"The Dust Has Not Yet Settled"

Victims' Views on The Right to Remedy and Reparation

A Report from the Greater North of Uganda

UGANDA HUMAN RIGHTS COMMISSION
UHRC

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This publication was made possible through the UN Women Global Programme on women's access to justice in conflict and post-conflict situations, funded by the Government of the Federal Republic of Germany.

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ACKNOWLEDGEMENTS

This Report, jointly commissioned by the Uganda Human Rights Commission and the UN Office of the High Commissioner for Human Rights, is based on field research carried out in the Greater North of Uganda between 2007 and 2011. In addition to UHRC and OHCHR colleagues in Uganda, special thanks go to the many people who participated in this project, most especially the victims who willingly shared their stories and contributed to the information provided in this report that seeks to connect the notion of reparative justice to the local experiences of victims and survivors of the Northern Uganda conflict. The gathering of information from over 2,000 victims and victims' advocates in the Greater North is a reflection of the dedicated efforts of many agencies and people. The overall impetus for this research was conceived by Bernard Turyashemererwa, UHRC Regional Human Rights officer, Gulu, and Ms. Katherine Liao of OHCHR. This report is a testament to the memory of Bernard Turyashemererwa, whose tragic death deeply affected all who knew him.

In particular, UHRC and OHCHR would like to acknowledge the Consultant Dr. Dyan Mazurana and her team from the Feinstein International Center, Tufts University, USA, for their indispensable role in the data collection (2010-2011), overall analysis and compilation of this present report. Dr. Mazurana is an Associate Research Professor at the Fletcher School of Law and Diplomacy and Research Director at the Feinstein International Center, Tufts University, USA. She has carried out research on the conflict in northern Uganda for a decade, with a focus on documenting serious violations of international human rights law and grave violations of international humanitarian law, including the effects on victims, their families and communities. Within her research and publications on Uganda and elsewhere, she has explored access and avenues to remedy and redress for victims of serious and grave violations. Her areas of focus include women's and

children's rights, war-affected children and youth, armed conflict, and peacekeeping.

Still, this field-based study would not have been possible without the valuable support and contribution of many others who worked hand in hand with the Consultant including Ms. Teddy Atim and Ariane Brunet. UHRC/OHCHR would like to extend sincere thanks to all those who constituted the research teams during the different phases of the project. Students from the **Oxford Transitional Justice Research Centre for Socio-Legal Studies** went through the previous 2007 body of research and produced a memo on their findings and Ismene Zarifis drafted a report on some of the initial data; Mazurana and Atim consulted both manuscripts in their preparation of this report.

For the research in 2008 and 2009, the research team on the UHRC side included: Bernard Turyashemererwa, Melody Ginamia, Justin Otim and Fiona Abalo Opoka (for Gulu/Amuru); Josephine Akello and Beatrice Omony (for Pader; Tom Okello and Charlotte Oloya (for Lira); Charles Kwemoi (Soroti). The research team on the OHCHR side included: Joan Kipwola, Deborah Oyella, Hilda Oyella, Steven Van Damme, Patricia Okello, Marissa Ryan, Andrew Akutu, and Katherine Liao. Deep appreciation is equally extended to the national consultants who assisted with note taking including: Patrick Ashby and Giovana Lamunu, Elisabeth Epudu, Lillian Aaca, and Moses Egayu. In the gender focus groups, Christine Adokorach helped to organise the women's focus groups in Pabbo IDP camp and provided the transcript of these focus groups. The Austrian government provided financial support for this research and documentation.

This report was also reviewed and edited by various individuals including: Joseph Akwenyu, Ariane Brunet, Gaelle Carayon, Nathan Ebiru, Birgit Gerstenberg, Mariana Goetz, Roselyn Karugonjo, Katherine Liao, Florence Nakazibwe, Victor Ochen, Patrick Opio, Keith Proctor, Ruth Rubio-Marin, Fiona Shanahan, Nahla Valji and Lucie Viersma. Additional recognition to the substantial contribution of all UHRC and OHCHR colleagues in the field who

provided extensive comments to the text and contributed to the analysis. We hope this is a fitting reflection of your excellent work.

UN Women provided financial support under its Joint Programme on Access to Justice for Women, for the 2010 research to facilitate the integration of a gender perspective into the research findings.

OHCHR dedicates this report to all the victims of mass atrocities committed during the Northern Uganda conflict that spanned over two decades. For those victims whose continued resilience has inspired this report, UHRC and OHCHR, wish to express our sincere gratitude and deep respect.

EXECUTIVE SUMMARY

This report outlines the views and priorities of victims of serious violations of human rights law and international humanitarian law which resulted from the conflict between the Government of Uganda and the rebel Lord's Resistance Army (LRA). It details the serious violations that victims and victim-focused civil society organisations (CSOs) believe should trigger their right to remedy and reparation. Their priorities for remedy focus primarily on truth-recovery and accountability for harms committed. Recognising that reparations constitute remedies, their priorities for reparation rights include: physical and mental health services, education services, assistance to recover housing, land and inheritance, rebuilding of livelihoods, empowering of youth, public acknowledgement of harm and apologies, information on the disappeared, and the proper treatment of the dead. The report incorporates a strong gender focus and analysis.

The report provides victims, CSOs, the Ugandan authorities, the United Nations, development partners, non-governmental organisations, and foreign agencies and specialists in transitional justice with a detailed outline of victims' rights to remedy and reparation in international law. It also highlights the remedy and reparation principles and parameters outlined in the *Agreement on Accountability and Reconciliation,* one of the five agreements (collectively known as the Juba Protocols) concluded in talks between the Government of Uganda and the LRA in Juba, Southern Sudan in 2006-2008. The Agreement[1] and its Annexure[2] form the basis on which the Government of Uganda is drawing key principles to frame policies, legislation, and programmes to determine facts around the conflict (itself a form of remedy)and determine the parameters and modalities for reparation.

1 http://www.beyondjuba.org/peace_agreements/Agreement_on_Accountability_And_Reconcilition.pdf

2 http://www.iccnow.org/documents/Annexure_to_agreement_on_Accountability_signed today.pdf

In part to begin addressing victims' right to remedy and reparation, in 2008, Uganda's Justice, Law and Order Sector (JLOS) established a high level Transitional Justice Working Group to give effect to the provisions of the Juba Peace Agreement (see Chapter 3). The Transitional Justice Working Group is comprised of five thematic sub-committees including: (1) war crimes prosecutions; (2) truth and reconciliation; (3) traditional justice; (4) Sustainable funding; and (5) integrated systems. In 2008, Uganda established the International Crimes Division of the High Court to try perpetrators and is currently considering the establishment of a truth-seeking body. Issues of remedy and reparation cut across these thematic areas and will likely be addressed in several focus areas of the sub-committees. The five thematic sub-committees have to be engaged in moving forward these important issues.

This report brings together the substantial body of evidence drawn from international legal instruments attesting to the right of victims in the Greater North of Uganda to remedy and reparation for serious violations suffered. The foundational tenet and obligation of reparation in international law is that it should directly benefit the victims of certain types of serious violations. It is increasingly accepted that genuine reparation is more than the outcome of formal judicial proceedings and must be situated within broader political processes in societies emerging from conflict.

Despite recognition that the right to remedy and reparation must apply without discrimination, most remedy and reparation responses for atrocities committed during situations of armed conflict have failed to systematically incorporate women's, girls' and boys' specific experiences, needs and rights. It is important to recognise, in Uganda as in other post-conflict contexts, that the origins of violations of women's and girls' human rights both predate conflict and are exacerbated during the conflict. Hence, remedy and reparation processes and outcomes have an important role in helping address post-conflict socio-cultural injustices.

Research process

The report presents evidence primarily gathered from interviews with 2,302 people between 2007 and 2011. An initial data set was collected and managed by OHCHR- Uganda and subsequently re-analysed by Oxford Transitional Justice Research. A second data set was generated by OHCHR, and a third by OHCHR and the Uganda Human Rights Commission (UHRC), in partnership with researchers from the Feinstein International Center, Tufts University, USA. In-depth individual interviews, focus groups and semi-structured interviews involved former LRA abductees, relatives of abductees and people killed or maimed, victims of physical violence, forced wives, internally displaced persons, grassroots cultural leaders, elders, youths, recipients of traditional healing practices and members of victim groups and CSOs. The interviews carried out by the Feinstein team (in conjunction with OHCHR and UHRC) focused on specific harms including mutilation, amputation, and serious war wounds, as well as specific victims including forced wives/mothers and their children born in captivity, torture survivors and victims of sexual violence.

The data presented in this report draws principally from the primary data collected between 2007 and 2011 by OHCHR and UHRC. Where relevant and possible, secondary literature is cited.

The Feinstein team then analysed all three data sets to generate the findings presented in this report. The Feinstein team explored (a) the types of serious violations interviewees discussed; (b) the past and current impact of these violations on victims' lives; (c) their views and understanding of truth telling and fact finding around the conflict; and (d) their views on remedy and reparation. The validation of findings was assessed by (a) triangulation; (b) comparing findings from secondary literature; and (c) feedback – primarily obtained by validation workshops that included victims, victim-focused CSOs, JLOS, UHRC, OHCHR, and key donors and international organisations.

The following findings are drawn largely from the primary data collected for this study by OHCHR and UHRC incorporated a strong gender focus/analysis.

Serious rights violations

Civilian populations suffered serious violations at the hands of both the LRA and the Uganda People's Defence Force (UPDF). The victims and victim-focused CSOs identified 11 categories of serious violations that they believed should trigger the right to both remedy and reparation. These include: killing, torture or cruel, inhuman or degrading treatment, abduction, slavery, forced marriage, forced recruitment, mutilation, sexual violence, serious psychological harm, forced displacement, and pillaging, looting and destruction of property. Attacks that resulted in these violations were generally indiscriminate, showing no respect for traditional or international legal norms[3] that in times of armed conflict protect certain groups not directly involved in the fighting (i.e., Non-belligerents), such as the elderly, women and children.

According to the witness accounts and other published studies,[4] the LRA carried out massacres in a systematic and widespread manner. In addition to killing civilians during attacks, the LRA also killed civilians they had taken into captivity, often in particularly brutal ways, including beating, hacking, pounding or crushing them to death, dismembering them, cooking or burning them alive, or breaking their limbs and putting them in pits that they could not crawl out from. LRA acts of torture or cruel, inhuman or degrading treatment included the raping of women and girls, the cutting and burning of women and girls' genitals and breasts, castration of males, dismemberment, cutting body parts, and severe beatings, among other violations. In addition, the LRA perpetrated torture, cruel or inhuman treatment of civilian populations and abductees by forcing people, in particular children, to harm and kill loved ones, family members, friends, and other community members or captives.

The scale of abduction was immense. In Acholiland alone studies estimate at least 66,000 cases, with more than a third of male

3 Most all societies have traditional norms regarding the conduct of armed hostilities, which includes recognising categories of persons to whom fighters should show mercy and restraints, primarily women, children and the elderly see Hugo Slim. (2008). Killing Civilians: Method, Madness and Morality in War, Columbia University Press: New York.

4 See for example, Erin Baines, et al. 2009. Kill Every Living Thing: The Barlonyo Massacre. Justice and Reconciliation Project, Gulu District NGO Forum.

youth and a fifth of female youth reporting abduction by the LRA.[5] Twenty percent of male abductees and five percent of female abductees are believed to have been killed during captivity with the LRA as a consequence of combat, violence and deprivation. The crime of abduction was often followed by forced recruitment into the LRA.[6] The primary targets for LRA forced recruitment were boys and girls between 10-18 years of age.[7] The LRA reportedly forced abducted civilians into various forms of slavery including forced labour, sexual slavery, forced marriage, forced pregnancy and forced child bearing. Consequently, thousands of children have reportedly been born as a result of "forced marriage" and some currently face challenges attempting to integrate with their mother's family and community.

The LRA were known for mutilating civilian victims, especially females.[8] The LRA used mutilation as a form of punishment of both communities and individuals. This includes cutting off people's ears, lips, nose, fingers or limbs, cutting of females' breasts and genitals, raping females with machetes and male castration.

Many victims interviewed reported that experiencing and witnessing the serious violations discussed above has resulted in severe psychological harm to themselves, their families and communities.

Interviewees reported that the UPDF engaged in illegal killings, including executions, as well as raping and then stabbing or shooting to death captured LRA fighters. They reported that

5 See Annan, Jeannie, Chris Blattman, Khristopher Carlson and Dyan Mazurana. 2008. The State of Female Youth in Northern Uganda: Findings from the Survey of War Affected Youth: Survey for War Affected Youth. Kitgum Uganda, and Feinstein International Center, Tufts University; Annan, Jeannie, Christopher Blattman, Dyan Mazurana and Khristopher Carlson, "Civil War, Reintegration and Gender in Northern Uganda," Journal of Conflict Resolution accepted and forthcoming.

6 Abduction refers to the crime of kidnapping or taking someone away by force. Forced recruitment refers to the crime of forcing someone to involuntarily join an armed force or armed group. In the LRA and GoU conflict, the LRA abducts people and then forcibly recruits them into the rebel force.

7 Annan, Jeannie, Chris Blattman, Khristopher Carlson and Dyan Mazurana. 2008. The State of Female Youth in Northern Uganda: Findings from the Survey of War Affected Youth: Survey for War Affected Youth. Kitgum Uganda, and Feinstein International Center, Tufts University; Annan, Jeannie, Christopher Blattman, Dyan Mazurana and Khristopher Carlson, "Civil War, Reintegration and Gender in Northern Uganda," Journal of Conflict Resolution accepted and forthcoming.

8 See AYINET. (2011). 2009/2010 Surgical and Medical Rehabilitation Report. Kampala, Uganda.

the UPDF tortured people and used undue force that resulted in death, primarily of persons captured during battles with the LRA or suspected rebel collaborators.

The UPDF also reportedly raped both males and females, at times publicly, in order to punish and intimidate populations resisting their orders. The UPDF was also accused by interviewees of forced recruitment of minors. The UPDF, in particular the force's Mobile Units, have been accused of raping females within IDP camps and females captured in combat with the LRA or known to have returned from the LRA.

Consequently, at a minimum, thousands of adults and children are living with serious injuries from bullet, shrapnel, and machete wounds caused by LRA attacks, from being hit with bomb fragments during UPDF aerial bombardments, or by being caught in combat exchanges.[9]

By the height of displacement in 2005, nearly two million people – approximately 90-95 percent of the population of Acholiland and 33 percent of the population of Lango sub-region were internally displaced due to the conflict.[10] People spoke of being told by the UPDF that they had a few days or, in some cases, only 24 hours to leave their homes and make necessary preparations. They said that on return shortly after displacement to their homes to try and collect their belongings they found all their assets looted. Most blamed the UPDF for looting or allowing the looting, either by deliberate act or omission. Some interviewees reported the UPDF used violence including rape, force and threats – to compel people to leave home and move into camps.

9 For example, in large scale surveys, Annan et al. finds that 7% of female and 13% of male respondents reported serious war time injury that inhibited their ability to move or work. Pham et al. finds that 5% of their study population was maimed by war related crimes and injuries. See Jeannie Annan, Chris Blattman, Khristopher Carlson and Dyan Mazurana. 2008. The State of Female Youth in Northern Uganda: Findings from the Survey of War Affected Youth: Survey for War Affected Youth. Kitgum Uganda, and Feinstein International Center, Tufts University; Phuong Pham et al. (2007). When the War Ends. Human Rights Center: University of California, Berkeley.

10 OCHA, "Consolidated Appeals Process (CAP): Mid-Term Review of the Humanitarian Appeal 2005 for Uganda," Geneva, June 22, 2005, http://www.reliefweb.int/rw/RWB.NSF/db900SID/HSHU-6DL849?OpenDocument&rc=1&emid=ACOS-635PRQ&cc=uga. (retrieved April 28, 2011).

Nearly all interviewees spoke of the violence, impoverishment and humiliation that occurred as a result of forced displacement. They reported that IDP camps – over 240 in number at the height of the conflict were poorly protected and inadequately facilitated. The LRA carried out some of its largest massacres in and around camps. At a minimum, tens of thousands of people died in the camps due to disease and violence.[11] Traditional kin-based systems of support were weakened as clan members in camps became destitute and were no longer able to support vulnerable relatives. Respect for elders waned and children missed schooling.

The majority of interviewees spoke of having property, personal effects and key assets looted, pillaged, and destroyed by the LRA and UPDF. People reported their land was seized for creating military facilities and IDP camps, for which they have not been compensated.

Though not necessarily party to the conflict, armed raiders from the Karamoja region, in the context of the prevailing insecurity in the Greater North, perpetrated crimes against the population. Various groups from Karamoja were named as responsible for crimes of killing, rape, looting and destruction of property. Many interviewees assert the Government of Uganda failed to respond adequately to protect them from the raiders from Karamoja.

Remedy: What victims want

Victims have a clearly established right to remedy and reparation for serious violations of international human rights law and international humanitarian law. Remedy encompasses the right to: a) equal and effective access to justice; b) adequate, effective and prompt reparation for harm suffered; c) access to relevant information concerning violations and reparation mechanisms; and d) access to fair and impartial proceedings.[12]

11 For the seven month time period of the study, researchers found a total excess mortality of 25,694 persons, of which 10,054 were children under 5. The study estimates that 3,971 people were violently killed during this same time period in Acholiland. See the Republic of Uganda Ministry of Health and the World Health Organisation,"Health and mortality survey among internally displaced persons in Gulu, Kitgum and Pader districts, northern Uganda," World Health Organisation: Geneva (2005).

12 "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. (Referred to hereafter as *The Basic Principles*).

Victims and members of victim-focused CSOs stated that the Government of Uganda, the LRA, the Government of Sudan, some members of the diaspora, and raiders from Karamoja have been responsible for violations during the hostilities. Interviewees stated that those parties responsible, and in particular their leaders, should be held accountable, including criminally accountable.

Victims and victim-focused CSOs named truth-recovery, acknowledgement of harms, redress and reparation as their top priorities for any future transitional justice initiatives.

Victims and victim-focused CSOs reiterated to researchers the need to carry out fact-finding and inquiry regarding the facts and nature of the Government of Uganda and LRA conflict and the serious crimes and violations committed by all parties. People take a long-term view of the conflict, tracing its origins prior to the emergence of the LRA in 1986. Victims and victim-focused CSOs have clearly articulated the kinds of serious violations they believe should be investigated, documented and addressed. They stated that they did not know the whole truth about the harms they had suffered, particularly the identity of perpetrators. There exists a strong community-level interest in having the facts about violations of human rights and humanitarian law put on public record. Family members of the very large number of disappeared people emphasised their desire to learn of their loved ones' fates. Furthermore, many are interested in ensuring that the dignity of the dead is preserved.

Victims and victim-focused CSOs expressed clear ideas regarding the core functions of the emergent truth-recovery or inquiry body. They want to be consulted in processes to determine the history of what has happened. They stress the need to ensure that violations against women and children are heard, taken seriously and documented as part of the public national record. Survivors of sexual violence, survivors who have been seriously mutilated, and families of children born as a result of captivity strongly emphasised that special provisions must be put in place to ensure

they are able to present evidence in safety and, if they choose, without revealing their identities. Victims and victim-focused CSOs interviewed for the studies stressed the need for the protection of witnesses. They strongly assert their right to be involved in the design of the mandate of any official body established to recover the truth and clarify historical events. They believe they can provide such an entity with indispensable assistance to reach out to marginalised, hard-to-reach communities and victims. Without them, they argue, such a body cannot be truly victim-oriented in its scope and operation.

Reparation: What victims want

All victims of human rights violations have the right to effective remedy. The Human Rights Committee's General Comment 31, paragraph 16, "requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. In addition to the explicit reparation required by articles 9, paragraph 5, and 14, paragraph 6, the Committee considers that the Covenant generally entails appropriate compensation. The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations."[13]

Reparation has five components: 1) **restitution** (seeking insofar as possible to restore victims to their original state prior to the violations, including land restitution); 2) **compensation** for economically-assessable damage; 3) **rehabilitation** (ensuring access to medical and psychological care and legal and social services); 4) **satisfaction** (measures such as attested public disclosure of the facts around disappearances, abductions and killings, identification and burial of the dead, and apologies

13 Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on State Parties to the Covenant , U.N. Doc CCPR/C/21/Rev. 1/Add.13/ (2004).

from and sanctions against perpetrators); and 5) **guarantees of non-repetition**. The last requires civilian control of armed forces; international standards of due process; law reform; an independent judiciary; robust protection regimes; human rights and humanitarian law training and a gender-just interpretation of laws through promotion of women's rights and equality.

Reparation programmes are unlikely to succeed unless they are linked with other transitional justice measures particularly prosecution, truth-telling, and institutional reform. In particular, while a remedy might sometimes be enough to fulfil a victims' right to reparation (such as satisfaction), both rights are interlinked and reparation alone, will not fulfil the victims' right to remedy.

The categories of necessary forms of reparation that came up most consistently in interviews and the data from the present study include: physical and mental health services, education, housing, land and inheritance, rebuilding livelihoods, empowering youth, public acknowledgement of harm and apologies, information on the disappeared and proper treatment of the dead.[14]

Both material and symbolic forms of reparation are essential. Material reparation can include medical, educational, and housing assistance, as well as compensation in terms of cash, vouchers, pensions, or other benefits of monetary value. The rebuilding of schools, health clinics, hospitals, roads and markets if explicitly done as a form of redress and reparation, can also be a form of material reparation. Material reparation is present in all five components of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-recurrence. Symbolic reparation includes apologies, official acknowledgements, dignified reburials, commemorations and transformations of places of mass atrocities into public memorials. Within reparation, symbolic reparation largely occurs through the component of satisfaction.

The act and process of the victims engaging with the State on remedy and reparation is itself an integral part of the reparation

14 This list is not intended to be comprehensive. Rather, it puts forward the most noted categories of reparation needs.

process. For victims, reparation often requires acknowledgment of State responsibility (by commission or omission) for rights violations. The process by which reparation is promoted, and how victims are treated during it, is of paramount importance. Justice is itself an experience and a process, not simply an outcome.[15] To be well received, processes for remedy and reparation need to be owned by victims and empower them as survivors.

It is important to acknowledge that multiple local languages and low literacy rates exist and that there is a need to recruit gender-sensitive, female investigators to enable better access to information from female victims. It is necessary to acknowledge and make provisions for victim's difficult access to legal or medical documentation upon return from flight or IDP camps. Many female victims and victims of sexual violence will not initially come forward to claim reparation, in part due to the stigma attached to the harms they have suffered. Hence, reparation processes must allow women and girls to come forward when they are ready and not be barred by expiry of formal prescribed deadlines.

Overwhelmingly, victims and victim-focused CSOs said that the Government of Uganda should be responsible for awarding reparation. They stress the LRA also bears responsibility, but given that its leadership remains in rebellion they feel that any prospect of reparation from the LRA remains remote. They believe the international community should help ensure that victims receive remedy and reparation in response to the immense and long-lasting harms they have suffered, but did not believe they should replace the Government in bearing ultimate responsibility.

Throughout the research, victims and victim-focused CSOs consistently demonstrated a sophisticated and nuanced understanding of reparation. They envisage reparation as a process enabling victims to speak out about harms and what happened to them. They want those parties responsible for the serious crimes and violations to admit wrong-doing and apologise. They believe

15 Mariana Goertz, REDRESS, personal communication with the authors, December 1, 2010.

these steps are essential to end the cycle of blame, harassment and intimidation they now face. They want a reparation process to provide comfort for victims and help them move into new stages of their lives. They believe reparation processes and outcomes can help rebuild relations of trust between citizens and the authorities if the Government indicates commitment to end such horrors and harms, once and for all.

The way forward

In the Greater North, the vast majority of victims of serious violations are yet to realise their internationally-acknowledged right to remedy and reparation. The overwhelming majority of victims of serious violations have no access to equal and effective justice and judicial remedy. There has been no concerted effort on the part of the Government of Uganda to document, investigate, and provide victims with access to relevant information concerning the violations they were exposed to and suffered. There have been no fair and impartial justice proceedings regarding the mass and widespread violence in Greater North. There has been almost no systematic information, outreach or consultation with victims on planning for remedy and reparation mechanisms.

This report offers detailed sets of suggestions as the Government of Uganda begins preparations for inquiry into past serious violations and offers recommendations to establish mandates and frameworks for reparation. Victims and victim-focused CSOs want to be consulted to determine the history of what has happened and the future of what should happen to repair the lives of victims. They want to ensure that violations against women and children are heard, taken seriously and documented.

While the Government of Uganda has the primary responsibility, the UN, NGOs and Uganda's development partners have a role to play in facilitating effective remedy and reparation, particularly in terms of monitoring and ensuring victims actually receive remedy and reparation. Researchers found a widespread view that the international community should help ensure that victims receive remedy and reparation, both through political advocacy and

provision of material and human resources. Interviewees want them as partners in reparation, but do not want them to "hijack" planning processes on truth-recovery or reparations. International stakeholders could assist the Government of Uganda develop remedy and reparation structures and work to ensure their actual implementation and transparent accountability to victims.

Recommendations

Key recommendations on victims' right to remedy and reparation derived from testimonies obtained during the research process include:

1. The mandate of the body of inquiry should incorporate and widely publicise the principles set out in a) *The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ; b) the Nairobi Declaration on Women's and Girls' Right to Remedy and Reparation and Serious Violations of International Humanitarian Law*[16]*; and c) the Agreement on Accountability and Reconciliation and its Annexure*.
2. The work of the body of inquiry should adhere to principles of equality and non-discrimination. It should be gender-balanced and include people with expertise on sexual and gender-based violence and violence against children. Its leaders should be dedicated and independent. One's political affiliation should not be a factor and neither should politics guide its operation.
3. It is important to ensure that for some violations, particularly those of a sexual nature, interviews will be conducted in a way to protect victims' privacy and well-being. It is vital to make provisions for witness protection, particularly for women and children.
4. CSOs and victim-led groups should participate in the design, implementation, monitoring and evaluation of reparation programmes.

16 http://www.womensrightscoalition.org/site/reparation/signature_en.php

5. Violations that qualify victims for reparation must not leave out, or unduly simplify, forms of violations that have a disparate gender impact including: sexual violence, reproductive violence, forced marriage, forced impregnation, forced child bearing, and forced removal of children from their parents or caregivers.
6. Beneficiaries should include family members (broadly defined) and other dependents.
7. Support structures, with sufficient trained female investigators and medical and psycho-social personnel, need to be established to assist victims in the process of speaking out and claiming reparation.
8. Flexible evidentiary standards and processes should not stigmatise or endanger victims; the names of those seeking reparation should not be publicised.
9. There is a need for substantial investment in physical and mental health services for victims of serious burns, facial and body mutilations, repeated rape, rape with machetes, castration, and landmine, bomb and gunshot victims, among others, who require specialised, long-term care. There is need for government policy directing significant resources to physical and mental health services to care specifically for victims.
10. Reparation should include assistance to help victims to gain access to their homes and land and cultivate their land, including funds to hire help or rent oxen to help plough the land, particularly for widows, the elderly and child-headed households. Reparation could also include start-up capital for income generation and livelihoods support programmes.
11. Reparation should include access to education, legal and social services, public acknowledge of harms and apologies, inquiries into the whereabouts and fate of the disappeared, and assistance with the identification and burial of the dead. It should also include compensation to land owners who hosted IDP camps and military establishments.
12. A national reparation policy and its implementation framework should be instituted.

INTRODUCTION AND METHODS

Introduction

The purpose of this report is to present the views of victims and victim-focused CSOs in the Greater North of Uganda on their right to and priorities for remedy and reparation for serious human rights violations an abuses they have suffered as a result of the LRA and Government of Uganda hostilities. The report incorporates a strong gender focus and analysis.

Chapter 1 presents the study rationale, methods and data sets used to generate the findings presented throughout the report. Chapter 2 provides a detailed discussion of victims' of serious violations right to remedy and reparation within international human rights law and international humanitarian law, and highlights the gender dimension of these rights. Chapter 3 documents and examines the Agreement on Accountability and Reconciliation and its Annexure of the Juba Protocols, with an emphasis on the key principles to frame a Body of inquiry and the parameters and modalities for reparation. Throughout, the principal gender dimensions within the Agreement and its Annexure are highlighted. Chapter 4 then draws from the narratives of victims and victim-focused CSOs in the Greater North of Uganda to provide a detailed description of the serious violations of human rights and humanitarian law that Ugandan victims were subjected to during the Government of Uganda and LRA hostilities, giving attention to key gender and generational aspects. Chapter 5 presents victims' and victim-focused CSOs' priorities for remedy. Chapter 6 provides the victims' and victim-focused CSOs' views on the right to reparation and presents a discussion of the scope and kinds of reparation likely required by victims of serious violations in the Greater North. Within each chapter, recommendations are given.

Study rationale

The purpose of this report is two-fold. First, it is to provide the victims, victim-focused CSOs, the Government of Uganda, the United Nations, NGOs and Development Partners with the victims' experiences of serious violations and their right to remedy and reparation for such violations under international law, and as highlighted within the Agreement on Accountability and Reconciliation and its Annexure of the Juba Protocols. Second, the report offers guidance on the scope and key forms of remedy and reparation needed by victims of serious violations in the Greater North of Uganda.

Data sets, methodologies and validation of findings

Primary Data

This report uses both primary and secondary data sources. Primary data is drawn from interviews with 2,302 people between 2007 and 2011, the vast majority[17] of whom are victims of serious violations of human rights law and international humanitarian law as a result of the hostilities between the Government of Uganda and the Lord's Resistance Army (LRA).

There are three primary data sets used in this report. The **first data set** was collected in 2007 by OHCHR, Uganda and includes qualitative, semi-structured interviews with 1,725 victims of serious violations (gathered in 69 focus groups) and 39 key informants on victims' perceptions of accountability, reconciliation and transitional justice in northern Uganda.[18] Focus groups were comprised of former LRA abductees, relatives of abductees and of people killed or maimed, victims of physical violence, internally displaced persons who have suffered economic loss, grassroots

17 The exact number of victims is not known as many of the persons interviewed from CSOs are themselves victims but may not have identified themselves this way to the research teams. However, the vast majority of interviewees identified themselves (usually through narratives about the harms they have suffered) as victims of serious violations.

18 One report was previously published from this data, OHCHR, Uganda. (2007). Making Peace Our Own: Victims' Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda. OHCHR: Geneva and Kampala. For more information on the methods used and the findings refer to this 2007 publication.

cultural leaders and elders, youths, recipients of traditional healing practices and members of victim and community-based organisations. Where relevant, the groups were subdivided in terms of gender or age. The interviews were conducted in local languages and took place between February and March 2007 in the sub-regions of Acholiland, Lango, and Teso. This data was collected and managed by OHCHR, Uganda. The qualitative data was then re-analysed in 2008 by a 16-member team from Oxford Transitional Justice Research with a focus on identifying and analysing data regarding reparation.[19] **Throughout the present report, this data set will be referred to as "OHCHR 2007."**

The **second data set** was generated by OHCHR, Uganda and the Uganda Human Rights Commission (UHRC) between May and July 2008 and includes qualitative, semi-structured interviews with 350 victims. These interviews were carried out in focus groups. The focus groups were comprised of particular types of victims, including male and female abductees, forced wives and forced mothers, widows, war orphans, those whose family members had been killed, internally displaced persons who had suffered civil and political violations and economic loss, grassroots cultural leaders and elders, youths, members of victim- and community-based organisations, and other vulnerable groups. The interviews were conducted in local languages, specifically focused on issues of reparation and were carried out in locations throughout the sub-regions of Acholiland, Lango and Teso. This data set was collected and managed by OHCHR, Uganda staff. **Throughout the present report, this data set will be referred to as "OHCHR and UHRC 2008."**

The **third data set** was generated by OHCHR and the UHRC, in partnership with researchers from the Feinstein International Center, Tufts University, between September 2010 and January 2011 and represents interviews with 188 individuals. This data set combines data collected from purposive, qualitative, in-depth individual interviews with 96 victims of serious violations and CSOs working directly with victims of the Government of

19 Oxford Transitional Justice Research, "Victims' Perceptions of Conflict Reparations in Northern Uganda: Analytical Memorandum," (Author: Oxford) May 2008.

Uganda and LRA hostilities. The interviews focused on the effects of specific harms, for example, mutilation, amputation, serious war wounds, forced wives/mothers and their children born in captivity, torture survivors, and victims of sexual violence. This work used gender analyses to understand the ways in which gender influences how people were targeted, how their rights were violated, and how those violations shape their lives now. The research also focused on victims' views on remedy and reparation and the gender dimensions of those views. The focus of the interviews was to identify how specific violations interact with gender to shape people's lives now and their understanding of what would be necessary to repair their lives. These interviews were conducted in local languages. This research was initiated to fill data and knowledge gaps that existed in the previous data sets and was carried out in the sub-regions of Acholiland, Lango, Teso and West Nile. Additional research was then carried out using regional consultations and qualitative interviews with 92 direct victims and CSOs led by victims and/or working directly with victims of serious harms specifically on issues around fact finding and reparation. These interviews and consultations were carried out in local languages. This work was carried out in the sub-regions of Acholiland, Lango, Teso and West Nile. This data was collected, managed and analysed by researchers with the Feinstein International Center, Tufts University, USA. **Throughout this report, this data set will be referred to as "OHCHR and UHRC 2010/2011."**

Secondary Data

In this report, the emphasis is on reporting findings from the primary data (described above). However, the authors also examined relevant secondary sources, including scholarly and other publications, and grey (unpublished) literature. When relevant, key texts are cited throughout the report.

Data Analysis and Validation of Findings

Inductive coding was employed to analyse the data. Inductive coding involves the generation of themes and categories from rich,

complex data, and is focused on generating meaning rather than imposing pre-defined hypotheses.

The purpose of data analysis was to better understand (a) the types of serious violations interviewees discussed; (b) the effects of those violations on the victims' lives then and now; (c) their views and understanding of truth telling and fact finding around the Government of Uganda and LRA conflict and the harms they and others suffered; and (d) their views, understanding of, and priorities regarding remedy and reparation.

The accuracy of this report's findings was assessed using (a) comparison with findings from previous research; (b) triangulation within the project; (c) feedback from participants in the research; and (d) feedback from intended users of the research findings. Initial results were presented at two validation workshops -- one with Government of Uganda officials and key partners, and the other with victims and representatives of CSOs working closely with victims. Both workshops were held in Kampala, Uganda in late November 2010. Comments from the validation workshops were taken into consideration in the preparation of this final report.

VICTIMS' RIGHT TO REMEDY AND REPARATION UNDER INTERNATIONAL LAW AND UGANDA'S NATIONAL LAWS

The right to remedy and reparation in international human rights law and international humanitarian law

Victims have a clearly established right to remedy and reparation for serious violations of international human rights law and international humanitarian law. In 2005 the United Nations General Assembly adopted the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (referred to hereafter as *The Basic Principles*),[20] which lays out international law regarding the right to remedy and reparation. *The Basic Principles* represent the most comprehensive international guidelines and principles on remedy and reparation and is a legal document. It does not create new legal obligations but draws on existing legal obligations under international human rights law and international humanitarian law. The United Nations Office of the High Commissioner for Human Rights (OHCHR) then produced a *Rule-of-Law Tools for Post-Conflict States: Reparations Programmes,* which gives practical guidance on how to render *The Basic Principles* operative.[21]

20 A/RES/60/147.

21 OHCHR, Rule-of-Law for Post-Conflict States: Reparations Programmes (OHCHR: New York and Geneva) 2008.

The right to remedy for victims of serious violations of international human rights law and international humanitarian law is present within numerous international instruments:

- Article 8 of the Universal Declaration of Human Rights[22]
- Article 2 of the International Covenant on Civil and Political Rights[23]
- Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination[24]
- Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[25]
- Article 24 of the International Convention for the Protection of All Persons from Enforced Disappearance
- Article 39 of the Convention on the Rights of the Child[26]
- Article 3 of the Hague Convention Respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV)[27]
- Article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977[28]
- Articles 68 and 75 of the Rome Statute of the International Criminal Court.[29]

The right to remedy for victims of serious violations of human rights is also present in regional conventions:

- Article 7 of the African Charter on Human and Peoples' Rights[30]
- Article 25 of the American Convention on Human Rights[31]

22 1 Resolution 217 A (III).

23 Resolution 2200 A (XXI), annex.

24 Resolution 2106 A (XX), annex.

25 United Nations, Treaty Series, vol. 1465, No. 24841.

26 Ibid., vol. 1577, No. 27531.

27 See Carnegie Endowment for International Peace. (1915). The Hague Conventions and Declarations of 1899 and 1907. New York, Oxford University Press.

28 United Nations, Treaty Series, vol. 1125, No. 17512.

29 *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June–17 July 1998*, vol. I: *Final documents* (United Nations publication, Sales No. E.02.I.5), sect. A.

30 United Nations, Treaty Series, vol. 1520, No. 26363.

31 Ibid., vol. 1144, No. 17955.

- Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[32]

The following instruments are of persuasive effect on Uganda in developing appropriate legal, policy and institutional frameworks for reparations to victims of gross violations of human rights.

The 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was designed to assist Governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power.[33] This Declaration affirms that victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected, and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the swift application of appropriate rights and remedies for victims.

Finally, the Rome Statute of the International Criminal Court "requires the establishment of 'principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation', requires the Assembly of States Parties to establish a trust fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims, and mandates the Court 'to protect the safety, physical and psychological well-being, dignity and privacy of victims and to permit the participation of victims at all stages of the proceedings determined to be appropriate by the Court'."[34]

The right to remedy under Uganda's national law

The right to remedy and equal treatment is included within various provisions of the Constitution of the Republic of Uganda[35]:

- Article 50 guarantees judicial remedy for human rights violations and in particular states that, any person who claims that a fundamental or other right or freedom guaranteed

32 Ibid., vol. 213, No. 2889.

33 A/RES/40/34.

34 United Nations, The Basic Principles, Preamble, page 3.

35 The Constitution of the Republic of Uganda, 1995. Available at http://www.ugandaembassy.com/Constitution_of_Uganda.pdf

under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.

- Article 21 guarantees non-discrimination and equal treatment, violations of which are entitled to remedy under Articles 50 and 53 of the Constitution
- Articles 24 and 44 (a) establishes freedom from torture and inhuman treatment as a fundamental right, and also recognised to be non-derogable. Violation of this right similarly entitles the victim of such treatment to obtain judicial remedy under Article 50 of the Constitution.
- Article 34 (7) provides for special protection of vulnerable children, which implicitly includes child victims of crimes who would be entitled to compensation in case of violations of their rights.
- Article 53 (2) empowers the Uganda Human Rights Commission to order compensation and any other legal remedy or redress in cases where an infringement of a human right or freedom has been proved.

National legislation within Uganda also lays out key provisions for protection, remedy and redress:

- Article 64 of the International Criminal Court Act mentions enforcement of the International Criminal Court's orders for victims' reparations[36]
- Section 5 of the Children Act, [37] Cap 59 sets out general duties of a parent, guardian or other person having custody of a child to maintain that child and ensure their right to (a) education and guidance; (b) immunisation; (c) adequate diet; (d) clothing; (e) shelter; and (f) medical attention. The Section further states that any person having custody of a child shall protect the child from discrimination, violence, abuse and neglect. (Section 5 (2))

36 The International Criminal Court Act 2010, the Uganda Gazette No 39 Volume CIII dated 25th June 2010, assented on 25th May 2010. Available at http://www.beyondjuba.org/policy_documents/ICC_Act.pdf

37 The Children Act, Chapter 59 of the Laws of Uganda, August 1, 1997, available at http://www.ugandaembassy.com/The_Children_Act.pdf

- The Children Act also provides special protection for vulnerable children such as those with disabilities, most notably in Section 9.[38]

Regional instruments ratified by Uganda relevant to victims' right to remedy and reparations include:

- The African Charter on Human and Peoples Rights[39]
- The African Charter on the Rights and Welfare of a Child[40]
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa[41]

The relevant legislation governing situations of gross violations of international human rights law or grave breaches of international humanitarian law committed in or outside Uganda include:

- The Geneva Conventions Act, Cap 363[42]
- The International Criminal Court Act[43]
- The Amnesty Act (Uganda's national amnesty law).[44]

Notably, these laws reflect apparent gaps with regard to guarantees of victims' right to remedy. The Geneva Conventions Act, Cap 363 enacted in 1964 as a law to domesticate the Geneva Conventions of 1949, relates to treatment of protected persons (i.e. Prisoners of War, internees, and civilian populations) during armed conflict be it of international or non-international character. The Geneva Convention in relation to the protection of civilians in times of war (set out in the fourth schedule of Uganda's Geneva Conventions Act) in particular, refers to special measures to be accorded to children below the age of fifteen years (article 24) as well as the obligation to facilitate the transmission of information between family members dispersed on account of the conflict to enable their reunion (articles 25 and 26). However, the application of the convention elapses upon cessation of military operations (article

38 Ibid.

39 United Nations, Treaty Series, vol. 1520, No. 26363.

40 Ibid., vol. 1144, No. 17955.

41 Ibid., vol. 213, No. 2889.

42 The Geneva Conventions Act (Ch 363), available at http://www.ulii.org/ug/legis/consol_act/gca1964208/

43 The International Criminal Court Act 2010.

44 Amnesty Act, 2000.

6) and does not accord any substantive remedies for victimised civilians to claim during the post conflict stage.[45] The International Criminal Court Act, which domesticates the Rome Statute, makes provisions to facilitate Uganda's cooperation with the International Criminal Court. The Act recognises the victims' right to remedy and obligates the State to enforce orders for reparations issued by the International Criminal Court (Article 64).[46] The Amnesty Act, Cap 294, which was enacted in January 2000 and currently envisaged to remain in force until 25 May 2012 (pursuant to Amnesty Act (Extension of Expiry Period) Instrument, 2010, SI 21/2010), seeks to provide for amnesty for Ugandans involved in acts of a warlike nature in various parts of the country. It does not address any aspects of compensation or reparations for the victims of such crimes.[47]

There are a number of other specific legal frameworks that stipulate the victims' right to remedy that may be drawn upon as the basis for remedy and reparations for victims of serious human rights violations, which may also be interpreted as crimes within Uganda's domestic jurisdiction. These include:

- The Trial on Indictments Act,[48] (TIA) Cap 23 – *Section 126 – Compensation* (1) When any accused person is convicted by the High Court of any offence and it appears from the evidence that some other person, whether or not he or she is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed, the court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation as the court deems fair and reasonable.
- Remedies can also derive from prosecution of crimes recognised under domestic penal law and have a bearing on the individual victim's inherent rights and human dignity.

45 The Geneva Conventions Act (Ch 363).

46 The International Criminal Court Act 2010.

47 Amnesty Act, 2000.

48 The Trial on Indictments Act (Cap 23), available at http://www.ulii.org/ug/legis/consol_act/toia222/

Uganda's Penal Code Act, Cap 120,[49] includes crimes such as Rape (Sections 123-124), Abduction (Section 126), Murder (Section 188-189), Kidnapping and Abducting (Chapter XXIV – Sections 239 -247), whose penalties can be supplemented with an order issued by courts acting under the powers granted by Section 126, TIA to grant compensation to the victim.

Also noteworthy is that victims' right to remedy and reparation has further been affirmed within the Juba Peace Agreement on Accountability and Reconciliation signed between the Government of Uganda and the LRA on June 29, 2007 which draws upon *The Basic Principles* (discussed in detail in Chapter 3).

The scope and components of remedy and reparation

The present OHCHR and UHRC report draws on an understanding of remedy and reparation within international human rights and humanitarian law and Uganda's national laws which include prevention and investigation of violations, prosecution of perpetrators, access to justice and effective remedy, and it is shaped by practical efforts to date. Effective reparation contains elements of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

As provided for under international law, remedies for serious violations of international human rights law and international humanitarian law include the victim's right to:

"(*a*) Equal and effective access to justice;

(*b*) Adequate, effective and prompt reparation for harm suffered;

(*c*) Access to relevant information concerning violations and reparation mechanisms."[50]

Victims shall have equal access to an effective judicial remedy as provided for under international law. Other remedies include

49 The Penal Code Act (1950), available at http://www.wipo.int/wipolex/en/details.jsp?id=5241

50 *The Basic Principles*, Principle 11.

access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Obligations to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic law. [51]

In fulfilling its responsibilities, the State is also duty bound to:

"(*a*) Disseminate, through public and private mechanisms, information about all available remedies for serious violations of international human rights law and international humanitarian law;

(*b*) Take measures to minimise the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims;

(*c*) Provide proper assistance to victims seeking access to justice;

(*d*) Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy for serious gross violations of international human rights law or serious violations of international humanitarian law."[52]

Reparation, especially large-scale reparation, is increasingly understood to be an attempt to seek justice and accountability and that such processes involve more than the outcomes of judicially-based proceedings. Large-scale reparation programmes emphasise the recognition of the harms and victims, and can include judicial reparations that seek compensation that is proportional to harm suffered. Furthermore, given the large number of victims, and hence potential claimants, mass claim reparation programmes or reparation funds created in the aftermath of a truth and reconciliation commission, can reduce some of the expense and difficulty associated with litigation, including higher evidentiary standards, the pain of cross-examination, and lack of confidence in the national judicial systems in the transition era, all of which

51 See *The Basic Principles*, Principle 12.

52 I bid.

are particularly onerous for women, children and marginalised minority populations.

The foundational tenet and obligation of reparation as laid out in international law is that reparation should, "provide benefits directly to the victims of certain types of crimes" and violations.[53] The Human Rights Committee has stated in regards to the duty of States to make reparations to victims: "without reparation to individuals whose Covenant rights have been violated, the obligation to provide effective remedy…is not discharged."[54]

Reparation has both considerable breadth and depth in *The Basic Principles,* which lays out five main forms of reparation: (1) restitution, (2) compensation, (3) rehabilitation, (4) satisfaction and (5) guarantees of non-repetition. Reparation should attempt to be proportional to the gravity of the violations and the harm suffered.

Restitution should seek as much as possible to restore victims to their original state prior to the violations. It includes, as appropriate, "restoration of liberty; enjoyment of human rights, identity, family life and citizenship; return to one's place of residence; restoration of employment; and return of property."[55]

Compensation should be given for any economically-assessable damage in a manner that is appropriate and proportional to the violations, which can include physical, mental, material, opportunistic and moral harms and costs incurred in pursuit of addressing the resulting harms.[56]

Rehabilitation encompasses medical and psychological care and access to legal and social services.[57]

Satisfaction is broadly understood to include, where applicable, measures that help cease violations; verification and full public

53 Pablo de Grieff, "Justice and Reparations," in Pablo de Greiff, ed. (2006) *The Handbook of Reparations.* Oxford: Oxford University Press, 2006. p. 453.

54 General comment no. 31 (2004) on the nature of the legal obligation imposed on States parties to the Covenant. See also OHCHR. (2008). *Rule-of-Law Tools for Post-Conflict States: Reparation Programmes.* New York and Geneva: OHCHR.

55 A/RES/60/147, article 9, para. 19.

56 Ibid., article 9, para. 20.

57 Ibid., article 9, para. 21.

disclosure of the facts (while ensuring disclosure does not harm victims or witnesses); search and identification of those disappeared, abducted, and killed; proper reburial; official declarations, apologies and sanctions against those liable for the violations; and tributes to the victims, including victims of conflict-related sexual violence.[58]

Guarantees of non-repetition include civilian control of armed security forces; application of international standards of due process; independence of the judiciary; upholding of protections for protected persons[59] under international law; human rights and humanitarian law training for relevant sectors and adherence to these laws and a gender-just interpretation of these laws within codes of conduct; and reform of laws, including through an approach that promotes women's rights and equality, that contribute to violations of international humanitarian and human rights law.[60]

Reparation can occur in both **material and symbolic forms. Material forms of reparation** are often present in forms of service packages, including medical, educational, and housing assistance, as well as compensation in terms of cash, vouchers, pensions, or other material benefits that have a monetary value. The rebuilding of schools, health clinics, hospitals, roads and markets can also be a form of material reparation.

Symbolic reparation is aimed at addressing psychological elements in which the victim feels satisfied that sufficient actions have been made to ask amends for her suffering.[61] Symbolic reparation includes, for example, official acknowledgement and apologies; changing the names of public spaces or buildings; days of commemoration; the creation of memorials dedicated to the victims, including victims of gender-based and sexual

58 Ibid., article 9, para. 22.

59 The Article 4 of General Provisions of the Fourth Geneva Convention defines protected persons. Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

60 Ibid., article 9, para. 23.

61 Brandon Hamber and Ingrid Palmary, "Gender, Memorialization, and Symbolic Reparation," in Ruth Rubio-Marín (ed.). (2009). *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations.* Cambridge University Press. p. 326.

violence[62]; proper (re)burial (including associated rituals); location and identification of the dead and missing (including marking and honouring mass graves and providing information regarding the missing); and closing and converting repressive sites into memorials.[63] Clearly, material forms of reparation can have significant symbolic value, so the two need not be mutually exclusive and in fact can enhance one another.

Reparation programmes have made symbolic and material awards to **individual** victims and their families, and to a lesser extent have awarded **collective reparation** to entire groups or communities. In a number of past reparation programmes, only individual victims who suffered certain forms of harms and violations were awarded reparation, and this has been the dominant trend in past reparation efforts.

However, it is important to recognise that armed conflict and political violence are often not only attacks on individuals, rather they represent dehumanising, violent and exploitative social relations that existed prior to the outbreak of armed conflict or political violence.[64] Much of the violence suffered by individuals is deep-seated and structural in nature. Victims are targeted because they are members of families, ethnic groups, communities, cultures and societies. While much political violence is aimed at destroying the individual, it is often primarily because of her/his membership in a particular group, as well as his/her place in society, and the goal is therefore to break apart broader social relations.[65] This has implications for how reparation is understood. Given the recognition that serious, systematic violations often target groups of people, it makes sense in a number of cases for **collective**

62 Ruth Rubio-Marín, "Gender of Reparation" in Pablo de Greiff (ed.) (2006). *The Handbook of Reparations.* Oxford University Press. p. 453.

63 Naomi Roht-Arriaza, "Reparations Decisions and Dilemmas," *Hastings International and Comparative Law Review 27*, no. 2 (2004).

64 Ignacio Martín-Baró, "Reparations: Attention Must Be Paid: Healing the Body Politics in Latin America," *Commonweal* 117: 6 (1990), 184-186.

65 See Dyan Mazurana and Khristopher Carlson, "Reparations as a Means for Recognizing and Addressing Crimes and Grave Rights Violations Committed Against Children during Situations of Armed Conflict and Under Authoritarian Regimes," in Ruth Rubio (ed.) (2009). *The Gender of Reparations: Unsettling Gender Hierarchies while Addressing Human Rights Violations.* Cambridge University Press; David Becker, "Dealing with the Consequences of Organized Violence," in Martina Fischer, Alex Austin, and Norbert Ropers (eds.) (2003). *Berghof Handbook for Conflict Transformation.* Berlin: Berghof Research Center for Constructive Conflict Management.

reparation to be awarded, with harms against a collective right giving rise to entitlement to collective reparations. Indeed, given the large numbers of victims in cases of armed conflict and mass atrocities, the difficulty in making individual-level decisions about harms, and the poverty of many nations emerging from conflict, there is increased national and international interest in gaining a better understanding of the scope and parameters of what collective reparation programmes might entail.[66] Nevertheless, it is imperative to recognise that the right to reparation is first an individual right.

Within discussions of what constitutes **collective reparation**, there is a lack of conceptual clarity. Some put forward that the collective aspect of reparation refers to the *modality of distribution* in which groups of victims (rather than individuals) receive reparation (i.e., groups of individuals that experienced serious violations), as anticipated by the Rome Statute of the International Criminal Court (ICC). Others contend it refers to the idea of *public goods*; which once in place, would benefit victims and non-victims (e.g., the building of schools, health centres, or hiring of particular health specialists which both victims and non-victims could access). Others argue that it refers to distributing reparation in particular *geographic locations or ethnic communities* where violence and violations were concentrated (although individual reparation can also focus on a particular geographic area).[67] Notably, these forms of collective reparation could co-exist and are not mutually exclusive. However, it is unclear how to ensure victims' sense of recognition in these circumstances, and many such programmes are considered by victims as constituting the government's development obligations, not reparation.

From a structural perspective, collective reparation programmes should prompt more critical reflection on the dimensions of large-

66 Ruth Rubio-Marín, "Gender and Collective Reparations in the Aftermath," in *The Gender of Reparations*. For more on the deep-seated structural causes and consequences of the conflict, see Refugee Law Project. 2004. *Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda*. Working Paper No. 11. Kampala, Uganda; ICTJ. 2009. The Rabat Report: The Concept and Challenges of Collective Reparations (Author) Available at http://ictj.org/sites/default/files/ICTJ-Morocco-Reparations-Report-2009-English.pdf Accessed August 8, 2011.

67 Ruth Rubio-Marin, Ibid, p. 385.

scale political violence and repression suffered by groups of people, and could lend themselves to making meaningful contributions towards non-repetition and the upholding of the victims' rights.[68] It is important to recall that the foundational obligation to provide remedy and reparation to individual victims remains intact within efforts towards collective reparation.

Reparation programmes will only achieve their modest goals if they are linked with **other transitional justice measures**, and this point cannot be stressed strongly enough. Reparations programmes that are not linked to additional transitional justice measures, including prosecution, truth-telling, and institutional reform, will be inherently flawed.[69] In particular, most of the reports issued by **truth-telling or fact-finding commissions** and most of the transitional justice literature focus on revealing the facts around human rights violations; only rarely do they document or analyse the truth surrounding the conditions that made such violations possible. Important exceptions to this limitation are found in the truth-telling reports produced in Peru and Guatemala.[70] Yet, if efforts for reparation are to be truly informed, it is of utmost importance to identify the underlying factors (historical, social, political, economic, cultural, and so on) that enabled the violations to occur, at whose hands, and which institutions stood by. In addition, the gendered, discriminatory roles and practices of these institutions should be brought forward, so as to begin to dismantle them and create the necessary conditions for equality.[71]

In efforts surrounding reparation, it is necessary to distinguish the primary **differences between reparation and post-conflict reconstruction or development**. In essence, reparation provides direct remedy to the victims of serious violations of international human rights law and/or serious violations of international humanitarian law. Reparation signifies public acknowledgement of

68 Ibid., p. 388.

69 See de Greiff, "Justice and Reparations."

70 Lisa Laplante, "On the indivisibility of rights: Truth commission, reparations and the right to development," *Yale Human Rights and Development Law Journal*, Volume 10, pp. 141-176 (2007).

71 See Dyan Mazurana and Khristopher Carlson, "Children and Reparation: Past Lessons and New Directions." In *Unicef Innocenti Research Centre Expert Paper Series on Children and Transitional Justice* (Unicef Innocenti Research Centre: Florence) 2010. Available at http://www.unicef-irc.org/knowledge_pages/resource_pages/children_and_transitional_justice/working_paper_series.html

the State's or perpetrator's commission of harms or violations and/or the State's failure to prevent violations and harms. Reparation signifies State responsibility to redress these serious violations.

By contrast, development policies do not entail State responsibility for wrongdoing or an acknowledgment that harm has been suffered. Development policies are not conceived to achieve justice for victims of serious violations or address irreparable harms. Development does not meet (nor does it seek to meet) distinct and direct needs of victims who have suffered serious violations and harms.[72] This is not to say that development and assistance efforts cannot underpin key reparation efforts to help bolster and strengthen reparation. For example, roads could be constructed to enable access to and from more remote and isolated minority communities that bore the brunt of violence (as in Guatemala), the rebuilding of schools and health clinics, with the accompanying proper staffing and resources in heavily war affected areas, could be prioritised by national development initiatives (as in Peru), or the international community could assist in building the capacity of the State to manage and undertake reparation programmes (as is currently being attempted in Nepal).

Victims and duty bearers

The right to remedy and reparation is for those **victims** who have been subjected to serious and systematic violations of their human rights, not intermittent or exceptional violations. And while all human rights violations give rise to the right to effective remedy, the obligation to repair (i.e., reparation) covers only those human rights violations that are deemed serious violations of international human rights law and international humanitarian law. In this context, it is well acknowledged that the Constitution of Uganda guarantees every person the right to obtain legal remedy and redress from a competent court or tribunal for infringement of human rights.[73]

72 The confusion between reparation and post conflict reconstruction or development has received serious consideration, see Lisa Laplante, "On the indivisibility of rights: Truth commission, reparations and the right to development," *Yale Human Rights and Development Law Journal,* Volume 10, pp. 141-176 (2007).

73 See Article 50 (Enforcement of rights and freedoms by courts) and Article 53 (Powers of the Uganda Human Rights commission).

Within *The Basic Principles*, victims are defined as: "persons who have individually or collectively suffered harm including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that constitute serious violations of international human rights and violations of humanitarian law. Where appropriate and in accordance with domestic law, the term 'victim' also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation."[74]

Importantly, a person is considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted, and regardless of the familial relationship between the perpetrator and the victim.[75]

The right to reparation for victims is consistent with international human rights law and international humanitarian law and must be carried out "without any discrimination of any kind or on any ground, without exception."[76]

Victims and (as applicable) their families also have the right to be treated with respect, to have appropriate measures in place to ensure their safety, physical and mental well-being and privacy, and should not be subjected to legal or administrative procedures that re-traumatise them.[77] Victims should also be provided with: "equal and effective access to justice; adequate, effective, and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanism."[78]

The **duty bearers** include the State, non-State perpetrators, or other parties found liable for the violations. The State shall provide reparation to victims for acts or omissions which can be attributed to the State. Persons or other entities found liable for reparation to a victim can be ordered to provide reparation to the

74 *The Basic Principles,* article 5, para. 8.
75 Ibid., article 5, para. 9.
76 Ibid, article 11, para. 25.
77 Ibid., article 6, para. 10.
78 Ibid., article 7, para 11.

victim or compensate the State if the State has already provided reparation to the victim. *The Basic Principles* recommend that the State establish national reparation programmes in the event that non-State, responsible parties are unable or unwilling to provide reparation.

The importance of process within remedy and reparation

Under international law the right to reparation has a dual dimension. The first is the substantive (or outcome) dimension. This includes the duty to provide the victim with actual redress in the form of rehabilitation, restitution, compensation, satisfaction, and guarantees of non-repetition.

The second is the procedural (or process) dimension; the "effective domestic remedies" explicit in the major human rights instruments. This includes, for example, acknowledgement by the State for serious violations due to commission or omission, judicial and public recognition that the harms occurred, and the victim participating in a process in which those who committed or failed to prevent the harms are held to account.

The process in which reparation is provided, and how the victims are treated throughout, is of paramount importance and will strongly reflect on the success and cohesion of reparation and transitional justice policies and programmes. **Justice is itself an experience and a process, not simply an outcome**.[79] The process of remedy and reparation can provide a significant part of reparation, can at times constitute reparation, and may call for further procedural processes to take place (e.g., the search for the disappeared and missing, investigations, and exhumations and proper reburial of the dead).[80] Hence, the act and process of the victims engaging with the State on remedy and reparation is an integral and significant part of the reparation process itself. It is essential to understand the integration of remedy and reparation,

79 Personal communication, Mariana Goetz, December 1, 2010.

80 Mariana Goetz, "The Right to Reparation," presentation at *Gender, Reparations and Development,* a joint UNIFEM/UNDP international workshop, December 1, 2010, Kampala, Uganda.

as they are intrinsically linked and form an important part of a victim's process of engagement with the state and the exercise of her or his own rights as a citizen.

Reparation requires State and public recognition of the violation of victims' rights. It requires the acknowledgment of State responsibility (by commission or omission) or the perpetrator's responsibility for those violations. It entails the recognition of the most serious harms to victims resulting from the violations. And in itself, it represents a serious attempt to assist victims, however minimally, to cope with some of the effects and harms of the violations in their lives and to subvert pre-existing structures of violence, repression and subordination.[81]

Gender and reparation

As stated in ***The Basic Principles***, the right to remedy and reparation must apply without discrimination of any kind or on any ground, without exception.[82] However, most reparation programmes around the world have failed to systematically incorporate women's and girls' specific needs and concerns.[83] Considering that women and girls experience violence in distinct ways,[84] Ruth Rubio-Marín, one of the foremost experts on gender and reparations, argues that the failure to incorporate women's and girls' needs and priorities within reparation policies and programmes is striking. She writes that,

81 Ruth Rubio-Marín, "Reparations for Gross Human Rights Violations," presentation at *Gender, Reparations and Development,* a joint UNIFEM/UNDP international workshop, December 1, 2010, Kampala, Uganda.

82 *The Basic Principles,* Article 25.

83 See Ruth Rubio-Marín (ed.), *The Gender of Reparations;* Ruth Rubio-Marín (ed.). (2006). *What Happened to the Women? Gender and Reparations for Human Rights Violations.* Social Science Research Council: New York; Ruth Rubio-Marín and Pablo de Greiff, "Women and Reparations," *International Journal of Transitional Justice* 1, no. 3 (2007): 317-337.

84 Women's and girls' distinct ways of experiencing serious violence is well documented, see for example, United Nations. (2002). *Women, Peace and Security: Study of the United Nations Secretary-General as Pursuant Security Council Resolution 1325.* New York: United Nations; United Nations, *Report of the Secretary-General on Women, Peace and Security to the United Nations Security Council* (UN document S/2002/1154), 2002.

Similarly, it is common knowledge that in most cases women play a crucial role in the follow-up of violence – searching for victims or their remains, trying to reconstitute families and communities, carrying on the tasks of memory, and demanding justice. Despite all of this, reparations programmes have not been designed with an explicit gender dimension. And yet, there are few reasons to believe that the so-called `gender-neutral' reparations programmes equally facilitate the achievement of the underlying goals of reparations programmes, including recognition, civic trust, and social solidarity for men and women.[85]

It is well recognised that women and girls are more disadvantaged within societies before, during and after war and for socio-economic, physical and psychological reasons, they experience violations and outcomes differently.[86] Gender-neutral reparation therefore fails to address the effects and outcomes of particular violations, especially for women and girls. Reparation therefore must take into consideration the disproportionate effects of the crimes and violations on women and girls, their families and their communities.[87] As such, it is clear that reintegration and restitution by themselves are not sufficient goals of reparation, since the origins of violations of women's and girls' human rights often predate the conflict situation.[88] Reparation has an important role in helping drive post-conflict transformation of socio-cultural injustices and political and structural inequalities that shape the lives of women and girls and, at times, place them at greater risk of harm from the violations they suffered.[89]

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85 Ruth Rubio-Marín, "Introduction: A Gender and Reparations Taxonomy," in *The Gender of Reparations,* p. 2-3.

86 Within their own ethnic, class/caste groups, women's and girls' disadvantage to men and boys is well documented, as is their distinct ways of experiencing serious violence is well documented, see for example, United Nations, *Report of the Secretary-General on the Elimination of All Forms of Discrimination and Violence against the Girl Child,* 2007, United Nations document E/CN.6/2007/2 and United Nations. (2002). *Women, Peace and Security: Study of the United Nations Secretary-General as Pursuant Security Council Resolution 1325* New York: United Nations; United Nations, *Report of the Secretary-General on Women, Peace and Security to the United Nations Security Council* (UN document S/2002/1154), 2002.

87 *The Nairobi Declaration on Women's and Girls' Right to Remedy and Reparation,* hereafter *Nairobi Declaration,* Preamble.

88 Reparation that seeks to re-establish the status quo can ignore structural causes for gender based violence and therefore fail to meet guarantees of non-recurrence of the violation.

89 *Nairobi Declaration,* clause 3.

The ***Nairobi Declaration on Women's and Girls' Right to Remedy and Reparation*** (hereafter *Nairobi Declaration*) is an important document that came out of an international initiative to shape a gender-just understanding of the right to remedy and reparation.[90] The *Nairobi Declaration* offers victims' and civil society perspectives' on reparation. It adopts a definition of harm that includes physical integrity, psychological and spiritual well-being, economic security, social status, and the social fabric of the community. According to the *Nairobi Declaration*, gender-just reparation requires:

a) Truth telling, including the acknowledgement of serious violations against women's and girls' and their resulting suffering;

b) Reparation measures that are sensitive to gender, age, cultural diversity and human rights;

c) Decision-making about reparation must include victims as full participants, including representation of women and girls in all their diversity. Full participation of women and girls victims should be guaranteed in every stage of the reparation process, i.e. design, implementation, evaluation, and decision-making;

d) Practices and procedures for obtaining reparation must be sensitive to gender, age, cultural diversity and human rights, and must take into account women's and girls' specific circumstances, as well as their dignity, privacy and safety. As such, structural and administrative obstacles in all forms of justice, which impede or deny women's and girls' access to effective and enforceable remedies, must be addressed**;**

e) The presence of male and female staff sensitive to specific issues related to gender, age, cultural diversity and human rights, and who are committed to international and regional human rights standards should be involved at every stage of the reparation process;

f) Physical and mental health services and other services for rehabilitation for women and girl victims;

90 At the International Meeting on Women's and Girls' Right to a Remedy and Reparation, held in Nairobi from 19 to 21 March 2007, women's rights advocates and activists, as well as survivors of sexual violence in situations of conflict, from Africa, Asia, Europe, Central, North and South America, crafted the *Nairobi Declaration*.

g) Provisions for compensation and restitution for women and girl victims;

h) Justice initiatives that include ending impunity for sexual violence crimes and violations;

i) Programmes aimed at restoring victims' dignity using symbolic tools like public apologies;

j) Educational initiatives, including raising awareness on women's and girls' rights and gender sensitivity; and

k) The reform of discriminatory laws and customs against women and girls.

The *Nairobi Declaration* references age and customary and religious law as factors that must be analysed in understanding diverse needs for reparation. Though the decision-making process should be participatory and should involve local civil society organisations, victims groups and the international community, the *Nairobi Declaration* asserts that the State bears the primary responsibility for reparation.

One of the important contributions of a gender-just approach is the insight gained into the **processes of access to remedy and reparation**. As discussed above, the process in which victims engage in to access remedy and reparation is of vital importance in determining the quality and success of reparation. **To be well received and accepted, processes for remedy and reparation need to be owned by victims and empower them as survivors.** It is useful to keep in mind lessons learned from other countries regarding gender and procedural access to reparation.[91]

First, regarding registration, it is important to have **data collection tools and language** used in data gathering that is mindful of multiple local languages and low literacy rates, as women and girls in particular tend to have less education and lower literacy rates as compared to their male counterparts. In addition, the data collection tools themselves should enable the detection and collection of information regarding crimes of sexual violence,

91 Lessons presented here are drawn from Argentina, Australia, Bosnia, Brazil, Canada, Chile, Colombia, Ghana, Guatemala, Peru, Rwanda, Sierra Leone, South Africa, and Timor-Leste.

which is often considered taboo. In order to get around taboo, at times, coded language within local languages have been developed to make reference to body parts, sex, and sexual violence, and these codes should be understood and used in order to ensure collection of information in an appropriate manner.

Second, in terms of **gathering evidence**, there is often a lack of female investigators who are trained to work in a sensitive manner with female and child victims. It is also important to realise that many victims will have difficulty accessing courts or other official bodies set up to hear and process reparation claims. For females and victims of sexual violence in particular, they may face significant stigma and shame in coming forward.

Third, it is necessary to acknowledge **victims' difficult access to legal or medical documentation** upon return from flight or refugee or internally displaced persons' (IDP) camps and make provisions accordingly. Requiring medical corroboration of injury, particularly in the case of sexual violence, is often not realistic as most victims lack access to medical facilities and cannot afford the costs of the medical examination.

Fourth, **gender-biased laws should be reformed, particularly in regards to** property ownership and inheritance for women and girls, equal enjoyment of political participation in governance and public life, and freedom to make choices regarding one's reproductive health.

Fifth, **gender-insensitive laws on defining sexual violence** should also be examined, as well as onerous evidentiary burdens regarding sexual violence (e.g., requiring multiple eye-witnesses for corroboration, medical examination and police reports).

Sixth, many female victims and victims of sexual violence will not initially come forward to claim reparation, in part due to the stigma attached to the harms they have suffered. Hence, **reparation processes must allow women and girls to come forward when they are ready**. Measures should be developed to enable them to come forward even after the formal prescribed

time period is expired.[92] Nurses and medical personnel should be trained to detect if a patient has been sexually abused as a result of the conflict, so that they can discretely provide the necessary care to which the victim is entitled. These same medical personnel should be trained to encourage victims to come forward with their specific needs and to let victims know that reparation is available to them when and if they decide to come forward.

Victims, particularly victims of sexual violence, should have resource people (such as trained counsellors and specialists) helping them with the administrative steps needed to obtain reparation. In some cases, collective reparation efforts, such as the hiring of permanent staff at referral hospitals who specialise in reproductive health care for victims of sexual violence, reconstructive surgery or fistula repair, could serve as a means to ensure access to services for victims who come forward, or for other people in need of such services in the community, and for victims of serious violations in need of such services but who do not come forward during the formal time period.

Parties to the **Agreement on Accountability and Reconciliation and its Annexure of the Juba Protocols** (discussed in detail below) noted the need to strive to prevent and eliminate gender inequalities that may arise during the processes of truth telling, redress and reparation.[93] The principles outlined therein are useful as the State of Uganda begins its preparations for inquiry into past serious violations and establishing mandates and frameworks for reparation. In particular, they called for:

- Special provisions for victims of sexual violations and crimes;
- Recognising women's and girls' needs and adopting gender-sensitive approaches;
- Ensuring necessary protective measures to children and victims of sexual violence, including witness protection (physical and psychological) and special provisions in cases involving gender based violence.[94]

92 *Nairobi Declaration* 3 (g).

93 Agreement, clause 10.

94 Agreement, clause 3.4.

- Ensuring that within measures regarding accountability and reconciliation, the dignity, privacy and security of women and girls are protected, [95] Ensure their views and concerns are recognised and taken into account, in part through encouraging and facilitating the participation of women and girls in the processes of implementing the Agreement;[95]

Victims' right to remedy and reparation: Recommendations

Recommendation 1: To guide the formation and mandate of the Body of Inquiry (or Truth Telling Commission), incorporate the guiding principles of *The Basic Principles*, the *Nairobi Declaration* and the "Agreement on Accountability and Reconciliation and its Annexure" of the Juba Protocols.

Recommendation 2: Ensure that equality and non-discrimination are part of the overarching principles that guide the working of the body of inquiry, namely: fact-finding processes; inquiry, data collection and data analysis; registration process; and forms, scope and distribution of reparation.

Recommendation 3: Create and support administrative structures to allow for the participation of CSOs and victim-led groups in the design, implementation, monitoring and evaluation of reparation programmes.

Recommendation 4: Ensure that violations that qualify victims for reparation do not leave out or unduly simplify forms of violations that have a disparate gender impact, in particular sexual violence and reproductive violence, including forced marriage, forced impregnation, forced child bearing, forced abortions, forced sterilisations, and forced removal of children from their parents or caregivers.

Recommendation 5: Ensure that possible beneficiaries include family members and other dependents, as this is particularly important in upholding the right to reparation for women and child

95 Agreement, clause 11.

victims. A broad definition of family should be considered as it is well documented that within the transition, families tend to include orphans, children born of rape, extended family members such as nieces or nephews whose parents were killed or disappeared, elderly people who now live with one of their children or care for many grandchildren, widows, and child-headed families.

Recommendation 6: Put into place support structures to assist victims in the process of coming forward to engage in processes of remedy and reparation and in claiming reparation. Develop flexible reparation processes to enable highly stigmatised victims, such as survivors of sexual violence and children born due to wartime violations,[96] to have access to reparation. Help ensure access through persons and processes sensitive to victims' concerns and needs and without public disclosure of the harms they have suffered. Within this, ensure trained female investigators and medical and psycho-social support personnel trained to work with victims of sexual violence and trauma, are available to assist women, children, and victims of sexual violence.

Recommendation 7: Within remedy and reparation processes, streamline claims processes with flexible evidentiary standards and ensure that processes do not stigmatise or endanger victims. This includes the need to simplify procedures, permit lower thresholds of evidence, set witness protections, and avoid re-victimisation by investigators, family members, and the community. Do not make publicly available the names of those seeking reparation. This prevents victims of sexual violence and other stigmatising crimes from coming forward. [97]

96 Children born due to war-time violations include children born as a result of rape by the LRA and the UPDF. Children born as a result of civilian rape are not included in this definition for the purposes of this report.

97 There is a need to protect victims or victim witnesses from excesses of cross-examination and limiting those questions that are perceived to be unnecessary or intimidating scenarios that domestic laws (i.e., in Uganda the Evidence Act) authorize the judges to act upon and protect witnesses. Within Uganda, witness protection procedures outlined in the Evidence Act include forbidding the use of insulting or scandalous questions to a witness during cross-examination [Section 150 and 151); protecting the witness from answering certain questions intended to discredit the witness by injuring his or her character [Sec. 147] and protecting certain witnesses from being compelled to testify in court against their will for instance; spouses (Section 120).

REMEDY AND REPARATION WITHIN THE JUBA PROTOCOLS' AGREEMENT ON ACCOUNTABILITY AND RECONCILIATION AND ITS ANNEXURE

Agreement on Accountability and Reconciliation and its' Annexure

This chapter provides a concise discussion of the Agreement on Accountability and Reconciliation and its Annexure of the Juba Protocols. The Agreement and its Annexure are relevant to readers of this report because it is from these documents that the Government of Uganda will draw key principles to frame its policy, legislation, and programmes to establish a body of inquiry into facts around the conflict and determine the parameters and modalities for reparation. Within the discussion, the chapter highlights the links among inquiry, truth telling and reparation within the Agreement and its Annexure. It also reviews the key principles of the Agreement and its Annexure relevant to inquiry, truth telling and reparation for widespread crimes and serious violations committed during the Government of Uganda and LRA hostilities.

The Agreement and its Annexure are a political statement of will to adopt appropriate justice mechanisms and resolve the Government of Uganda/LRA conflict while promoting reconciliation. The Government of Uganda has repeatedly stated that it will use the Agreement as a sound basis for achieving those purposes.

Accountability processes within the Agreement on Accountability and Reconciliation and its Annexure cover the Government of Uganda and LRA hostilities, although the scope of inquiry can include relevant consideration and analysis before this period. The Agreement covers the Greater North (defined as northern and north-eastern Uganda).[98] Victims are defined as "persons who have individually or collectively suffered harm as a consequence of crimes and human rights violations committed during the conflict."[99]

The Agreement and its Annexure have two primary means of implementation. First, implementation can draw on existing capable Ugandan institutions and mechanisms, and customs recognised under national laws. Second, as necessary, the national legal system can be modified to ensure a more effective and integrated justice and accountability response.[100]

The Agreement puts forward key principles to guide the formation of a **body for inquiry** into past events related to the conflict and for determining the scope and modalities of reparation programmes. It states that the Government shall by law establish a body to look into the past and related matters to the conflict. This body should be comprised of individuals of high moral character, integrity and expertise and inquire into the conflict's history, manifestation and violations. They should hold sessions in public and private; making necessary provisions for witnesses; promote truth telling and preservation of memory; and gather and analyse information on the disappeared. The body should make recommendations to prevent future conflict and make its findings public. Importantly, the body is tasked to recommend the most appropriate modalities for implementing a regime of reparation, in line with principles set out in the Principal Agreement.[101]

In addition to what is noted above, the body of inquiry should produce a comprehensive, independent and impartial analysis of the history and manifestations of the conflict, which is deemed

98 Agreement clause 2, 14

99 Agreement clause 1.

100 Agreement clause 5.1, 5.6 and 14.5.

101 Annexure clause 4 (j).

essential for attaining reconciliation at all levels. Within this history, there should be a focus on the human rights violations and crimes committed during the course of the conflict.[102]

The Agreement lays out principles for six key areas relevant to truth telling, inquiry and reparation: 1) consultations, 2) inquiry and truth telling, 3) victims' rights, 4) gender, equality and non-discrimination, 5) female- and child-sensitive approach, and 6) reparation.

The Agreement calls for the widest possible **consultations** and ownership of accountability and reconciliation processes for the development and implementation of transitional justice measures. It also stipulates that consultations should include State institutions, civil society, academia, community leaders, traditional and religious leaders, and victims.[103]

Victims' rights are clearly articulated within the Agreement and its Annexure, and include victims' effective and meaningful participation in accountability and reconciliation proceedings. Victims also have the right to be informed of said processes and any decisions affecting their interests, and they have a right to access relevant information about their experiences. They also have a right to truth telling and fact finding regarding the harms they and others have suffered. Throughout these processes, victims have a right to dignity, privacy and security.[104]

The Agreement and its Annexure promote a **gender-sensitive approach**. In particular, the Agreement commits its implementers to strive to prevent and eliminate gender inequalities that may arise[105] and make special provisions for victims of sexual violations and crimes.[106]

In addition, the Agreement has principles regarding specifically **female-sensitive approaches**. The Agreement calls for the need

102 Agreement clause 2.3.
103 Agreement clause 2.4.
104 Agreement clause 8.4
105 Agreement clause 10.
106 Agreement clause 3.4, Annexure clause 24.

to recognise the needs of women and girls and adopt gender-sensitive approaches.[107] It calls for ensuring that their experiences, views and concerns are recognised and taken into account. It prioritises protection of the dignity, privacy and security of women and girls involved in accountability and reconciliation processes and it calls for the encouragement and facilitation of women's and girls' participation in the processes of implementing the Agreement.[108]

The Agreement also calls for the need to recognise and address the special needs of children and adopt a **child-sensitive approach**. It calls for recognising and considering the experiences, views and concerns of children. It prioritises protecting the dignity, privacy and security of children in any accountability and reconciliation proceedings. It states that children are not to be subjected to criminal justice proceedings, but may participate, as appropriate, in reconciliation processes. It promotes appropriate reparations for children and it calls for the encouragement and facilitation of the participation of children in the processes of implementing the Agreement.[109]

All of the five preceding principles are linked, relevant and apply to principles pertaining to **reparation** as envisioned in the Agreement. The Agreement states that both formal and alternative justice mechanisms require reparation for victims.[110] The range of reparation includes restitution, rehabilitation, compensation, satisfaction and guarantees of non-recurrence, with priority given to vulnerable groups. The Agreement allows for both collective and individual reparation measures.[111] Finally, victims have the right to reparation from perpetrators as part of sentencing and sanctions in formal proceedings.[112]

107 Agreement clause 10 and 11.
108 Agreement clause 11.
109 Agreement clause 12.
110 Agreement clause 5.3 and 6.4.
111 Agreement 9.1 and 9.2.
112 Agreement clause 6.4 and 9.3.

Recommendations

Recommendation 1: Advocate for the incorporation of the Agreement on Accountability and Reconciliation and its Annexure to shape the mandate and functions of the body of inquiry. The Juba Protocols and Agreement on Accountability and Reconciliation and its Annexure present clear guidelines, principles and frameworks for the creation of a body of inquiry.

Recommendation 2: To ensure the rigour and validity of any formal consultations, it is recommended that victims of different ages, sexes, ethnicities and regions and those who experienced different kinds of violations are consulted and interviewed. Ensure that for some violations, particularly those of a sexual nature, interviews are conducted in a way to protect the privacy, dignity and well-being of the victims.

Recommendation 3: The government of Uganda and its partners should make public and available the guiding principles, mandate and function of the body of inquiry, ensuring specific outreach to victims in the Greater North and its environs. Where possible, such outreach and documents should be appropriate, including alternative methods for information distribution, simplified and written in the local languages in the Greater North and other parts of Uganda.

Recommendation 4: Take measures to ensure active participation of victims, including their effective and meaningful participation in accountability and reconciliation proceedings, including:

- Having a voice in the design of processes of remedy and reparation;
- Facilitating their appearance before the body of inquiry;
- Informing them of the processes and any decisions affecting their interests**;**
- Enabling their access to relevant information about their experiences of harms and their affects**;**
- Enabling their participation in truth telling and fact finding around the harms suffered**;**

- Ensuring their dignity, privacy and security throughout processes.[113]

Recommendation 5: Work with victim-focused CSOs and victims' groups in the different regions of the Greater North to promote and ensure effective representation and meaningful participation of victims in the process to:

- Help identify and mobilise victims to take part in accountability and reconciliation proceedings;
- Represent victims where it is deemed appropriate for the safety, dignity, security and well-being of the victims;
- Help in the delivery of reparation to victims and their communities.

113 As noted Agreement clause 8.4, 11 (iii) and 12 (iii)

SERIOUS VIOLATIONS IN THE GREATER NORTH

Introduction

All victims of human rights violations have the right to effective remedy (described in Chapter 2). The right to repair is for victims of serious violations, as well as violations of human rights including unlawful detention and miscarriages of justice. It is generally agreed that repair is required for violations constituting international crimes: genocide, crimes against humanity, war crimes, torture, inhuman and degrading treatment, slavery, and apartheid. Increasingly over the last 15 years, international criminal law recognises crimes of a sexual and gender-based nature as constituting international crimes, and this trend is codified in the Rome Statute of the International Criminal Court.

This chapter presents the serious violations of human rights law and international humanitarian law that Ugandan victims were subjected to during the Government of Uganda and LRA hostilities.

The findings presented here come from interviews with 2,302 people contained within the OHCHR 2007, OHCHR and UHRC 2008, and OHCHR and UHRC 2010/2011 data, with limited reference to relevant secondary data. The strength of the OHCHR and UHRC interview data is that it is qualitative in nature, so that while it cannot establish rates of prevalence of particular harms, it can provide important qualitative information, in particular description, depth, and nuance regarding the forms of harms, which party carried them out, and how they were experienced by the victims and their families. Where appropriate and possible, primary data is supplemented with secondary literature to provide further dimension to the present report's findings, including

large scale representative studies that have generated statistics regarding the harms discussed.

Unless otherwise noted by in text citations, all data presented here comes from the primary data generated by interviews with 2,302 people carried out between 2007 and 2011 by OHCHR and UHRC.

The categories of harms presented here were formulated from documenting patterns in the forms and manifestations of the harms, and then validating and expanding those categories with victims and victims' groups in the four sub-regional workshops (held in Acholiland, Lango, Teso and West Nile), and one combined workshop for the Greater North (held in Kampala) in 2010. Hence, the categories of harms presented here arose from the experiences and understanding of victims and victim-focused CSOs in the Greater North of Uganda.

The victims and victim-focused CSOs identify 11 categories of serious violations that they believe should trigger the right to reparation: killing, torture or cruel, inhuman or degrading treatment, abduction, forced recruitment, slavery, forced marriage, mutilation, sexual violence, psychological harm, forced displacement, and pillaging, looting and destruction of property.[114] In general, attacks that resulted in these violations were indiscriminate in nature and showed no respect for traditional norms[115] that in times of armed conflict protect certain groups not directly involved in the fighting (i.e., non-belligerents), such as the elderly, women and children. Within each category of serious violation, the chapter highlights key gender and generational aspects.

In addition, the victims and victim-focused CSOs identify three categories of harm that, while not reaching the threshold of serious violations, they nonetheless want acknowledged and addressed.

114 These 11 categories consistently appeared within the interview data, and during the victim and victim-focused CSO validation workshops in all four sub-regions the participants confirmed that these were the categories they believed should trigger reparation. Notably, there was consensus within each validation workshop on these 11 categories.

115 Most all societies have traditional norms regarding the conduct of armed hostilities, which includes recognising categories of persons to whom fighters should show mercy and restraints, primarily women, children and the elderly see Hugo Slim. (2008). *Killing Civilians: Method, Madness and Morality in War*. Columbia University Press: New York. For historical information on Acholi norms for conducting armed conflict see Ronald Atkinson. (1994). *The Roots of Ethnicity: The Origins of the Acholi of Uganda before 1800*. Kampala: Fountain Publishers.

These include: land seizure, damage to their cultural and traditional heritage, and spiritual harm. They also spoke at length about how the conflict, and the Government and international community's response to the conflict, have increased ethnic tensions in the region.

Parent, caregiver, spouse, child or close relative killed by wartime violations or as an act of political violence

Killings resulted from attacks on civilian populations by both the LRA and the UPDF. The LRA carried out massacres in a systematic and widespread manner.[116] In addition to killing civilians during attacks, the LRA also killed civilians in captivity, often in particularly brutal ways. Captured civilians were routinely executed by the LRA when the LRA no longer needed their services , when they attempted to escape or disobey orders or as retaliation for a failed mission or attack. The LRA also used captives as human shields during encounters and battles with the UPDF. Young children taken captive and forced to carry loot would be executed if they became tired, walked too slow, asked to rest, or appeared to be longing for their homes and families. Often other abductees were forced to carry out the killings. At times, pregnant women and mothers of young children were captured and given to LRA commanders and fighters as "forced wives," and their existing children were killed or allowed to die to ensure that they only had children born from LRA members (discussed below in Slavery). [117] Girls and women who refused to engage sexually with the LRA commander or fighter who had taken them were ruthlessly beaten and sometimes killed. In some cases, these girls and women who refused sex with their captors were tortured, including having their legs and arms broken, then put into pits in swamps and buried alive. The LRA would also capture suspected UPDF or militia members or informants and tie them to trees deep in the bush and let them die.

116 See also, Erin Baines, et al. (2009). *Kill Every Living Thing: The Barlonyo Massacre*. Justice and Reconciliation Project, Gulu District NGO Forum.

117 See also, Carlson, Khristopher and Dyan Mazurana. (2008). *Forced Marriage within the Lord's Resistance Army, Uganda*. Feinstein International Center, Tufts University.

People were also tortured to death by the LRA using various forms including dismemberment, having body parts cut, being burnt alive, or being hacked, beaten or crushed to death.[118] (Also see, Torture below).

Interviewees said that the UPDF engaged in illegal killings, although the data suggests they did not do so in a systematic or widespread manner. Some witnesses who were interviewed by OHCHR and UHRC teams reported that during their time in captivity, they saw UPDF execute, as well as rape and then stab or shoot to death, captured LRA "fighters," who often were themselves abductees.

There were cases reported of the UPDF torturing people to death, though not in a systematic or widespread manner.[119] There were infrequent reports by people interviewed by OHCHR and UHRC teams of the UPDF using undue force that resulted in death, primarily of persons captured during battles with the LRA or suspected rebel collaborators.

Torture or Cruel, Inhuman or Degrading Treatment

Torture is defined in accordance with Article 1 of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.[120] Torture includes inflicting severe mental or physical pain and suffering for purposes of punishment, intimidation, coercion and obtaining information at the instigation of or with the consent or acquiescence of a public official or other person acting in official capacity. There is no international definition of cruel, inhuman or degrading treatment.[121]

118 See also, Human Rights Watch. (2003). *Abducted and Abused: Renewed Conflict in Northern Uganda*. Author: New York; Human Rights Watch. (2003). *Stolen Children: Abduction and Recruitment in Northern Uganda*. New York, New York.

119 See also, Human Rights Watch. (2005). *Concerns regarding Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Uganda;* Human Rights Watch. (2004). State of Pain: Torture in Uganda. New York, New York; Human Rights Watch. (2003). *Abducted and Abused: Renewed Conflict in Northern Uganda*. New York, New York.

120 United Nations Treaty Collection. *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment A/RES/39/46*.

121 For discussion on cruel, inhuman or degrading treatment or punishment see OMCT/Europe. (2004). *Interpretation of the Definition of Torture or Cruel, Inhuman or Degrading Treatment or Punishment in Light of European and International Case Law*. Available at www.omct.org/files/2004/10/2667/omctreport_definition_eu_301004 Accessed August 9, 2011.

Torture or cruel, inhuman or degrading treatment of adults and children in public by the LRA during attacks and within the confines of the LRA was used as a means to terrorise the population and break their will to resist LRA demands. Torture or cruel, inhuman or degrading treatment was also used by the LRA to punish communities that had reported their presence to the UPDF, had given sanctuary to those who had escaped LRA captivity, had resisted or refused their demands, or who received support from the Government of Uganda and the United Nations, such as those who went into IDP camps.[122]

Torture or cruel, inhuman or degrading treatment by the LRA included the raping of women and girls, the cutting and burning of women and girls' genitals and breasts, and the castration of males. Tactics by the LRA also incorporated the deliberate removal of body parts (including girls' and women's breasts and men's genitals), the destruction of people's eyes with stones and sticks, the cutting out of tongues, and smashing out of teeth. The LRA would also carve and smash people's faces and bodies. At times, the victims would be tied to trees so they could not escape as the LRA carried out these horrific crimes. The LRA forced people to drink harmful and taboo substances, like petrol or human blood. As a form of punishment against targeted communities, the LRA forced villagers to kill, dismember and cook their loved ones and friends. Interviewees said that women most often were forced to prepare the fires and pots of water and bring salt with which the body parts were cooked. At other times, the LRA would force people to drink blood and eat human flesh and body parts. The LRA also forced people to bite through the legs or arms and hack through the bones of other victims. During abduction and while in captivity, it was predominately children who were forced by the LRA to kill other abductees as a form of punishment, intimidation and indoctrination.[123] In other cases, the LRA would purposefully

122 See also, Human Rights Watch. (2003). *Abducted and Abused: Renewed Conflict in Northern Uganda*. New York, New York.

123 While abducted children made up a substantial portion of LRA forces, it appears that they were particularly selected to carry out this violence as a means to reinforce the group's control over of other abducted children. See also, Human Rights Watch. (2003). *Stolen Children: Abduction and Recruitment in Northern Uganda*. New York, New York; Coalition to the Stop the Use of Child Soldiers. (2004). *Child Soldier Use 2003: A Briefing for the 4th UN Security Council Open Debate on Children in Armed Conflict*. Author: London.

set people on fire, or burn parts of their bodies, including forcing people to put parts of their bodies in fires or to sear themselves with hot metal pots. The LRA humiliated and sexually abused victims by forcing them to strip naked.[124]

Some former abductees and those working closely with these populations reported that in retaliation for the UPDF pattern of raiding LRA camps when the LRA had prepared and were beginning to eat their food, the LRA, at times, killed and cooked people in pots, then waited for the UPDF to attack them to get the food, and thus the LRA tricked the UPDF into eating human remains.

Interviewees reported that the UPDF engaged in torture or cruel, inhuman or degrading treatment of alleged captured LRA fighters and abductees and suspected collaborators. Interviewees reported that UPDF tortured people, both civilians and captured members of the LRA. The torture included tying their hands and arms behind their backs so tightly it caused permanent nerve damage, hanging people from the ceiling, beating them with sticks and metal pipes, rubbing hot oil and peppers into wounds, cutting and electrocuting people, cutting genitals, breaking bones and smashing teeth.[125] The majority of victims reported as tortured by the UDPF were males, although some females were also reportedly tortured. The UPDF was also accused of raping both males and females, at times publicly, in order to punish and intimidate populations that were resisting their orders.[126]

Abduction

The war in the Greater North is infamous for the high rates of abduction of children, youth and, to a lesser extent, adults by the LRA. The scale of abduction was immense. Representative studies found abduction numbers in Acholiland *alone* at 66,000 (which

124 Forced nudity as a form of humiliation has been ruled as a form of torture and inhuman treatment in a number of international cases.

125 See also, Human Rights Watch. (2005). *Concerns regarding Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Uganda;* Human Rights Watch. (2004). *State of Pain: Torture in Uganda.*

126 See also, Daniel Neumann (producer, writer), Otim Patrick (producer) and Ann Chang (producer). (2008). *Gender Against Men*. A production of the Refugee Law Project, and the Faculty of Law, Makerere University.

is a conservative estimate), with more than a 1/3 of male youth and 1/5 of female youth reporting abduction by the LRA.[127] A 2007 OHCHR report found that out of 2,875 persons interviewed, 37% reported abduction by the LRA.

Initial abduction by the LRA was largely random in terms of who was abducted. However, upon abduction, the LRA made calculated decisions about whom they retained in the force, whom they let go, and whom they killed outright. The LRA preferred abducting and retaining boys and girls in their teenage years (particularly young people 10-18 years old).[128] Forced recruitment often followed abduction.

It is believed that many thousands of Ugandan abductees have been killed as a consequence of combat, violence and deprivation during captivity. Tragically, a large-scale representative study of war-affected youth in Acholiland estimates that 20 percent of male abductees and five percent of female abductees are dead. This amounts to a staggering nine percent of the 1996 population of male youth and one percent of the female population alive in 1996.[129] The LRA continues to operate and abduct children, youth and adults in the Democratic Republic of Congo, Central African Republic and South Sudan.

UPDF was not reported to engage in abduction, but at times was accused of forced recruitment (see Forced Recruitment).

Forced recruitment

Within the LRA, the crime of abduction was often followed by forced recruitment into the armed group. The primary targets for LRA forced recruitment were boys and girls between 10-18 years of age (see Abduction).[130]

127 See Annan, Jeannie, Chris Blattman, Khristopher Carlson and Dyan Mazurana. (2008). *The State of Female Youth in Northern Uganda: Findings from the Survey of War Affected Youth: Survey for War Affected Youth,* Kitgum Uganda, and Feinstein International Center, Tufts University; Annan, Jeannie, Christopher Blattman, Dyan Mazurana and Khristopher Carlson, "Civil War, Reintegration and Gender in Northern Uganda," *Journal of Conflict Resolution* accepted and forthcoming.

128 Ibid.

129 See Annan, Blattman, Carlson and Mazurana.

130 See Annan, Blattman, Carlson and Mazurana.

The LRA is virtually entirely dependent on civilian abduction and forced labour to support the ground operations of the daily running of their insurgency. Upon being retained and forcibly recruited into the LRA, captive young women, children and some adult males were required to grow, harvest, process and prepare food, as well as fetch water. More educated youth, particularly females, were trained to serve as nurses and medical aides and to operate radios and help with other forms of transport and logistics. Young men and some young women were forced to become fighters and bodyguards for their captors. Young men and some young women were forced into intelligence work to help the LRA in planning and carrying out attacks and accessing human and material support. Captives of both sexes, children and adults, were forced to carry looted goods acquired during attacks as well as weapons, ammunitions and supplies for the fighting group. Both male and female older children and youth received military training and were expected to fight if ordered to do so. Males in their 20s were kept primarily as fighters and the more trusted among them as bodyguards and eventual low-level commanders, with a few reaching higher ranks.[131] Females who had reached puberty were typically given by high-ranking LRA commanders to other LRA commanders or fighters in a practice defined by international law as "forced marriage"[132] (discussed in more detail under Slavery). These females also provided forced labour, and were also trained and at times expected to fight. A few females rose to high ranks within the LRA. Younger children and older adults (though few older adults were retained) provided forced labour to keep the LRA functioning.

The UPDF also pressured and forcibly recruited boys and girls into their forces. At times they would force newly captured or escaped abductees to lead them to LRA bases or areas of LRA activity. Some former male abductees reported being strongly pressured and intimidated by the UPDF to join the government force, including joining 105 Battalion which was primarily made up of former

131 Ibid.

132 For a detailed analysis of forced marriage with the LRA see Carlson, Khristopher and Dyan Mazurana. (2008). *Forced Marriage within the Lord's Resistance Army, Uganda*. Feinstein International Center, Tufts University.

officers from other Ugandan rebel forces and abductees of the LRA.[133] During a spike in LRA attacks, the Government of Uganda called for the communities to raise militia forces, which it put under the command of the UPDF. With the urgent and rapid mobilisation of tens of thousands of militia members, many boys and girls also joined those fighting forces, received military training and weapons. Though initially raised to protect their own communities, militia members were deployed as far as Sudan to fight the LRA.[134] With international condemnation of the use of child soldiers, most notably in the Optional Protocol of the Convention on the Rights of the Child and United Nations Security Council Resolution 1612, and increased international attention to the conflict starting around 2003, the UPDF and the Government of Uganda were pressured to stop the recruitment of child soldiers and to immediately demobilise all children in the UPDF and militia forces.

Youths and adults who were members of militias and lost their lives fighting the LRA remain largely unaccounted for, and those who were injured or maimed have not received the necessary assistance for treatment and rehabilitation.

Slavery and forced marriage

The LRA systematically forces civilians it abducts into various forms of slavery. The LRA is heavily dependent on forced labour (a form of slavery) to run its field operations (for details see Forced Recruitment). The LRA also engages in other forms of slavery, including sexual slavery, forced marriage, forced pregnancy and forced child-bearing.

As mentioned above, pubescent girls and young women were forced by the LRA into a condition of "forced marriage" which is a form of slavery and a serious crime under international law. "Forced marriage" was methodically organised by the senior leadership of the LRA. Adult rebel commanders in their 50s raped and impregnated girls as young as 12 years of age. The

133 McKay, Susan and Dyan Mazurana. (2004). *Where are the Girls? Girls in Fighting Forces in Northern Uganda, Sierra Leone, and Mozambique: Their Lives During and After War*. International Centre for Human Rights and Democratic Development, Montréal, Canada.

134 This observations were made by the authors during the raising of militias in 2004-2005.

presence of "forced wives" in the LRA served to bolster fighter morale and support the systems that perpetuate cycles of raiding, looting, killing, and abduction. The LRA leadership exercised rigid control over the sexuality of abducted women and girls through intimidation, discrimination, and violence. A medical CSO that was interviewed in the study had documented that the majority of young women and older girls who were deliberately wounded in captivity by the LRA suffered as a result of their persistent refusal to engage sexually with their captors, which led to them being severely beaten, tortured, maimed, having their breasts cut off, or being killed.[135]

Within "forced marriages," females were repeatedly raped and sexually violated, and hence suffered sexual slavery. In addition, female victims were forcibly impregnated and forced to give birth to the resulting children; attempts to prevent pregnancy or cause spontaneous miscarriages were punishable by death. Females who had children with them when they were abducted often saw those children die due to lack of food and medicine as their LRA captors wanted them to bear LRA children, not so-called 'useless civilian children.' Thousands of children have been born as a result of the violence of "forced marriage." In addition to child-bearing and rearing, "forced wives" were also compelled to provide labour to their captors, husbands and to the LRA as a whole.

The effects of "forced marriages" are physical and psychological, and impact how the survivor is treated by her family and community upon return, influencing her choices and ability to fully realise her rights as a citizen.[136] Though many are accepted, some children born of "forced marriages" also face serious challenges upon attempting to reintegrate with their mother's family and community.

Mutilation and war injuries

Mutilation has a serious and significant effect on victims, affecting them physically, psychologically, socially and economically. The

135 See AYINET. (2011). *2009/2010 Surgical and Medical Rehabilitation Report,* Kampala, Uganda.

136 See also Carlson and Mazurana.

LRA mutilated some of its civilian victims. Mutilation by the LRA was often carried out as a form of punishment. This includes cutting off people's ears, lips, nose, fingers, arms, legs, cutting of females' breasts and genitals, raping females with machetes and male castration. Doctors and medical CSOs working with such victims find that the majority (over 70%) of victims mutilated by the LRA during attacks upon communities are women.[137] Additionally, females compelled into "forced marriage" within the LRA who refused to engage sexually with their captors were also mutilated (see Slavery).

Thousands of adults and children are living with serious injuries from bullet, shrapnel, and machete wounds caused by LRA attacks, being hit with bomb fragments during UPDF aerial bombardments, or being caught in combat exchanges between the LRA and the UPDF and its militia forces.

Thousands more have been seriously burned during LRA attacks on IDP camps and villages which the rebels set on fire. Medical personnel and medical CSOs report[138] that the majority of burn victims they encountered (and eventually treated) were children. When the LRA would attack villages or IDP camps, adults ran away, but children often sought refuge in their families' grass-thatched huts only to be caught in flames as rebels set the huts alight.

The LRA planted landmines in villages, granaries, near water wells, schools, health units, in agriculture lands and the paths to villages, schools and health units. The landscape was also littered with unexploded ordnance such as grenades, bullets, rocket propellers, and bombs. There are people who have lost their lives and limbs to unexploded ordnance.[139] In West Nile, the majority of victims are mainly as a result of LRA road ambushes or encountering landmines and unexploded ordnance during travel.

137 See for example AYINET. (2011). *2009/2010 Surgical and Medical Rehabilitation Report,* Kampala, Uganda.

138 Ibid.

139 See also, Wairagala Wakabi, "Landmines pose further danger to Uganda's war refugees," *The Lancet,* Volume 368, Issue 9548, Pages 1637 - 1638, 11 November 2006. Original Text.

Crimes of sexual violence

The LRA carries out serious crimes of sexual violence in a systematic and widespread manner. As mentioned above, these crimes include rape, forced marriage, forced pregnancy, forced child bearing, sexual mutilation, male castration, and other serious sexual harms. The majority of sexual crimes committed by the LRA are carried out within the confines of "forced marriage," which is orchestrated and managed by top LRA leadership (see Slavery). According to interviews with former abductees, rape of civilians outside the confines of "forced marriage" is largely prohibited by top LRA leadership. However, at times LRA fighters will rape civilian girls and women if they believe they will not be caught or punished by their commanders. The LRA fighters would also cut females' breasts and genitals and are reported to have raped some women with machetes as a form of punishment and to cause terror.

Some interviewees said that the UPDF, in particular the force's Mobile Units, raped females within the IDP camps and females within the LRA (abductees) they capture or those they know have returned from the LRA (returnees).[140] Also reported were cases of the UPDF raping women and girls when soldiers would accompany the females from the IDP camps out to collect food, firewood and poles for building. Some parents and husbands reported that having beautiful daughters and wives became a liability as members of the UPDF would detain the men, while others would go and proposition or rape the daughters and wives. In some cases, it was alleged that the fathers or husbands of the females would be killed, their death blamed on "the LRA," and then particular UPDF soldiers would try to gain sexual access to the females. The army was also accused of raping men and gang-raping women as a form of punishment against particular communities.[141] Victims also reported women being raped by UPDF fighters to terrorise populations that were refusing to leave their villages and go into the IDP camps (see Forced Displacement).

140 See also, Human Rights Watch. (2005). *Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda*. Author: New York.

141 See also, Daniel Neumann (producer, writer), Otim Patrick (producer) and Ann Chang (producer). (2008). *Gender Against Men*. A production of the Refugee Law Project, and the Faculty of Law, Makerere University.

There were reported cases of the UPDF raping and sexually abusing women and girls they 'rescued' from the LRA, particularly within the more remote locations of UPDF operation. There were reports from witnesses who said that during their time in captivity, they saw UPDF commanders order the mass rape of captured females from the LRA (who themselves were abductees), and then afterwards stabbed or shot the abducted females to death.

Psychological harm

Experiencing such serious violations as discussed above, as well as witnessing such harms to family, neighbours and others, has resulted in serious psychological harm to victims, their families and communities. Men, women, boys and girls saw loved ones killed, mutilated, tortured, severely beaten, abused and humiliated. They witnessed people being set on fire inside their homes, and at times, they themselves were caught inside burning buildings. They experienced and/or witnessed rape and sexual abuse. They saw loved ones abducted or they were abducted themselves. As abductees within the LRA, they were forced to kill or injure their loved ones or other people, to step on and desecrate the bodies of the dead, to destroy and loot property, to beat, cut and torture people, and to dance, cheer and "celebrate" while other abductees were brutally tortured and murdered. Parents suffered the extreme strain of being unable to protect their children, and children suffered the confusion, sorrow and anger of seeing their parents unable to protect and care for them.

Mental health studies in northern Uganda find that victims of violence and those persons exposed to violence report higher levels of distress. Not surprisingly, abductees report high exposure to and experiences of violence, with females subjected to "forced marriage" reporting the highest levels of exposure to violence among both formerly abducted and never abducted youth populations.[142] A minority of victims (in one large scale study 15%) reported feelings of irritability, an inability to concentrate or finish tasks, persistent nightmares, feelings of deep sadness, constant

142 See Annan, Blattman, Carlson and Mazurana.

crying when reminded of the past, feelings of helplessness and giving up, intense and chronic headaches, chest and body pains, and overall body shaking. Some victims reported being disturbed by spirits of their dead loved ones who died violent deaths and for whom they were not able to properly bury. Some abductees reported being disturbed by spirits of those they were forced to kill or witnessed being killed.[143] The aftermath of the effects of the violence can be long lasting. For example, some children reported that even today they remain afraid to walk through thick brush or on paths to school that have not been properly cleared because they continue to fear abduction, even though they know the LRA is no longer in their area.

Forced displacement

By the height of displacement in 2005, nearly 2 million people – approximately 90-95% of the population of Acholiland, 33% of the population of Lango, 200,000 people in Teso and 41,000 in West Nile -- had become internally displaced due to the conflict. There were over 240 IDP camps during the height of the conflict in the Greater North. Nearly all interviewees spoke of the violence, impoverishment and humiliation that occurred as a result of forced displacement.

Many people spoke of being told by the UPDF that they had a few days or in some cases only 24 hours to leave their homes and make necessary preparations. People reported being told by the UPDF they would be able to go back and get their belongings. They said that upon returning they found all their assets looted, and most blamed the UPDF for looting or allowing the looting, either by deliberate act or omission. Some interviewees reported the UPDF used violence - including rape, force and threats, and burning of their granaries - to compel people to leave their homes and move into displaced camps (see; serious crimes of sexual violence).[144]

As a primarily agro-pastoral, subsistence agriculture population, being cut off from their agricultural lands and traditional homesteads

143 Ibid.

144 See Chrispus Okello and Lucy Ovil, "Confronting the Reality of Gender-based Violence in Northern Uganda," *International Journal of Transitional Justice* 1 (3) (2007): pp. 433-443.

had a devastating economic, livelihood, social and cultural effect on people. Perhaps most significantly, they were no longer able to produce enough food for subsistence and this had overwhelmingly negative consequences for their health and well-being.

It was widely reported by interviewees that the camps were poorly protected and had inadequate facilities. Tens-of-thousands of people died in the camps due to disease and violence. Some children interviewed spoke of walking through the camps and witnessing families burying their dead. The most rigorous mortality study conducted to date is the World Health Organisation and Uganda Ministry of Health mortality survey of Acholiland in 2005. For the period from January to July 2005 in Acholiland, the study found excess death rates at over 1,000 a week, well above emergency levels. For the seven month time period of the study, researchers found a total excess mortality of 25,694 persons, of which 10,054 were children under five. The study estimates that 3,971 people were violently killed during this same time period in Acholiland.[145] In a 2007 OHCHR and UHRC report, out of 2,875 persons interviewed, 76% said they had lost a family member to the conflict.

The camps were poorly protected by the UPDF and militias and frequently raided by the LRA. The LRA carried out some of its largest massacres at the camps for the internally displaced, killing hundreds of people, wounding hundreds more, and burning hundreds of huts.

People spoke of UPDF soldiers sexually exploiting young women as the UPDF soldiers were some of the few people in the camps who had a regular income and weapons to protect themselves. In other cases, people alleged that the fathers and husbands of beautiful daughters and wives were illegally detained and at times killed so that UPDF soldiers could access the females (see; serious crimes of sexual violence). Other interviewees alleged that some UPDF soldiers forcefully took girls away from their parents to use them sexually. In some cases where the family tried to resist, they were

145 The Republic of Uganda Ministry of Health and the World Health Organisation. (2005) "Health and mortality survey among internally displaced persons in Gulu, Kitgum and Pader districts, northern Uganda." World Health Organisation: Geneva.

ill treated by the UPDF or labelled collaborators and subjected to abuse.

Due to the high concentration of human habitation, agricultural plots around the camps were over farmed and rendered less fertile. Some of the land is no longer useable. Meanwhile, some interviewees complained that the land they had been forced to vacate was used by the Government for camps and military barracks. Many people claimed they were never compensated for this use.

Pillaging, looting and destruction of property

Pillaging and looting by parties to an armed conflict is a serious violation of international humanitarian law. It is well recognised that the Uganda Constitution guarantees every person the right to own property and prohibits the compulsory and unlawful deprivation of one's property (Article 26) except in certain lawful circumstances. During the conflict, people reported having their personal and commercial goods taken, either in their absence or directly from them by force. The majority of interviewees who spoke about having property looted mentioned the loss of personal effects and key assets, including livestock. The LRA, the UPDF, and armed raiders from the Karamoja region were alleged to have perpetrated these crimes. People believe that the Karamoja raiders were allowed to come in, sweep through the region, and steal most of the population's livestock in 1987 and 1988; many people alleged that the (then) new army and new government in Uganda was working in collaboration with the raiders and also benefitted from looting and selling cattle. People spoke of the LRA burning their homes, burning their granaries and cutting down fruit and nut trees to destroy people's livelihoods. Others spoke of their homes and properties being destroyed by UPDF aerial bombardments or during the looting by the LRA, the UPDF and other civilians. The UPDF troops in the Greater North were often poorly financed and at times would engage in making charcoal to earn an income. Prior to and during the initial establishment of the IDP camps (which began in the mid 1990s), trees that people

used to produce food and earn income, like Shea and mango trees, were always protected from cutting. Many community members blamed the UPDF for cutting and burning their mango and Shea trees.

The loss of property, including livestock, was economically devastating for most families. The result was a severe and rapid impoverishment of much of the population. Already thus weakened, many struggled to survive in the displaced camps (see Forced displacement).

At the community level, there was widespread destruction of critical infrastructure, including hospitals, medical clinics and facilities, schools and roads by both the LRA and the UPDF. The increased insecurity and the direct targeting of schools by the LRA resulted in many children dropping out of school and losing out on years of education. As a result, with no access to schooling, and no means for families to support children, girls were married off at earlier ages than before the war. As the LRA destroyed property to punish and terrorise populations, interviewees alleged that the UPDF vandalised public institutions such as schools, health clinics and businesses, in part to enrich themselves, and in part to gather necessary supplies to support their forces. The occupation of schools[146] and burning of school desks for firewood and cooking fuel by the UPDF, as reported by several interviewees in Lango and Teso sub region, can be seen as emblematic of the political and social environment.

Other Harms Victims Want Acknowledged

The 10 serious violations discussed above encompass what victims and victim-focused CSOs contend are crimes that should trigger *both* the right to remedy and reparation (OHCHR 2007, OHCHR and UHRC 2008, OHCHR and UHRC 2010/2011). In addition, people interviewed spoke of the following four other harms that they suffered that, while not constituting serious violations, they wanted acknowledged and addressed.

146 The UPDF also occupied hospitals and cooperative societies (where farmers would store and sell their products) in Lango and Teso.

Land seizure

Some interviewees complained that their land had been confiscated by the State and used for IDP camps or military barracks. They claimed that the land had been damaged and in some ways was no longer usable for agriculture or housing. Most interviewees said they had not been compensated for the use of and damage to their land. In several cases, interviewees reported that their land had not been returned, particularly in the cases where the State had established military barracks.

Damage to cultural and traditional heritage

The destruction of cultural objects and places of worship is prohibited under Article 53 of Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, as well as Article 16 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

Interviewees spoke of the damage the conflict had wrought to their traditional systems of care giving, particularly those of parents to their children and the treatment, respect and care given to the elderly. Traditional kin-based systems of support base were weakened as almost all members of the clans in the camps became destitute and were no longer able to support the more vulnerable families. The respect for elders waned, as their authority weakened within the camps. Due to the extreme levels of destitution in the IDP camps, the closure of many of the schools, and the lack of or low quality of education available in the camps, many children were largely unsupervised throughout the day. As a result, people said that today the cultural and traditional care given to the most vulnerable members of the community is extremely weak as most of the community's life is now monetised, something learnt during displacement.

Many people complained of an inability to pass on their culture to the youth through traditional storytelling and discussions during

the evenings around fires, as curfews meant people had to be in their huts shortly after dark.

People also spoke of the destruction of cultural artefacts, some which were several hundred years old and irreplaceable.

Spiritual harm

People spoke of the spiritual harm that had come from experiencing and witnessing the horrors and destitution of the conflict. People reported that by experiencing and witnessing the harms described above that they were subjected to attacks and haunting by spirits of the dead.[147] For children who witnessed their parents being killed, this can be quite severe as their ability to participate in normal life is hampered by flashbacks of the violations. This impairs not only their normal daily functioning, but also their ability to concentrate and perform well in school. Some interviewees expressed concern for young people affected by the war who have now resorted to drug and substance abuse to cope with their experiences.

Many survivors and relatives were deeply unhappy with and disturbed by the treatment of their dead who had died as a result of serious violations. Haunting and psychological harm was most reported by those who said that their loved ones were killed and buried in mass graves or thrown into the bush. Such interviewees routinely complained of attacks by the spirits on the living, causing them physical harm, tormenting their minds, or causing illnesses in the family. There is a locally expressed need for burials and rituals to show appropriate respect to the dead and ensure that they rest in peace. This may require exhuming the dead from wherever they were buried so they are buried according to custom or making symbolic burials in honour of the dead. However, for some interviewees who spoke on this issue, they cannot afford to properly rebury the dead because they cannot access the mass graves or the bushes were their loves ones were killed. In some cases, even when they know the location of their dead or would

147 See for example Annan, Blattman, Carlson and Mazurana; Erin Baines. The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda." *International Journal of Transitional Justice* 1 (1) (2007), pp. 91-114.

consider carrying out a symbolic burial, they lack the finances for ritualistic items and ceremonies and hence are prevented from the proper burial of their loved ones.

Increased ethnic tensions

Many interviewees spoke of increased ethnic tensions due to the war. In the cultures of the Acholi, Lango, Teso and West Nile sub-regions, people place a strong emphasis on living in community. In such cases, the harm to one represents harm to the family or clan, and has repercussions on the surrounding community. Many of the original and remaining top commanders of the LRA are from Acholi, and hence the rebellion itself is branded within the region as an Acholi rebellion. Additionally, other ethnic groups are frustrated with the Acholi clan leaders' inability to reign in the insurgency in its early years.

While the strain of ethnic tensions within the region due to the war is well known, interviewees were also extremely critical of the ways in which they allege that the international donor community and the United Nations had exacerbated these tensions. In particular, there is a widespread belief that Acholiland, and certain districts within Acholiland, received the lion's share of international attention, assistance, and political leverage within the peace negotiations. Other ethnic groups in the sub-region feel marginalised and that their voices and experiences are either ignored or being subsumed in that of the Acholis. They also said that the way in which international and bi-lateral aid and assistance is concentrated in Acholiland has exacerbated this perception.

This sentiment is strong in the Lango, Teso and West Nile sub-regions, which argued that the government, development partners, and humanitarian community focused on improving security, alleviating poverty and building peace in Acholiland to the exclusion and marginalisation of the other sub-regions. Many interviewees said that working across ethnic lines is required for successful rehabilitation and stability of the region and that donors should work to support such cross ethnic initiatives and refrain from creating more ethnic divisions.

Recommendations

Recommendation 1: The Government of Uganda, the Justice Law and Order Sector, and the Transitional Justice Working Group and its United Nations and Development Partners should:

- Take into serious consideration the victims' 11 categories of serious violations that they feel should trigger their right to both remedy and reparation.

Recommendation 2: The body of inquiry should:

- Inquire into the serious violations committed during the conflict, giving particular attention to the experiences of women and children;
- Make provision for witness protection (physical and mental), especially for women and children;
- Make special provision for cases involving gender based and sexual violence;[148]
- Consider accountability for the full range of actors, including financing groups, and accountability for forced displacement and the associated crimes and violations in the camps.

148 See for example Annan, Blattman, Carlson and Mazurana; Erin Baines. The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda." *International Journal of Transitional Justice* 1 (1) (2007), pp. 91-114.

REMEDY: VICTIMS' PRIORITIES

Introduction

This chapter presents the victims' and victim-focused CSOs' priorities for remedy, which focused primarily on truth-recovery and accountability for harms committed (OHCHR 2007, OHCHR and UHRC 2008, and OHCHR and UHRC 2010/2011). The topic of reparation, which is a central part of remedy, is discussed in detail in Chapter 6.

Remedy encompasses the right to: (a) equal and effective access to justice; (b) adequate, effective and prompt reparation for harm suffered; (c) access to relevant information concerning violations and reparation mechanisms; and (d) access to fair and impartial proceedings (see Chapter 2 for a detailed discussion).[149]

Victims and victim-focused CSOs named truth-recovery, acknowledgement of harms, redress and reparation as their top priorities for any future transitional justice mechanism (OHCHR 2007, OHCHR and UHRC 2008, and OHCHR and UHRC 2010/2011).

In 2008, Uganda's Justice Law and Order Sector (JLOS) established a high level Transitional Justice Working Group to give effect to the provisions of the Juba Peace Agreement (see Chapter 3). The Transitional Justice Working Group is comprised of five thematic sub-committees including: (1) war crimes prosecutions, (2) truth and reconciliation, (3) traditional justice, (4) sustainable funding, and (5) integrated systems. In 2008, Uganda established the International Crimes Division of the High Court to try perpetrators and is currently considering the establishment of a truth-seeking body. Issues of remedy and reparation cut across these thematic areas, and will likely be addressed in several of the sub-committees.

149 *The Basic Principles,* article 7.

The five thematic sub-committees are engaged in moving forward these important issues.

Victims and victim-focused CSOs interviewed for all three studies (OHCHR 2007, OHCHR and UHRC 2008, and OHCHR and UHRC 2010/2011) express an overwhelming desire for:

(a) Truth about past harms and historical clarification to explore the long view of the conflict;

(b) Effective steps to be taken to investigate human rights violations recognised as criminal acts and to bring to justice those responsible;

(c) LRA and the Government of Uganda – and particularly their leadership – to be held accountable for violations committed and harms they caused (by commission and omission) during the conflict;

(d) Remedy and reparation for past violations and harms;

(e) Reconciliation and healing, particularly at the family, community and inter-regional levels.

(f) The international community to play an active role in ensuring and supporting the Government of Uganda to fulfil its responsibility to guarantee their right to remedy and reparation.

It is important to recall the four following facts about remedy and reparation (detailed in Chapter 2).

- First, victims have **a clearly established right to remedy and reparation** for serious violations of international human rights law and international humanitarian law.
- Second, the right to remedy and reparation must be applied **without any discrimination** of any kind or on any ground, without exception.
- Third, **victims are defined** as "persons who have individually or collectively suffered harm including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that constitute serious violations of international

human rights and humanitarian law. Where appropriate and in accordance with domestic law, the term `victim' also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation."150

- Fourth, **duty bearers** include the State, non-State perpetrators, or other parties found liable for the violations. The State shall provide reparation to victims for acts or omissions that can be attributed to the State. Persons or other entities found liable for reparation to a victim can be ordered to provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.

To date, in the Greater North, the **vast majority of victims of serious violations have not realised their right to remedy or reparation.** The overwhelming majority of victims have no access to equal and effective justice and judicial remedy, in part interviewees said due to the Government of Uganda not recognising their claims and the weak state of the justice sector in the conflict-affected regions of the Greater North to handle such claims. There has been no concerted effort on the part of the Government of Uganda to document, investigate, and provide victims with access to relevant information concerning the violations they and others in the region were exposed to and suffered. To date, there has been no substantial progress in the pursuit of fair and impartial justice regarding the mass and widespread violence perpetrated in Greater North. There has been no systematic information, outreach or consultation with victims on any development or planning for reparation mechanisms. To date, there has been no adequate, effective and prompt reparation by the State for victims of serious violations caused as a result of the Government of Uganda and LRA hostilities.

Truth-recovery as a form of remedy

At present, the Government of Uganda's discussions around establishing a body of truth-recovery, inquiry or clarification (as

150 *The Basic Principles*, article 5, para. 8.

per the Juba Protocols, see Chapter 3) appear, for now, to be the most likely avenue for victims to receive some form of remedy. The OHCHR and UHRC 2010/2011 study, in particular, sought out victims' and victim-focused CSOs' views on truth-recovery and the body that would facilitate truth-recovery; the outcomes of which are included in this report.

Victims' Priorities for Truth

Interviewees spoke about the need to carry out fact-finding and inquiry regarding the **history and nature of the Government of Uganda and LRA conflict and the serious crimes and violations committed by all parties to the conflict.** According to interviewees, one of the primary deficiencies of the current Government has been its unwillingness to engage and admit the truth about past atrocities, and consequent insufficient remedy and reparation for victims.

Victims and victim-focused CSOs have **clearly articulated the kinds of serious crimes and violations they believe should be investigated, documented and addressed** (see Chapter 4). When considering these violations and crimes, the significant factors of gender, age and sexual violence should be taken into account, as evidenced by the findings presented in Chapter 4.

People take **a long-term view of the conflict,** which for them has its roots in the events prior to 1986 and prior to the emergence of the LRA. Consequently, any truth-recovery mechanism in Uganda would need to explore events before the beginning of the 1986 LRA-GoU conflict in order to account for the population's longer historical view. In particular, many victims stressed there needed to be serious inquiry into the conditions that led to the rise of the National Resistance Movement to power and the effects of that rise to power. Furthermore, the truth-recovery mechanism would need to address the trans-national nature of the conflict, including the role of the Government of Sudan and the diaspora that funded and supported the LRA and fuelled the conflict.

Many interviewees across the four sub-regions stated that they did not know the **truth about the harms they had suffered,**

particularly the identity of perpetrators. There was significant mistrust of the UPDF. People at times alleged that some of the attacks the government blamed on the LRA were, they suspected, carried out by the UPDF. Interviewees stressed that there was a need for some form of clarifying mechanism to produce an accurate, objective, transparent, public record concerning harms caused during the conflict, in addition to identifying those responsible. They stressed that this work must not be conducted by a political body, fearing that the work would simply become a platform for opportunistic politicians.

There was also a strong demand by family members to **know the fate of the disappeared** and, if possible, the whereabouts of their loved ones. Information on the fate of those enforced disappeared and location of the dead also constitutes a form of reparation, under satisfaction. Some interviewees requested the coordinated assistance of the ICRC to help establish the fate of thousands of persons who have been forcibly disappeared.

There already exists a **strong community-level interest in having the facts about serious violations put on public record.** To this end, there are numerous cases of local officials in Acholiland, Lango and Teso documenting LRA and UPDF violations, including large scale attacks, massacres, torture, rape and sexual violence. Academic and NGO researchers have also carried out studies of particular attacks and resulting violations, as well as studies of particular harms suffered by segments of the population. Local medical CSOs and a number of medical practitioners in the North also have extensive knowledge of serious violations, since they are at times treating the survivors and their families. Some local CSOs have extensive documentation on abducted children and adults from their areas. These efforts are important and commendable,[151] and could complement - but are no substitute for - the Government of Uganda's efforts to ensure victims receive remedy.

151 The OHCHR and UN Women are supporting a review of all relevant literature in this regard and shall make that report available near the end of 2011.

Body of Inquiry, Truth-Recovery or Historical Clarification

Victims and victim-focused CSOs (OHCHR and UHRC 2010/2011) clearly stated that the **body of inquiry, truth-recovery, or historical clarification should have as its core functions the documentation of:**

i. The history of the Government of Uganda and LRA conflict (taking the long view of the conflict);

ii. The resulting serious violations;

iii. The perpetrators of those crimes and violations (both by commission and omission);

iv. The impact the serious violations have had on the victims and their families and communities; and

v. Make recommendations about the victims' reparation needs.

Key to note is that in the Agreement on Accountability and Reconciliation, which details the parameters of a body of inquiry, the Government of Uganda committed itself to **strive to prevent and eliminate gender inequalities that arise during any processes for remedy and reparation.**[152] The parties also committed that within these processes they would make special provisions for women, children and victims of sexual violations and crimes[153]; recognise their needs and adopt gender-sensitive approaches; and ensure their experiences, views and concerns are recognised and taken into account. The parties also committed themselves to protect the dignity, privacy and security of women and girls, and encourage and facilitate the participation of women and girls in the processes for implementing the Agreement (see Chapter 3).[154]

Naming and recognising the serious crimes and violations of male and female adults and children, helps to raise awareness in the nation about the violations some of its people have been subjected too. This can help positively influence a more holistic

152 Agreement clause 10.

153 Agreement clause 3.4.

154 Agreement clause 11.

strategy for reparation and measures that support reparation. And it begins to build a shared memory and history, as well as and a path forward.

Victims and victim-focused CSOs agreed that such a **body should be independent and made of people of high integrity whom the victims can trust.** They believe that some members of the body should have knowledge of working with women and children who had suffered abuse, and someone with knowledge of working with survivors of extreme forms of sexual violence and abuse, as they themselves had suffered. Many thought that one or two seats should be reserved on the body for a well-respected, victim's advocate from among the CSO community in the Greater North.

Victims and victim-focused CSOs said they want the body to have **a strong capacity to enable it to have a wide reach,** to be comprehensive in its mandate and approach, and to make recommendations on reparation modalities.

Victims and victim-focused CSOs said they want to be **consulted to determine the history of what has happened.** They want to have their voices and stories heard and recorded. Women and youth victims, and those victim-focused CSOs that work closely with these populations, stressed the need for the body to **ensure that violations against women and children are heard, listened to, taken seriously and documented** as part of the public and national record. Survivors of sexual violence, survivors who have been seriously mutilated, and families of children born as a result of captivity strongly emphasised that special provisions must be put in place to enable their coming forward and safeguard their well-being and identities (if they so chose). For example, the testimonies of victims of sexual violence should be taken with specialists in post-traumatic stress present to provide the necessary support. Questions should be vetted by gender experts to ensure that sexist values and judgments are not woven into the way questions are formulated. The participation of women and girl victims and civil society organisations in the transitional justice

process is essential to reflect key principles of the Agreement on Accountability and Reconciliation and Annexure.[155]

Victims and victim-focused CSOs stressed the **need for protection** if they come forward as witnesses or as rights claimants. Given that the LRA is still active[156] and that the parties held most responsible for the harms suffered – the LRA and the Government of Uganda – are still actively involved in hostilities, and the fact that the conflict has not ended as the LRA is still at large and has not signed the peace agreement, many interviewees were justifiably concerned about their own safety if they came forward to testify.

Finally, they stressed they **wanted input into the planning and mandate** of any body of inquiry, truth-recovery or historical clarification. They felt that they had important contributions to make to help enable such a body to truly reach out to the people, to locate hard-to-reach and marginalised victims, and create a process that is truly victim-oriented in its scope and operation. They also believed that they needed to play a role in part because of their strong scepticism that the Government of Uganda could implement a reparations programme that would actually provide remedy to victims. Rural interviewees in particular stressed the importance of having a voice. They claimed that they were rarely consulted, and they felt that most programmes were designed in Kampala or internationally and "put on top of us." Importantly, the process through which victims realise their right to remedy can itself be a form of reparation (discussed in Chapter 2), which is precisely what the interviewees themselves are expressing.

Government of Uganda Consultations with Victims and Their Families

In 2009 the Government of Uganda began to put in place mechanisms to carry out consultations with Ugandan citizens, including victims of serious violations, on their views of truth-telling, traditional justice mechanisms, and, to a much lesser extent, reparation. The Government of Uganda will undertake

155 Agreement clause 11.(iv), Annexure clause 24.

156 The LRA has not carried out armed violence in Uganda since 2007, although they continue to be active and carry out atrocities in the Central African Republic, Democratic Republic of Congo, and Sudan.

these consultations in 2011 to help shape policy regarding the mechanisms to provide remedy and reparation as pertains to the Juba peace accord.

Victims and victim-focused CSOs interviewed in the OHCHR and UHRC 2010/2011 study showed considerable interest to be involved in the consultations and to have the opportunity to give the Government of Uganda their feedback and insights.[157] Interviewees stressed that they wanted the consultations to reach out to them and honestly reflect their input. They emphasised that they wanted the **consultations to acknowledge the different forms of harm they had suffered**, including serious crimes of sexual violence, and **the ways in which those harms had affected their lives in the present.** They stressed that the consultations need to be carried out in a way that was **respectful of and protected the dignity and well-being of the victims and their families.**

Government and public acknowledgement and accountability as a form of remedy: Addressing impunity

Strong trends have emerged among victims and victim-focused CSOs' regarding which parties are responsible for violations and harms committed during the Government of Uganda and LRA hostilities and who should be held accountable. Accountability primarily focused on non-judicial measures, though the need for judicial redress and accountability was specifically mentioned by numerous interviewees (OHCHR 2007, OHCHR and UHRC 2008, and OHCHR and UHRC 2010/2011). Nearly all respondents interviewed on the subject felt that there should be Government and public acknowledgement of the serious violations victims suffered and failure to prevent serious violations. Many spoke of holding criminally responsible leaders of the LRA, Government of Uganda, and the Government of Sudan for crimes committed by commission and omission.

157 The OHCHR and UHRC 2010/2011 study was the only one of the three OHCHR studies to focus questions on the consultations.

The serious violations and international crimes of which the LRA, the UPDF, and the Government of Uganda are alleged by the interviewees are presented in Chapter 4 of this report and include: killing, torture or cruel, inhuman or degrading treatment, abduction, slavery, forced marriage, forced recruitment, mutilation, sexual violence, psychological harm, forced displacement, and pillaging, looting and destruction of property.

In addition, victims and victim-focused CSOs also named violations and harms committed by the Government of Uganda via omission. In particular, interviewees highlighted the Government of Uganda and its armed forces (UPDF and militias) failure to protect or prevent attacks against civilian populations by the rebel forces. This included allegations that the UPDF (and to a much lesser extent the militias) fled camps that came under attack, and left civilians at the mercy of the rebels who later committed widespread killings, abductions (and accompanying sexual violence and other crimes), maiming, mutilations, and attempted immolation.

Interviewees believed that the Government of Uganda was also responsible for harms committed by omission through its failure to uphold its legal obligations to protect its citizenry and their property from both the LRA and raiding parties from Karamoja. There were numerous allegations that officials within the Government of Uganda – in particular members of the ruling National Resistance Movement, but also some opposition members – used the conflict for war profiteering and further entrenching their power and positions.

Interviewees also alleged that armed raiding parties from the Karamoja region were responsible for crimes of killing, rape, looting and destruction of property. The Government of Uganda was named as responsible by omission for failing to prevent or adequately respond to the attacks by the raiders from Karamoja.

Interviewees alleged that the Government of Sudan, and in particular the ruling National Congress Party and the Sudanese People's Armed Forces, were also responsible parties since,

beginning in (at least) 1993, they began providing military and financial support to the LRA.[158]

Interviewees overwhelmingly stated that those parties responsible, and in particular their leaders, should be held accountable, including criminally accountable, for the harms they have caused during the conflict (OHCHR 2007; OHCHR and UHRC 2008; OHCHR and UHRC 2010/2011). Specific groups of victims, in particular those that experienced some of the highest levels of violence and exposure to violence, namely abductees, victims of mutilation and females subjected to serious forms of sexual violence by both the LRA and UPDF, called for the strongest criminal sentences for those that orchestrated the violence.

The studies' findings (OHCHR 2007; OHCHR 2009; OHCHR and UHRC 2010/2011) challenge the depiction of people in the conflict-affected Greater North as inherently forgiving, reconciliatory or willing to give amnesty to those who have caused them serious harm. Sentiments of anger and a desire for prosecution were prevalent throughout many discussions and interviews. Where there was general acceptance of amnesty, it was particularly to facilitate the return home of low-level LRA perpetrators and for former abductees who did not become commanders and who people generally felt had carried out their crimes under duress and force.

Recommendations

Recommendation 1: Ensure that equality and non-discrimination are part of the overarching principles that guide the working of the body of inquiry namely:

- Fact-finding processes;
- Inquiry, data collection and data analysis;
- Registration process;
- All links to judicial accountability;

158 See for example, International Crises Group (ICG), "Northern Uganda: Understanding and Solving the Conflict," *ICG Africa Report No. 77*, 14 April 2004. Accessed http://www.crisisgroup.org/~/media/Files/africa/horn-of-africa/uganda/Northern%20Uganda%20Understanding%20and%20Solving%20the%20Conflict.ashx

- Forms, scope and distribution of reparation.

Recommendation 2: Ensure that the body of inquiry provides a comprehensive, independent and impartial analysis of the history and manifestations of the conflict.[159]

- Truth telling requires the identification of serious and systematic crimes and serious human rights violations committed against women, men, girls and boys (whose violations often go unrecognised).

Recommendation 3: Regarding the selection of commissioners and staff for the body of inquiry:

- The body of inquiry should reflect gender balance and include commissioners with expertise on sexual and gender based violence and violence against children in armed conflict, preferably expertise on these issues as regards the conflict in the Greater North;
- The body of inquiry should have among its members a victim representative of high moral integrity chosen with the input of a coalition of CSOs in the Greater North which is specifically victim-focused;
- All commissioners and staff should be of the highest integrity and have no history of violence against women and children;
- All commissioners and staff should be trained to avoid "gender bias" in the context of carrying out their work and the handling of witnesses and claimants. Commissioners and staff must be trained to ensure a gender-just approach in their interactions with victims;
- There should be the presence of persons with expertise in sexual and gender based violence and violence against children in all departments or bodies within that work directly with victims;
- Enable administrative structures to allow for the participation of CSOs and victim-led groups in the design, implementation, monitoring and evaluation of reparation programmes.

159 As reflected in Agreement on Accountability and Reconciliation, clause 2.3.

REPARATION: VICTIMS' PRIORITIES

Introduction

This chapter provides the victims' and victim-focused CSOs' views on the right to reparation and presents a discussion of the scope and kinds of reparation needed by victims of serious violations in the Greater North of Uganda.

Overwhelmingly, interviewees in all three studies (OHCHR 2007, OHCHR and UHRC 2008, and OHCHR and UHRC 2010/2011) strongly felt that victims of serious violations should be accorded reparation. They saw reparation as a crucial measure to provide accountability, acknowledge wrongs were committed, and address past injustice.

Under international standards, reparation has five main forms: (1) restitution, (2) compensation, (3) rehabilitation, (4) satisfaction and (5) guarantees of non-repetition. Reparation measures should attempt to be proportional to the gravity of the violations and the harm suffered. Reparation takes material and symbolic forms, and can take the forms of individual and collective reparation (detailed in Chapter 2).

Importantly, in Luo, reparation is often translated as *"culo jami orwenyo,"* which means "paying for the lost properties and/or lives" and is often equated with compensation. Therefore, it is important when discussing reparation in Acholiland and Lango to use phrases such as *"yubo/yiko gin ame obale acalo adwogi me lweny,"* which means "repairing harms committed during the war" and then to explain the scope of the five different components of reparation under international standards. In the OHCHR and UHRC 2008 and

OHCHR and UHRC 2010/2011 studies, in particular, interviewers and facilitators introduced and discussed the full scope of the right to reparation under international law in local languages so that victims could then speak from a more fully informed position to advance their opinions regarding their right to reparation.

Responsibility and modalities for reparation

Under international law, duty bearers for reparation include the State, non-State perpetrators, or other parties found liable for the violations. The State is also obligated to provide reparation to victims for acts or omissions which can be attributed to the State. In the case of widespread and mass atrocities, and in the likely event that non-State responsible parties are unable or unwilling to provide reparation, *The Basic Principles* recommend that the State establish national reparation programmes (see Chapter 2).

Overwhelmingly, interviewees in all three studies (OHCHR 2007, OHCHR and UHRC 2008, and OHCHR and UHRC 2010/2011) said that **the Government of Uganda should ensure remedy and reparation.** Interviewees (OHCHR and UHRC 2010/2011) said that any reparation programmes would need to be enacted only after the Government of Uganda acknowledged it has caused grave harm, both by commission and omission, to victims, their families and communities. In response to whether the Government of Uganda needed to acknowledge responsibility for harms committed prior to issuing reparations, several interviewees pointedly said, "Reparation for what?! Doesn't the government have to first acknowledge what happened, who did it, and who allowed it to happen before we can talk about reparation?"

Interviewees (OHCHR 2007, OHCHR and UHRC 2008, and OHCHR and UHRC 2010/2011) also stressed **the LRA bore responsibility for serious crimes,** but given that its leadership remains in rebellion, they felt it unlikely that any reparation from the LRA would be forthcoming in the near future. They did however stress that key former LRA commanders that have come out of the bush and received amnesty, naming in particular Brig. Sam Kolo, Brig.

Kenneth Banya, Onen Kamdulu and Cmdr. Patrick Opiyo Makasi and other high-ranking commanders, should come forward and admit to their wrong-doing, give information on the disappeared, and publically ask for forgiveness from the victims, their families and communities (all forms of reparation under satisfaction). Many victims were outraged that the above named men had failed to earnestly and publically admit to their wrong doing or apologise for the serious crimes they had committed, and yet with the Government granting them amnesty, the victims had to let these men move freely within the communities of the Greater North that they had terrorised. Victims were also angry about the fact that some of the above named men continue to pressure their former "forced wives" to maintain relationships, have been facilitated with phones, good homes and food, are transported around by NGOs and the Government, while their victims continue to struggle with the effects of serious violations and have seen little to no Government effort on their behalf.

The three studies (OHCHR 2007, OHCHR and UHRC 2008, and OHCHR UHRC 2010/2011) found a widespread view that **the international community should help ensure that victims receive remedy and reparation** they demand in response to the immense and long-lasting harms they have suffered. In particular, interviewees believed the international community should help advice on the scope and modality of remedy and reparation, and help carry out effective monitoring to ensure victims actually have access to and receive remedy and reparation.

Interviewees said that they want international governments and organisations, noting in particular the United Nations, to help to ensure accountability, transparency, and non-discrimination in remedy, truth telling and reparation processes. Interviewees said they want representatives of the international community to consult with victims and CSOs to help inform Uganda's process, including adding international knowledge of other processes where it would be beneficial. Interviewees wanted the international governments and the United Nations to assist, including financially and through human resources, the Government of Uganda's efforts to provide

remedy and reparation. Ultimately, interviewees wanted members of the international community as partners to assist in reparation.

Interviewees were in widespread agreement that the United Nations (and its agencies), as well as relevant Development Partners, international NGOs and the victim-focused CSOs should play important roles in supporting the Government of Uganda in its efforts to ensure victims' rights to remedy and reparation. The United Nations was mentioned as a particularly desirable partner to help monitor the administration of the reparations programme, in partnership with, and with input from, victim-focused CSOs that have a strong past record of work with victims. The United Nations' involvement was seen as essential to preventing corruption and ensuring victims receive and benefit from reparation.

Victim-focused CSOs were named as key partners in helping reparation efforts find, reach and assist victims of serious violations.

Interviewees in Lango, Teso and West Nile expressed concerns that within reparation programmes, donors may continue what they perceived as a donor bias towards focusing resources and efforts on the Acholi sub-region. They wanted donors to understand that populations within Lango and parts of Teso and West Nile also severely suffered from the Government of Uganda and LRA hostilities and to uphold their right to remedy and reparation.

Finally, while interviewees see an important role for international organisations and actors with experience in truth seeking, remedy and reparation to play, they do not want international organisations to "hijack" planning processes on truth-recovery or reparations. Some interviewees noted that in previous processes around the Juba Accords, they felt that some international organisations that did not come to meet or consult with them still had tremendous influence in decisions that affected them.

Victims can benefit from both individual and collective forms of reparation which are meant to operate in tandem and support one another (they are not in opposition or competition).

In terms of who should receive reparation, interviewees overwhelmingly said that **individual reparation should go directly to the individual victim** (OHCHR and UHRC 2008, and OHCHR and UHRC 2010/2011). Most interviewees said that victims of abduction and forced recruitment who carried out crimes against their will (i.e., not high ranking LRA commanders) should also be eligible for reparation since they too had suffered serious violations. Nearly all interviewees rejected distributing individual reparation through heads-of-households or clan or traditional leaders, and even the majority of clan and traditional leaders rejected this idea (OHCHR and UHRC 2008). Individual reparation going directly to individual victims means the possibility for women and youth to make decisions on how to handle reparation resources. Careful consideration should be given to helping claimants understand and find secure means to access their assets, money and banking systems.

The majority of interviewees noted the collective nature of the serious violations and thus felt that **collective reparation was also necessary**. Collective reparation can refer to the *modality of distribution* in which groups of victims (rather than individuals) receive reparation (i.e., groups of individuals that experienced serious violations). It can also refer to the idea of *public goods*, which once in place would benefit victims and non-victims (e.g., the building of schools, health centers, or hiring of particular health specialists which both victims and non-victims could access). Collective reparation can also be about distributing reparation in particular *geographic locations or ethnic communities* where violence and violations were concentrated.[160] Within collective reparation measures, individual victims' right to remedy and reparation remains intact. In collective reparation measures, it is essential to give priority to women's and youth's needs, ensuring their voices and participation in the design of collective programmes.

160 Ruth Rubio-Marín, "Gender and Collective Reparations in the Aftermath," in *The Gender of Reparations,* p. 385.

Victims' understanding of reparation

Interviewees in all three studies (OHCHR 2007, OHCHR and UHRC 2008, and OHCHR and UHRC 2010/2011) had a sophisticated and nuanced understanding of reparation.

Victims said that reparation is a process that takes place over a long period of time. Victims spoke of reparation being about providing comfort to those who have been hurt. They discussed that reparation could help victims move on to new stages of their lives, so that they are not always victims. Some victims understood that reparation processes can also help transform perpetrators so that they too are freed from forever being viewed as `perpetrators.'

Victims also spoke about what reparation meant to them. They said that it was a process that enabled victims to speak out about what was wrong and what happened to them. They stressed the importance of Government acknowledgement and declarations about what happened to them, and that what was done to them was wrong. They wanted those parties responsible for serious crimes and violations to admit wrong doing and apologise. According to victims, public acknowledgement and apology is important because it is essential to stopping the blame, harassment, intimidation and ridicule they report they now face. This was particularly the case for girls and women subjected to the serious crime of "forced marriage" within the LRA, children born of captivity, victims of mutilations, and burn victims. While many of the victims of sexual violence, forced marriage and forced child-bearing wanted public acknowledgment of the crimes as a whole, they did not want to be publically identified as having suffered those crimes. Many of the mothers of children born as a result LRA captivity that were interviewed had not told their children how they were conceived. Thus, there is a need for such victims to be able to come forward in a highly confidential and private manner to claim reparation.

Many spoke about the need for full and public disclosure of the facts around the serious violations they, their families and their communities had suffered. This acknowledgement of collective harms suffered would be a form of collective reparation.

Victims also said that reparation was important as a process that would draw attention to their plight and provide assistance to help them lead a normal life again. They said it was a process that helped victims and their families rebuild hope. They said that reparation processes and outcomes also showed commitment by the Government that such horrors and harms should not, and would not, be repeated. Many victims said that reparation was necessary for them to build trust in their communities, and rebuild their trust in the Government in the aftermath of the conflict.

Victims advocated for reparation efforts that would restore their looted and damaged properties, assist with years of missed education and opportunity, and restore their physical and mental health, well being and dignity. Some who faced challenges around land dispossession due to the death of their husband or father spoke of the need for reparation efforts to enable them access to legal and social services that would help them rebuild their lives.

Victims also talked extensively about the importance of reparation to help collectively maintain the memory of the dead (so it is not solely a task for the surviving family), to bring the bones of the dead back home, and to enable their proper burial. Victims whose family members disappeared or remain abducted stressed that efforts must be undertaken to search for and reveal the fate of their loved ones.

Some victims, particularly those whose testimonies indicated they had suffered some of the highest exposure to and experiences of violence, demanded legal prosecution, punishment and sanctions against those found liable for serious violations.

Interviewees in all three studies expressed an overwhelming desire for reconciliation, particularly at the family, community and inter-regional levels. Many families and communities are divided by histories of atrocities, for example, in some locations clans whose children were accused of leading attacks are not being allowed to return to their original homes. However, there was widespread scepticism about the potential for current transitional

justice mechanisms – especially state institutions – to facilitate reconciliation. Victims' views on reconciliation are presented in previous OHCHR reports (OHCHR 2007, and OHCHR and UHRC 2008).

Interviewees in all three studies said that remedy and reparation are central to trust building and reconciliation. These forms of justice help to rebuild not only the extremely damaged citizen-state relationship, but also family and community relations. If handled carefully, processes and outcomes of remedy and reparation can help rebuild and transform relations based on gender and age. They can also help in the establishment of new relations that transform previous forms of violence, such as gender-based violence.

Gender - just reparation

Chapter 2 of this report provides a detailed discussion of gender and reparation. Building on that discussion, all three studies (OHCHR 2007, OHCHR and UHRC 2008, and OHCHR and UHRC 2010/2011) clearly showed that in the Greater North women, men, girls and boys all suffered serious violations (see Chapter 4). However, the narrative data convincingly show that the socio-economic, psychological, and physical effects of the violations can differ considerably for the sexes and different generations. In particular, women and girls experience some violations with much more frequency, specifically rape, sexual violations, and mutilation. In the context of the Greater North, some violations are in fact exclusive to women and girls, including forced marriage, forced pregnancy, forced child-bearing and rearing, sexual slavery, and the resulting children born. Young males are the primary target for forced recruitment by the LRA and, to a much lesser extent, the UPDF (see Chapter 4). Hence, reparation must be crafted in a way to ensure equality and address key gender dimensions of the violations and their effects.

The participation of women and girl victims and civil society organisations in the transitional justice process is essential to

reflect key principles of the Agreement on Accountability and Reconciliation and Annexure.[161] Indeed, women and girl victims' participation in transitional justice decision-making signals their efforts to position themselves as equal citizens, and in itself has reparatory value.[162] Furthermore, a gender-just approach to reparation moves beyond harm built on civil and political rights to incorporate economic, social and cultural conditions, structural violence, and pre-existing inequality and discrimination.[163]

The exacerbation of violence during the conflict has in some families given rise to increased domestic violence after the conflict. As part of gender-just collective reparation, there should be campaigns to address gender-based violence developed by the communities themselves, with access to mental health personnel and facilities and women activists to help facilitated their work. Inviting "men against violence against women" groups can also be a way to widen the reparation approach in those communities where high levels of domestic violence are reported.

Community-level reparation efforts could also include working with traditional midwives and health care providers so that they are able to identify women and girls who suffered conflict-related sexual violence, provide them with the appropriate resources (including references to medical and mental health personnel and facilities) to ensure that any sexually transmitted diseases or reproductive health injuries can be adequately addressed, in a manner that provides the appropriate protection and confidentiality.

It is important to remember that many female victims and victims of sexual violence will not initially come forward to claim reparation, in part due to the stigma attached to the harms they have suffered. Hence, reparation processes must allow these victims to come forward when they are ready and not be barred by expiry of formal prescribed deadlines. This could be enhanced by community and

161 Agreement clause 11. (iv), Annexure clause 24.

162 *Nairobi Declaration* 2b.

163 Ruth Rubio-Marín and Pablo de Greiff , "Women and Reparations" (2007) 1 *International J. of Transitional Justice*.

national level education and outreach programmes to lessen the stigma against victims.

The necessary scope and forms of reparation

The remainder of this chapter presents a discussion of the scope and kinds of reparation likely needed by victims of serious violations. The current report reflects the narratives from the data gathered in the three studies (OHCHR 2007, OHCHR and UHRC 2008, and OHCHR and UHRC 2010/2011) and then coded that data based on (a) the kinds of harms that resulted from the serious violations, (b) how victims said those harms were affecting their lives now, and (c) what victims said they needed to recover and move forward in their lives. This data is then analysed into the current findings. The data clearly indicates that the outcomes of the violations are experienced in gendered ways and thus a gender just and gender aware reparation response is required.

The report also reflects on the scope and forms of reparation offered in 10 other countries whose reparation programmes have been globally referenced, to see how other countries addressed (or failed to address) similar kinds of harms.[164]

The results from the three studies (OHCHR 2007, OHCHR and UHRC 2008, and OHCHR and UHRC 2010/2011) data analysis and the comparative analysis of reparation programmes in 10 other countries have been used to categorise and draw some conclusions about the necessary scope and forms of reparation that are needed for victims of serious violations in the Greater North. The suggested forms of reparation were validated and refined at two workshops in Kampala in 2010, one with victims and victim-focused CSOs and one with members of the Uganda's Justice Law and Order Sector's high level, inter-ministerial Transitional Justice Working Group.

The categories of necessary forms of reparation that came up most consistently in the data from the three studies (OHCHR 2007,

164 These countries include Argentina, Canada, Chile (which has had two commissions), Guatemala, Peru, Rwanda, Sierra Leone, South Africa, Timor-Leste, and the United States.

OHCHR and UHRC 2008, and OHCHR and UHRC 2010/2011) are detailed throughout the rest of this chapter, and include:

- Physical and mental health services
- Education
- Housing
- Land and inheritance
- Rebuilding livelihoods
- Empowering youth
- Public acknowledgement of harm and apologies
- Information on the disappeared
- Proper treatment of the dead.

While these are not exhaustive categories, they are the categories that came up most frequently in the testimonies and interviews of victims and victim-focused CSOs.[165]

Physical and mental health services

For victims of serious violations, physical and mental medical care is a top priority. Importantly, **many victims who have been subjected to serious violations *are different* from other citizens and require specialised care and assistance that is not readily accessible or available**, particularly in the war-torn Greater North.

Victims of serious burns, facial and body mutilations, repeated rapes, rapes with machetes, castration, land mines, bomb and gunshot victims, for example, require specialised and long-term care and assistance. These victims may require reparative, reconstructive and plastic surgeries and extensive wound management and rehabilitation. Some need artificial limbs and mobility devices (for example, wheelchairs). For victims who were harmed as children, their bodies are still growing and so they need to update yearly their artificial limbs or body parts (for example, artificial jaw bones need to be replaced yearly for children whose jaws have been shattered by beatings, gunshots or bombs).

165 This list is not intended to be comprehensive. Rather, it puts forward the most noted categories of reparation needs.

Victims of sexual violence have significant reproductive health care needs, including fistula and other reproductive surgeries. Reproductive surgeries are often highly specialised, and multiple surgeries are often needed to manage the repair, which greatly increases the cost and the recovery period. Some victims of sexual violence have contracted HIV/AIDS as a result of rape, and therefore will require a lifetime of medical care, drug therapy, and boosted nutrition levels.

Many victims have mental health care needs, including victims of torture or cruel, inhuman and degrading treatment, mutilation, serious burns, sexual violence, and some children born due to captivity and their caregivers. In the 2010/2011 OHCHR and UHRC research, several of the grandparents of children born due to captivity who were raising the children said they wanted access to specialised mental health care, particularly for the older children who had been partially raised within the LRA. While studies find high levels of resiliency among victims of the war, it is believed that approximately 10% of the population would be in need of specialised mental health care. The psychosocial work occurring in the Greater North is, for the most part, not equipped to handle the more serious mental health cases.[166]

Victims of serious violations repeatedly spoke about the need for access to improved general health care for themselves and their children.

Clearly, efforts to establish more local health clinics, supply those clinics with more medications, or offer more general community based psychosocial health programmes are needed for all citizens. Yet such efforts do not even begin to address the reparation health needs of victims of serious violations. Reparation efforts for these victims will require state acknowledgment of harm and medical specialists and specialised and long term care for the survivors.

Individual reparation would seek to ensure that victims receive the necessary and proper mental and physical health care on the basis of his or her injuries. There are some surgeons and health care

166 See for example Annan, Blattman, Carlson and Mazurana.

specialists in the Greater North now doing important work with these victims, and their work could be facilitated and built upon to help the thousands of victims that remain in need. Reparation specifically includes health care arising from the violation but also the underlying principle of 'repairing the harm' necessitates a broad view and should encompass all measures that would respond to the harm and its consequences.

Collective reparation for victims of serious violations could include the Government of Uganda making funds available to the region's referral hospitals to hire (long-term) medical specialists of the nature discussed above, and to provide resources for individual victims to be treated. For example, specialists in reproductive surgeries or specialists for orthopaedic injuries and burn victims could provide critical and analogous expertise to those in the Greater North who have suffered sexual violence or immolation as well as those in the wider community who have suffered fistulas due to child birth or accidental burns. Other measures could include having experts on post traumatic stress and reproductive health needs for victims of conflict-related sexual violence as part of fully staffed reproductive health units within hospitals in the Greater North or as part of strong referral structures throughout the North. Nurses, paramedics, midwives, administrative staff in health clinics of the Greater North could also be trained in recognising the needs of victims of serious violations and referral systems could be significantly strengthened to provide specialised services.

Education

Many victims, particularly children and youth, spoke of how the violations severely affect their ability to attend school. Many abductees spent years out of school, and there are few accelerated formal education programmes for young adults in the Greater North of Uganda. Studies find that, in particular, girls' "forcibly married" and forced to give birth to children in the LRA almost never return to school once out of captivity[167]; this is in part due

167 See Annan, Blattman, Carlson and Mazurana.

to Uganda's restrictions about girl mothers attending school and the lack of child care options for these young mothers. While there were some strong programmes that did offer valuable and marketable vocational training to former abductees, the majority who attended programme found themselves in low quality vocational training centres from which they gained few marketable skills. As the international humanitarian community scales down and pulls out of the Greater North, many of these programmes are scaling down and support for former abductees in primary and (to a much lesser extent) secondary school is waning and in numerous cases ending. Other war affected children and youth said that the ways in which they had been harmed negatively affect their ability to learn and concentrate in school.

Adult victims spoke of how the violations limited their ability to provide schooling for their children. For example, victims who had been maimed or seriously wounded often lost their ability to carry out subsistence agriculture or repair their homes on their family and clan land. In such cases, this led to an inability to produce enough surplus food to sell to help pay school fees, which led to the withdrawal of the children from school. In other cases, victims whose spouses were killed also often had to pull children out of school. In the cases of the killing of parent(s), the children often dropped out of school. The researchers encountered case after case in which remaining family members were forced to take the children out of school to help work the land to enable the family to survive. While Universal Primary Education exists in the Greater North, there are many "hidden fees" which are often too great for destitute families of victims to afford, including uniform fees, scholastic materials, school development fees, and Parent Teacher Association fees. For many victims and their families, secondary school, and beyond that university, remain impossible.

Research finds that while abduction of males and females by the LRA was nearly random, retention and forced recruitment was not. Girls who were more educated, and girls from families that had higher education levels (and thus one might suspect would have prioritised educating their girls), were retained by the LRA

at a significantly higher rate than less educated girls and girls from less educated families.[168] When these girls escaped LRA captivity, the options open to them from local rehabilitation centres and programmes were vocational training or, less often, education through secondary school. A number of these more educated girls and boys prior to captivity had goals of attending higher levels of education, including achieving secondary and university degrees. After captivity, return to families impoverished by the war has meant that most have been unable to carry out their goals of higher education.

Reparation efforts should enable victims of serious violations to have access to primary and secondary school. Youth victims of serious violations, including forced mothers and victims of sexual violence, could be encouraged to provide to the educational board of Greater Uganda the type of courses and training they wish to receive so that educational options are responsive to their needs and goals, and based on market analysis. Reparations could be collective, such as for particular groups whose education was disrupted as a direct result of the violation. In other countries, this included children/youth whose parents were killed or disappeared due to political violence, child/youth torture survivors, abductees and forced recruits. In countries such as Argentina, reparation programmes included access to university for students who could meet the university entrance requirements. This is a policy Uganda could also consider, as to date almost all education assistance from NGOs for victims of serious violations stops at primary school. Many victims of serious violations said this is not reparatory as there is a lack of acknowledgement by the state for the harms suffered, which victims in this study stressed was key to making any action reparatory.

Secondary and university education to victims of serious violations should be part of larger reparation programmes. It is also important for the Government of Uganda to recognise that many young people who have suffered serious violations have spent

168 See Annan, Blattman, Carlson and Mazurana. The same pattern was not true for boys as their levels of education seemed not to be a significant factor in their retention or release from the LRA.

years out of school, due to abduction, displacement, and poverty and may need accelerated education programmes to ensure that young people now in their 20s are not put in classrooms with young children where their feelings of embarrassment may serve as a disincentive to attending school.

Housing, land and inheritance

Adequate housing and shelter is a major concern for victims of serious violations and their families. Due to serious injuries, impoverishment caused by looting, pillaging and destruction of their property and assets, many victims and their families are unable to rebuild or maintain their homes. In the cases of women whose husbands were killed due to war-time violations, they and their children may have been forced out of their home or off their land by the relatives of their dead husband. Where they have been able to maintain their home and land, some may find themselves in disputes over land boundaries with their relatives, or given the poorest house and land.

In the case of children or youth who lost both parents due to war-time violations, they too may find themselves forced out of their family home and off their family land by their dead father's relatives.

Children born due to war-time violations are also finding it difficult to access their father's land. In the Greater North, children inherit land on their father's side. If a child is born and no bride-price is paid, the child remains a member of the mother's clan. Customary law and practice in the Greater North often does not enable women in the clan to inherit land, and hence mother's inability to inherit land prevents them from passing on any family land to their children. Children born due to war-time violations (e.g., their father took their mother as a "forced wife" inside the LRA and the child was born as a result of that crime) are often not recognised or accepted by the father's family, who often do not want competition for claims to housing and land. Hence, without intervention, these children will risk being landless, and forced to

occupy a very precarious position within a primarily subsistence agriculture-based population.

Reparation could entail provision for adequate housing and shelter for victims of serious violations. Reparation could also take the form of access to legal and social assistance to help enable widows, orphans and children born due to war-time violations to gain and maintain access to their rightful homes and land. The assistance of traditional leaders may be useful in the latter regard, to help ensure these victims receive and maintain the land and property that is rightfully theirs.

Reparation could also include efforts to harmonise customary law and practices with state law to ensure equally enjoyment of land rights, inheritance, marriage and land ownership, as guaranteed under the constitution. Reparation could present an opportunity to amend customary laws and practices that are discriminatory for women, particularly in relation to marriage, divorce and succession laws.

Livelihoods

People's livelihoods were irrevocably altered by the serious violations (detailed in Chapter 4). With the looting of cattle and livestock, many people's life savings vanished. Their homes and assets were pillaged, looted and destroyed by parties to the conflict, or those who took advantage of the lack of law and order.

People whose livelihoods came from agriculture found themselves forced into camps where there was very little access to land, and such access required cash or other means. Traders could not move their goods as they had before, shops were looted, burnt and destroyed, and trading centres became run-down. The informal economy comprised nearly the entire economy in much of the war-affected areas.

Street children and "night commuters" appeared where none had been before. Child sexual exploitation and sex work grew,[169]

169 Unpublished study on children selling sex in Lira by Save the Children, 2006.

especially among girls, as children looked to survive and find "safe" places off the street. Youth dropped out of school, competition for the few paying jobs was tight and many struggled to find livelihoods that kept themselves and their families alive.

Parents whose children were abducted lost their jobs as they failed to report to work due to their desperate attempts to find their children. Higher-educated parents who could have fled the region did not, instead staying behind trying to locate their missing children, only to find their properties looted, and their assets depleted during their search.

The killing or maiming of spouses, parents and caregivers left many families headed by a single caregiver, sometimes a child. Women in particular took in war orphans, greatly increasing the number of dependants they were responsible for. In some cases, grandparents took in their grandchildren as parents died or were killed, increasing greatly their financial, resource and physical responsibility.

Reparation could entail the replacement of or compensation for lost livestock and property. Reparation could also be in the form of assistance to help victims cultivate their land, including funds to hire help or rent oxen to help plow the land, particularly for widows, the elderly and child-headed households. Reparation could also entail start-up capital for income generation, and training programmes to help victims initiate and achieve sustainable livelihoods.

Empowering youth

Interviewees expressed concern for the state of some youth that had experienced serious violations and had experienced many losses.[170] They expressed concern for a reported increase in alcohol and drug abuse and a failure of some of these youth to engage constructively in families and communities. Campaigns to counter drug and alcohol abuse should be linked with campaigns

170 Annan, Blattman, Carlson and Mazurana find that war affected male and female youth with social, emotional and behaviour problems are the exception, not the rule, and most youth remain resilient.

to counter domestic violence. Many youth who experienced serious violations are caught up between a lack of education and their age. Many never went to school at an early age, and now feel too old to enrol for lower primary, yet remain too uneducated to enrol for higher levels of education. They spoke of feeling defeated and with almost no choices.

Reparation could include the provision of accelerated education programmes, which could be offered in schools available to all war affected youth. They could also look to benefit from reparation livelihood initiatives (see Livelihoods). There are also needs for programmes to address alcohol and drug abuse, which again could also be available to serve the broader war affected community. For some there are needs for specialised physical and mental health care (see Physical and Mental Health Services).

Public acknowledgement of harm and apologies

Victims and victim-focused CSOs in all three studies (OHCHR 2007, OHCHR and UHRC 2008, and OHCHR and UHRC 2010/2011) overwhelmingly stated their need for public acknowledgement of and apologies by the Government of Uganda for harms and failure to prevent harms. Numerous interviewees said that until the Government of Uganda made this important step, they would consider any other reparation efforts as little more than attempts to buy their silence about what had happened.

Interviewees in all three studies also demanded public apologies and admitting of wrong doing by the LRA. As discussed above in Section 2 of this chapter, interviewees said that even though the LRA top leadership remains in rebellion and in the bush, the top ex-LRA commanders who are now back in Uganda should make public apologies to them.

Interviewees said that within their public acknowledgement of harm and apologies both the Government of Uganda and LRA should engage in truth telling and ask the forgiveness of victims and their communities.

Women, men, girls and boys subjected to sexual violence (which in the post-conflict period is increasingly linked to domestic violence) could be given space to think of apologies in a different way, since sexual violence can lead to stigmatisation. Particular spaces for these victims to develop their own understanding of what form apologies could take should be made available.

Enforced Disappearance

There are literally thousands of people in the Greater North, including many youth (predominately males), whose whereabouts and fate are unknown. Many of these people were abducted by the LRA and have never returned. In some cases, their families allege they were picked up by the UPDF and have not returned.

Families have a right to know the truth about these enforced disappearances. More specifically, "families have the right to know about the progress and results of an investigation, the fate or the whereabouts of the disappeared persons, the circumstances of the disappearances, and the identity of the perpetrator(s)."[171] The UN Working Group on Enforced or Involuntary Disappearances also notes that "the right of the relatives to know the truth of *the fate and whereabouts* of the disappeared persons is an absolute right, not subject to any limitation or derogation… No legitimate aim, or exceptional circumstances, may be invoked by the State to restrict this right."[172] While the State is obligated to take all necessary steps, there is no obligation as to the result.

The right to know the truth in relation to enforced disappearances is a fundamental component of the right to reparation. Reparation could take the form of a high level commission, task force or working group of esteemed persons with a mandate to receive claims of enforced disappearances as a result of the conflict in the Greater North, and to carry out interviews and investigations to find the whereabouts and fate of such persons. Institutions and persons with such information could include the armed forces

171 The United Nations Working Group on Enforced or Involuntary Disappearances, *General comment on the right to truth working group on enforced or involuntary disappearances,* 22 July 2010. Available at http://www2.ohchr.org/english/issues/disappear/index.htm

172 Ibid.

(which carried out interrogations of many former abductees and LRA), as well as interviews with the formerly abducted to help reveal the fate of those abducted by the LRA who have not returned. Where the UPDF or security forces are alleged to be the abductors, the panel could call for their testimony. Churches, mosques and trusted human rights NGOs and CSOs in the Greater North could agree to create information drop off boxes, where people with information on the disappeared could anonymously drop off information, and commissioners for the disappeared could have access to this information and follow up with means to verify the information.

Proper treatment of the dead

Proper identification and treatment of the dead is an important form of reparation. Many people had to leave behind the bodies of those killed, or may not know the location of their dead. Interviewees said that improper treatment of the dead included the burial of victims' bodies in mass graves, and the founding of memorial sites by officials without consulting surviving victims and relatives of the dead. At several massacre sites where victims were interviewed by this report's authors, it was unclear which bodies were in the mass graves. In other cases body parts of victims were scattered between different mass graves and memorial sites. In other sites, government lists of the dead fall short of the number of dead reported by relatives and the community. In other cases, bodies lay in shallow graves or unmarked sites where the victims were killed and the families cannot move them for economic and ritualistic reasons, though they are deeply troubled by an inability to bring their dead home.

Anecdotal evidence of the priority given to the dead is very strong. For example, anxiety regarding the improper treatment of their dead is so strong that family members who had been amputated in attacks would speak first about the killing of their loved one and not being able to recover their dead before they spoke of the loss of their limbs. During the OHCHR and UHRC 2010/2011

study, clear regional differences emerged regarding the treatment of the dead among Acholiland, Lango and Teso sub-regions and such differences should be accounted for within any reparation scheme.

Reparation in such cases would include assistance for locating, properly identifying, exhuming or removing of the body from its grave or the bush, and the proper (re)burial of the dead. Reparation would also include assistance for basic necessities for the rituals for the dead for those victims' families too poor to afford the costs. Such processes would require careful local participatory planning, in which the victims themselves were deeply involved, to ensure their needs are met.

Victims want complete and complex reparation

National reparation responses vary in their scope, completeness, comprehensiveness, complexity, and integrity and coherence.[173] Victims and victim-focused CSOs (OHCHR and UHRC 2010/2011) said **they want a more wide-reaching and complete process of reparation**. In particular, they wanted application processes to be victim-friendly, and to be open for longer periods of time to allow victims to gain the confidence in the system to come forward. They wanted the reparation response to consider and address long term affects of serious violations they have suffered.

They also **wanted a more complex process that includes a range of material and symbolic, individual and collective reparation** (OHCHR and UHRC 2010/2011). They wanted victims to have the ability to access numerous forms of reparation. For example, they wanted victims to have the ability to access and choose among numerous forms of reparation, such as public acknowledgement of harm and apologies, specialised health care, help with education, compensation for looted, pillaged and destroyed property, and assistance with proper treatment of the dead.

173 For a more detailed discussion see OHCHR. (2008). *Rule-of-Law for Post-Conflict States: Reparations Programmes*. OHCHR: New York and Geneva.

Recommendations

Recommendation 1: Outreach for Remedy and Reparation:

- Outreach should be understood as a two-way process involving engaging with victims, building trust and confidence among victims -- particularly victims of sexual and gender based violence and victims of mutilations and immolation -- and ensuring inclusive and participatory space and support for victims' empowerment;
- Victim-led outreach should be considered to help in facilitating outreach, as victims tend to distrust the system of being on lists or being assigned registration numbers;
- Processes must be developed to enable victims themselves to come forward to claim their rights to remedy and reparation, and should avoid the creation of victims' lists by Local Councillors and other government officials;
- High levels of illiteracy, poverty, poor transportation, and deep social fractures (gender, ethnic, linguistic, religious, class or regional differences) require well-crafted outreach processes.

Recommendation 2: Procedural right of access to remedy and reparation. To be well received and accepted, processes for remedy and reparation need to be owned by victims and empower them as survivors. Hence, registration and legal processes should:

- Design data collection tools and language mindful of low literacy rates;
- Simplify procedures, lower the threshold of evidence, spare victims the pain of cross examinations, and avoid re-victimisation by investigators, perpetrators, family members, and community;
- Acknowledge and make provisions for victim's limited access to legal or medical documentation upon return from IDP camps;
- Streamline claims processes with flexible evidentiary standards.

Recommendation 3: Consider means to best address the reparation needs of victims in the categories of necessary forms of reparation that came up most frequently in the testimonies and interviews of victims and victim-focused CSOs, including:

- Physical and mental health services;
- Education
- Housing, land and inheritance
- Rebuilding livelihoods;
- Empowering youth;
- Public acknowledgement of harm and apologies;
- Information on the disappeared;
- Proper treatment of the dead.

Recommendation 4: Regarding processes and timeframes for reparations:

- Support structures are needed to assist women and girls in the process of speaking out and claiming reparation;
- Develop reparation processes to enable highly stigmatised victims, such as survivors of sexual violence, children born due to wartime violations, and burn and mutilation victims to access reparation;
- Ensure access through persons and processes sensitive to their concerns and needs and without the requirement for public disclosure;
- Do not make publically available the names of those seeking reparation. This is particularly stigmatising and prevents victims of sexual violence and other sensitive crimes from coming forward;
- Reparation processes should allow victims of sexual violence and other serious violations to come forward when they are ready. Measures should be developed to enable them to come forward after the formal prescribed time period is expired and maintain their confidentially.

Recommendation 5: Enable CSOs to participate in the reparation processes:

- Link with established CSOs with credible histories that work closely with victims of serious violations in the Greater North to help inform and facilitate the resulting reparation processes and programmes;
- Establish administrative structures to allow for the participation of CSOs and victim-led groups in the design, implementation, monitoring and evaluation of reparation programmes.

Recommendation 6: In supporting remedy and reparation processes, Development Partners, the United Nations and NGOs should:

- Review their policies towards supporting reparation efforts of the government with a view to ensuring the fulfilment of victims' right to remedy and reparation;
- Ensure that staff engaged in assisting and supporting the Government of Uganda's reparation efforts are trained in gender equality and trained to work with and understand the specific needs of victims of sexual violence;
- Assist the government in developing remedy and reparation policy, programmes and processes and ensuring their actual implementation and accountability to victims.

FINAL REMARKS

Having analyzed the testimonies and statements of over 2,300 victims and advocates from victim-focused CSOs and carried out a thorough review of academic publications, and United Nations, INGO, NGO and CSOs published reports on remedy, reparation, and the conflict in the Greater North of Uganda, and OHCHR and UHRC raise the following comments and conclusions:

1. Victims of the hostilities between the Government of Uganda and the LRA in the Greater North of Uganda have suffered egregious harms and serious violations that entitle them to equal access to prompt and effective remedy and reparation.
2. The right to remedy for these victims of serious violations of international human rights law and international humanitarian law is present within numerous international instruments; regional conventions; various provisions of the Constitution of the Republic of Uganda; national legislation within Uganda; and has been affirmed within the Juba Peace Agreement on Accountability and Reconciliation and its Annexure.
3. Key gender, generational and socio-cultural dimensions must be considered and addressed in all efforts towards remedy and reparation for victims of serious violations in the Greater North.
4. Victims' own priorities for remedy focus primarily on truth-recovery and accountability for harms committed.
5. Victims' own priorities for reparation rights include: physical and mental health services, education services, assistance to recover housing, land and inheritance, rebuilding of livelihoods, empowering of youth, public acknowledgement of harm and apologies, information on the disappeared, and the proper treatment of the dead.

6. Victims' believe that the Government of Uganda should take primary responsibility for providing remedy and reparation, with the support and partnership of local, victim-focused CSOs and international partners, including development partners and the United Nations.

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