

Universal Periodic Review Stakeholders Joint Submission
Compiled and Submitted by Human Rights Focus Gulu on Behalf of Districts Human Rights Promotion and Protection Sub-committee.
March 14, 2011

Executive Summary

1. This is a joint submission by civil society organisations working in northern Uganda under the Human Rights Promotion and Protection (DHRPP) sub-committee of the District Disaster Management Committee to monitor protection and promotion of human rights for Internally Displaced Persons (IDPs), including but not limited to, the rights to food, water, shelter, clothes, medical care and education.

The submission was led by the Human Rights Focus (HURIFO) and includes among others the African Center for Treatment of Torture Victims (ACTV)- Gulu, Norwegian Refugee Council- Information, Counseling and Legal Assistance (NRC-ICLA), Acholi Religious Leaders Peace Initiative (ARLPI), Danish Refugee Council (DRC), Norwegian Refugee Council, Gulu Disabled Persons Union (GDPU), Gulu Deaf Association (GDA), and Refugee Law Project- Gulu.

Civil and Political Rights

The right to personal liberty and security of persons:

2. The government of Uganda has played a critical role by ensuring peace prevails in northern Uganda. During the LRA insurgency, many security operatives¹ were created. However they have not to date been demobilized or absorbed in to the formal government's security system. Many continue to impersonate as employees of high offices namely, Resident District Commissioners, Presidential Advisors, Police or Joint Command Centre of the UPDF. They sometimes arrest, torture and detain civilians beyond stipulated time period allegedly by the orders from the offices from which they claim to come. To avoid further unauthorized arrests, torture and detention on political differences, personal vendetta, or acts of individual crimes, arising from these multiple security operatives², we do recommend the following;

Recommendations:

- We recommend that the government come up with streamlined system of formal recruitment, arming and deployment of recognized persons in the forces.
- Government should once and for all demobilize all security operatives used during the LRA insurgency and those created afterwards or absorb them in the legal forces.
- It is recommended the government also de-gazette all the battalions created during the war and located on peoples land and return the said land to the IDP host returnees/owners.

Questions:

- What plans does the government of Uganda have in terms of protecting and promoting human rights defenders?

¹Operatives used by the police and the army in Northern Uganda: Private individuals some armed with guns, clubs and authorized to operate in the capacity of the Uganda Police Force and the Joint Command Centre of the UPDF respectively.

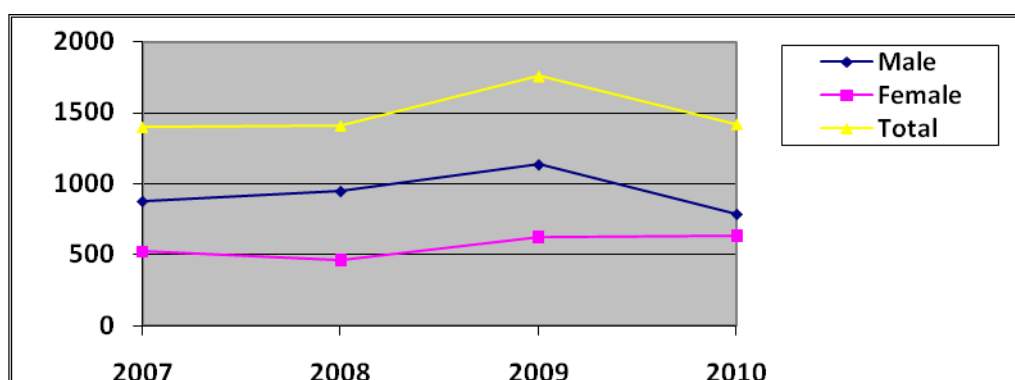
² Crime preventers and Special Police Constables (Para-militias)

- What timeline does the government of Uganda have for demobilizing or absorbing the private operatives such as Joint Command Centre and Special Police Constables in the formal security arms of the government?

Torture, cruel, inhuman and degrading treatment:

3. In Acholi sub-region, the Uganda police force and the UPDF have on several occasions been involved in joint police-military operations in the name of tracking law offenders. This approach is condemned across the region not only because of its heavy handedness but with also a highly contested legality. The police still regularly use torture as a method of interrogation a decision always sanctioned by the senior command in the police force in the sub-region. Majority of senior police commanders happened to be UPDF soldiers³. In 2010, more than three death cases were recorded and all a result of torture by the police and UPDF. This is only recorded from the central police station in Gulu district. However, several cases of torture from the police outposts and local councilors have also been reported. The challenge is that the majority of these crimes are committed with impunity. Looking at ACTV records below, there is a steady reduction in the number of torture cases recorded among the males in 2010 compared to 2009. This however indicates positive progress in the prevention of torture. It should also be noted that with the increasing militarization of the police force and the just concluded general elections in 2011, more cases of torture and illegal detentions are likely to be experienced.

Diagram 1.0: Graphical representation of the trend of torture in the past four years in Acholi sub-region



Source: ACTV medical treatment records.

Torture trends from 2007-2010 (Amuru, Gulu and Nwoya districts)

Perpetrator	Year			
	2007	2008	2009	2010
UPDF	116	128	89	76
Police	42	85	60	32
Local Councilors	05	00	03	15
Prisons	00	00	02	13
Local Defense Forces	01	00	03	00
Total	164	213	157	136

Source: ACTV medical treatment records.

³ DPC and OC Crime of Gulu district among others are former UPDF officers currently serving under Uganda Police Force.

Recommendation:

- We recommend enactment of law prohibiting and criminalising torture and other inhuman degrading treatment.
- GoU should establish a compensation fund for torture victims.

Question.

- What time line does the government of Uganda have to come up with laws on torture?

The justice and law and order sector:

4. The administration of Justice, Law and Order Sector is one area that we appreciate the government's efforts in the administration of justice in the northern part of Uganda. However there are still a lot that deserves to be improved especially issues concerning backlog of cases, the recruitment of judges and magistrate's which is still insufficient and the high instances of corruption in the judiciary.

Recommendations:

- GoU should appoint the necessary judicial officials in the judiciary in order to solve the problem of case backlog.
- GoU should strengthen the institution of the Inspectorate of Government to reign on corrupt judicial officials.

Questions:

- When is the government planning to recruit more magistrates and judges and deploy them to northern Uganda?
- When is the government planning to provide necessary services like prisons and accommodation to ease the work of the judicial officers in the newly created districts in the northern Uganda?

Prisons:

5. We commend the Uganda prisons especially the ones in Acholi sub-region for their continued cooperation with the CSOs and steady success in ensuring the protection of rights of prisoners. The government is however urged to ensure prisoners pending trials are timely presented for hearing of their cases in courts. Also improvements are required in areas of infrastructure, and logistics which impairs their work.

Question:

- Under government plan when would it be possible to improve on the accommodation of prisoners and supply of water and sanitation for staffs and inmates? We also like to know when the government plan to solve Gulu central prison transport challenges in order to ease on the forces' operation.

Court martial:

6. The court martial is another area that has been administering justice among the perpetrators of crime within the army. The biggest challenge with the court is procedural in nature and many refer to them as "*kangaroo courts*". Often civilians found in

possession of a fire arm are tried by the court martial under a process that does not ensure their due right to a fair hearing.

Recommendation:

- The government needs to ensure at all time qualified and competent individuals adjudicate such cases and on a regular basis.
- The government need to put in place a well articulated rule of procedure and the attendant adherence to such procedures needed to give the court martial the respect and legitimacy it badly needs in order to scoop the much needed public confidence.

Economic Social and Cultural Rights

7. The result of the 2006 ceasefire agreement saw subsequent improvements in the security situation in northern Uganda. With over 95% of the IDPs returning, resettling and reintegrating among communities. Challenges of inadequate housing, lack of accessible clean and safe drinking water, insufficient livelihood support and conflicts over resources especially land threatens the achievement of lasting peace/durable solutions for the returnees. The coalition of CSOs on human rights protection and promotion in Acholi sub-region single out land conflicts in the return areas to be the major problem experienced and requiring the state commitment and political will in addressing them. Only through these efforts will the communities in the sub-region be able to achieve their economic and social rights among others.
8. Despite positive developments in the security situation and increasing number of returnees over the years, return has sparked off increased land issues and resultant disputes across Acholi land. The disputes revolve around conflict over boundaries, retroactive land gifts, compulsory land acquisition by the state and disputes over ownership on land rights of women and children. However, in the absence of well-functioning dispute resolution structures and mechanisms to settle the uprising land wrangles, many are looking to the formal and informal mechanisms without success. Whereas the Local Council Courts and the traditional systems are entrusted with the responsibility of settling such disputes at the grassroots, these systems do not always function effectively and in many remote areas they are not accessible to the majority poor.

Achievement

9. In order to contribute to improved access to justice at the grassroots, the government of Uganda enacted the 1998 land act which provides for customary tenure to be governed by the rules and customs of the area. The government further aims to promote popular justice through a deliberate measure to make justice participatory and accessible to even the poor at a minimum cost. This idea is further strengthened by the constitution of Uganda that provides for justice to conform to the norms and values of the people with its administration being participatory. According to the principles and practices of customary land tenure of Acholi, about 93% of land in northern Uganda is held under customary tenure. This means that in resolving land disputes the customs of the area have to be considered. Importantly, the customs in the area do not operate in isolation of the statutory laws, and as such, both systems have to be applied in making a decision. It should be noted that where the customary laws provide for a remedy, the statutory law

will not be applied unless the customary law is inconsistent with the 1995 constitution of the republic of Uganda.

10. The Ugandan legal regime provides for the dual operation of both the traditional and state systems in administration of justice. Both organs are expected to play a complementary role to one another. The statutory system has gone a long way in trying to incorporate the customs and to give them the force of law. The land act also sought to integrate customary principles when they provided that the traditional leaders and authorities can act as mediators in resolving land disputes. This has also been emphasized by the magistrate courts that have continuously sent back disputes to the traditional leaders to resolve.

Issues

11. There is some degree of confusion over the justice system as it relates to land, with all three systems involved. According to the land act (S3 and S 27), customary land is to be governed by the customary laws of each people, with disputes determined by the customary authorities. However, the land act also stipulates that the LC2 court (i.e. the LC2 executive committee sitting as a court) is the first court of instance for land disputes on unregistered (i.e. untitled) land, with appeal to the sub-county court and then to Chief Magistrates.

Critique of current land administration and access to justice

Traditional/clan leaders and their jurisdiction over land disputes

12. The land law in Uganda grants extensive powers over land to traditional clans including determination of land disputes. The law further allows for the appointment of mediator in land disputes. However, no provision is made for the enforcement of these decisions or a mechanism of appeal on decisions of the traditional courts hence the claim normally starts afresh in the state system if one is aggrieved by the decision of the traditional court and successful persons face challenge of enforcement of decisions. This provision is provided for under the land act 1998 section 88, but in practice the provision is not easily enforceable. This provision has created forum shopping amongst the population.
13. The customary law though provided for in the statutory law does not have the same force of law. If a client goes before the traditional leaders the enforcement mechanism is a problem because the traditional leaders rely on the trust and respect that the community has on their traditional leaders to ensure that the party in the wrong would respect the ruling of traditional leaders. After the LRA insurgency, the role of the traditional leaders has been weakened and they no longer have the respect to the extent they had before the war, as a result this has encouraged some sub-groups from the community to disregard traditional ruling as they opt for statutory justice system.

The formal and non-formal systems

14. The traditional justice system aims to restore relationship between conflicting parties, hence reconciliatory as opposed to the formal/state justice system which is largely retributive/punitive. In that respect, the state law has a penal code that severely punishes offence. Whereas the state law distinguishes between civil claim and criminal claim, the traditional system is fused.

15. However, disposal of land disputes in the formal justice system is often lengthy, protracted and expensive undertaking. Needy people have little faith in the formal system or cannot afford it. Community members of the LC court are not adequately aware of substantive laws and procedures governing property or land dispute resolution. There are abundant accusations of improper receipt of fees and collusion with disputing party to being corrupt while adjudicating land disputes.

Customary law as used in courts of law

16. The existence of parallel justice systems for land disputes—both local council courts and clan committees with overlapping jurisdictions—has led to “forum shopping,” whereby more powerful parties can employ the overlap between informal and formal systems to their own benefit, picking and choosing whom to approach in order to obtain their desired outcome.

17. No regulations exist for clan justice systems. Whereas the local council courts have their duties and responsibilities clearly defined by an act of parliament and accompanying regulations, no such provisions exist to support clan committees. This weakens clan authorities in implementing S.88 of the land act.

18. The vast majority of appeals from local council courts to the Chief Magistrate’s courts are overturned and reheard because of rampant irregularities in some cases, LC courts decide to make both parties of the same case “winners.” Such LCs never answers to Chief Magistrates courts when summoned. Others refuse to give copies of their judgments for appeals. Where Chief Magistrate has ordered a retrial, this has created a huge backlog of cases in the magistrate’s courts.

19. On the other hand, most people in Acholi prefer to take their land disputes before clan committees. The clans understand the history of land rights and have the legal and social responsibilities to protect the land rights of vulnerable people. In Gulu district, clans to whom cases are referred from the Chief Magistrate’s court have an 80-85% success rate. These clans record and provide minutes of their proceedings and consistently handle land matters quickly and cheaply.

20. Based on the above challenges, a letter containing recommendations was sent to the chief justice imploring him to use his powers as the chief justice and issue a practice direction based on section 88 of the land act.

Gaps in the relationship between statutory and customary laws requiring state actions

- The two institutions (statutory and customary institutions) are parallel. There is lack of clarity on the link between the two systems.
- Enforcement of decision of traditional institutions are rendered difficult by the nature of the law enforcement systems in place, moreover, decisions of traditional authority is used as persuasive in courts of law.
- Even though there is little trust in both systems, individuals are more interested in statutory law than customary law, so many tend to opt for formal courts than customary institutions.

Refugees and Internally Displaced Persons

21. Whereas the government of Uganda established a national policy for Internally Displaced Persons (IDPs) in 2004 to establish the principles which will serve as a guide to government institutions, humanitarian and development agencies, provision of protection and durable solutions assistance to IDPs in Uganda, the policy specifies the roles and responsibilities of government institutions, humanitarian and development agencies, donors, the displaced community and other stakeholders.
22. At the peak of the insurgency, an estimated 1.8 million people got displaced in northern Uganda, and by the end of December 2010, the estimated number of IDPs remaining in camps and former camps within the Acholi sub-region was estimated at 5,664 in camps, 37,335 in former camps and 52,359 in transit sites. In addition, there are an estimated 7,365 person's still displaced in Adjumani district and 20,000 hosted within the local communities in Kiryandongo district⁴. These figures indicate that more than 92% of the original displaced population has already left the camps. Figures for the Acholi sub-region are based on updates from a camp mapping exercise conducted in November 2010 by UNHCR and its implementing partners (IPs).
23. To date, out of the 251 camps, 237 have been closed and 14 are still active and of the 14 camps remaining active, certain camps bordering Sudan and the Karamoja sub-regions have not closed due to presence of unexploded ordinance and anti-personnel land mines (notably in Lamwo district), and fear of armed Karamajong cattle raiders (Agago and Kitgum districts). Inter-clan land conflict is also a hindrance to camp closure. The 14 active camps however have all been re-assessed for closure.

Access to land by returnees

24. Land issues and eviction remain a serious concern. Major land disputes received continues to be inter-clan conflict and boundary issues. Communities and local leaders lack knowledge on land rights and the mechanisms to access property restitution channels continue to be a significant challenge to the achievement of durable solutions. In most community feedback sessions, land owners who hosted IDPs have requested for government compensation. In addition, more issues are being raised by communities about compensation for lives and property lost during the displacement.

Basic services

25. Whereas the government had established a number of basic service centers, these were built in areas surrounding the camps. Upon return to their villages many face lack of access to the few inadequate, dilapidated basic service infrastructure and social service provision in the areas of return particularly safe drinking water sites, health care, educational facilities, and road networks are limiting the achievement of durable solutions.

Rule of law

⁴ UNHCR information factsheet on IDPs and Refugees in Northern Uganda 2010

26. Many districts in the return areas administrative units are dysfunctional to enforce the rule of law. The police outposts and deployment are inadequate in a number of return areas.

Extremely vulnerable individuals (EVIs)/persons with special needs (PSNs)

27. The challenge of EVIs/PSNs still persists. Some are left in the former camps and transit sites with no support. The displacement has led to absence of a strong family/community support to ease their return and integration.

Unexploded ordinances/anti-personnel landmines

28. Access to some areas in Lamwo and Agago districts respectively remains difficult due to the presence of landmines, and UXOs.

Recommendations

- The government should come up with clear policy guidelines on local integration of IDPs with specifics on persons with special needs.
- The government needs to find a viable option where perpetrators of corruption are prosecuted and accountability of actions made public to the communities.
- With specific focus on Amuru, Nwoya, Pader and Lamwo districts, the government needs to provide protection to returnees' land and other properties. There is need to curb forced evictions and unlawful acquisition of land by state agents.

Rights of Persons with Disabilities

Education:

29. The fraternity of People with Disabilities (PWDs) appreciates the government of Uganda's effort in promoting Universal Primary Education (UPE), Universal Secondary Education (USE), adult literacy and affirmative action for PWDs when joining higher institutions of learning. However, special needs education in Acholi sub-region is completely lacking in terms of quality and access.

Recommendations

- The government needs to open more schools for the deaf and the blind in the sub-region and recruit competent staff to assist in service provision.
- GoU needs to increase budgetary allocations to the special needs department under ministry of education so that it reaches the grassroots schools.
- To promote inclusive education, the old school buildings within the districts should be made disability friendly

Access to basic services

30. Access to basic services is still a challenge experienced by PWDs in the sub-region. Compounded by the inadequate resettlement packages, the PWDs are currently left in the return sites with minimal support. The government is urged to design special projects for the PWDs and also do a census to determine the exact population so as to ease planning and coordination of support.

Transitional Justice

Achievements in place

31. Following the signing by both the GoU and the LRA of Agenda Item No. 3, the Justice Law and Order Sector (JLOS) of the GoU established a Transitional Justice Working Group (TJWG) to work towards development of “a comprehensive transitional justice system for Uganda that will promote accountability and reconciliation”⁵. Thus far, achievements in developing transitional justice mechanisms are the establishment of the War Crimes Division of the High Court of Uganda with a mandate to try war crimes in 2008 and the passing of the ICC Act domesticating the Rome Statute and including war crimes, crimes against humanity and genocide in the Ugandan criminal legal regime in March 2010. The GoU is further applauded for providing, at least initially, reparations to a number of victims of conflict, most notably the Acholi War Debt Claimants Association. It is hoped that this commitment will continue and benefit a wider section of victims on a more systematic basis.

Recommendations

- Ensure that JLOS has the necessary financial and human resources to not only design a national transitional justice policy but also to implement such a policy in earnest and without undue interference.
- GoU should build trust in the victims of conflict by ensuring that persons most responsible for atrocities committed on both sides of conflicts (both state and non-state actors) are subject to the same prosecutorial process.
- Ensure that a comprehensive reparations package, which may include individual compensations, is available to victims.
- Support the National Reconciliation Bill and the establishment of a National Reconciliation Forum, as proposed in this Bill. In any case, convene a truth-telling body sensitive to the needs of survivors and ensure that its recommendations are implemented.
- Engage in broad institutional reform based on the findings of the truth-telling body, in particular those aimed at rectifying historical marginalization.
- Formally recognize existing traditional mechanisms intended to bring about reconciliation, including the traditional Mato Oput.
- Ensure that government structures formally apologize for the role of state perpetrators in the conflict and involve themselves in memorialization /commemoration initiatives.
- Encourage all conflict-affected communities to engage in reconciliation dialogue with each other to resolve lingering cross-ethnic hostilities.⁶

Gender concerns

32. Gender inequality still creates challenges in our society today with women bearing the greater burden in form of access to services and means to production which limit their participation in the post conflict recovery and development. Women especially the widows and aged women are often deprived of access to, ownership and use of land; women are left without the means to create stable and sustainable livelihoods. This has

⁵Report Justice Law and Order Sector “Developing and Managing an Effective Transitional Justice System; Supplement for the 3rd Forum” www.jlos.go.ug/uploads/Supplement%20for%20the%203rd%20Forum.pdf

⁶ These recommendations are further explained in for example the BJP reports “Why Being Able to Return Home Should be Part of Transitional Justice” by Paulina Wyrzykowski and Benard Okot and “Tradition in Transition” by Lyandro Komakech and Alex Sheff.

the effect of not only making women vulnerable to poverty but also reinforce and perpetuate their social, economic, political and cultural inequalities.

Recommendations:

- The state should adopt the regulation for implementation of the Domestic Violence Act, and develop multi-sectoral action plan to combat violence against women.
- Government should enact a comprehensive law, criminalizing all forms of sexual violence and abuse (rape, defilement).
- Government should continue to fully involve women in the peace building, reconciliation, rehabilitation and recovery processes in the context of the PRDP.
- Government should protect communities, women and girls in IDP camps/return areas from sexual and gender based violence and abuse. The perpetrators of such acts must be punished.

Children concerns:

33. Children often suffer neglect, abuse and violence in the administration of juvenile justice. Their legal rights are often ignored. Sometimes their parents are not informed of their whereabouts. They are held in degrading conditions, often sharing cells with adults.

Recommendations

- Whatever the criminal charge they face, children should only be deprived of their liberty as a last resort and for the shortest appropriate time.
- Where possible, the government should ensure juvenile delinquents are given alternatives to imprisonment.
- The government of Uganda should ensure that all detained children have the right to have contact with their families and to be treated with due respect for their age. They also should be held separately from adults to minimize the risk that they will be abused or influenced by other inmates.