

REDRESS

Seeking Reparation for Torture Survivors

TORTURE IN UGANDA

A Baseline Study on the Situation of Torture Survivors in Uganda

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INFORMATION ON REDRESS

REDRESS works internationally to obtain justice for survivors of torture and related crimes and end impunity for governments and individuals who perpetrate it, and to develop and ensure compliance with international standards. The organisation provides specialised legal assistance to individuals and communities in securing their rights, conducts advocacy with governments, parliaments, international organisations and the media and works in partnership with like-minded organisations around the world.

ORGANISATIONAL MISSION

- To rebuild the lives and livelihoods of torture survivors and their families so that they become active and contributing members of society again.
- To eradicate the practice of torture world-wide.

OBJECTIVES

- To obtain reparation for victims of torture and, when appropriate, their families, anywhere in the world.
- To make accountable all those who perpetrate, aid and abet acts of torture.

STRATEGIES

- To provide legal advice and assist torture survivors gain both access to the courts and redress for their suffering.
- To promote the development and implementation of national and international standards which provide effective and enforceable civil and criminal remedies for torture.
- To increase awareness of the widespread use of torture and of measures to provide redress.

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I. INTRODUCTION AND BACKGROUND

On 26th June 2007, it will be twenty years from the date on which the *United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* came into force. This important anniversary is an opportunity for critical reflection: what has been achieved in the 20 years since the Convention came into force? Has there been progress in eliminating the scourge of torture and acknowledging the harm suffered by the many victims in all parts of the world?

The Convention is one of the most widely ratified treaties with 144 State Parties. The word ‘torture’ will, to most people, invoke images of some of the most horrific forms of physical and psychological suffering but the variety and severity of the methods of torture and cruel, inhuman or degrading treatment or punishment is not exhaustive and there is no limit on who can be victimised – survivors of torture come from all walks of life, and from most countries around the world. As is noted in the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol)*, “Its purpose is to deliberately destroy not only the physical and emotional well-being of individuals, but the dignity and will of entire communities. It concerns all members of the human family because it impugns the very meaning of our existence and our hopes for a brighter future.”¹

All are quick to recognise that the practice of torture and other cruel, inhuman and degrading treatment or punishment is not to be tolerated under any circumstances, yet the practice continues behind veiled disguises – it

is legitimised by calling it by other names; ‘exceptional circumstances’ continue to be used to justify the dehumanisation of individuals and communities; the torturers themselves are not prosecuted or punished owing to competing or conflicting priorities of governments and at times institutionalised impunity and barriers impede other forms of remedies and reparation. Without the formal acknowledgement of the crime, torture survivors remain marginalised, alienated and disadvantaged within their communities, and their medical, psychological and social rehabilitative needs overlooked or forgotten.

Uganda ratified the *UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* in 1986 and is party to a number of other regional and international treaties that outlaw torture and other forms of ill-treatment. Despite this, reports of torture in Uganda continue. When the United Nations Committee on Torture, the body which oversees States’ compliance with the *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* considered the initial report of Uganda in May 2005, amongst its conclusions and recommendations it noted

“the continued allegations of widespread torture and ill-treatment by the State’s security forces and agencies, together with the apparent impunity enjoyed by its perpetrators” ... and recommended that the Ugandan Government “Take vigorous steps to eliminate impunity for alleged perpetrators of acts of torture and ill-treatment, carry out prompt, impartial and exhaustive investigations, try and, where appropriate, convict the perpetrators of torture and ill-treatment, impose appropriate sentences on them and properly compensate the victims.”²

¹ Available at <http://www.unhchr.ch/pdf/8istprot.pdf>.

² Conclusions and recommendations of the Committee against Torture : Uganda. 21/06/2005. CAT/C/CR/34/UGA. (Concluding Observations/Comments) available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.CR.34.UGA.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.CR.34.UGA.En?OpenDocument) (last accessed April 2007).

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Reports by civil society groups indicate that torture in Uganda continues to be widespread. Torture is said to take place in the context of the armed conflict in the north of the country and also as part of the regularly actions of the police and security forces. Although torture is practiced against people accused of ordinary crime, political opponents and terrorist suspects are said to be more at risk of torture than other detainees. The majority of cases reported to NGOs concern prisoners singled out for their actual or alleged political activities; other cases concern rebel groups and their supposed followers, but in many cases the individuals alleging torture are simply accused of treason or terrorism with no named allegiance to a particular group.

Reports by NGOs indicate a widespread use of torture especially in ‘safe houses’, the name given to unauthorized places of detention. Detainees commonly report severe beatings during interrogations as well as the use of psychological torture—including live threats as well as showing them other persons who have been previously tortured and have visible marks to instil fear and/or compliance.

Torture methods reportedly used in Uganda include:

- ◆ *kandoya* (tying hands and the feet behind the victim);
- ◆ Suspension from the ceiling while tied up;
- ◆ Water torture/”Liverpool” (forcing the victim to lie face up, mouth open while the tap is turned on into the mouth);
- ◆ Severe beatings with metal rods, pistols, fists, sticks with nails;
- ◆ Death threats including putting the nozzle of the pistol into the victim’s mouth, showing him fresh graves, dead bodies or snakes;
- ◆ Putting the victim in the back of the vehicle where his captors sit or put their boots on him; abusive language and threats; and kicking with boots all parts of the body;
- ◆ Gang rape of female victims;
- ◆ Mutilating genitalia of male suspects through kicking, beating with sticks,

puncturing with hypodermic needles and tying the penis with wire or weights;

- ◆ Forcing the victim to stand in red ants.

The Baseline Study

Taking into account the prevalence of torture and the situation of survivors in the country, **REDRESS** decided together with the **African Centre for the Treatment and Rehabilitation of Torture Victims** (ACTV) to conduct a detailed assessment of the situation of victims and the opportunities and challenges relating to meeting victims’ needs.

The decision to conduct the *Baseline Study on Torture in Uganda* also takes into account the collaboration between ACTV and REDRESS in early 2004 when the organisations worked closely together in the implementation of an anti-torture training programme for Ugandan doctors and lawyers under the guise of the Istanbul Protocol Implementation Project (an initiative of International Rehabilitation Council for Torture Victims (IRCT), the World Medical Association, Human Rights Foundation of Turkey, Physicians for Human Rights USA and REDRESS). REDRESS was responsible for developing a series of legal training tools and curricula on legal aspects relating to the effective investigation and documentation of torture. Uganda was one of the countries of the pilot phase (along with Mexico, Sri Lanka and Georgia) and REDRESS worked with ACTV and other Ugandan organizations on the country-specific manual and the training modules, and participated actively in the training sessions which took place in Kampala later in 2004. The Baseline Study also reflects REDRESS’ work as a key proponent of victims’ rights in the context of the ongoing International Criminal Court investigation into serious international crimes in Uganda and as the Coordinator of the Victims Rights Working Group, a network of individual experts and NGO activists working to

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promote the rights of victims at the International Criminal Court. It also reflects the very recent establishment of a Ugandan Victims' Rights Working Group, an informal network of Ugandan NGOs working on victims' issues.

The objective of this *Baseline Study on Torture in Uganda* is therefore to obtain a clear understanding of the situation of victims of torture and conflict in the country and to assess the key issues pertinent to improving access to justice and adequate and effective forms of reparation. The *Baseline Study* is intended to serve as the foundation for further work in support of torture survivors in the country, and is intended to be of benefit not only to REDRESS and ACTV, but other civil society groups, government agencies and others working towards these goals in Uganda.

The *Baseline Study* is therefore intended to be a tool to shape the structure and content and emphases of further work on civil society groups and others working to combat torture in Uganda. It is also a reference point from which to base appropriate indicators and benchmarks to monitor and evaluate future outputs and to assess the extent to which they have contributed to desired changes for beneficiaries within the country.

Focus

The *Baseline Study* focuses on the following factors crucial to changing the legal framework and practice as well as to build the capacity of lawyers, civil society organisations and others assisting torture survivors with a view to improving access to justice, namely:

- I. The situation of beneficiaries (both direct and indirect beneficiaries);
- II. Legal, Institutional and other barriers that may impede progress;
- III. New and/or expected future openings/Positive developments

Methodology

The *Baseline Study* draws on quantitative and qualitative information for a comprehensive assessment of the situation and scale of beneficiaries and their needs as well as the systemic and practical difficulties facing survivors of torture in seeking access to justice. The research methodology used to conduct this survey is a combination of desk-top research and field work, and was comprised of the following steps:

(1) Developing a detailed research plan of the information sought and the sources to be consulted;

(2) Open-source research: Consulting and analysing a range of documents, both from within Uganda and from regional and international sources, including legislation, government publications, United Nations documents and NGO reports;

(3) Drawing up detailed questionnaires and checklists as research tools for initial field research;

(4) Three-week dedicated field research in which Mr. Kevin Laue, Legal Advisor at REDRESS, carried out a series of semi-structured interviews with a cross-section of key stakeholders, including officials, civil society groups and torture survivors, in Kampala and Gulu, Northern Uganda. Mr. Laue was hosted by the African Centre for the Treatment and Rehabilitation of Torture Victims (ACTV) whose legal officer Ms. Sharon Tem actively participated in most of the meetings. During his stay in Kampala, Mr. Laue also conducted an intensive in-house survey of ACTV's capacity; similarly, he had the opportunity to assess the operation of the recently established ACTV office in Gulu, albeit for a shorter duration;

(5) Preparing a first draft of the *Baseline Study*, based on the sources consulted at stage (2) as

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well as the interviews and documents compiled by Mr. Laue during his visit to Uganda;

(6) Second visit to Uganda during which Mr. Laue conducted additional interviews with key persons in order to obtain further information, gain insights into the practice and clarify some outstanding issues. He also discussed preliminary findings with ACTV and others;

(7) Finalisation of the *Baseline Study*, taking into account information and comments collected during the second visit to Uganda. The in-country research also benefited from the work of Mrs. Mariana Goetz, REDRESS' Advisor on the International Criminal Court (ICC), who conducted a series of interviews with civil society in Northern Uganda in late 2006 on victims' perceptions and expectations with regard to the current ICC investigations, and has been closely involved in recent initiatives to establish a Ugandan Victims' Rights Working Group.

A list of the interviews conducted by Mr. Laue can be found in the Annex at the end of this Report. The *Baseline Study* itself draws on the interviews, in particular in referring to perceptions shared by several interlocutors. Generic references are made in the case of information obtained during specific interviews without, however, identifying the interviewed person.

Whilst REDRESS acknowledges the range of individuals and organisations that have contributed to this Study and commented on earlier drafts of the text, REDRESS is solely responsible for its final content.

II. SUMMARY OF KEY FINDINGS

SITUATION OF TORTURE SURVIVORS

Torture is a pervasive problem in Uganda and consequently there is a large and varied group of torture survivors within the country. This group comprises both victims of past torture (mainly from previous regimes of government) and more recent or ongoing forms of torture. Some of the torture survivor population within the country is internally displaced, further still are refugees fleeing torture suffered abroad. Most victims are either members of the political opposition, minority groups or persons suspected of having committed common crimes, who often belong to marginalised sectors of society.

The forms of torture inflicted in Uganda are diverse including both physical and psychological exactions, as well as the particular context of torture perpetrated in relation to the armed conflict in the North of the country. The pervasiveness of torture is owed in part to lack of effective safeguards to prevent the practice. Individuals most at risk of torture enjoy little protection: there is a maze of law enforcement agencies, many of which operate outside of the law and/or without clear accountability. Persons arrested are often detained in so-called 'safe houses' and are routinely deprived of custodial safeguards, in particular access to a lawyer, at times in express disregard of *habeas corpus* orders issued by the Ugandan High Court. Monitoring of detention facilities is inadequate to prevent the majority of violations.

Most torture survivors suffer from long-term physical and psychological ailments as a result of the harm inflicted. Survivors have considerable health, financial and social needs. Given that marginalisation is often the cause of torture, the impact of the torture which can often lead to further marginalisation produces a double effect for survivors, often resulting in extreme isolation, as public attitudes towards survivors can be hostile. In addition to the

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regular presence of physical and psychological ailments, torture survivors repeatedly express a strong sense of frustration about the prevailing impunity of perpetrators and the limited access to justice, factors which result in a deep sense of injustice that has tends to compound the adverse psychological effects of torture.

BARRIERS TO JUSTICE AND REPARATION EXPERIENCED BY TORTURE SURVIVORS

Torture survivors, and those acting on their behalf, face a series of obstacles when seeking justice and reparation. Barriers impeding effective access to justice exist at multiple levels, namely: deficiencies in the legal framework, practical difficulties, institutional shortcomings, inadequate complaints and investigation procedures, and limited effectiveness of judicial and non-judicial remedies.

Laws: Uganda is state party to most human rights treaties but has not adopted laws implementing its obligations under these treaties. There is no specific crime of torture in Uganda's penal code. This impacts adversely on the information publicly available on torture, because it does not appear in crime statistics, as well as the public and official understanding of torture as a heinous practice prohibited under all circumstances. It also contributes to impunity because relevant acts can only be prosecuted as common crimes, such as assault, which do not capture the specific nature of torture as an 'official crime'. The absence of laws or programmes providing for victim and witness protection, the lack of an explicit right to reparation for torture, and short statutes of limitation, are further shortcomings in the legal system that all have the result of undermining access to justice.

Practical Barriers: Torture survivors face a range of problems when attempting to assert their rights. Many survivors are unaware of their

rights. In addition, they face an indifferent if not hostile public, including official institutions that have provided little if any support. Survivors and relatives of victims, as well as human rights defenders, have frequently been threatened with adverse consequences, such as arrest, physical attacks or similar measures, where they have sought to assert their rights. Survivors can expect little or no protection from state institutions, often resulting in a reluctance to pursue remedies, particularly where torture survivors are still in detention. Even where they decide to take action, access to justice is generally difficult because of the inadequate infrastructure of official institutions, including courts, the non-affordability of lawyers in light of limited legal aid resources, and the shortage of lawyers qualified to pursue torture cases.

Complaints procedures and investigations: There is no effective complaints procedure in torture cases resulting in effective and independent investigations and prosecutions. Torture survivors, especially when still in detention, are often not able to lodge timely complaints. Survivors have difficulties in identifying perpetrators of torture and in gaining timely access to independent medical examinations, often resulting in the lack of medical evidence of torture which further inhibits successful prosecutions and/or civil suits. Investigations in torture cases are conducted by the police, i.e. the very agency whose members are frequently the subject of investigations. The Ugandan Human Rights Commission is a more independent body that also carries out investigations. However, its investigations are not of a criminal nature, it has no prosecutorial powers and it is often not clear whether it recommends prosecution in individual cases. Even where the Tribunal of the Commission makes a finding of torture against a named individual, there is no established procedure in terms of which the police and the Department of Public Prosecutions initiate investigations. Most investigations do not result in prosecutions,

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ostensibly because the perpetrator is not identified or because insufficient evidence is available. In many instances, the investigating bodies have no or insufficient access to the agencies whose members are accused of torture, such as special crime units operating 'safe houses' or the armed forces, and those accused remain untouchable. No steps have been taken to address the apparent systemic problem that, in spite of a considerable number of torture cases, as confirmed by the Ugandan Human Rights Commission, virtual impunity persists in terms of criminal prosecutions. The various agencies claim to have imposed some disciplinary sanctions against individual perpetrators of torture but the practice appears to be piecemeal and of limited effectiveness in deterring torture practices.

Judicial and non-judicial remedies: Civil courts have awarded compensation to torture survivors in a few cases. However, the vast majority of torture survivors do not bring claims before courts due to a combination of factors, in particular because they cannot afford a lawyer and are unfamiliar with court proceedings. Most NGOs also have limited capacity to represent victims before the courts, and lawyers seldom litigate such cases on a pro-bono basis. Most torture survivors and NGOs bring complaints before the Ugandan Human Rights Commission. The Commission faces a series of obstacles in its work and suffers from being under-resourced. Torture survivors have also complained about the treatment at the hands of the Commission which is often seen as being insensitive to their needs, pointing to a lack of awareness and training on the part of staff. In spite of this, the Commission has been the only body to award considerable compensation in a number of torture cases. However, owing to a large backlog, cases are often heard only after several years. The biggest shortcoming in the existing system is the Commission's lack of enforcement powers, and the lack of a follow-up system with regard to its decisions. Most awards are

not honoured by the responsible Attorney-General, with individual perpetrators not being held financially accountable either. This is a well-known problem repeatedly highlighted by the Commission itself and acknowledged by some government bodies, but no measures have been taken to ensure that the Commission's awards in torture cases are complied with and actually paid out to victims. This lack of enforcement continues to be a source of intense frustration and disillusionment experienced by torture survivors, undermining the credibility of the complaints procedure before the Ugandan Human Rights Commission. This serious problem is a priority area for advocacy and strategic litigation, in particular bringing cases to the High Court that seek to compel the Government of Uganda to comply with the rulings of the Commission.

- *There are a series of legal and practical challenges impeding access to justice for torture survivors. This applies both to criminal complaints mechanisms as well as to judicial and non-judicial remedies.*
- *Targeted interventions, consisting of strategic litigation, advocacy for legal and institutional reforms and rights awareness campaigns are needed to address the specific issues identified. This includes in particular the recognition of a specific offence of torture in Ugandan criminal law, effective victim and witness protection, a complaints system ensuring prompt, effective and impartial investigations in torture cases, legal aid for victims of torture so that they can access courts, and measures to enhance compliance with rulings of the Ugandan Human Rights Commission in torture cases.*
- *There is also a need to counter prevailing misconceptions about the nature of torture and hostile or indifferent attitudes towards torture survivors.*

SPECIAL CONSIDERATIONS RELATING TO NORTHERN UGANDA

There are a massive number of individuals in Northern Uganda who have been subjected to torture. Young males and women are those most likely to have suffered torture, including rape, at the hands of the UPDF. Children who have been abducted and civilians who have

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been attacked are the main victims of torture by the Lord's Resistance Army (LRA), often consisting of mutilations or other extremely brutal forms of torture.

Many victims have suffered from double-victimisation, adding to a pervading sense of insecurity. Most civilians are extremely vulnerable to torture, both in the internal displacement camps and in the rural areas. Although there have been less violations since the ceasefire came into effect in 2006, the situation remain precarious. Most torture survivors have suffered adverse health impacts, including physical disabilities and traumatisation. However, they are forced to live in dire conditions in camps or elsewhere. Insufficient services are available to address their physical and psychological health as well as rehabilitation needs. While most victims' main wish appears to be a return to peace and improved living conditions catering for their basic needs of survival, many victims express a strong desire for accountability of the perpetrators and reparation.

The situation in the North is characterised by impunity and limited access to justice. UPDF members are commonly not subject to independent investigations and few soldiers have faced prosecutions. LRA members benefit from the Ugandan amnesty law, which, although largely welcomed locally, has been criticised for favouring ex-combatants over victims and for potentially covering those responsible for mass atrocities. The community in Northern Uganda, including victims, is divided over the merits of the current ICC investigations of high-ranking LRA members. While welcomed by some victims and human rights defenders, others see it as an impediment to peace. The ICC prosecutions have brought the issue of accountability into sharp relief, not only of LRA members but also of government officials. Several victims and civil society groups advocate for stronger accountability and are seeking ways to hold individual

perpetrators of both sides accountable and to ensure victims' rights in the process.

Northern victims also face considerable hurdles in accessing justice. Given the economic situation of most victims, access to courts is commonly only possible with the assistance of NGOs or lawyers funded by the Legal Aid Project. While NGOs such as HURIFO have successfully brought cases to the High Court, they face resource constraints and are unable to meet the huge demand. Moreover, the court infrastructure is weak and the system suffers from a large backlog of cases. However, steps have been taken to enhance the courts' capacity and there is significant scope for making greater use of judicial avenues. The same considerations apply to the Ugandan Human Rights Commission which is taking steps to enhance its capacity in Northern Uganda.

- *Concerted efforts are needed to respond to the needs of a large number of victims of torture in Northern Uganda. Priority areas are judicial interventions before the High Court to set precedents resulting in enhanced accountability and reparation for torture committed by government forces, and legal assistance and support to those who seek to use ICC procedures for the benefit of victims.*
- *Capacity building and training needs are particularly acute in Northern Uganda, as most NGOs have insufficient capacity and expertise to respond to demands.*

GOVERNMENT RESPONSES

The Government of Uganda does not have an express anti-torture policy. It has largely failed to respond to calls by the Ugandan Human Rights Commission to enhance accountability of perpetrators of torture and ensure enforcement of compensation awards. It has not taken any steps to make torture a specific criminal offence even though the absence of such an offence is generally acknowledged as a serious lacuna undermining the fight against torture in Uganda. The Justice, Law and Order Sector (JLOS) is the only government agency that is planning a series of measures to

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promote human rights and improve access to justice. Its strategic investment plans for the next five years contain a number of noteworthy initiatives which, if implemented, can significantly enhance human rights protection. Although not torture specific, many of the measures identified by JLOS would also benefit torture survivors.

- *The Ugandan Human Rights Commission and JLOS have indicated their willingness to call for reforms and implement changes. The JLOS strategic investment plan provides a benchmark and opens opportunities for civil society engagement. JLOS should be lobbied to focus on particular problems experienced by torture survivors in seeking access to justice. Judicial interventions should be contemplated to expedite implementation of some of the key goals where insufficient progress is made.*

The Commission and several institutions have conducted a series of training programmes on human rights, including torture, for law enforcement personnel. Civil society groups have also conducted a number of trainings on relevant topics. However, there appears to be a lack of overall coordination and evaluation of the impact of trainings, which remains largely anecdotal.

- *A number of remaining gaps have been identified in this Baseline Study, including:*
 - I. *the fact that not all agencies have received training in equal measures, with a particular need for more training for Police Special Constables and the Violent Crime Crack Unit, as well as for agencies responsible for the investigation of crime;*
 - II. *the need to follow up trainings undertaken and to evaluate impact;*
 - III. *the need for a stronger perspective on victims and their rights in the light of limited understanding of the consequences of torture for victims, their needs and wants, and how to ensure their rights in relevant proceedings;*
 - IV. *there is a need to focus on imparting practical skills, such as investigation methods which avoid using torture, and how to ensure victims' rights throughout legal proceedings;*
 - V. *local practices would benefit from comparative and international experiences, including the role of regional and international human rights bodies and foreign and international courts.*

CIVIL SOCIETY RESPONSES

Several local NGOs work on torture and there is increasing recognition of the need to combine forces, which has resulted in the establishment of a Coalition Against Torture. NGOs focus mainly on monitoring and advocacy but have limited capacity to provide legal assistance. Most NGOs lack sufficient staff and resources to meet the demand of torture survivors for legal services, not least due to the lack of sustained funding for legal programmes. NGO lawyers working on torture cases have often not received specific training on how to deal with trauma victims or on international practices that could be utilised to enhance the effectiveness of their work. The shortcomings of NGOs are all the more serious because of the shortage of experienced lawyers who would be willing and able to litigate torture cases. There are few qualified lawyers and most of them would naturally expect to be paid for their services, which limits access for victims and NGOs alike.

- *There is a need for enhanced capacity of civil society and the legal profession. This is both with regard to the number of lawyers working on torture cases and the expertise of lawyers currently assisting survivors particularly in respect to how to handle torture cases and how to use strategic litigation for the benefits of a potentially large number of victims.*
- *In addition to greater resources, targeted training is needed to enhance existing capacity and to ensure sustainability through a training of the trainers programme.*

Several NGOs working on torture have close links with grassroots communities although the degree of participation and representation differs. In some areas, such as parts of Northern Uganda, there is still a lack of representation of local communities. Local victims' groups are beginning to organise themselves and have set up victims' organisations or working groups.

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- *There is a need for NGOs to coordinate closely with community groups and victims' groups. NGOs should reach out and make efforts to support victims' organisations, in particular by providing advice and training to enhance legal capacity.*

III. SITUATION OF TORTURE SURVIVORS

This chapter seeks to assess the situation of torture victims. It focuses on the scale of torture, groups of persons who have become victims, the context and nature of torture, location and perpetrators, as well as the vulnerability of victims, particularly in regard to responding to torture. Its aim is to provide a concise overview of the scale and nature of torture in Uganda and the victimisation faced by various groups in order to develop responses to specific challenges in relation to torture perpetrated against a particular group or in a particular context.

The *Baseline Study* uses the term “torture” as understood in international law. It encompasses acts constituting torture both under Article 1 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), which requires a degree of official involvement, and acts amounting to torture under international humanitarian law, in particular common Article 3 to the four Geneva Conventions of 1949, which also covers torture by non-state actors such as armed rebel groups.³ The term “victim” is used in line with 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*.

“victims are persons who 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 gross violations of international human rights law, or serious violations of international 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 victimization.”⁴

1. Practice of torture

1.1. Scale of torture past and present

(i) Past torture (1962-1995)

Uganda has a long history of torture, often perpetrated on a very large scale. In 1986 a Commission of Inquiry was set up to investigate violations of human rights committed from 1962-1986. The Commission interviewed over 200 witnesses, finding that a “very large number of people in Uganda were subjected to torture and cruel, inhuman and degrading treatment or punishment.”⁵ The regimes of Obote, Idi Amin and various interim governments used torture mainly as an instrument of repression. Given the ethnic base and dictatorial exercise of power, torture was frequently used against members of other ethnic groups and political opponents. Accordingly, with a change in power, members belonging to the hitherto ruling ethnic group and even some of the torturers themselves became victims of torture, as happened following the fall of Idi Amin in 1979. As a result, over the period of almost 25 years, a wide cross-section of members of ethnic and political groups became victims of torture at the hands of at least one regime.

³ See on the relevant definitions of torture, and applicability to non-state actors, REDRESS, *Not only the State: Torture by Non-State Actors, Towards Enhanced Protection, Accountability and Effective Remedies*, May 2006, pp.16 et seq.

⁴ The Basic Principles were adopted by the UN General Assembly on 16 December 2005, UN Doc. A/RES/60/147.

⁵ Pearl of Blood, *Summary of the Report of the Uganda Commission of Inquiry into the Violation of Human Rights*, UPPC, October 1994, p.29.

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The Commission only published its final report in 1994, making a series of recommendations.⁶ Of these, the recommendations to prosecute those implicated in human rights violations in the period 1962-1986 and to compensate victims of torture went largely unheeded, the absence of political will on the part of the Government, and the lack of victims' mobilisation, being key factors for this failure.⁷ The latter can be attributed in particular to the disparate groups of victims and the focus of civil society on ongoing violations. Most human rights organisations, such as the African Centre for the Treatment and Rehabilitation of Torture Victims (ACTV), only began operations in the 1990s, responding mainly to current violations at the time, or in the North, addressing violations committed in the course of the ongoing conflict. No mapping of the number of victims of torture, let alone concerted initiatives to establish their needs and efforts to provide reparation, has been undertaken to date. While many victims of the pre-1986 period will have died due to the passage of time, a considerable number are probably still alive.

There are also a number of torture survivors from the period 1986-1995 during the early years of the Museveni Government, comprising political opponents, suspected LRA members, suspects of crimes and prison inmates. The cut-off date is significant because victims of torture had much more limited access to justice before 1995 when the present Constitution was adopted and the Uganda Human Rights Commission established (remedies that have become available to torture survivors as a result are described in more detail below). Organisations such as ACTV and the Kumi Human Rights Initiative (KHRI), which was set up in 2001,

have cases of a number of torture survivors from this period. Their cases have not been heard by the Ugandan Human Rights Commission and they ostensibly can not bring claims before the courts because statutes of limitation have expired, thus apparently leaving victims without any recourse to remedies. Victims of violations committed before 1995 have received little if any compensation.⁸

(ii) Victims of Present torture

Thousands of persons have become victims of torture since 1995. In the absence of any official statistics, it is difficult to estimate the overall number of torture victims. Suitable indicators for the scale of torture are the number of victims treated by ACTV and of torture-related complaints submitted to the Ugandan Human Rights Commission (around 75% of which are commonly upheld by the Commission). ACTV has treated 2,632 torture survivors since 1999, using the UNCAT definition and sound screening methods to determine whether or not a client has been tortured. The number of torture survivors treated annually has risen from 437 in 2004, to 752 in 2005 and to 1145 in 2006 (626 in ACTV's Kampala office and 519 in the newly opened Gulu office), which ACTV attributes to increased awareness about torture and the services available. In 2005 and 2006, around 87% of ACTV clients were Ugandans, with others coming from neighbouring countries.⁹

The UHRC has received a total of 1,963 complaints of torture in the period from 1997 to the end of 2005.¹⁰ Beginning with 30 complaints recorded in 1997, the number of

⁶ Ibid pp.64-91.

⁷ Joanna R. Quinn, *The Politics of Acknowledgment: An Analysis of Uganda's Truth Commission*, YCISS Working Paper Number, 19 March 2003, pp.21-22.

⁸ See Risdell Kasasira, *Teso MPs to sue government over 1989 Mukura massacres*, Daily Monitor, 31 January 2007, p.6: "The government had earlier called for compensation of Shs1.5m for every family member who was killed but the MPs say the families have not been compensated. 'It is deplorable, it is shocking what the government called compensation was just building of a memorial school' said Mr. Epatait [Ngora County MP]."

⁹ ACTV Annual Reports 2005 and 2006.

¹⁰ Uganda Human Rights Commission, *8th Annual Report*, 2005, p.52.

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complaints has risen steadily, reaching its peak of 488 in 2004, and dropping to 256 in 2005. A high percentage of these cases is usually proved in the UHRC Tribunal (77.2% in 2005) which means that around 1,500 of the complaints are capable of being proven (not all complaints received have been resolved to date).

The Government compiles national statistics on crimes.¹¹ However, given that torture is not recognised as a specific crime, there is no separate entry for torture. The crime statistics make reference to the overall number of crimes attributed to the various security agencies but do not provide a breakdown as to the nature of crimes committed.¹² The Director of Public Prosecution (DPP) acknowledges that it is difficult to provide statistics on the numbers who have actually been prosecuted and, in an interview with REDRESS, was unable to state how many cases of ‘torture’ had been proceeded with under the Directorate of Public Prosecutions.

REDRESS also sought to obtain information about torture related cases brought before the High Court and the Appeal Court. The Registrars of both courts confirmed that the information is on their data bases but that it could not be obtained readily as it would have to be extracted manually from individual files. Effectively, there is limited access to this information as the data is not generated in a coherent, systematic and accessible manner.

Reports by civil society groups on the prevalence of torture in Uganda contain a considerable number of case examples but commonly do not include overall estimates.¹³

In 2005, the United Nations Committee Against Torture, the official body of the United Nations tasked with monitoring State compliance with the Convention against Torture, expressed its concern at “the continued allegations of widespread torture and ill-treatment by the State's security forces and agencies, together with the apparent impunity enjoyed by its perpetrators.”¹⁴

1.2. Perpetrators

A range of security organs have reportedly been responsible for torture in Uganda. Though Ugandan law bestows responsibility for law enforcement on the police, there is a proliferation of bodies, often operating as plain cloth officers, which have arrested, detained and tortured suspects. These agencies have in many instances removed victims from the protection of the law to so-called ‘safe houses’ and are difficult to identify, resulting in a climate of impunity.

According to human rights reports,¹⁵ interviews with the DPP and the data contained in the annual reports of the UHRC and ACTV, the following agencies have been accused of torture (and in several cases found to be responsible by the UHRC afterwards):

- The Ugandan Police Force
- Violent Crime Crack Unit (VCCU), a special unit comprised of various security agencies set up to combat violent crime, replacing the so-called Operation Wembley
- Chieftaincy of Military Intelligence (CMI)
- Joint Anti-Terrorism Task Force
- Uganda Peoples’ Defence Forces (UPDF)
- Prison guards
- Internal Security Organisation (ISO)
- External Security Organisation (ESO)
- Local Government/District Administration
- Local Defence Units (LDUs)

¹¹ See e.g. *Baseline Study on Criminal Justice*, Executive Summary, available at <http://www.jlos.go.ug/pdfs/EXECUTIVE%20SUMMARY.pdf>

¹² *Ibid*, p.13.

¹³ See e.g. FHRI, *Deprivation of the Right to Life, Liberty and Security of Person in Uganda*, Report for the Period January to June 2006, pp.13 et seq.

¹⁴ Conclusions and recommendations of the Committee against Torture: Uganda, UN Doc. CAT/C/CR/34/UGA 21/06/2005, para 6 (c).

¹⁵ See e.g., Human Rights Watch, *State of Pain: Torture in Uganda*, Vol. 16(4), March 2004 <http://hrw.org/reports/2004/uganda0404/> and FHRI, *Deprivation of the Right to Life, Liberty and Security of Person in Uganda*, 2006, *supra*.

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- Special Police Constables (SPCs)

Rebel groups, in particular the Lord's Resistance Army, are also said to be responsible for acts of torture, in particular as understood in international humanitarian law and international criminal law that use similar definitions as Article 1 of the UN Convention Against Torture without requiring involvement of a state official.

1.3. Torture Methods

Torture methods consist of “routine kicking and slapping, as well as severe beatings with rifle butts, sticks, and other objects [and] ...tying the victim's hands and feet, keeping detainees tied together in mud pits, and inflicting serious harm to the private parts.”¹⁶ Other physical methods of torture include suspension from the ceiling while tied up; water torture/“Liverpool” (forcing the victim to lie face up, mouth open while the tap is turned on into the mouth), gang rape of female victims. The torture has in some cases been so severe that its victims reportedly died as a result.¹⁷ Psychological methods of torture used are death threats, including putting the nozzle of the pistol into the victim's mouth, showing him fresh graves, dead bodies or snakes, forcing detainees to witness the torture of others as well as food and sleep deprivation.¹⁸ According to a 3-year retrospective study of a total of 310 patient records at ACTV conducted from 1998-1999, “most common method of torture included kicking and beating (79.7%), rape (26%) and witnessing family members, relatives and other victims tortured (48%),” with the army accounting for 85.8% of the perpetrators.¹⁹

There are concerns that torture methods have become more sophisticated and that the perpetrators try to leave fewer traces, for example by holding victims under water, which has been attributed to increased awareness, better documentation and the (limited) accountability before the UHRC and courts.²⁰

2. Victims' Profiles

There is no official or systematically collated information on the profile of torture victims although the UHRC and ACTV documentation of torture, in conjunction with anecdotal evidence contained in NGO reports, indicate three major groups: those believed to be members of the political opposition, those suspected of having committed common crimes, and civilians and others tortured by either or both sides of the warring factions in the Northern Ugandan conflict.

2.1. Members belonging to the political opposition

There has been a series of cases over the last decade where political opponents have been subjected to torture.²¹ According to several NGOs interviewed by REDRESS, political opponents tend to suffer the worst torture. Political opponents denotes those associated with a political party or movement opposed to the Government or government policies, including members, campaigners and supporters of parties as well as anyone critical of government policies. These are commonly politically active persons, predominantly male, comprising both youth activists and more mature activists. While the majority of more senior people are based in Kampala, many grassroots activists live in rural areas.

¹⁶ Foundation for Human Rights Initiative (FHRI), *Status Report*, 2005, p.17.

¹⁷ FHRI, *Deprivation of the Right to Life, Liberty and Security of Person in Uganda*, 2006, *supra*, p.14.

¹⁸ Kinyanda et al, *Medical Aspects of Torture as seen in Uganda*, National Training Manual for the Istanbul Protocol Training, 2004, p.5.

¹⁹ Seggane Musisi, E. Kinyanda, R. Mayengo-Kiziri and H. Liebling, *Post-Traumatic Torture Disorders in Uganda: A 3-Year Retrospective*

Study of Patient Records at a Specialised Torture Treatment Centre in Kampala, Uganda, 1999.

²⁰ Interviews, Kampala, December 2006.

²¹ See e.g. Human Rights Watch, *State of Pain: Torture in Uganda*, *supra*; FHRI Status Report, 2005 p.17.

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There is a broad range of opposition groups, the main one being the Forum for Democratic Change (FDC) led by Kizza Besigye. Dozens of FDC supporters and other opponents of the Government were said to be tortured in the course of the violence surrounding the 2001 presidential election.²² Fewer cases of torture were reported during the 2006 presidential elections itself but there were serious violations, in particular a wave of arrests, including the arrest and the bringing of charges against Kizza Besigye, which were widely seen as politically motivated.²³ Members of Reform Agenda, a group that has now become part of the FDC, and other political opponents are frequently charged with treason or terrorism and detained for months if not years, in most cases without any trial being held.²⁴ In the case of Kizza Besigye and 22 others, who were charged with treason and misprision of treason (concealment of treason), the High Court granted bail to fourteen accused in November 2005. However, armed personnel entered and prevented the processing of the bail documents. The accused persons remained in custody and were charged with the crimes of terrorism and unlawful possession of firearms in the General Court Martial (GCM) on the basis of the same facts. The Government has only belatedly produced the suspects in court and to date has failed to release them. This is in spite of the Constitutional Court ruling of 31st January 2006 according to which the proceedings were in violation of fundamental rights and the GCM had no jurisdiction to try the case²⁵ and a further ruling of the same

²² See entry on Uganda in Amnesty International, *Annual Report*, 2002.

²³ See Human Rights Watch, *Overview of Human Rights Development*, 2006, at <http://hrw.org/englishwr2k7/docs/2007/01/11/uganda14719.htm>.

²⁴ Human Rights Watch, *Concerns regarding Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Uganda*, May 2005 (Torture of Political Opponents), <http://hrw.org/backgrounders/africa/uganda0505/index.htm>.

²⁵ Ronald Naluwairo, *The Trials and Tribulations of Rtd. Col. Dr. Kizza Besigye and 22 Others, A Critical Evaluation of the Role of the General Court Martial in the Administration of Justice in Uganda*, HURIPAC Working Paper No.1, October 2006.

Court on 12th January 2007, finding that the continued detention of the 14 suspects was in violation of their right to personal liberty and contravened the independence of the judiciary.²⁶ In most reported cases, government agencies, such as the Chieftaincy of Military Intelligence, the International Security Organisation, the Joint Anti-Terrorism Task Force and others have taken perceived political opponents into custody in violation of existing safeguards, including to so-called 'safe houses' in place since 1998 and which greatly facilitate and arguably aggravate the impact of torture.²⁷

Political opponents are particularly vulnerable. During election times, it is almost accepted as normal by the public that political opponents suffer violence, including torture at the hands of government officials. They are often deprived of legal safeguards because they are frequently denied access to lawyers, can often not avail themselves of the habeas corpus remedy and are commonly denied timely access to an independent doctor who could both provide treatment and attest to any torture-related injuries.²⁸ Moreover, the UPDF Act (2005) allows civilians to be charged in courts martial under military justice where they have conspired with service persons to commit certain crimes or are found in unlawful possession of arms.²⁹ Given the inadequate legal safeguards available in the

²⁶ See *Position of the Uganda Human Rights Commission on the Continued Detention of the People's Redemption Army (PRA) Suspects*, in *The New Vision*, 1 February 2007, p.34.

²⁷ According to the Army, "safe houses" are used "to isolate the hard-core suspected terrorists and prevent them from alerting their 'friends in crime' still at large so as to deter their possible escape." (UCHR, 8th Annual Report 2005, p.120) In practice, however, "safe houses" have been used for torture purposes, often against those suspected of "terrorist crimes," including members of the political opposition. Following national and international protests, the Government announced that all "safe houses" have been closed down but there are continuing credible reports of torture in such locations. Moreover, safe houses have been replaced by a regime of special cells that deprives suspects of basic safeguards and the right to complain. See FHRI, *Deprivation of the Right to Life, Liberty and Security of Person in Uganda*, 2006, supra, p.18.

²⁸ See *Okumu and Okello v Attorney General*, High Court of Uganda, Case No. HCT 02 CV-MA 063 of 2002.

²⁹ See Section 119 (g) and (h) of the Uganda Peoples' Defence Forces Act, 2005.

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military justice system, the recent legal changes have deprived civilians of some of the safeguards available in criminal proceedings before ordinary courts.³⁰

The FDC has a human rights desk and is presently compiling a full report of all the violations suffered by its members and supporters who have been attacked, assaulted, tortured, killed or disappeared. The work of the human rights desk has been undertaken mainly by volunteer lawyers working part time but it is expected to become more professional so that it can document, take action and follow-up on any reported cases of torture of FDC members.

2.2. Torture of suspects of common crimes

ACTV's profile of victims and anecdotal evidence show that persons with lower social standing are more likely to be targeted by the police and special units set up to combat crime. According to the 3-year study of 310 patient records mentioned above, "The surviving victims were mostly women and of a peasant, low income and low education social class."³¹

One of the main factors for the persistence of torture is a seemingly institutionalised practice within the police and special law enforcement agencies of using violence amounting to torture as a means to extract information and confessions. Torture has apparently also been used to turn suspects into informants. Legal safeguards have been eroded by the setting up of special units, such as the Violent Crime Crack Unit (VCCU) that comprises the CMI, ISO and other agencies, which has been given wide powers to combat the rise of violent

crimes. The VCCU has replaced "Operations Wembley" launched in 2002 which was itself characterised by serious violations, including torture.³² According to FHRI: "The procedure of effecting arrests by the VCCU and the manner of detention and extracting 'confessions' and information defies all known legal and acceptable principles."³³ Severe beatings and other forms of torture of suspects are commonplace, with 60% of cases brought before the magistrates believed to be based on confessions.³⁴ The High Court held in a landmark ruling that evidence should not be admissible where it has been obtained in breach of the Bill of Rights (in the case at hand unlawful detention and thus, a fortiori, it would also apply to torture).³⁵ This is in line with the provisions of the Evidence Act according to which confessions extracted under torture are irrelevant.³⁶ However, the onus in a trial is on the defendant to show that he or she did not confess or make a statement voluntarily, and in practice courts have in some instances seemingly accepted statements made under torture.

The bulk of violations take place in Kampala, mainly in the custody of the respective agencies or in 'safe houses'. Suspects are often held for prolonged periods particularly by the VCCU, which also targets family members or other people seeking to assist, resulting in further isolation and avoidance of lawyers.³⁷

In rural areas, police officers and local administrators are the main culprits of reported torture cases. There have been several torture cases in local prisons. These

³⁰ FHRI, *Deprivation of the Right to Life, Liberty and Security of Person in Uganda*, 2006, supra, pp.57 et seq.

³¹ Seggane Musisi, E. Kinyanda, R. Mayengo-Kiziri and H. Liebling, *Post-Traumatic Torture Disorders in Uganda: A 3-Year Retrospective Study of Patient Records at a Specialised Torture Treatment Centre in Kampala*, Uganda, 1999. See also ACTV, Annual Report, 2004, pp.19 et seq. and 2005, pp.20 et seq.

³² UHRC, *Your Rights*, June 2003, pp.15,16.

³³ FHRI, *Deprivation of the Right to Life, Liberty and Security of Person in Uganda*, 2006, supra, p.15.

³⁴ Interview, Kampala, December 2006.

³⁵ *Kalawudjo Wamala v. Uganda*, Criminal Session case No.442/1996 (H.C.).

³⁶ See Article 24 of the Evidence Act, DATE: "A confession made by an accused person is irrelevant if the making of the confession appears to the court, having regard to the state of mind of the accused person and to all the circumstances, to have been caused by any violence, force, threat, inducement or promise calculated in the opinion of the court to cause an untrue confession to be made."

³⁷ Interviews, Kampala, December 2006.

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are often run down and neglected, lack money and food, and abuses are rife, a problem acknowledged by the Government. This includes prisoner on prisoner violence because prison guards have delegated powers to prisoners who abuse, intimidate or extort money from fellow inmates.³⁸ The Prison Act of 14 July 2006 places the 174 local government prisons under one structure with the central prisons, and prison rules are reportedly being updated to comply with the UN minimum standard rules for the treatment of prisoners. It is premature to assess whether these changes will result in the expected improvement and concomitant reduction of torture. Systemic problems persist in Ugandan prisons, in particular severe overcrowding and inadequate provision of food and medical services, which in itself may constitute inhuman treatment.³⁹

Suspects of common crimes are a disparate group, but usually persons of a marginalised background, including the urban poor and farmers. They are at a higher risk of being arrested, detained and subsequently tortured. There is a perception that individuals who are disabled or experience mental health problems are especially vulnerable but further empirical research would be needed to confirm such views. Marginalised members of society are less aware of their rights, are often not able to pay the expected bribes or do not have contacts, including access to lawyers, which could help in ensuring their rights and preventing torture. Following their release, many persons belonging to these groups tend to avoid any contact with the system and are more prone to accept informal solutions, if offered, instead of taking formal steps, such as lodging complaints.

2.3. Gender specific torture

³⁸ Interviews, Kampala, December 2006.

³⁹ See FHRI, *Shadow report of Uganda's State Party Report to the African Commission on Human and Peoples' Rights (ACHPR)*, November 2006, p.10.

Torture methods used against men often target the genitalia. Women have also become victims of forms of sexual torture in custody though it is not clear how prevalent this practice is outside of the North. Forms of sexual torture reported include rape, gang rape, sexual comforting, forced incest, sex in exchange for gifts or security, being forced into marriage, abduction with rape, attempted rape and being forced to witness violent sexual acts.⁴⁰ Women, especially those from a poor and less educated background, are particularly vulnerable to torture because Uganda is a largely patriarchal society where women are less likely to be aware of their rights and to avail themselves of existing safeguards.

2.4. Children

In spite of child protection laws, children are often not kept separate from adults in detention facilities ostensibly because the police distort the age of the detainees.⁴¹ This increases the likelihood and vulnerability of children to become victims of torture. The available statistics do not provide a clear indication of how many children have complained about torture or are likely to have become victims of torture. There are isolated reports of torture of children but NGOs interviewed stated that there is not much evidence of children being tortured in police custody. However, this may be due to a considerable number of unreported cases and it is not clear whether this can be seen as an indication that children are less at risk of torture than others. While there are NGOs with a mandate to protect children, those living on the streets or from impoverished backgrounds remain particularly vulnerable to violence, including at the hands of law-enforcement agents.

⁴⁰ Kinyanda et al, *Medical Aspects of Torture as seen in Uganda*, National Training Manual for the Istanbul Protocol Training, 2004, p.4.

⁴¹ FHRI, *Deprivation of the Right to Life, Liberty and Security of Person in Uganda*, 2006, supra, pp.29 et seq.

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2.5. Death row

Some 555 prisoners were on death row in 2006 awaiting execution.⁴² Many of these prisoners have been on death row for several years (up to twenty years in some cases). 417 of these prisoners brought a constitutional petition in 2003 to set aside the death penalties imposed on them on the grounds that the imposition of the death sentence was unconstitutional and contrary to articles 24 and 44 of the Constitution that prohibit cruel, inhuman or degrading punishment or treatment. In 2005, the Constitutional Court ruled that neither the death penalty itself nor the method of hanging is unconstitutional. However, the death penalty should not be mandatory and the execution should not be unreasonably delayed because of the suffering caused by the so-called death row syndrome.⁴³ The Court in particular ordered the Executive to exercise its prerogative of mercy with regard to death penalties not subject to further appeals, and to give those whose appeals are still pending a hearing in mitigation on sentence.⁴⁴

Lawyers who have interviewed death row inmates reported poor conditions of detention and drastic physical and psychological health problems resulting from being on death row without adequate access to medical treatment.⁴⁵ A further aggravating factor is the delay in the hearing of appeals that amounts to a denial of justice, with many death row prisoners languishing in prison for years on end. Dozens of death row inmates have died in prison of natural causes while waiting for over a decade to have their appeals heard.⁴⁶ Death row inmates are thus a group that

suffers specific violations and is particularly vulnerable due to the combined factors of inadequate medical treatment and limited access to justice.

2.6. Refugees

Uganda hosts a very large number of refugees from neighbouring countries where torture is widespread. There are about 230,000 refugees in Uganda. It is not clear how many of these refugees have suffered torture but observers believe that many refugees have been victimised in this way. Even if it is only 5-10% of the refugee population that suffered torture, this would still be a high number. According to ACTV, in 2005, out of its 752 clients, 52 came from DRC, mainly from Eastern DRC, 18 from Rwanda, 9 Burundi, 9 Sudan, 4 Ethiopia, 2 Tanzania and 1 from Somalia. Many of these torture survivors had undergone horrific torture, including several cases of rape.

Torture survivors who are refugees are particularly vulnerable due to their uncertain status in Uganda, lack of security in the refugee camps and difficulties of coping with life in Ugandan society. When torture survivors arrive and report to the police they are routinely sent to a camp where they are effectively left with no money or resources, even if they have children. The camps are usually not safe and living conditions are poor. Rates of rape and HIV/AIDS are high, with little protection being offered. Refugees interviewed were wary of UNHCR staff, who are not seen as very helpful. Refugees are reluctant to stay in the camps. However, when trying to establish themselves in Kampala, they face a myriad of problems. They report that they are regarded with suspicion and find it hard to rent property or obtain work. They are the first to be blamed in disputes and receive little help from the police or state institutions. Instead, there are reports of several Congolese detainees who “are being kept at the mercy of the authorities till they

⁴² According to the Uganda Prisons Department, referred to *ibid.*, at p.41.

⁴³ *Susan Kigula and 416 Others vs. The Attorney General*, Constitutional Petition No.6 of 2003, Judgement of the Constitutional Court of Kampala, 10 June 2005.

⁴⁴ *Ibid.*

⁴⁵ Barbra Masinde and Martin Owor, *Review of death penalty cases in Uganda*, 1st August-30th September 2005.

⁴⁶ See Solomon Muyita, *30 soldiers die in Luzira, more cry out for justice*, Daily Monitor, 30th January 2007, pp.1,2.

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can be deported.”⁴⁷ Even access to basic health services provided by government hospitals is not possible without money. It usually takes about six months to obtain refugee status but this can vary considerably. Once granted status, refugees are less likely to be arrested by police and are given a ration card which is, however, only valid in camps.

The situation of refugees has also been adversely affected by the outdated Control of Aliens Act under which refugees were dealt with by the police and held in camps. A new Refugee Act was passed in 2006 but had not been promulgated by early 2007.⁴⁸ The new Act provides for clearer procedures and services for refugees. It is expected to improve their status although some shortcomings remain.⁴⁹ Refugees basically have the same rights in respect of cases of torture committed in Uganda itself, for example, a refugee was awarded twelve million shillings by the UHRC for torture committed by the CMI. However, there is limited scope for legal action in relation to the torture suffered abroad. Uganda’s legal system does not provide for the exercise of effective universal jurisdiction, i.e. the possibility to bring criminal or civil actions against perpetrators of torture even where the torture was committed by non-Ugandan nationals in a third country.⁵⁰ The situation differs with regard to UPDF soldiers responsible for violations committed in the DRC who could be held accountable in Uganda. However, there are no known precedents, which has been attributed to a lack of understanding amongst the judiciary and the legal profession, including the absence

of a creative litigation culture; worse, victims of torture have apparently encountered perpetrators in the street and suffered further victimisation as a result, and are afraid to seek justice.⁵¹

3. Findings

Impact and vulnerability

Doctors, medical organisations and treatment centres such as ACTV working with torture survivors have documented a range of adverse health impacts, comprising both physical and psychological symptoms. These include electrical injuries, skin complaints, gastrointestinal complaints, chronic gynaecological sequelae, chronic surgical complications as well as acute, chronic and complex post traumatic stress disorders, often occurring with co-morbid depression, anxiety disorder, somatisation disorders, atypical psychosis, chronic pain syndromes and chronic fatigue.⁵² Torture survivors have also suffered a series of adverse social consequences, in particular breakdown of marriage, unemployment as well as stigma, isolation and dislocation, especially in cases of disability and displacement.⁵³ ACTV and other doctors have developed their capacity to document torture in the course of the last decade, and Uganda is currently one of the countries in which domestic and international organisations collaborate through training and other initiatives to enhance the capacity of doctors to document torture in line with internationally recognised standards, under the

⁴⁷ FHRI, *Deprivation of the Right to Life, Liberty and Security of Person in Uganda*, 2006, supra, pp.51,52.

⁴⁸ <http://www.refugeelawproject.org/resources/legalres/refugeesact.pdf>.

⁴⁹ See comments by the Refugee Law Project on the new Act, at www.refugeelawproject.org.

⁵⁰ The Committee against Torture expressed its concern at: “The absence of universal jurisdiction for acts of torture in Ugandan law”, in Conclusions and recommendations of the Committee against Torture: Uganda, UN Doc. CAT/C/CR/34/UGA, 21 June 2005, para 5 (c).

⁵¹ Interview, Kampala, February 2007.

⁵² According to Seggane Musisi, E. Kinyanda, R. Mayengo-Kiziri and H. Liebling, *Post-Traumatic Torture Disorders in Uganda: A 3-Year Retrospective Study of Patient Records at a Specialised Torture Treatment Centre in Kampala, Uganda*, 1999.²⁷ Most of the torture survivors developed various psychological disorders including chronic (and complex) posttraumatic stress disorder (75.4%), depression (28%), anxiety disorders (17%), somatoform disorders (32%) and chronic pain disorders/syndromes 82%. A number of patients also had physical sequelae of torture including fractures (43.5%) hernias (7.7%) and sexually transmitted diseases (60%) contracted through rape.²⁷

⁵³ See *ibid.* and ACTV, Annual Report, 2004, pp.22 et seq.

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guise of the International Rehabilitation Council for Torture Victims.⁵⁴

Torture survivors met by REDRESS in Uganda reported a series of repercussions of torture adversely impacting on their ability to lead a “normal” life:

- **Physical condition:** sexually impotent or no libido; weak; cannot lift heavy objects; loss of memory; lack of sleep.
- **Mental impact:** bad-tempered; always worried and easily scared; life has been shortened; disabled; scared to go out at night because might be arrested again; feel sick and worried because never told why was believed to have committed a crime; lack of energy; name in press when arrested but not when released; fear of re-arrest.
- **Incapacity to earn a living:** loss of property; lack of financial security as a result of injuries and unable to earn as before; lack of capital to get back on feet; deterioration of life.
- **Social isolation:** feel people know what happened to them but do not care; feel separated from their families; loss of employment because of what happened; feel they are outsiders stigmatised in village and don't fit in; still scared; avoid noisy places and meetings; isolated; would like to live where not known; do not feel free in public places.

IV. BARRIERS TO JUSTICE FACING TORTURE VICTIMS

This chapter seeks to identify the barriers that victims of torture face in accessing justice. It provides an overview of the main obstacles pointed out by victims, civil society, UCHR and to some extent acknowledged by the Government. These obstacles consist of gaps in the legal framework and shortcomings in the work of bodies tasked with responding to human rights violations. This is both in relation to investigations and prosecutions as well as other forms of reparation, in particular compensation. Having identified and

contextualised the obstacles, responses by the Government and civil society are assessed with a view to identifying openings and challenges ahead, and, in particular, to developing strategies on how best to overcome existing barriers.

1. *Victims needs and wants*

Victims of torture have a right to reparation, both as a matter of international law⁵⁵ and under Ugandan law although the latter is not explicit and has shortcomings.⁵⁶ It is widely recognised that reparation should be victim-oriented.⁵⁷ REDRESS asked a group of torture survivors who are clients of ACTV in Kampala what was most important to them and what their wants and needs were. It became clear that most survivors lack financial security as a result of injuries because they commonly do not have the necessary capital and/or are unable to earn as before. All survivors stressed the need for compensation, treatment and justice. They emphasised that the perpetrators of torture ought to be punished, and criticised the prevailing impunity. Survivors expressed serious reservations about apologies if not accompanied by accountability and compensation. Legal help and social and economic rehabilitation were equally mentioned as crucial means that would help them to address or even overcome some of their difficulties.

⁵⁴ See <http://www.irct.org/Default.aspx?ID=48>.

⁵⁵ See in particular Article 14 of the UN Convention against Torture and 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 (Basic Principles), General Assembly (2005), UN Doc. A/RES/60/147.

⁵⁶ See REDRESS, *Action against Torture: A Practical Guide to the Istanbul Protocol for Lawyers in Uganda*, August 2004, part C. The Manual is available online here: <http://www.redress.org/publications/National-adaptation-Uganda-legal-material.pdf>.

⁵⁷ See Parts V – X of the Basic Principles.

2. Key barriers in Uganda's legal framework on the prohibition of torture and remedies for torture survivors

Uganda is a state party to the key international human rights treaties on the prohibition of torture, namely the UNCAT,⁵⁸ the ICCPR⁵⁹ and the ACHPR.⁶⁰ Article 24 of the 1995 Constitution guarantees that "No person shall be subjected to any form of torture, cruel, inhuman or degrading treatment or punishment," which Article 44 recognises as a non-derogable right. Article 50 stipulates a constitutional right to redress for fundamental rights violations.⁶¹ Victims may have recourse to Ugandan courts (consisting of the Supreme Court, the Court of Appeal, the High Court and subordinate courts, namely Magistrates Courts and Local Council Courts), or to the Ugandan Human Rights Commission.

However, the legal framework pertaining to the prohibition of torture is characterised by significant gaps in legislation. The fundamental rights guaranteed in the 1995 Constitution are with few exceptions not matched by corresponding legislation to give practical effect to such rights. The same applies to international human rights treaties to which Uganda has become a party; no implementing legislation has been enacted to

give effect to the UNCAT, the ICCPR or the ACHPR.⁶²

One of the main shortcomings is the absence of a criminal offence of torture that applies to all law-enforcement personnel. At present, it is only the Anti-Terrorism Act of 2002 that contains a specific offence of torture carrying a punishment of up to five years imprisonment or a fine, or both. It is, of limited scope, however, as it only applies to authorised officers engaged in anti-terrorism operations.⁶³

There can be no criminal investigations or prosecutions for the crime of torture as such, a problem widely acknowledged by various government bodies and authorities, including the DPP.⁶⁴ Ordinary offences that may be applied to perpetrators of torture in lieu of an offence of torture itself fail to capture the specific nature of torture as a deliberate crime against the integrity of a person committed with the active involvement of officials. There are no adequate offences covering forms of mental torture, and the punishment for offences that can be applied in relevant cases is not proportional to the gravity of torture.⁶⁵ Most significantly, the lack of an offence of torture contributes to limited awareness of its criminal nature, and fosters impunity. Similar considerations apply to administrative regulations and the UPDF Act.⁶⁶ Although the latter contains criminal offences for various forms of ill-treatment carrying a maximum punishment of five to seven years depending on the seriousness of the case, it fails to specify and cover several forms of torture. The inadequate enforcement of existing provisions, which is examined in greater detail

⁵⁸ Accession 3 November 1986.

⁵⁹ Accession 21 June 1995.

⁶⁰ Ratified 10 May 1986.

⁶¹ "(1) Any person who claims that a fundamental or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a rights and competent court for redress which may include compensation. (2) Any person or organisation may bring an action against the violation of another person's or group's human rights. (3) Any person aggrieved by any decision of the court may appeal to the appropriate court. (4) Parliament shall make laws for the enforcement of the rights and freedoms under this Chapter."

⁶² See Conclusions and recommendations of the Committee against Torture: Uganda, UN Doc. CAT/C/CR/34/UGA, 21 June 2005, para 5; Concluding observations of the Human Rights Committee: Uganda, UN Doc. CCPR/CO/80/UGA, 4 May 2004, para 6.

⁶³ Section 21(e) Anti-Terrorism Act 2002.

⁶⁴ Interviews, Kampala, December 2006.

⁶⁵ REDRESS, *Action against Torture: A Practical Guide to the Istanbul Protocol for Lawyers in Uganda*, August 2004, pp.8-9.

⁶⁶ UHRC, *7th Annual Report*, 2004 pp. 68-69.

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below, completes a situation that frequently results in impunity.

The UHRC applies a broad definition of torture in its work.⁶⁷ However, although its role is important in establishing a record of torture and in providing some form of reparation to victims, the UHRC does not undertake criminal investigations and has no powers to prosecute and punish anyone responsible for torture. Effectively, this means that there is no independent body responsible for criminal investigations of torture cases or even to monitor that such investigations are conducted according to international standards. Moreover, there are no provisions obliging the police or the DPP to consider seriously the UHRC's recommendations to investigate and prosecute named individuals or to initiate such proceedings following rulings by the UHRC Tribunal.

There are a series of additional shortcomings in Uganda's laws relating to remedies for torture victims that have been pointed out by international human rights treaty bodies, the UHRC, and Ugandan civil society.⁶⁸ The following are significant legal barriers to victims' right to access justice:

- **Lack of victim and witness protection:** there is no law providing for effective victim and witness protection, or a programme to this end. Victims and

witnesses continue to face intimidation and harassment, which impacts adversely on the ability to pursue cases.

- There is **no explicit right to reparation** for torture that would facilitate access to justice for victims, in particular by using the definition of torture, providing for simplified procedures taking international standards into account, and stipulating adequate forms of reparation. Victims may bring claims before the courts but there are a series of legal obstacles, including short statutes of limitations of two years for bringing cases against the state, excluding recourse to the courts for a large number of torture victims. While cases can still be brought before the UHRC (there is a 5 year limitation period which can be extended), this does not apply to victims of torture pre-1995 who are left without access to justice, contrary to international standards. A further obstacle is that there is no state system providing legal aid for pursuing claims before the courts. Although court fees can be waived for "paupers", access to the courts is beyond the means of most torture survivors.
- The current system relies heavily on the **UHRC** as the main body tasked with providing some form of reparation to victims of human rights violations, but its effectiveness is severely hampered by its **limited powers**, including its **lack of enforcement powers**, which are analysed in more detail below.

3. Practical barriers adversely affecting victims' access to justice

Ugandan torture victims face a series of barriers that tend to compound problems of access to justice faced by most Ugandans.

⁶⁷ See UHRC, *8th Annual Report*, 2005 pp.51-52. See also Commissioner Aliro Omara in the case of *Fred Tumuramye v Gerald Bwete & Others* (UHRC 264/99): "Article 1 CAT while defining torture, recognises that nation legislations may have a wider definition than is contained in CAT. In my view, the provisions of the Uganda Constitution cited above recognise that torture, cruel, inhumane and degrading treatment or punishment can be committed by anybody. The act need not to be with official sanction, instigation, complicity or acquiescence. Private individuals in their private capacity can legally commit acts of torture, cruel, inhuman and degrading treatment or punishment."

⁶⁸ See Conclusions and recommendations of the Committee against Torture: Uganda, UN Doc. CAT/C/CR/34/UGA, 21 June 2005; Concluding observations of the Human Rights Committee: Uganda. UN Doc. CCPR/CO/80/UGA, 4 May 2004; UHRC, *7th Annual Report*, 2004 pp. 56, 58; Foundation for Human Rights Initiative *Shadow Report of Uganda's State Party Report to the African Commission on Human and Peoples' Rights*, 40th Ordinary Session of the ACHPR, Banjul, The Gambia, November 2006, pp. 6-8.

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3.1. Public perceptions of torture survivors

Public perceptions of torture survivors are either indifferent or hostile. The lack of empathy and solidarity is not only immensely frustrating for torture survivors; it also influences the attitudes of anyone they come in touch with, including members of official institutions, and are prone to lessen the impetus for legal or institutional reforms that may benefit torture survivors. These factors stack the odds against torture survivors obtaining justice for their suffering at several levels.

A torture survivor interviewed by REDRESS recounted the following experiences:

“The general public do not care about torture survivors; they are aware that torture happens but they are not interested; they think that if you have been tortured then you must be a criminal; they think that you must have been released because you bribed your way out; so you don’t get a chance to explain that you were wrongly tortured and that you are innocent – you are not taken seriously, but in effect blamed for what happened to you; people don’t think it will happen to them, and as long as they are okay they don’t care about other people’s problems; the issue of torture is not important to the general public; also, victims don’t want to talk about it and neither do other people because they are afraid they will be reported and victimised.”

3.2. Factors impeding access to justice for torture survivors

3.2.1. Overview

As recognised by the Justice Law and Order Sector (JLOS),⁶⁹ “The majority of people in Uganda are poor [38% in 2003 according to JLOS] and lack adequate access to justice

⁶⁹ www.jlos.go.ug JLOS is composed of the Ministry of Justice and Constitutional Affairs; Ministry of Internal Affairs; The Judiciary; The Uganda Prison Service; The Uganda Police Force; The Directorate of Public Prosecutions; The Judicial Services Commission; The Uganda Law Reform Commission; Ministry of Gender Labour and Social Development - Probation Services; Ministry of Local Government - Local Council Courts.

among other social services.”⁷⁰ It is in particular “poor and marginalised groups [juveniles, women, people in conflict affected or remote areas, HIV/AIDS patients] [that] still bear unreasonable burdens taking the form of physical distance to JLOS institutions, costs of access, language and attitudinal barriers and existence of conflict situations.”⁷¹ Poverty, gender inequality, conflict, the lack of rights awareness among ethnic minorities and corruption are some of the key factors identified as impeding effective access to justice.⁷²

Many torture survivors belong to the poor and marginalised groups and therefore experience the “unreasonable burdens” pointed out by the JLOS in accessing courts or public institutions. The nature of torture compounds the generic difficulties of access to justice, in particular:

- there is a general level of tolerance of torture and concomitant lack of awareness of victims’ rights in torture cases;
- depending on their background, e.g. known political opponents, suspected LRA members or those accused of violent crimes, torture survivors are likely to be treated with a great deal of hostility when dealing with public institutions;
- forms of torture, in particular rape and sexual violence, carry social stigma;
- victims and their relatives face potential harassment when taking legal action;
- there is a need to pay for lawyers who would ideally be specialists having expertise and experience in dealing with torture cases and survivors to reduce the likelihood of choosing ineffectual remedies or re-traumatising victims.

3.2.2. Shortcomings in infrastructure and services of institutions

A Criminal Justice Baseline Survey, commissioned by JLOS, found serious deficiencies in the accessibility of services in terms of “proximity of institutions to the

⁷⁰ JLOS, *Strategic Investment Plan*, Final Draft, 2006 (on file with REDRESS), p.21.

⁷¹ *Ibid.*, p.26.

⁷² *Ibid.*, in particular p.4.

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users, staffing levels and, for the police, the number and regional distribution of vehicles.”⁷³ It found that the resource allocation for the Uganda Police Force and the Directorate for Public Prosecution is heavily skewed towards the Central Region (Kampala) with fewest resources allocated to the North. The regional distribution of resources for the Courts of Judicature was found to be more equitable although there were only a few state attorneys, high court judges and chief magistrates outside of Kampala. However, the court system is overburdened and understaffed, resulting in a backlog of cases and serious delays of several years in processing cases. The survey also found that the Uganda Prison Service is “grossly understaffed”, resulting in a high ratio of prisoners to warden of 9:2 in 2000, and that the prison population (15,313 in 2000) is “approximately twice the approved number.”⁷⁴ Interlocutors from the police, DPP, prison service and the judiciary have all pointed out persistent systemic problems in the existing infrastructure. In addition to the lack of resources and capacity, corruption is repeatedly mentioned as a serious concern undermining the effectiveness of complaints procedures and access to justice on the one hand and the capacity of the respective institution to deliver justice on the other. These factors have resulted in poor perceptions of JLOS institutions, with many people, including torture survivors, preferring not to have any contact with such institutions and either seeking informal solutions or not taking any action at all in cases of violations of their rights.

3.2.3. Knowledge of rights

The level of rights awareness and mistaken beliefs, such as that torture is a normal element of law-enforcement procedures, differs considerably between groups. Political

activists are more likely to be aware of their rights and can draw on a network of contacts in a position to provide advice. Many of those accused of common crimes, on the other hand, tend to have less awareness of their rights. The UHRC, government bodies and civil society organisations have carried out general rights awareness campaigns. The Police Human Rights and Complaints Desk has produced leaflets and posters informing detainees about their rights, which are displayed at some police stations. The Judicial Services Commission is producing a handbook for citizens on their rights. However, most of these campaigns have focused on Kampala and their impact has not been fully evaluated.

Torture survivors reacted with disbelief to the question whether, and if so, what, the authorities have done to inform them about their rights while in detention, such as seeing a lawyer, obtaining medical treatment or challenging detention before a court. This response indicates that law-enforcement personnel routinely ignore the law and fail to inform detainees or others of their rights. Torture survivors have had remarkably similar experiences: none had been informed about their rights at the time of arrest and most stated that they had no rights in remand prisons, let alone in ‘safe houses’. Those arrested are not granted access to a doctor or a lawyer following arrest and will only find out more about the case against them when taken to court.

There is little evidence of campaigns by public institutions specifically targeting those most at risk of torture, or those that have been tortured, informing them of their right to complain and to seek reparation, and how to exercise it. Torture survivors have mainly relied on NGOs such as ACTV to provide support but they feel that they have not received adequate information or support from official bodies, including the UHRC.

⁷³ Ibid., p. 76.

⁷⁴ Ibid., p. 81.

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3.2.4. Factors complicating access to justice for women who have been tortured

In 2002, JLOS conducted a study on gender and justice.⁷⁵ The study concluded that there is an array of barriers to justice for women as compared to men. With regards to the administration of law, the study found that:

- Most women have neither the time nor the money to make it to the justice delivery agencies
- Most persons in the justice delivery agencies are not aware of gender issues, which works to the detriment of women
- Technical and support staff in such agencies have gender biases and stereotypes that discriminate against women
- Women tend not to have confidence in the system because the effects of poverty and gender oppression leave women more powerless and less confident
- Women are more illiterate than men and have limited access to finances for engaging lawyers
- Women are more vulnerable during situations of conflict and insecurity.⁷⁶

In addition to the marginalisation due to male bias, poverty, illiteracy and a lack of knowledge of how to use the system, women are less likely to take legal action, particularly in cases of sexual violence due to stigmatisation and the insensitive handling of cases by the predominantly male officials and judges. The traumatic experiences of torture, mostly committed by men, are prone to exacerbate the lack of confidence in the system and militate against seeking recourse.

3.2.5. Lack of protection of torture survivors, relatives, lawyers and human rights defenders

The lack of protection that victims face is a serious impediment to access to justice. There is no legislation or programme in place providing protective measures for victims or

witnesses at risk of threats and harassment as a result of seeking justice against perpetrators.⁷⁷

Detainees and prisoners, particularly in ‘safe-houses’ and their relatives or friends are especially at risk if they complain of torture. Although the right to habeas corpus is granted and has been upheld in courts, detainees are often not in a position to exercise their rights and challenge the legality of detention.⁷⁸ Where lawyers have sought habeas corpus, several institutions have ignored court orders to produce the body⁷⁹ and have instead tried individuals contrary to judicial decisions finding that such trials were unconstitutional.⁸⁰ Though some rudimentary monitoring mechanisms are in place in other detention facilities by organs like the UHRC, they provide insufficient protection against any retaliation by the perpetrators or those close to them.

Human rights defenders interviewed in the course of the *Baseline Study* recounted several incidents of harassments of complainants and human rights defenders, such as verbal intimidation, being followed by persons in unmarked cars, and attempted arrests. Authorities are also reported to threaten those released with re-arrest in case of complaints of torture; to this end, rather than risking acquittals, detainees are released with the case file kept open so that charges can be revived anytime. The climate of fear generated by these practices is exacerbated where the perpetrators belong to one of the security organs operating with virtual impunity, which increases the likelihood that threats are actually carried out.

⁷⁵ The Justice, Law and Order Sector Programme Study on Gender and Access to Justice <http://www.jlos.go.ug/pdfs/Executive%20Summary%20Gender%20Study%202002.pdf>.

⁷⁶ Ibid. p.5.

⁷⁷ See Conclusions and recommendations of the Committee against Torture: Uganda, UN Doc. CAT/C/CR/34/UGA, 21 June 2005, para 6 (g).

⁷⁸ See *Okumu and Okello v Attorney General*, op. cit.

⁷⁹ *Tumushabe v Attorney General* Misc Appl. No 63 of 2003.

⁸⁰ FHRI, *Deprivation of the Right to Life, Liberty and Security of Person in Uganda*, 2006, supra, pp.64,65.

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3.2.6. Legal representation for torture survivors

While still in detention, many victims are not able to access a lawyer. Though there is a right to see a lawyer, detainees are not informed about this right and most cannot afford the service of one. Moreover, those detainees kept in 'safe-houses' are routinely denied access to a lawyer.⁸¹ Relatives or friends of detainees who have asked lawyers or human rights defenders to assist have faced threats, as have the lawyers and human rights defenders themselves.

Bringing a case before a court is beyond the means of most Ugandans. A claim can be brought before a chief magistrate for up to 5 million UGS (around \$2,860), and for up to 2 million UGS before a grade 1 magistrate, but all torture claims would attract greater amounts because of the seriousness. A lawyer would thus normally take a torture case to the High Court, which has unlimited jurisdiction as far as quantum goes. Court fees are on a sliding scale, so on a 50 million UGS claim the costs are less than a 100 million UGS claim.⁸² The main cost factor is the lawyer's fees. Most lawyers would demand a 1 million UGS (around \$572) deposit in a country where most people struggle to earn more than \$50 a month; the lawyers' charges are 50,000 UGS per half an hour in court, up to a maximum of 300,000 UGS (around \$172) if in court for a full day. Costs are open-ended depending on the case; an average case would be about 5 million UGS, with the cost of a possible appeal amounting to around another 3 million UGS.

Legal aid is extremely limited. The state provides legal aid only in capital cases.⁸³ There

is neither a right nor a regulatory framework for legal aid in other proceedings.⁸⁴ Financial assistance may be available through the Legal Aid Project run by the Law Society that deals with criminal and civil cases. However, the Legal Aid Project "has offices only in a limited number of districts and utilises the services only of a limited number of lawyers."⁸⁵ According to a recently undertaken Legal Aid Baseline Survey, there are no primary legal aid services in 90% of Ugandan districts.⁸⁶ The Legal Aid Project concentrates on indigent persons and would usually refer a torture case to the UHRC rather than taking it themselves to the civil courts. There is a perception that the Legal Aid Project, being under the Law Society of Uganda which is a statutory body, tends to avoid becoming involved in 'political' cases in the broad sense, i.e. confrontational cases of abuse of power. The Government acknowledges that the current legal aid system is grossly inadequate, with most legal aid being provided through NGOs and others funded by donors.

Lawyers have acted pro bono in landmark cases, such as challenging the legality of the death penalty, and in cases seeking the release of prisoners. However, only few lawyers, mainly those working for NGOs, offer services to torture survivors who want to bring claims before the courts. The majority of victims cannot afford to take their cases to court. Against this background, most victims tend to file complaints with the UHRC, which is free of charge.⁸⁷

4. Practice of torture survivors' access to justice

⁸¹ See *Okumu and Okello v Attorney General* op. cit.

⁸² On a 50 million UGS claim the court fees are 148,000 UGS; on a 100 million UGS claim they are twice that: see The Commercial Court Users Guide page 46.

⁸³ Article 28 (3) (e) of the Constitution of the Republic of Uganda, 1995.

⁸⁴ See Byenkya Tito Kugonza, *An overview of Access to Justice and the Legal Aid Situation in Uganda*, May 2006.

⁸⁵ JLOS, *Baseline Study on Criminal Justice*, Final Report 2002, p.83.

⁸⁶ FHRI, *Deprivation of the Right to Life, Liberty and Security of Person in Uganda*, 2006, supra, p.48.

⁸⁷ See more on the role and capacity of lawyers and NGOs infra, at VII. A.

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4.1. Complaints procedures: Investigation and prosecution of perpetrators of torture

4.1.1. The Legal Framework

Because there is no specific criminal offence of torture in Ugandan criminal law, acts of torture can only be prosecuted as common offences such as assault or inflicting grievous bodily harm. A victim or his/her lawyer can lodge complaints alleging torture to the police through the internal police complaints mechanism, or to the Inspector General of Police, through a petition to the High Court or through a complaint to the UHRC.⁸⁸ Victims have a right to bring a private prosecution but effectively only with the consent of the DPP.

The police and the courts (Magistrates Courts and the High Court) are competent to open criminal investigations into torture allegations. Investigations are generally undertaken by the Ugandan Police Force, through its Criminal Investigation Division (CID).⁸⁹ The DPP controls all criminal prosecutions on behalf of the State, directing the police to undertake criminal investigations and instituting criminal proceedings other than in courts martial.⁹⁰

The UHRC is also mandated to investigate allegations of torture.⁹¹ It is barred from considering cases that are before a competent court. It can exercise the powers of a court with investigations being carried out by the

local human rights officer. The UHRC can only recommend prosecutions to the DPP as it has no power to prosecute itself.

The High Court may order the police to carry out a full investigation to ensure protection of the law. While other courts in the Commonwealth have made decisions along these lines, there are no precedents in Uganda to date.

In case of prosecutions by the DPP, cases will be heard by the Magistrates Courts or the High Courts, depending on which ordinary crime the accused has been charged with in lieu of an offence of torture. UPDF members are subject to prosecutions before courts martial.⁹²

4.1.2. Practical Application

- UHRC

The UHRC is the only body that maintains and publishes statistics detailing the complaints of torture it receives.⁹³ It uses an expanded version of the definition of Article 1 of the Convention Against Torture, including acts committed by private individuals that would not necessarily be recognised as torture within the meaning given to the term in the CAT. It specifies the number of complaints of torture, the office of the UHRC where the complaint was lodged (head office or regional offices), the state organs accused of torture, and the outcome of cases before the UHRC Tribunal. The statistics provide no information on the gender, age or professional status of complainants in torture cases (the categorisation of complainants by gender provided by UHRC concerns all complaints without giving a break-down as to the

⁸⁸ REDRESS, *Action against Torture A Practical Guide to the Istanbul Protocol for Lawyers in Uganda*, August 2004, pp. 11,12.

⁸⁹The Criminal Procedure Code Act, Chapter 116 of the Laws of Uganda, regulates the procedures followed in criminal cases. The investigation process is triggered when a complaint or report of the alleged crime is made to the police. The complaint may be made either orally or in writing. The complaint may be lodged by the victim or another person, such as their lawyer or relative. This report is known as "First Information" and it is normally recorded on Police Form 86. The crime report is then passed on to the CID officer in charge of a particular police station who will then decide whether or not a case file should be opened and on what charges.

⁹⁰ See Article 120 of the Constitution. For more information on the functions of the Director of Public Prosecutions, see the website of the government of Uganda, available online at www.dpp.go.ug.

⁹¹ See Article 51 (1) of the Constitution of the Republic of Uganda of 1995.

⁹² The system comprises Unit Disciplinary Committee, Divisional Court Martial, (or in exceptional circumstances Field Court Martial), General Court Martial and Court Martial Appeal Court, see sections 194-204 of the UPDF Act, 2005.

⁹³ See UHRC, *8th Annual Report*, 2005 pp.52-58.

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substance of the complaint). There is also no information on the methods of torture alleged.

Since 1997, the number of complaints of torture has risen from 30 to 488 in 2004, dropping slightly to 256 in 2005, representing around 20% of the overall number of complaints before the Commission.⁹⁴

Any complaint relating to torture is recorded in a specific form and a human rights officer of the UHRC is assigned to the case. The officer then writes a letter to the perpetrator/station requesting a statement; the complainant is asked to identify witnesses where possible. The complainant is automatically sent to ACTV for the preparation of a medico-legal report (unless the complainant has already undergone such an examination at ACTV or elsewhere), as the Commission has no in-house capacity in this respect. The UHRC has identified a series of obstacles in its investigatory work, namely the difficulty in locating witnesses/victims, lack of cooperation from Government institutions, in particular denial of access to military detention facilities, ignorance of the population on the powers of the Commission, lack of cooperation from eyewitnesses, insecurity in conflict-related areas and lack of logistics. The limited cooperation by government institutions coupled with inadequate resources to document violations, including medical examinations, has resulted in delays and incomplete investigations.⁹⁵

Where the legal department of the UHRC finds on the basis of the available information that a violation has occurred, the UHRC Tribunal will hear the case. The UHRC used to include specific recommendations to prosecute the perpetrators of torture but has abandoned this practice as the police and other law enforcement agencies effectively

have refused to comply. In cases of ill-treatment, the UHRC may issue caution letters against individual officers which will go on record. Holding an individual perpetrator liable before the Tribunal may also result in disciplinary proceedings although this seems to be rare. In its recent practice, the UHRC confines itself to making general recommendations on the need to combat impunity and engages with the various law-enforcement agencies to this end. It therefore plays a monitoring role but has been of limited relevance in ensuring that victims' right to complain of torture is followed up with a full investigation and prosecutions where sufficient evidence is found. Discussions with various agencies in the course of the field research were inconclusive as to the procedure followed by the police or DPP in cases where the UHRC either identifies perpetrators or recommends prosecution. No formal procedure or informal understanding appears to be in place according to which the police or DPP should carry out full investigations and prosecutions in such cases.

• Ugandan Police Force

The police in Uganda have instituted a procedure called the Human Rights and Public Complaints Management System. This procedure enables members of the public to report complaints about the conduct of officers to the police management. This system is established in all police units.⁹⁶ Complaints can be lodged with the station officer and written complaints can be sent to the Human Rights Complaints Desk, which has professional lawyers. In its initial report to the UN Human Rights Committee, the Ugandan Government submitted data on the number of complaints received by the Human Rights and Public Complaints Management System (a total of 1917 complaints between

⁹⁴ Ibid., p.52.

⁹⁵ See in this regard Isaac Bakayana, *From Protection to Violation? Analyzing the Right to a Speedy Trial at the Uganda Human Rights Commission*, HURIPPEC Working Paper No.2, November 2006.

⁹⁶ UN Human Rights Committee, Initial Report of Uganda under Article 40 of the ICCPR, UN Doc. CCPR/C/UGA/2003/1, 25 February 2003.

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1998 and 2001).⁹⁷ There is also a hotline set up by the Inspector General of Police. However, a series of problems remain for survivors wanting to complain of torture to the police. In addition to the factors identified above, in particular intimidation, there are a number of generic obstacles. The police have a poor reputation for dealing with complaints. According to public surveys, most people view the police as corrupt and unlikely to take any action without being bribed to do so. This perception testifies to a general lack of trust in the police, with many victims of ordinary crimes refraining from complaining in the first place. This distrust is even more marked in torture cases. Expecting a torture survivor or his or her relative to lodge a complaint at a police station also has a deterrent effect where the alleged perpetrators belong to the police.

No comprehensive information is readily available on the investigations into torture allegations undertaken by the police following complaints or on the results of such investigations. Police do not automatically investigate allegations arising from UHRC rulings ostensibly because of budgetary constraints and limits on what could be done without formal complaints from victims.⁹⁸

The Ugandan Police Force's investigative performance suffers systemic problems, including shortage of staff in several regions, inadequate resources, poor investigation techniques and susceptibility to bribes. The police have undergone generic training on improving its investigation skills although this has not been torture specific.⁹⁹ However, training seems to have been piecemeal and there is no apparent policy of applying relevant standards and techniques in the actual investigation practice. A series of factors

hinder effective investigations of torture allegations. This includes not taking medical evidence in accordance with internationally recognised standards (not least due to the lack of qualified forensic doctors and pathologists), difficulties in identifying perpetrators, lack of accountability of members of ad hoc security agencies, the use of unauthorised detention facilities and the culture of impunity within the army and security agencies. Lawyers and human rights activists interviewed view the lack of will by the police to investigate fellow police officers as the biggest obstacle. They point out that it is usually only in high profile cases with a lot of public attention and pressure that action might be taken to investigate torture cases. However, in some cases no prosecutions have been initiated despite the availability of clear evidence.

Officers can be charged or subjected to a disciplinary process (if a disciplinary process is pending, they are automatically suspended) in police disciplinary court where they can be demoted, fined, cautioned or dismissed but no statistics are available with regards to such measures taken in respect of torture. The Ugandan Police Force has taken disciplinary action against a small number of VCCU personnel, including dismissals or initiating court proceedings.¹⁰⁰ However, only a few investigations have resulted in prosecutions of the alleged perpetrators, resulting in de facto impunity.

- **UPDF**

Both the police and the UHRC, following complaints against UPDF personnel, have experienced difficulties in seeking access to UPDF facilities and personnel, which undermines their ability to undertake effective investigations into allegations of UPDF torture. No official statistics are available to show how many torture related complaints have been lodged by civilians or soldiers

⁹⁷ Ibid.

⁹⁸ Interview, Kampala, December 2006.

⁹⁹ In July 2003, the US Department of Justice undertook a six-month law enforcement project in Uganda. The project was designed to improve the training, infrastructure and investigative skills capacity of the Uganda Police Force Criminal Investigation Division (CID).

¹⁰⁰ UHRC, 7th Annual Report 2004, p.77.

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directly to the UDPF or to local councillors passing complaints on to the local army commander. The UDPF established a human rights desk in 1992, which has been transformed into a human rights department. Investigations are carried out internally. The UDPF has a Special Investigations Branch tasked with investigating human rights violations but little is known about its investigations in torture cases. There are isolated reports of investigations resulting in either disciplinary punishment, in particular as part of UHRC initiated mediation, or prosecutions, or both.¹⁰¹ In some cases, courts martial have convicted and sentenced perpetrators of torture or similar violations¹⁰² but responses often have been grossly inadequate, such as in the Patrick Mamenero case.¹⁰³ In most cases, it is not clear what steps, if any, the army has undertaken, suggesting impunity for the perpetrators.

One of the systemic problems is the lack of record keeping and the fact that the Chief Justice has yet to issue regulations on how courts martial are to be conducted, raising concerns about transparency and fair trial rights, including admissibility of confessions

obtained through torture.¹⁰⁴ The number of prosecutions in torture cases remains small if compared to the overall number of complaints lodged against the UDPF before the UHRC.

• **Prison System**

Prisoners can either lodge complaints within the prison system or complain to UHRC staff or human rights defenders visiting the prison. The Commissioner General of Prisons received 36 complaints of torture in 2004, 12 of which were from the Surboti region.¹⁰⁵ Prison officers are subject to disciplinary punishment for ill-treatment and to prosecution in cases of inflicting grievous bodily harm but few cases go to court. An example recounted by an interlocutor during the field research for this survey was the prosecution of one warder for assaulting a prisoner. However, the case was stopped because the witness could not be found following his release.

• **Directorate of Public Prosecutions**

The DPP is in charge of prosecutions undertaken by any law enforcement personnel. It can and does prosecute perpetrators of human rights violations amounting to crimes but there is no specific policy or special effort toward the prosecution of perpetrators of torture. Investigations and prosecutions commonly only commence where there is a clear complaint with an identified perpetrator, placing a heavy burden on the victim seeking accountability. Although it is acknowledged that it is difficult for victims to identify perpetrators, the DPP appears not to have taken steps to institute investigations irrespective of complaints.¹⁰⁶ There appears to be no consistent or co-ordinated attempt to follow up findings of the UHRC in specific

¹⁰¹ See UHRC, 7th Annual Report 2004 pp. 78-79 and 8th Annual Report, 2005, p. 55.

¹⁰² UHRC, 7th Annual Report, 2004, p.79.

¹⁰³ See Report of the Special Rapporteur on Torture, UN Doc.E/CN.4/2005/62/Add.1, 30 March 2005, para. 1834: "By letter dated 15 July 2004, sent jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur notified the Government that he had received information on Patrick Mamenero Owomugisha, age 25. According to the allegations received, he was arrested on 20 July 2002 from his home in Kabale, near the Rwandan border, with his father, Mzee Denis Mamenero. Patrick Mamenero Owomugisha died a few days later in CMI custody of a "subdural haematoma" caused by a blunt instrument. At the time of his death, he was en route to the military hospital. The certificate of death was signed on 24 July 2002, by a doctor of Mulago Hospital. The CMI admitted that the detainee was hit by a CMI soldier on guard duty on 22 July 2002, but maintained that at the time Patrick Mamenero Owomugisha was trying to escape. The soldier (whose name is known to the Special Rapporteur) was arrested and charged with murder on 22 October 2002 in the UDPF court martial. However, he was granted bail. The CMI paid the Mamenero family about one million Uganda shillings (US \$503) as condolences. The head of CMI faxed a statement that was read at the burial and which claimed that enemies of the Government entered the CMI offices and killed Patrick Mamenero Owomugisha."

¹⁰⁴ FHRI, *Shadow report of Uganda's State Party Report to the African Commission on Human and Peoples' Rights (ACHPR)*, November 2006, p.8.

¹⁰⁵ *Ibid.*, p.80.

¹⁰⁶ Interview, Kampala, December 2006.

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cases, even where a perpetrator has been identified or where an investigation could identify the perpetrator. The fact that the police are investigating themselves in case of police torture and the lack of an independent mechanism is acknowledged as a problem by the DPP; if a pattern of abuse at a particular station is apparent, outside investigators may be brought in but these responses appear to be rather piecemeal.¹⁰⁷

- **Findings**

The current system of complaints and investigations results in widespread impunity for torture. It neither acts as a deterrent against future torture nor ensures justice for those who have been tortured by holding those responsible to account. The police, army and prisons have complaints mechanisms in place but the system is flawed. Investigations are neither transparent nor subject to independent overview, with the very agency whose member is accused of the violation being in charge of investigations. The DPP has not been proactive and has not taken the required steps to investigate and prosecute allegations of torture, being largely reactive and ineffectual in securing prosecutions.

Victims have limited input throughout the process of complaints and investigations, and lack protection. There is a need both for a clear policy and training on handling complaints and conducting investigations in torture cases and for advocacy focusing on strengthening victims' rights throughout the process. A major shortcoming in the overall setup is that the UHRC does not appear to have a policy and practice of recommending prosecutions, and other agencies have no procedure to follow up investigation reports and decisions by the UHRC. This has resulted in a systemic inconsistency. While the UHRC has awarded compensation for torture in a number of cases, individual perpetrators have

with few exceptions not faced any criminal investigation or prosecution (especially in the absence of an individual complaint), leading to incomplete reparation without accountability.

4.2. Remedies for torture survivors seeking compensation and other forms of reparation

4.2.1. The Legal Framework

Judicial remedies

Victims of torture can seek reparation, in particular compensation, before courts, the UHRC or directly from the law-enforcement agencies concerned. Article 50 (1) of the Constitution provides that: "Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation." Article 50 (2) significantly grants broad standing as: "Any person or organisation may bring an action against the violation of another person's or group's human rights." As recognised by the High Court, Article 50 "opens gates to what is called public interest litigation, whereby the persons whose rights are infringed or violated need not share interest in the action with those persons who litigate on their behalf."¹⁰⁸

Cases can be brought for tort before the Magistrates or the High Court, which has awarded monetary damages for fundamental rights violations in cases such as *Joseph Tumushabe v Attorney General*.¹⁰⁹ A victim may also petition the Court of Appeal (which serves as the Constitutional Court), to provide redress.¹¹⁰

¹⁰⁸ *Joseph Tumushabe v Attorney General*, Miscellaneous Application No.63 of 2003.

¹⁰⁹ *Ibid.*

¹¹⁰ Article 137(4) of the Constitution provides that: "Where upon determination of the petition under clause (3) of this article the Constitutional Court considers that there is need for redress in addition to the declaration sought, the Constitutional Court may-(a) grant an order of redress; or refer the matter to the High Court to

¹⁰⁷ Interview, Kampala, December 2006.

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Tort claims can be brought against public officials alleged to have committed acts of torture as well as against the State which is vicariously liable. Under section 3 of the Government Proceedings Act, a person suffering damage by a person who is an employee of the Government can institute proceedings against the Attorney General. The courts can award monetary damages in case of a violation.

Victims may also obtain reparation through the criminal courts. Most criminal cases, including those involving acts of torture, are tried in the Magistrates Courts. In addition to any other punishment, the court has discretion to order a convicted person to pay compensation if it appears on the evidence that the aggrieved party has suffered material loss, which would be substantially recoverable in a civil suit.¹¹¹

There are also local council courts that serve as alternative dispute mechanisms to deal with local minor disputes but are, on the face of it, not competent to deal with torture cases.

Non- Judicial remedies

Torture victims can bring complaints before the UHRC.¹¹² The UHRC may also initiate investigations on its own motion. The Commission investigates cases, having the powers of a court, including the powers to summon persons. If the Commission finds that there is sufficient evidence, it will seek to mediate between the parties and, if this fails, cases are heard by the UHRC Tribunal. The complainant is assisted or represented by a

investigate and determine the appropriate redress. (b) refer the matter to the High Court to investigate and determine the Appropriate”.

Article 137 (3) (b) of the Constitution provides that “A person who alleges that any act or omission by any person or authority is inconsistent with or in contravention of a provision of this Constitution, may petition the Constitutional Court for a declaration to that effect, and for redress where appropriate”.

¹¹¹ Section 209 of the Magistrates Court Act, 2000.

¹¹² Article 52 (1) (a) of the Constitution of the Republic of Uganda of 1995.

staff member of the UHRC during Tribunal proceedings, with an officer from the Attorney-General’s office representing the state. One of the commissioners, who must be a judge, hears the case and has the power to order any legal remedy, including compensation. The UHRC has developed principles that guide its compensation awards, drawing on international standards.¹¹³ Compensation in cases of state liability is awarded against the Attorney-General but not the individual perpetrator. The UHRC has no powers of enforcing its decisions.

The law-enforcement agencies and the army may and have provided compensation to some victims of torture and other violations. This practice is not based on an established system but done on an ad-hoc basis.¹¹⁴ There are no statistics on the overall number of claims brought by victims before these various bodies.

4.2.2. Practical application

- UHRC

The UHRC has been by far the most important body to award compensation. An increasing number of torture survivors bring claims before the Commission. From 1999-2005, the UHRC has awarded a total of around 775 million UGS (\$441,595.442) in 63 cases. Awards made in 2005 ranged from 900,000 (\$517) to 33,578,000 (\$19,297). The success rate before the UHRC tribunal is around 75%.¹¹⁵

¹¹³ See UHRC, *7th Annual Report*, 2004, pp. 29-31.

¹¹⁴ *Ibid.*, p. 79. REDRESS was told of a soldier seriously assaulted by an officer (broken ribs etc), and who complained to the UPDF HR Dept; a meeting was called with both parties and the officer’s commanding officer present; the assault was admitted but the perpetrator said he had been provoked; it was explained that he couldn’t take things into his own hands and that he ought to have used the disciplinary machinery; he agreed to pay the victim 5 million UGS compensation, which was deducted from his salary in two equal instalments; he was also cautioned and made to go for counselling; the soldier was transferred at his wish to avoid any harassment.

¹¹⁵ UHRC, *8th Annual Report*, 2005, p.56.

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There is increased awareness of the UHRC amongst Ugandan society, in particular in Kampala. The UHRC has undertaken a range of broad outreach activities to raise awareness of the commission and its work.¹¹⁶ However, there is still a discrepancy between the overall number of reported torture cases and the number of those who complain to the UHRC. Torture survivors have in this regard complained about the lack of specific outreach activities of the Commission.¹¹⁷

The UHRC is experiencing problems of capacity and resources, a shortage of staff, lack of comprehensive regional coverage and a series of obstacles already identified above, resulting in severe delays, with some cases taking more than five years to reach a conclusion, as well as a backlog of cases. One of the responses of the UHRC is to have a Kampala-based registrar to facilitate the work of the Tribunal(s) and make it more efficient; this will function like court registrars, to facilitate follow-ups, warrants of arrest, subpoenas and the like - effectively, all the procedural aspects.

Human rights defenders interviewed by REDRESS criticised the UHRC for the alleged practice of forcing complainants into mediation and to accept lesser amounts than those which would have been awarded by the Tribunal. It is not clear how widespread this practice is but according to the UHRC most of the 81 cases mediated in 2005 concerned maintenance and education but not torture.¹¹⁸ Moreover, it appears that complainants are generally more willing to settle than the Attorney-General representing the state.¹¹⁹ While mediation can entail an apology, which serves a form of justice for the victim, and an element of deterrence if accompanied by sanctions, it should not be imposed, not least because mediation does not result in a quasi-

judicial ruling or public acknowledgment of responsibility.

The UHRC acknowledges some serious systemic shortcomings. Individual perpetrators are not held personally responsible, which lessens the impact and deterrent effect of awards. Moreover, compensation awards are in most cases not paid out by the Attorney-General.¹²⁰ This is due to the lack of clarity of the status of awards and non-compliance by the Attorney-General's department. Both parties to proceedings before the UHRC tribunal have the right to lodge appeals to the High Court. A-G lawyers often indicate that they will appeal and file a notice of appeal without proceeding subsequently, effectively using a delaying tactic. While this means that awards become final, complainants are often under the impression that a proper appeal is pending. The UHRC does not operate a system of properly following up its decisions, of monitoring appeals and of liaising with complaints, resulting in confusion and frustration on the part of complainants who are left unaware of the final outcome of their case. Even where the award is final and no appeal pending, the Attorney-General's office has frequently failed to pay out awards (around 90% of awards remain unpaid). A total of around one billion UGS is outstanding in unpaid compensation.¹²¹

The Attorney General's office apparently has not budgeted for the payment of awards. Instead, it has complained about the size of compensation awards but the UHRC to date has resisted calls to lower awards. The Government has argued that it has no money to pay the awards but this is widely seen as reflecting a lack of political will. It is only in

¹¹⁶ Ibid., pp. 22-29.

¹¹⁷ Interviews, Kampala, December 2006.

¹¹⁸ UHRC, *8th Annual Report*, 2005, p.67.

¹¹⁹ Interview, Kampala, February 2007.

¹²⁰The UN Committee against Torture expressed concern "about the frequent lack of implementation by the State party [Uganda] of the [UHRC] Commission's decisions." See Conclusions and recommendations of the Committee against Torture: Uganda, UN Doc. CAT/C/CR/34/UGA, 21 June 2005, para. 8.

¹²¹ Interviews, Kampala, December 2006 and February 2007.

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cases doggedly pursued by complainants that the Attorney-General's office has at times paid compensation. The UHRC has repeatedly lamented this practice of non-compliance but has neither a fully developed system of follow-up nor the powers to enforce decisions. Individual complainants may arguably take a case before the courts to force the Attorney-General to comply with the decision of the UHRC tribunal but this strategy appears not to have been tried to date. The outcome of this practice is that awards do not constitute an effective deterrent against individually responsible perpetrators who are forced to pay for their wrongdoing, and that the state fails to assume ultimate responsibility by paying out the awards, effectively leaving torture survivors empty-handed.

Victims asked about their perceptions and experience with the UHRC expressed considerable discontent relating to their treatment at the hands of UHRC staff, procedural shortcomings, and compensation practice, including lack of payments. Specific issues mentioned include:

- **Treatment:** lack of respect; not treated with care and dignity; not attended to directly or promptly with UHRC staff ostensibly more interested in gossiping; UHRC staff seen to “fob people off”; UHRC staff telling victims that they will call without even having contact details; UHRC having invited torture survivors to workshop who were then refused access when showing up; travelling expenses are often not paid to complainants or witnesses
- **Procedure:** UHRC is understaffed and slow; complainants do not have access to their own files and are not kept informed about progress in their cases; UHRC lawyers provided are ‘not as good as having your own lawyer,’ which disadvantaged poorer victims and favoured “middle-class” victims
- **Compensation:** many survivors don't see the UHRC as independent and believe that compensation is only awarded as a cover-up or to placate international opinion; compensation awarded is seen as too low; appeals by the state delay process and most survivors don't have a

lawyer needed to deal with issues arising out of the appeal; lack of payment by Attorney-General.¹²²

• Courts

No statistics are readily available that indicate the number of torture cases that have been brought before Ugandan courts. While victims of torture have a right to seek compensation before the courts, few cases are known where they have actually done so.

There have been a few instances in which the Ugandan courts have awarded compensation. In a case brought by Hon. Ronald Reagan Okumu and John Livingstone Okello Okello on behalf of twenty-one persons alleging UPDF violations, the Gulu High Court awarded 15 million UGS to each of the twenty surviving prisoners “for the violation of their rights to liberty and for being detained in an illegal facility and for being subjected to torture, inhuman, cruel and degrading treatment or punishment and for denial of access to their relatives, lawyers, doctors.”¹²³ In a subsequent case relating to the same twenty civilian prisoners and five military prisoners in UPDF custody, the High Court Kampala awarded each of the 25 detainees a sum of 10 million UGS for a violation of their rights (failure to grant access to their lawyers, relatives and friends, and to produce them in Court within the constitutional period of 48 hours), and a further 7 million UGS for 13 civilians detained in a prison other than a civilian prison.¹²⁴ The High Court of Gulu has also awarded compensation in several other torture cases, which will be considered in more detail below.

These cases show that the High Courts are amenable to awarding compensation in torture cases where sufficient evidence is available. Notably, most of these cases have been brought by NGOs or lawyers effectively

¹²² Interviews, Kampala, December 2006.

¹²³ *Okumu and Okello v Attorney General* op. cit.

¹²⁴ *Tumushabe v Attorney General* op. cit.

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acting as public interest litigants. However, these cases remain exceptional. Torture survivors normally refrain from taking their cases to court due to a combination of factors, including lack of awareness, threats, costs, corruption within the judiciary, lengthy delays, evidentiary problems and lack of enforcement, which applies to all proceedings against governmental bodies. The biggest factor appears to be the lack of means to afford services of a lawyer.

Lawyers also see the lack of a definition of torture and the fact that litigants have to rely on tort law as further complicating factors. Moreover, tort claims are subject to a five year limitation period. This is a rather short period in torture cases where victims are often too traumatised to initiate legal proceedings shortly after the violations have taken place or where threats or other factors hinder victims from taking action. These combined factors result in a situation where access to the courts is still severely limited to the majority of torture survivors, although courts can provide an effective remedy when used.

V. THE SITUATION IN NORTHERN UGANDA

1. Background to the conflict and current developments

The situation in North Uganda differs from the rest of the country due to the conflict that has been ongoing between the Lord's Resistance Army (LRA) and the Ugandan Government for over twenty years. The LRA emerged following the demise of the Holy Spirit Movement that had taken up arms against the Government in 1986. The LRA arises from the Acholi population in the North who have been discriminated against by the Museveni Government, but its goals and

motivations have remained obscure.¹²⁵ It has failed to win the support of the local population and is said to be responsible for a series of atrocities against civilians, including in particular large-scale killings, mutilations, abduction of children and sexual violence.¹²⁶ The Acholi people are also wary of the Government which, in 1996, created IDP camps in which around three quarters of the population live as a result of what amounts to a policy of forced displacements.¹²⁷ These camps have been used by the UPDF as shields against LRA attacks. Instead of providing protection, the UPDF is said to be responsible for a series of sexual assaults on children and women in or around IDP camps. A large number of cases of extrajudicial killings and torture of persons claimed to be supporters of the LRA have been attributed to the UPDF.¹²⁸

On 16 December 2003, the Ugandan Government referred the situation in Northern Uganda to the International Criminal Court (ICC), requesting it to examine international crimes committed by the LRA. On 6 October 2005, the ICC issued arrest warrants for Joseph Kony and four other LRA leaders who were charged with crimes against humanity. Subsequently, and after several previously failed attempts, the LRA and the Government agreed on a ceasefire that came into effect on 29 August 2006 and continued to hold at the time of writing, resulting in a significant reduction of violations. Joseph Kony and the LRA demand that the ICC drop the indictments as a precondition to fully committing to lasting peace. These developments have triggered intense discussions, both locally and internationally,

¹²⁵ Tim Allen, *Trial Justice: The International Criminal Court and the Lord's Resistance Army*, Zed Books Ltd, London, New York, 2006, p.25.

¹²⁶ Ibid., p. 42; Human Rights Watch (HRW), *Uganda Report*, 2005 <http://hrw.org/english/docs/2006/01/18/uganda12284.htm>.

¹²⁷ See on internal displacement in Northern Uganda the report of the Representative of the Secretary-General on internally displaced persons, Francis M. Deng, Addendum, *Profiles in Displacement: Mission to Uganda*, UN Doc. E/CN.4/2004/77/Add.1, 3 March 2004.

¹²⁸ HRW *Abducted and Abused, Renewed Conflict in Northern Uganda*, July 2003 <http://www.hrw.org/reports/2003/uganda0703/>.

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on the relationship between peace and justice in the North Ugandan situation.¹²⁹

The civilian population has borne the brunt of the actual violations. It also suffers from the conditions created by the war, particularly large scale displacement, lack of provision of essential services, destruction of infrastructure, dysfunctional Government structures and a break-down of law and order. A large percentage of the local population suffer from serious health problems, either in form of diseases due to poor living conditions or due to violence, especially physical injuries and war-related trauma. There is also a marked increase in the spread of HIV/AIDS due to a combination of these factors.¹³⁰

The poor living conditions, high incidences of violence and the constant fear induced by the potential of attacks from either the LRA or the UPDF, or both, combined with the difficulty of providing adequate humanitarian relief, has resulted in heightened vulnerability. The level of vulnerability has lessened somewhat during the ceasefire but the situation is still volatile and unpredictable with more isolated violations continuing.

2. Practice of Torture and Victims' Profile

2.1. Torture by UPDF and other forces

- **Prevalence**

UPDF soldiers, Local Defence Unit officers, local militia members and the CMI are said to

be responsible for most torture cases in the North.¹³¹ The UPDF is responsible for counter-insurgency operations, the policing of the camps and other related functions as the police has become dysfunctional in several parts of the North. There is no reliable estimate of the number of victims of torture attributed to the UPDF but, judging by annual averages, there are thousands of victims of UPDF torture over the last decade. The UHRC received 108 complaints alleging torture by the UPDF in 2004, most of which relate to its conduct in North Uganda.¹³² Torture specific figures are not available for 2005, but the overall number of complaints against the UPDF was 146.¹³³ NGOs working in the North have documented a series of recent torture cases allegedly committed by the UPDF. According to the latest available figures, ACTV registered 7 complaints against the UPDF in the period of June-September 2006 (3% of its total),¹³⁴ apparently indicating a decrease in torture by the UPDF.

- **Profile of victims**

Most civilians are at risk of torture at the hands of the UPDF. The conduct of Government forces appears to reveal an underlying distrust towards the Acholi population, often suspected of supporting the LRA, which in turn fuels hostility on the part of civilians towards Government forces. In this context, the UPDF had turned to torture and other violations as means to combat the LRA insurgency, either to extract information or to punish those not acting in conformity with its commands, such as those relating to camp curfews.¹³⁵ UPDF soldiers have also ill-treated civilians at will and engaged in large-

¹²⁹ HRW, *Uganda Report*, 2006 <http://hrw.org/englishwr2k7/docs/2007/01/11/uganda14719.htm>. See Allen, *Trial Justice*, pp. 186-187 and Victims' Rights Working Group Statement on the Uganda Peace Talks: *Victims' Rights Must be Met*, August 2006 <http://www.vrwg.org/Publications/01/VRWG%20Statement%203%20Aug%20061.pdf>.

¹³⁰ See Medical Intervention Study of War Affected Gulu, Report Two, 2001, <http://www.isis.or.ug/docs/gulu-maintwo.pdf> and HRW, *Violence against women in Northern Uganda*, July 2005, AFR 59/001/2005.

¹³¹ Foundation for Human Rights Initiative (FHRI), *Deprivation of the Right to Life, Liberty and Security of Person In Uganda*, Report for the Period January to June 2006, p.83.

¹³² UHRC, *7th Annual Report*, 2004, p.75.

¹³³ UHRC, *8th Annual Report*, 2005, p.60.

¹³⁴ FHRI, *Northern Uganda: Peace at Last?* Report for the Period July-December 2006, p.82.

¹³⁵ HRW, *Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda*, September 2005, <http://hrw.org/reports/2005/uganda0905/>.

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scale sexual violence.¹³⁶ There are also cases of torture and ill-treatment of fellow soldiers within the UPDF. UPDF forces are also reported to have arrested and detained suspects in violation of constitutional rights and resorted to torture and ill-treatment.¹³⁷

- **Persons suspected of LRA membership or support**

Young males are most at risk of being suspected of belonging or supporting rebels, and of being arrested and tortured to extract information or confessions to charges of terrorism. While the UPDF may use accusations of LRA support or membership as the standard excuse to justify violations against anyone, the case histories show that those most likely to be subjected to torture are: LRA fighters captured by the UPDF, often child soldiers; individuals politically active and/or showing publicly what is seen as sympathy or support for the LRA; persons suspected of being informants as LRA members/supporters and others who by their conduct, such as breaking camp rules, incur suspicion. Several incidents of torture and violence have also been reported to REDRESS in which UPDF soldiers ill-treated civilians who would or could not reveal the whereabouts of LRA members, particularly in combat situations. Victims are often unlawfully arrested and tortured in army camps or Gulu prisons.¹³⁸ Torture consists predominantly of beatings with objects and attacks on the sexual organs, such as tying a rope around the testicles and tugging on the rope, or lashing the buttocks with coiled barbed wire, often resulting in lasting physical and psychological damage.

- **Karamajong**

¹³⁶ Ibid., pp. 24-36.

¹³⁷ See Report on the work of the Office of the High Commissioner for Human Rights in Uganda, UN Doc. A/HRC/4/49/Add.2, 12 February 2007, paras.26 et seq.

¹³⁸ HRW, *Abducted and Abused: Renewed Conflict in Northern Uganda*, July 2003, pp.42-44.

The Karamajong is a group of people living in the North-East of Uganda. There is a history of long-standing tension between the Government and the Karamajong that has recently escalated when the UPDF sought to forcibly disarm Karamajong warriors. Fighting ensued, and both sides have been implicated in serious violations.¹³⁹ It is especially in the context of these forcible disarmament campaigns as well as conduct and search operations that people in Karamoja are at a particular risk of torture by the UPDF.¹⁴⁰ This adds to a heightened vulnerability due to prevailing insecurity in the region, not least as a result of lack of development and a breakdown of law and order.¹⁴¹

- **Women and girls**

A large number of women and girls have been raped or suffered other forms of sexual violence in Northern Uganda. No reliable data is available on the number subjected to sexual violence, but a study commissioned by UNICEF in 2005, according to which 469 cases of sexual violence at a northern IDP camp were reported to the police in Gulu district in one year alone, indicates the magnitude of violations.¹⁴² In the camps, women have been sexually assaulted not only by soldiers but also by their husbands and other persons living in the camps. According to FHRI: “Young girls and unmarried women have been identified as the primary target of rape and defilement in the camps and because of the extensive poverty it is not unheard of that families will ‘sell off’ their young daughters to the soldiers to be kept as concubines and wives.”¹⁴³ A report on the

¹³⁹ See Report on the work of the Office of the High Commissioner for Human Rights in Uganda, UN Doc. A/HRC/4/49/Add.2, 12 February 2007, paras.14-16.

¹⁴⁰ Uganda Human Rights Commission, *Karamoja: Searching for Peace and Human Rights*, Special Report, 2004.

¹⁴¹ Ibid.

¹⁴² http://www.unicef.org/media/media_27378.html.

¹⁴³ FHRI, Report July-December 2006, supra, p.36.

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situation in Pabbo Camp in late 2004 confirms these findings.¹⁴⁴

Studies, such as on the IDP camps in Kitgum district, found that the large majority of the 70% of women who suffer from gynaecological problems claim to have been sexually abused.¹⁴⁵ HIV/Aids is particularly prevalent in camps, which is at least partly due to sexual abuse. Victims of sexual violence also suffered psychologically, especially trauma, stigmatisation, exclusion and discrimination.¹⁴⁶ While the reports do not specify how many of the violations were committed by Government agents, they show the high degree of vulnerability of women in camps to sexual violence from several sources and the severe consequences they suffer. Several women interviewed by REDRESS stated that they had been raped by UPDF soldiers, resulting in menstrual and abdominal pains, inability to carry out tasks due to physical pains, worries about HIV/AIDS infection and psychological difficulties.

• Children

Many children have become victims of torture and other forms of ill-treatment in Northern Uganda. There is no breakdown of figures of children tortured by the UPDF or other Government agents and the consequences of torture, as available surveys either focus on the LRA or do not disaggregate the data.¹⁴⁷ Reports indicate that there is a high risk of torture for children who escape from the LRA or who are captured during battles. Young Acholi boys are generally suspected of having links with the LRA and are often arrested and kept in detention like adults where they are

tortured by the UPDF to obtain information about the LRA and their activities.¹⁴⁸ Girls have been particularly at risk of rape and other sexual violence by UPDF soldiers.¹⁴⁹ Children are highly vulnerable to torture by the UPDF and other government forces because of their actual or suspected links with the LRA, the lack of protection, including breakdown of family life, as well as poverty and susceptibility to intimidation, facilitating torture and sexual violence.

The Committee for the Rights of the Child recently expressed its concern “at the very poor living conditions in the camps for internally displaced children, their very limited access to adequate health care and education and the very high risk, particularly for girls, of being sexually abused and exploited.”¹⁵⁰

2.2. Torture by the LRA

• Prevalence

The LRA is believed to number a few thousand fighters operating throughout the North of Uganda and in parts of the DRC and Southern Sudan. Though ostensibly waging a war against the Ugandan Government, the LRA has frequently targeted civilians, and is said to be responsible for attacks, killings, mutilations and large-scale abductions, particularly of boys forced to fight and of girls held as sex slaves.¹⁵¹ It is difficult if not impossible to estimate how many persons have been tortured by the LRA but given the scale of violations over a long period of time it is most probably that several thousands have

¹⁴⁴ *Suffering in Silence: A Study of Sexual and Gender Based Violence (SGBV) in Pabbo Camp, Gulu District, Northern Uganda*, commissioned by Gulu District Sub Working Group on SGBV, published January 2005.

¹⁴⁵ Isis-WICCE, *Medical Interventional Study of war affected Kitgum District*, 2006.

¹⁴⁶ *Suffering in Silence: A Study of Sexual and Gender Based Violence (SGBV) in Pabbo Camp, Gulu District, Northern Uganda*, 2005, pp.16,17.

¹⁴⁷ See e.g., UHRC 8th Annual Report, 2005, p.52.

¹⁴⁸ See e.g., Human Rights Watch, *State of Pain: Torture in Uganda*, Vol. 16(4), March 2004 <http://hrw.org/reports/2004/uganda0404/>.

¹⁴⁹ The report *Suffering in Silence: A Study of Sexual and Gender Based Violence (SGBV) in Pabbo Camp, Gulu District, Northern Uganda*, commissioned by Gulu District Sub Working Group on SGBV, published January 2005, found that girls aged 13-17 were most at risk of gender based violence in the camp.

¹⁵⁰ Concluding Observations of the Committee on the Right of the Child: Uganda, UN Doc. CRC/C/UGA/CO/2, 23 November 2005, para.63.

¹⁵¹ Allen, Trial Justice, *supra*, pp. 60-65; HRW, *Violence against women in Northern Uganda (Lough and Denholm)*, July 2005, AFR 59/001/2005.

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suffered this fate. One indicator of the scale of LRA torture is the fact that 48% (324) of torture survivors seen by ACTV in 2006 have alleged torture by the LRA.¹⁵²

- **Children**

Estimates of children abducted by the LRA range from 20,000 children (UNICEF) to 65,000 children, constituting 65% of the total of abductions (children and adults combined).¹⁵³ Children are forcibly taken from their homes and undergo extreme brutalisation at the hands of the LRA in order to ensure compliance and to turn them into LRA fighters or, in the case of girls, sex slaves. Recent surveys indicate the staggering violations committed against abducted children, of whom 60% have been severely beaten and 89% witnessed beatings or torture of other people. 21% witnessed the rape or sexual abuse of a woman.¹⁵⁴ The children are not only abused but are also forced to engage in violence against others, which constitutes in itself a form of torture. According to a recent survey, 20% and 18% of abducted children were forced to beat/cut a civilian or to kill a civilian who was not a family member or friend respectively, and 12% and 8% were forced to ill-treat or kill a family member or friend.¹⁵⁵

Children not abducted have also experienced torture. 22% reported to have received severe beatings and 58% have witnessed beatings or torture of other people. 3% have witnessed the rape or sexual abuse of a woman.¹⁵⁶ The adverse health impact of the conflict and violations committed by the various factions, in particular the LRA, on children in Northern Uganda has been extreme. It is well

¹⁵² Statistics provided by ACTV.

¹⁵³ See HRW, *Abducted and Abused: Renewed Conflict in Northern Uganda*, July 2003, pp.17-18; Allen, Trial Justice, supra, pp.62-63.

¹⁵⁴ Jeannie Annan, Christopher Blattman and Roger Horton, *The State of Youth and Youth Protection in Northern Uganda*, A Report for Unicef Uganda, September 2006.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

documented that the majority of children suffer from physical injuries and from mental trauma, often aggravating the already existing war-related trauma.¹⁵⁷

- **Civilians**

A large number of civilians have been abducted and/or abused and mutilated by LRA fighters. Methods used are often extremely brutal, resulting in disfigurement or death. Those most at risk are locals in conflict areas who are suspected of collaborating with the UPDF or supporting or belonging to pro-Government militias. REDRESS spoke to several victims who had suffered from torture and ill-treatment both at the hands of the UPDF and the LRA, although it is not clear whether torture by either increases vulnerability. Some attacks appear to have been made simply to prove that the LRA has the capacity to fight and intimidate the local population. Effectively, the whole population in LRA territory, especially in rural areas, is at risk of being subjected to such treatment and many have left their areas seeking refuge in camps or elsewhere where they live in deplorable conditions with lack of access to basic services, let alone justice.¹⁵⁸

- **Findings**

Civilians in Northern Uganda, in particular children, both male and female, and young persons, are highly vulnerable to torture and suffer severely from the impact of torture. Many suffer double-victimisation from both Government forces and the LRA, and there is a general feeling of being caught between the lines. The nature of forced displacement and the dire circumstances in which most people have to live, with no or inadequate access to medical, legal and other essential services, depending largely on humanitarian assistance,

¹⁵⁷ Ibid.

¹⁵⁸ See HRW, *Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda*, September 2005, p.15 <http://hrw.org/reports/2005/uganda0905/>.

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has resulted in collective victimhood of society in the North. This is compounded for victims of torture and other atrocities who are often severely traumatised.

3. Barriers to Justice in Northern Uganda

The conflict in Northern Uganda has brought with it an immense scale of victimisation coupled with a serious strain on the delivery of essential services, including access to justice. The magnitude of problems has put great pressure on NGOs and others working in the North, where the situation remains precarious despite the recent ceasefire. From a victims' perspective, the ICC proceedings have simultaneously opened opportunities and challenges, triggering intense discussions over the appropriateness of ICC investigations in light of ongoing peace efforts and the prospects for alternative local justice approaches.

3.1. Victims needs and wants

Torture survivors interviewed by REDRESS in Gulu expressed the need for compensation and rehabilitation. Many survivors are incapacitated as a result of the torture, which compounds the difficulties of making ends meet experienced by the majority of the population in Northern Uganda. However, none of the survivors interviewed had received any compensation due to a combination of factors: limited awareness of the office of the Human Rights Commission in Gulu; fear of retribution by the perpetrators who are still free and a general sense of insecurity; no means to pursue cases before courts. There is also an urgent need for treatment and rehabilitation. Survivors have received very limited treatment and rehabilitation from NGOs but not from the State.

The torture survivors interviewed had differing views on the question of accountability of the perpetrators. While some called for the prosecution and punishment of those responsible, both LRA (in particular the leadership) and UPDF, others were inclined to forgive the perpetrators, in order to facilitate the peace process and to enable their children to have a better future (without facing the threat of further abduction and torture).

3.2. The amnesty law, ICC proceedings and victims' perspectives

The Amnesty Act 2000 was initially conceived as an instrument to end the conflict in the North but was adopted as a national instrument due to popular support.¹⁵⁹ The Act declares an amnesty to any Ugandan, irrespective of age, who has been involved in acts of rebellion against the Government since 26 January 1986.¹⁶⁰ Beneficiaries are not to be prosecuted or subjected to any form of punishment for participation in the war or rebellion or for any crime committed in the cause of the war or armed rebellion.¹⁶¹ Receiving amnesty is contingent upon reporting to a recognised official, renouncing conflict, and surrendering possession of any weapons, upon completion of which process the reporter (applicant) receives an Amnesty Certificate¹⁶² and a package worth a total of 350,000 Ugandan shillings. By the end of 2006, almost 19,000 combatants had reported to the Commission.¹⁶³

The amnesty bars any legal action against LRA combatants or other beneficiaries of the amnesty even in cases where they have been

¹⁵⁹ Refugee Law Project Working Paper No. 15, *Whose Justice? Uganda's Amnesty Act 2000: The potential for peace and long-term reconciliation*, 2005, p. 6.

¹⁶⁰ Amnesty Act 2000, section 3 (1).

¹⁶¹ Amnesty Act 2000, section 3 (2).

¹⁶² *Ibid.*, section 4.

¹⁶³ Report on the work of the Office of the High Commissioner for Human Rights in Uganda, UN Doc. A/HRC/4/49/Add.2, 12 February 2007, para.57.

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involved in torture.¹⁶⁴ However, according to an amendment to the Amnesty Act dated 24 May 2006, the Minister for Internal Affairs may by statutory instrument declare a person ineligible for an amnesty. The Act does not address the rights of victims, nor does it provide for a formal mechanism by which the person receiving amnesty tells the truth about their actions. The amnesty was advocated for by several Northern Ugandan groups and enjoyed widespread support. It has to date not been challenged before any domestic court or regional/international human rights body. However, local responses to the implementation of the amnesty law have been mixed. Non-prosecution of child soldiers and lower ranking LRA cadres is widely welcomed because they are largely Acholi and are either actual family members or seen as belonging to the wider group. However, there is less support for extending it to the leaders of the LRA, such as Kony whose responsibility for atrocities is widely acknowledged. Moreover, the amnesty law is seen as favouring ex-combatants who also receive material benefits, unlike victims who have receive little if any financial assistance, thus breeding resentment and frustration.¹⁶⁵

The decision of the ICC in 2004 to open investigations into international crimes committed by the LRA, following the referral by the Ugandan Government, has triggered renewed intensive discussions about the relationship between peace and justice.¹⁶⁶ Joseph Kony demands that the ICC cancels its arrest warrants against him and other LRA leaders and to drop charges for international crimes as a precondition for the LRA committing to peace. The ICC has so far

resisted these demands, insisting that the arrest warrants must be executed. The response of the Government has been ambivalent, not least because ceasefire and peace negotiations continued throughout 2006, and it has sent mixed messages with regards to its position on ICC investigations of the LRA.

The primary interest of victims in Northern Uganda is peace, and the on-going peace process is perceived to be directly threatened by the indictments issued by the ICC. There is significant ill-feeling amongst civil society in Northern Uganda against both the Government and vicariously the ICC. The ICC is seen as foreign to local traditional justice mechanisms and as an instrument of President Museveni's politics against the North. Several factors contribute to these perceptions:

- The close working relationship between the Government and the ICC,
- The fact that the ICC has so far not investigated crimes committed by the UPDF, which most Northerners feel strongly about,
- The way the ICC has worked on the ground which is often seen as insensitive
- A preference for local justice, in particular amongst the Acholi, which places emphasis on pardon and reconciliation.¹⁶⁷

As a result it is difficult for NGOs to look upon the ICC positively, which impacts on the rights and interests of victims to justice and reparations generally. However, victims are not a homogenous group in Northern Uganda and there is a marked difference, for example, between the Acholi and other populations in the North, who have diverging views on the ICC and tend to take a less antagonistic stance or even support it.¹⁶⁸ The latter position is also reflected in the Ugandan Coalition for the ICC, comprising more than a dozen NGOs. Many victims groups are now advocating for victims rights. This includes both the need to

¹⁶⁴ "Although the amnesty has resulted in the return of thousands of LRA combatants, including abductees, and their demobilisation and reintegration into civilian life, OHCHR is concerned that the granting of an amnesty for serious crimes under international law is in violation of Uganda's treaty obligations." Ibid.

¹⁶⁵ Allen, Trial Justice, supra, pp. 125-126.

¹⁶⁶ See e.g., HRW, *Uganda: UN should stress peace, justice go hand in hand* <http://hrw.org/english/docs/2006/11/16/uganda14611.htm>; Amnesty International Briefing AFR 59/008/2005 <http://web.amnesty.org/library/index/engaf590082005>.

¹⁶⁷ Interviews, Gulu, December 2006.

¹⁶⁸ See e.g. Allen, Trial Justice, supra, p.140.

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include victims' voices in the peace negotiations and to enable victims to use available procedures before the ICC in order to ensure that their views are adequately reflected in the course of investigations, and their rights recognised.

There are also a series of domestic challenges. This includes ensuring that the Bill to implement the ICC Act of 2004 (currently still before parliament) is enacted, which looked increasingly unlikely given the growing hostility towards the ICC, and that victims of UPDF violations are publicly acknowledged and able to exercise their right to access to justice and reparation. In recognition of this challenge, a Ugandan Victims Rights Working Group was in the process of being formed in early 2007, comprising several NGOs.

3.3. Practical Barriers

3.3.1. Access to Justice: General considerations

Access to justice is severely impeded as a result of the conflict in Northern Uganda. Not only are the relevant institutions unable to provide effective legal redress in the prevailing conditions, but communities are fearful of attempting to assert their rights.¹⁶⁹ Some attempts have been made to alleviate the situation of the displaced. The Minister of State for Disaster Preparedness, Mrs Amongin Aporu, has publicly announced that the Government has now decided to adopt a policy on internally displaced persons¹⁷⁰ which sets out their substantive rights and provides a framework for implementation. This includes a rights monitoring mechanism in the Human Rights Promotion and Protection Sub-Committee, whose functions would largely be to make recommendations on protection issues. The policy recognises the substantive

rights of the internally displaced according to the UN Principles, but it seems to lack clear acknowledgment of the procedural problems of access to justice caused by the collapse of formal institutions. This could take the form of skills training and mediation awareness for camp leaders, and examining the process of making bye-laws to ensure that these promote the interests of all sections of the displaced community.¹⁷¹

Access to legal advice and representation is also severely limited. In Gulu there are a handful of lawyers but none in Kitgum or Prader. Legal services organisations are based in Gulu exclusively and have limited outreach to the other districts. Because of the war, few lawyers extend direct services to rural isolated communities. Lawyers are primarily trained to service the formal justice system and often have difficulty operating in areas where the system has collapsed. Legal aid services are being provided through the Ugandan Law Society's Legal Aid Project (LAP) in Gulu, which includes two qualified advocates who offer advisory and representation services and six paralegals.¹⁷² The LAP implements a legal support programme for Information Counselling and Legal Awareness (ICLA) supported by the Norwegian Refugee Council which focuses specifically on the needs of internally displaced persons. However, demand remains unfulfilled due to a shortage of experienced lawyers to take part in the scheme.

There has been a positive public response to legal education, in particular to radio programmes such as Mega Lawyer, which has vastly increased the demand for legal services. Non-lawyers remain the main providers of

¹⁶⁹ Justice Resources, *Law and Disorder: the Impact of the Conflict on Access to Justice in Northern Uganda*, 2005, para. 2.3.

¹⁷⁰ National Policy on Internal Displacement of Persons, Office of the Prime Minister (2004), *ibid.* at n. 17.

¹⁷¹ *Ibid.*, para. 3.5.

¹⁷² "In Gulu, during the first 10 months of 2006, the six LAP paralegals, who rotate between police stations, prisons and court, were in contact with 5,188 inmates, pre-trial detainees and members of the community and traced 337 sureties for police bonds/courts." See Report on the work of the Office of the High Commissioner for Human Rights in Uganda, UN Doc. A/HRC/4/49/Add.2, 12 February 2007, para.34.

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initial legal aid services. Although some organizations have developed expertise, the standards of training, supervision and follow-up of their activities are not uniform. Nevertheless, paralegals are beginning to have an impact on communities in raising general rights awareness although information provided is not necessarily torture specific.

3.3.2. Institutional responses

- **UPDF**

There are a series of allegations of UPDF torture, including rapes, in the IDP camps and elsewhere though there has been a recent decrease in violations due to the ceasefire. According to the UPDF human rights department, where discovered perpetrators of torture are court-martialled and made to pay compensation.¹⁷³ The Office of the High Commissioner for Human Rights “observed a positive trend among some UPDF commanders of bringing military suspects to justice before field court martial in an effort to combat impunity...[but is] concerned that proceedings before military courts still fall short of international standards.¹⁷⁴ However, with few exceptions, there has been impunity for such violations. There is no functioning complaints system. Victims do not enjoy protection and there is a climate of harassment and intimidation of victims, human rights defenders and local counsellors by the UPDF.¹⁷⁵

There are no special procedures for victims of rape to bring complaints confidentially and in an appropriate environment, such as a women’s desk. There is a lack of police presence to deal with many complaints against the UPDF, and the UPDF does not send

complaints to the police. Most complaints are supposedly dealt with internally by the UPDF with the victims not being informed about the investigations and the ultimate outcomes unknown, leaving the impression that the UPDF has not taken any steps to examine complaints. The alleged perpetrators have, where they can be identified (which frequently poses a problem), apparently been transferred or left the unit.¹⁷⁶ Apart from some disciplinary measures reportedly sometimes taken, usually there is no full investigation resulting in prosecutions.¹⁷⁷ Several cases have been related to REDRESS where, despite the availability of clear evidence of violations, no action was taken. This has been attributed to unwarranted insistence on the need for further evidence, corruption and a practice of harassment and intimidation of complainants and human rights defenders.

Most UPDF victims have not been able to obtain any form of criminal justice, having to rely on proceedings before the UHRC only (see below in this section). Soldiers allegedly responsible for torture, in particular those identified in UHRC proceedings, are meant to be investigated by the Special Investigations Branch that works with the CMI. However, even where the case reaches a court martial there appears to be little by way of law or justice, and the UPDF is perceived as covering up, denying access to the hearings and procedures and making it virtually impossible to know what happened. It is very difficult to discover whether a perpetrator of torture has been dealt with, and if so, whether he has been dealt with properly.¹⁷⁸

Several human rights groups, such as FHRI, monitor and document cases of UPDF violations but, with few exceptions, have been

¹⁷³ Interview, Kampala, February 2007.

¹⁷⁴ Report on the work of the Office of the High Commissioner for Human Rights in Uganda, UN Doc. A/HRC/4/49/Add.2, 12 February 2007, para.43.

¹⁷⁵ HRW, *Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda*, September 2005, pp.45-48.

¹⁷⁶ According to the UPDF human rights department, being in the army people are moved around and sent on operations, so sometimes they have been legitimately transferred which can make dealing with them take longer.

¹⁷⁷ HRW, *Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda*, September 2005, pp.42-45.

¹⁷⁸ Interviews, Gulu, December 2006.

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unable to take legal action. The UPDF itself has responded to some UHRC investigations by taking disciplinary measures and paying compensation in mediated settlements.¹⁷⁹ UPDF soldiers have also taken part in human rights trainings but a distinct lack of a human rights culture appears to persist within the forces, and the UPDF does not seem to have a clear anti-torture policy.

• Police

The police lack both an adequate presence and resources to fulfil its functions, as acknowledged and detailed in surveys commissioned by JLOS.¹⁸⁰ This insufficient presence means that the UPDF carries out policing functions, particularly in IDP camps which fosters a culture of impunity as the UPDF is effectively in charge of investigating its own conduct. This situation has been identified as an obstacle to effective investigations, and JLOS has “committed itself to an undertaking to reactivate and improve an appropriate JLOS presence in conflict-affected areas by June 2006” although implementation has been slow.¹⁸¹ Even where the police are entrusted with investigating cases against the UPDF, there appears to be a general reluctance to take any steps that could be seen as overly antagonistic. The police have also largely failed to adequately investigate alleged torture by its own forces or others, largely due to factors analysed in more detail above.

• UHRC

The UHRC established its Gulu regional office in 1999, with the Tribunal sitting in Gulu for 1-3 months altogether in each year. The vast majority of the cases (9 out of 10)

coming to the Gulu Tribunal concern torture, often in conjunction with loss of liberty. The main perpetrators are in the UPDF, including the Local Defence Units who fall under the same structure, as well as the police and other security organs. The UHRC has not dealt with torture by the LRA although such cases apparently fall within its mandate given the wide definition of torture used by the Commission.

The UHRC has been hampered in its investigatory work by a lack of resources, security concerns, and lack of cooperation from or pressure brought to bear by the UPDF, such as being ‘told’ there is no need to worry about a case as it is being dealt with internally by the UPDF in its ‘own way’; this in itself can lead to the problem of summary justice. Usually the UPDF does not bring a lawyer to defend a case before the Tribunal, and while many complaints are successful a range of problems are then encountered in the follow-up. Individual soldiers have normally been acting on superior orders, and the superiors then cover-up the case, do not cooperate or transfer the soldier, effectively raising all sorts of blocking tactics.¹⁸²

It is also difficult to obtain compensation. The money is supposed to come from the Consolidated Revenue Fund, which also funds the Tribunal. Attempts can be made to get the Ministry of Defence to pay. The MoD can collect from Divisional HQ, which can then go to the Battalion, who can deduct from the soldiers’ salary – effectively going down the chain. It is possible to garnishee an individual soldier’s salary, but this has not been done in torture cases.

There are many unique challenges facing the UHRC in its work in the North: the politics of the issue; the militarisation of the region which makes it difficult to investigate abuses and difficult to develop human rights; the

¹⁷⁹ See UHRC, *8th Annual Report*, 2005 pp.55-58.

¹⁸⁰ JLOS, *Baseline Study on Criminal Justice*, Final Report 2002 pp.15, 113, 146. See also, Report on the work of the Office of the High Commissioner for Human Rights in Uganda, UN Doc. A/HRC/4/49/Add.2, 12 February 2007, paras.21 et seq.

¹⁸¹ *Ibid.*, paras.17 et seq., in particular para.19.

¹⁸² Interviews, Gulu, December 2006.

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volume of people (3.5 million in IDP camps); limited resources, funding and staff; remoteness; fear and lack of awareness amongst the people of their rights. In responding to complaints about its lack of effectiveness, especially in the North, the UHRC plans to use improved methods of going on circuit e.g. the Tribunal will sit in Gulu for longer periods at a time so that all cases which start can be finished within the period, and then when more cases have accumulated another circuit will be sent; the plan is to be more organised, and to avoid back-logs and delays.

There has been some negative feedback from victims and others on the work of the UHRC, including limited awareness of its work; prevailing insecurity after reporting cases because perpetrators are still free; it is seen as ineffective; it should do more than just award money, in particular be able to prevent abuse; it should have capacity to report more widely on violations. There are also apparently certain logistical issues and a degree of internal 'conflict' between the HQ in Kampala and the local programmes i.e. between national and regional work, and who is responsible to deal with any difficulties that may arise.¹⁸³

3.4. COURTS

There is a High Court in Gulu hearing criminal and civil cases. There are also magistrates courts in Gulu and Kitum with jurisdiction over criminal cases, and Local Council courts to hear a limited number of civil cases. The court system in the North has for years suffered from dysfunction and a lack of capacity, resulting in a large backlog of 200 civil cases alone and delays in bail and habeas corpus proceedings. Recently, measures have been taken to address some of these problems, such as the appointment of new judges for the Gulu High Court, two for civil cases and two for criminal cases, which are

expected to result in some improvements. However, the courts remain seriously understaffed, impacting adversely on the effective functioning of the formal justice system. In the absence of available formal structures, the displaced and others rely extensively on mediation, alternative dispute settlement and customary justice. There is a high level of support amongst ordinary people for the Local Council courts, who see them as more accessible, inexpensive, efficient and culturally appropriate, whilst the formal courts are seen as slow, inaccessible culturally and temporally, expensive and sometimes corrupt.¹⁸⁴ While Local Council courts and other agencies can provide a localised justice, they are unable to adjudicate a full range of issues, their jurisdiction remains limited and there are concerns about the compatibility of some of their practices, such as the imposition of corporal punishment, with international human rights standards.¹⁸⁵ They are clearly neither designed nor suited to provide justice in torture cases, be it in the form of criminal prosecutions or compensation and other forms of reparation.

There are hardly any prosecutions in Northern Ugandan courts of UPDF, police or other officials for torture due to a combination of factors analysed above. On the other hand, there have been a series of successful civil cases brought before the Gulu High Court.¹⁸⁶ HURIFO, the most active human rights NGO bringing cases in the region, has lodged 18 such cases in the last four years, four of which were decided in 2005. Victims were granted a total of 107 million UGS in the four cases, all of which concerned violations by UPDF:

- A man burned in an attack was awarded 20 million UGS.

¹⁸⁴ Justice Sector, *Law and Disorder: the Impact of the Conflict on Access to Justice in Northern Uganda*, para. 8.2.

¹⁸⁵ Report on the work of the Office of the High Commissioner for Human Rights in Uganda, UN Doc. A/HRC/4/49/Add.2, 12 February 2007, para.36.

¹⁸⁶ *Supra*, IV. 4.2.

¹⁸³ Interviews, Gulu, December 2006.

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- A man kept in a safe house in Gulu was awarded 5.5 million UGS
- Two girls (17 years and 13 years) were gang raped by UPDF soldiers. Both girls took HIV tests: the younger one was severely torn and is now HIV positive; she was awarded 50 million UGS (30,000 USD); the older sister escaped HIV and was awarded 30 million UGS.
- The fourth case was settled out of court. UPDF soldiers lobbed bombs into a camp and injured a man. The Government wished to settle and agreed to pay him 40 million UGS¹⁸⁷

These developments show that victims can obtain reparation in the form of compensation from the courts if supported by dedicated organisations that have the legal expertise and capacity. Victims' lawyers involved in these cases believe that the naming and shaming of perpetrators has far-reaching consequences and has contributed to the reduction of violations.

However, there is a range of persisting problems that impede access to justice, and several factors that make access to justice even more difficult than in other parts of the country. The main problem is the large number of victims, and the shortage of lawyers that could provide legal assistance as well as judicial bodies to hear relevant cases. There are effectively no resident lawyers in private practice in the North and human rights cases are handled almost exclusively by NGOs, such as HURIFO, which cannot meet the demand. Even where torture victims are aware of their rights and have access to Gulu, many cannot avail themselves of legal services because of the shortage of lawyers, insufficient legal aid services and limited NGO capacity.

3.5. 'Transitional Justice'?

Northern Uganda could be described as being on the verge of 'transitional justice'. This is a term often used for post-conflict situations where there is a need to rebuild local institutions and provide reparation to a large

number of victims.¹⁸⁸ There has not been very much debate in Uganda, including amongst civil society and victims' associations, on possible transitional justice mechanisms, such as Special Courts, Truth and Reconciliation Commissions or other types of reparation commissions. In October 2006, the Refugee Law Project, HURIPPEC and the Faculty of Law of Makerere University launched an initiative: 'To Look Forward We Must First Look Back', which highlighted the truth and reconciliation deficit in the Juba peace talks and urged "Government, civil society actors, religious bodies and political parties, to fully investigate the multiple options for establishing a national truth and reconciliation process."¹⁸⁹ The amnesty law and concepts of traditional justice are already heavily influencing views on what should be done with regards to criminal prosecution of LRA members, at least rank and file members.

With regards to other forms of reparation, in particular compensation, both the UHRC and the courts have time limitations (pre-1995 and five years statute of limitations as respective cut-off periods), and lack the capacity to deal with a large number of cases. Both may face problems of enforcement: in the case of UHRC because of a lack of powers and in the case of courts because of generic problems of compliance. Moreover, neither the UHRC nor the courts have to date provided effective mechanisms for the victims of LRA violations. These considerations do not mean that the UHRC and courts cannot play a useful role, not least in terms of setting precedents and standards that shape debate on appropriate forms of reparation. However, victims, lawyers and NGOs have to date not probed these avenues as potential facilitators or triggers for broader reparation measures.

¹⁸⁸ See e.g. K. De Feyter, S. Parmentier, M. Bossuyt and P. Lemmens (eds.), *Out of the Ashes, Reparation for Victims of Gross and Systematic Human Rights Violations*, Intersentia, 2005.

¹⁸⁹ The appeal was published in *The New Vision*, 6 October 2006, p.20.

¹⁸⁷ Information provided by HURIFO.

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The ICC may provide reparation to victims of torture. However, this will be limited to violations that have taken place after July 2002 when the Rome Statute came into force, and will be restricted to the victims of cases actually prosecuted or, if not, will be of a more symbolic nature where provided by the ICC Trust Fund. There continues to be a great deal of uncertainty about eligibility, procedure and capacity of the ICC to provide reparation, as well as concerning the role of complementary national proceedings. This is an area where NGOs and networks such as the Victims Rights Working Group face considerable challenges, not only in terms of awareness raising but also on how best to use existing remedies for the benefit of all or at least most victims. The fact that victims come from various communities with different perceptions of the conflict and that many victims will also have been perpetrators, such as child soldiers, constitute further challenges.

VI. GOVERNMENT RESPONSES

1. Policies and initiatives impacting on access to justice for torture survivors

1.1. Legal and institutional policies and reforms

There is no publicly known Government anti-torture policy or similar concerted initiative to combat torture, incorporating enhanced access to justice for torture survivors. A series of trainings on human rights issues, including torture, have been conducted but there is no coherent approach to torture-specific trainings or to evaluate their impact. The most significant government initiative is the Strategic Investment Plan of the Justice Law and Order Sector (JLOS) of the Ministry of Justice and Constitutional Affairs. It aims at linking up all criminal justice organisations and

making targeted progress in the areas of human rights protection and access to justice.¹⁹⁰

1.2. Criminalising torture

The Government has to date taken no steps towards making torture a criminal offence in spite of international and national calls to this end, such as by the UN Committee Against Torture, the UHRC and civil society. JLOS has listed among its key activities for the period 2006/7-2010/11 to “initiate a law against torture.”¹⁹¹ However, the impression gained from meetings with various Government agencies as well as with NGOs is that the Government does not view the enactment of specific anti-torture laws as a priority. Moreover, several of the agencies who make most use of torture are outside of the main State institutions, which complicates internal Government debates and moves to achieve a consensus on the need for reforms. As a first step towards the adoption of a law on torture, the Law Reform Commission would draw up a concept paper on criminalising torture, but even if such step were to be taken it is expected that the reforms will be drawn out because of lengthy consultation processes and parliamentary procedures.

1.3. Combating impunity

The Government has also not taken vigorous steps to “eliminate impunity for alleged perpetrators of acts of torture and ill-treatment, carry out prompt, impartial and exhaustive investigations, try and, where appropriate, convict the perpetrators of torture and ill-treatment, impose appropriate sentences on them and properly compensate

¹⁹⁰ See on related ongoing initiatives, namely the Poverty Eradication Action Plan 2004-2007 and the Social Development Sector Strategic Investment Plan 2003-2008, FHRI, *Deprivation of the Right to Life, Liberty and Security of Person in Uganda*, 2006, supra, p.48.

¹⁹¹JLOS, *Strategic Investment Plan*, Final Draft, 2006 (on file with REDRESS), p.25.

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the victims,” as recommended by the UN Committee Against Torture.¹⁹² Responses have largely been piecemeal and dependant on the policies of the respective forces concerned. Some initiatives have been taken by the police, such as putting in place a complaints system, and with regards to the prison system.¹⁹³ A lot of emphasis is placed on training which appears to have had some but limited impact (see below). However, there is no discernible policy and practice by the DPP, police or UPDF of proactively investigating and prosecuting allegations of torture.

A key goal in this regard would be a system that provides for automatic, prompt and full investigations of cases of torture identified by the UHRC.

1.4. Compensation, in particular responding to UHRC’s recommendations

The Government has also not acted on the UHRC’s recommendations concerning compensation. The UHRC has repeatedly stressed that the Government should pay outstanding compensation awards but payments actually made still fall woefully short. The UHRC has also stressed the importance of individual liability of the perpetrators so that compensation awards have a deterrent effect.¹⁹⁴ In its 2005 report, in addition to calling on the Attorney-General to ensure personal liability and for liability to be decentralised from the A-G’s office so that line Ministries assume a sense of accountability, the Commission called for the establishment of a Victims Compensation Fund to compensate victims where perpetrators are unable to pay.¹⁹⁵

¹⁹² Conclusions and recommendations of the Committee against Torture: Uganda, UN Doc. CAT/C/CR/34/UGA, 21 June 2005, 21/06/2005, para 10 (g).

¹⁹³ Supra, IV. 4.

¹⁹⁴ UHRC, 8th Annual Report, 2005, p.68.

¹⁹⁵ Ibid.

1.5. JLOS plans: Protection of rights and access to justice

JLOS was set up six years ago, comprising the police, prisons and prosecution sectors, and has since conducted a series of baseline studies and survey’ on criminal justice issues.¹⁹⁶ Its strategic investment plan, due to be published in 2007, focuses on the following areas relevant to this survey (according to the draft on file with REDRESS):

- *Strengthening the rule of law* - law reform, tackling corruption within the police and judiciary; ensuring independence of judiciary; publication of law reports
- *Fostering a human rights culture across JLOS institutions and reducing human rights violations* - this is to be done, inter alia, by increasing the knowledge of human rights and proper practice within the police and prosecution and adopting a rights-based approach
- *Enhancing justice for all, especially for the poor* - the goal here is to achieve minimum levels/standards of access to justice for all populations especially those in conflict affected areas; an access to justice versus a law and order orientation is to be promoted.

The strategic investment plan for 2006/7-2010/11 specifies how these goals are to be accomplished.

Human rights culture

In order to foster a human rights culture across JLOS institutions with the goal of reducing violations, JLOS aims to:

- Conduct a baseline to establish types/occurrence of specific human rights violations in institutions; initiate a law on torture;
- Implement measures to realise minimum conditions in facilities of detention;
- Pilot model police stations to promote victims and accused persons’ rights; institutionalise complaints mechanisms and develop systems of strengthening institutional and individual accountability;
- Establish a framework of cooperation with the UHRC and other security agencies to minimise

¹⁹⁶ See <http://www.jlos.go.ug/reports.php>

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occurrence of human rights violations and to promote public confidence in the sector.

The goal of enhanced access to justice for all does not comprise considerations specific to torture survivors or victims of human rights violations. While many of the specific goals identified in this respect will, if implemented, also benefit torture survivors, further initiatives are needed to enhance access to justice for groups such as torture survivors who face additional barriers.

Access to Justice

The key goals identified in the Strategic Investment Plan with regard to access to justice are that “the Republic of Uganda aims to increase access to satisfactory and timely legal aid by vulnerable groups in need of such aid by 2010.”¹⁹⁷ To this end, the following activities are planned:

- Develop a policy, costed plan and national framework for the provision of legal aid countrywide. Focus to be on conflict-affected areas of Northern Uganda and remote, insecure areas, e.g. Bundibugyo, Kalangala and Karamoja.
- Prioritised construction, renovation and equipment of offices.
- Develop and implement costed and prioritised plans for the merger of central and local government, police and prisons.
- Develop a policy, costed plan and national framework for the provision of legal aid countrywide.
- Evaluate and improve the State Brief scheme.
- Monitor standards of legal aid provision and the pro bono scheme.
- Deregulate judicial and other procedures to reduce costs and delay, and review and reform bail practices.
- Develop, implement and integrate innovative pilot and low-cost models of legal aid including the Paralegal Advisory Services, juvenile justice programme, use of paralegals. Research findings and best practices will be documented for replication countrywide.
- Use of Alternative Dispute Resolution (ADR) and innovative approaches to handle justice is also a

key activity area. Use of ADR mechanisms is to be extended to all focus areas (including criminal justice) with emphasis on the conflict affected areas of Northern Uganda; record keeping and judicial oversight to be strengthened.

Technicalities that hamper access to justice are to be minimised:

- Develop and implement a comprehensive information dissemination strategy to increase information available to the public, expand dialogue between the communities and JLOS agencies, enhance dissemination of JLOS information and increase public knowledge about complaints procedures;
- Develop a human rights-based model and contribute to the National Civic Education Programme which is aimed at enhancing public knowledge of rights and obligations;
- Develop and disseminate information, education and communication materials on JLOS (user guides) and simplified laws, translated into at least 4 regional languages.

The Strategic Investment Plan also envisages a series of activities to raise awareness of relevant human rights standards amongst staff. Key activities for the future include:

- Developing and implementing strategies to enhance staff awareness and application of key human rights laws and principles and systematically integrating human rights principles in all induction and training programmes for staff, and operational procedures.
- Developing a change management strategy and human development plan to inculcate a positive approach of social responsibility among staff, improving customer service and minimising the strong law and order orientation; monitoring compliance with human rights principles in practice and enforcement of codes of conduct.
- Developing and implementing a comprehensive information dissemination strategy to increase information available to the public, expanding dialogue between the communities and JLOS agencies, enhancing dissemination of JLOS information and increase public knowledge about complaint procedures
- Developing a human rights based model and contributing to the National Civil Education Programme which is aimed at enhancing public awareness of rights and obligations

¹⁹⁷ JLOS, *Strategic Investment Plan*, Final Draft, 2006 (on file with REDRESS), p. 27.

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- Developing and disseminating Information, Education and Communication (IEC) materials on JLOS (user guides) and simplified laws, translated in at least four regional languages
- Phasing recruitment, training and deployment of interpreters/translation services at key points in the JLOS.
- Evaluating ongoing pilots on community policing with a view to strengthening and replicating them especially in conflict affected areas of Northern Uganda
- Piloting model police stations and paralegal services in identified areas
- Enhancing public awareness and participation by developing and implementing a multi pronged JLOS publicity strategy that involves key aspects such as regular national press briefings by JLOS leadership, Cabinet memos, and holding annual court open days in each chief magisterial area.

The JLOS targets are ambitious. It will be important that Ugandan civil society is able to play both a constructive and critical role in its implementation with a view to enhancing effective changes being made on the ground.

2. Training initiatives for law enforcement personnel: Scope and impact

There is a widespread perception amongst those interviewed by REDRESS that there is a lack of understanding and tolerance, if not even an acceptance of torture amongst the law-enforcement agencies. It is generally acknowledged that there is a need for extensive and substantial training. Indeed, Government bodies, the UHRC and NGOs have conducted a series of training workshops on human rights issues, including torture.

The UHRC has an Education, Research and Training Directorate. It has developed manuals and conducts human rights education in particular for the UPDF, the Uganda Police Force and Local Councils, including training of trainers. According to the UHRC "... though the target institutions are similar, the beneficiaries therein differ from year to year.

The continuous programme is meant to build on the earlier programmes to foster and maintain a human rights culture not only in the targeted institutions but also among Ugandans in general. Furthermore, the Commission's human rights education programmes were planned in response to the complaints received and the prevailing issues at the time."¹⁹⁸ From 1997-2006, the UHRC has trained 2,783 police personnel, 756 UPDF personnel and 188 prison staff. The UHRC has worked together with the Uganda Police training school at Kibuli staff college, the Ugandan Prison service training school at Luzira and Ugandan Peoples Defence College, in cooperation with international partners and national NGOs to deliver training on the international prohibition of torture.¹⁹⁹ The numbers are impressive and demonstrate the significant efforts undertaken by the UHRC. However, trainings have been criticised for being "elitist" and not reaching the perpetrators on the ground to the extent that they ought to.²⁰⁰

The respective agencies also conduct their own courses at their training schools or colleges. For example, there is a co-ordinating committee consisting of DPP officers and the police who have on-going programmes to teach the police relevant issues relating to successful prosecutions. The DPP is apparently approaching torture from a pragmatic perspective, seeking to inculcate an understanding on the part of law enforcement personnel that confessions extracted under torture are counterproductive because they can be challenged in court.²⁰¹ Prison staff used to receive external human rights training, mainly from NGOs, but prisons are now running their own training programmes. The political commissars in UPDF, through its

¹⁹⁸ UHRC, *8th Annual Report*, 2005, p.22.

¹⁹⁹ Livingstone Sewanyana, *Human Rights Education of Law Enforcement Personnel*, in *International and National Law against Torture- Status, Practices and Ways Forward for Vietnam*, The Publishing House of Political Theory, Hanoi, 2004, pp.367 et seq., at p.374.

²⁰⁰ Interviews, Kampala, December 2006.

²⁰¹ Interview, Kampala, December 2006.

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human rights department, have received training on human rights. This was provided by the UHRC, Save the Children Uganda and overseas experts. The UPDF also uses a human rights training manual for the different levels of military hierarchy. However, it is seen as less receptive than the police to human rights training by civil society.

There have been training workshops for the judiciary, such as by the Refugee Law Project under the Faculty of Law of Makerere University, but such activities appear to be isolated events and several interlocutors interviewed by REDRESS emphasised the need to conduct further training for the judiciary on human rights issues, including torture.

Civil society organisations have conducted a considerable number of training workshops on torture. In 2005, ACTV alone trained 255 Local Administration Police, 242 Special Police Constables and 166 prison staff on torture. It has also held one awareness workshop for the VCCU. In 2006, ACTV provided training to 456 law-enforcement personnel. ACTV has developed detailed training modules that cover most aspects of torture, in particular its impact on victims and treatment. However, the training modules do not include specific sessions on litigation strategies in torture cases. Several other organisations have, separately and jointly, conducted training for law enforcement personnel on torture. FHRI has conducted training in several districts, training some 150 local government officers, including police, magistrates and district officials per district. SOROTI provided training to the UPDF through the UHRC/Civil Military Co-Operation Centre at Soroti, and UPAF undertook training of police and prison warders. Save the Children has conducted training of mediators and police on juvenile justice and of UPDF on child protection

In October 2004, a large training was conducted by the International Rehabilitation Council for Torture Victims (IRCT) together with Makerere University on the implementation of the Istanbul Protocol (documentation and investigation of torture). The workshop was attended by a wide cross-section of medical and legal practitioners, as well as members of the Uganda Law Reform Commission and the UHRC but no representatives of law enforcement agencies were present. In January 2007, ACTV and the Medical Association of Uganda organised a major 3-day workshop on strengthening medico-legal skills and the investigation, documentation and prosecution of cases that need medical evidence in the courts of law, including torture. The training was attended by 50-60 participants, including the Assistant DPP, the Head of the Department of Pathology Makerere University, officials from the Judicial Service Commission, health workers from the Ministry of Health, prosecutors, local government officials, CID and others. A further training of trainers on the Istanbul Protocol is planned for mid-2007.

The number of training initiatives on human rights is impressive. Most of the programmes focus on imparting relevant standards on torture to law enforcement personnel. The training has been credited with resulting in a more people-friendly security force, a greater willingness to respond to torture, a more dynamic relationship between civil society and law enforcement agencies and reviews of the standing orders of the police and prisons.²⁰² Although these observations are important, they remain anecdotal as no overall systematic evaluation of the impact and effectiveness of training workshops has been undertaken to date. There also seems to have been little overall coordination to avoid duplication and to ensure coherence of the training in

²⁰² Sewanyana, *Human Rights Education of Law Enforcement Personnel*, supra, pp.374, 375.

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targeting all relevant agencies and covering relevant issues.

The following gaps were acknowledged or identified in the course of interviews during the field mission:

Beneficiaries

- Not all agencies have received training in equal measures, with a particular need for more training for Police Special Constables and the VCCU as well as for agencies responsible for the investigation of crime, such as the CID and UPDF.

Evaluation

- Need to follow up trainings undertaken and to evaluate impact.

Substance

- Need for a better understanding of nature of torture, in particular its psychological impact.
- Need for a stronger perspective on victims and their rights.
- There is little understanding of legal strategies on how to ensure the rights of torture victims in relevant proceedings.
- The approach of the DPP, namely to stress that torture should not be used as a means to secure unreliable confessions is useful from a pragmatic point of view but fails to impart a broader understanding of the rights and needs of victims in the process. This includes appraisal of the differences between victims and the implications for their ability to access justice in the system.
- Need to focus on imparting practical skills, such as investigation methods not using torture, and how to ensure victims' rights throughout process.
- Need to locate local practices in the comparative and international context, which includes the role of regional and international human rights bodies and foreign courts.

VII. CAPACITY OF CIVIL SOCIETY TO ASSIST TORTURE SURVIVORS

A. The Role of Civil Society

1. NGOs working on torture

There are several hundred NGOs in Uganda, most of which are based in Kampala and Northern Uganda, but only a few focus solely or predominantly on torture. The two main NGOs in this regard are ACTV and FHRI.

Those human rights organisations whose mandate covers torture work mainly on prevention through monitoring, awareness raising activities and advocacy. A Coalition Against Torture was established in 2004, comprising ten members in early 2007, namely: Foundation for Human Rights Initiative (FHRI), Kumi Human Rights Initiative (KHRI), Uganda Discharged Prisoners Aid Foundation, Tororo Civil Society Network (TOCINET), The African Centre for the Treatment and Rehabilitation of Torture Victims (ACTV), Women's International Cross Cultural Exchange (Isis-WICCE), People's Voice for Peace Gulu (PVP), Gulu NGO Forum, AHURIO (Western Uganda) and SODANN (Soroti). The Coalition plans to focus on networking, enhanced capacity to monitor and report on torture, and joint advocacy, on such issues as abolition of 'safe houses' and ratification of the Optional Protocol to the CAT. The Coalition is still in its early stages; it is premature to assess its effectiveness but it is clear that monitoring and advocacy are its main focal areas.

2. NGO Legal Capacity

Most organisations have only limited capacity to assist torture survivors in seeking justice and reparation. Many organisations have only one lawyer, FHRI and HURIFO being the exceptions. This is largely due to the combination of a traditional focus on monitoring and advocacy, and the lack of sustained donor funding for legal programmes. Several NGOs acknowledge the need to enhance their legal capacity in order to provide legal assistance and use the legal system more strategically but have been hampered by the lack of resources to date.

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Most NGOs, such as ACTV, KHRI and Soroti, limit themselves to lodging complaints on behalf of torture survivors with the UHRC and/or to refer cases to lawyers and the Legal Aid Clinic to take up cases. Unless legal aid is available the NGOs would have to pay lawyers as they commonly do not work on a pro bono basis, which limits the NGOs capacity to refer cases. Only a few NGOs take cases to the courts. FHRI has a free legal aid clinic and had 250 cases in 2006. Its lawyers either file complaints with the UHRC or, exceptionally, take cases to court on selected issues, such as the death penalty, pre-trial detention and the 22 PRA suspects. However, FHRI's capacity to take cases to court is limited because it lacks sufficient funds and there is no national legal aid scheme it can rely upon. HURIFO, based in Gulu, monitors violations and has brought several cases of torture and other violations before the High Court in Gulu, a number of which have already been successful. However, HURIFO too is constrained by limited financial and legal capacity to bring cases. Generally speaking, the demand outstrips by far the services NGOs can offer and several interlocutors have expressed concerns at duplication of services and the perceived lack of understanding of torture issues on the part of some legal practitioners and NGOs, and even donors.

A further notable feature is that the concept and practice of strategic litigation is underdeveloped. The term strategic litigation means that lawyers or NGOs use avenues available under the legal system to bring about fundamental changes in order to strengthen victims' rights and promote human rights and the rule of law. Strategic litigation is characterised by a creative use of the legal system that is not confined to individual cases dealt with on an ad-hoc basis but seeks to bring cases that can further strategic goals. In respect of torture, this includes enhancing access to justice for torture survivors and

setting precedents for enhanced protection, accountability and reparation. In the Ugandan context, the development of a strategic litigation programme would require:

- identifying systemic problems, such as lack of access for victims of past violations to courts because of statutes of limitations, inadequate enforcement of awards by the UHRC and impunity
- determining the goals of litigation in respect of these problems
- reviewing the effectiveness of pertinent steps taken to date, including litigation
- examining legal remedies and avenues, both national, regional and international, which may be utilised to advance the litigation goals
- selecting appropriate cases that highlight the systemic problem and stand a reasonable chance of succeeding on the strength of the evidence available.

Most Ugandan NGOs appear to respond to cases at hand without having a strategic litigation programme in place. Such "random" cases might set important precedents in combating impunity, such as in Northern Uganda, but are not necessarily the most suitable in overcoming persistent structural obstacles. However, some strategic cases have been litigated, such as on the death penalty.²⁰³ Moreover, no use has been made of available regional remedies, namely recourse to the African Commission on Human and Peoples' Rights. Further areas for strategic litigation have been identified (see below) and there is plenty of scope to enhance capacity of NGOs and lawyers, thus making an impact.

3. The role and capacity of lawyers

There are around 1,500 lawyers registered with the Uganda Law Society, 800 of whom practice, mainly in Kampala (around 80% of practising lawyers) and Jinja. There is a general shortage of lawyers that is even more marked outside of Kampala, with most of those

²⁰³ *Susan Kigula and 416 Others vs. The Attorney General*, Constitutional Petition No.6 of 2003, Judgement of the Constitutional Court of Kampala, 10 June 2005.

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outside attached to NGOs. Few senior lawyers engage in human rights work and there is no established culture of taking 'pro bono' cases. Most lawyers have little or no knowledge and understanding of the nature of torture, relevant international standards and crucial areas for legal intervention. There is also a perception that many lawyers are too timid to take 'controversial' cases or engage in test cases which challenge the authorities. This may in some cases be due to the harassment experienced by human rights defenders.

4. Training

NGOs have organised several training workshops on human rights in general and torture in particular. However, there has been little specialised training on human rights litigation. An important workshop was the 2004 training on the Istanbul Protocol mentioned above in which participants learned about relevant standards, documentation of torture and the use of evidence in legal proceedings. The January 2007 workshop in Gulu also dealt with the medico-legal investigation of human rights violations, including torture. However, more focused trainings would be needed to discuss extensively the relevant domestic and international case law, obstacles and potential avenues, and how to select and successfully bring cases to various judicial fora.

There has been little training on the legal aspects of working with and for torture survivors and trauma victims. ACTV has recently started to provide training on these issues, although it has mainly targeted health professionals focusing on medical aspects. The situation is slowly changing in the North, where several organisations have been focusing on victims' issues and were at the time of writing considering setting up a Victims Rights Working Group, focusing both on participation before the ICC and in local justice mechanisms.

Several universities offer human rights courses. Makerere University offers two human rights courses and an LL.M. programme on human rights. The new Kampala International University, the Uganda Christian University and the Grotius centre also offer human rights courses. While these courses provide an overview of international human rights law and relevant standards, including mention of the Convention Against Torture, there is no course focusing specifically on torture, trauma and litigation in cases of torture and/or other serious human rights violations.

The Law Society has a department of Continuing Legal Education whose objective is 'continuous professional skills enhancement of lawyers in Uganda to ensure harmony with the developments within the legal fraternity across the globe'.²⁰⁴ The Law Society has undertaken some training on strategic litigation and public litigation though not specifically on human rights litigation.

The combination of limited organisational and personal capacity results in an acute shortage of lawyers with the expertise and experience of working on human rights cases, in particular torture. Most organisations face the twin challenge of having a limited number of lawyers who often do not have the requisite skills. These problems are compounded by the lack of sufficient resources enabling NGOs either to litigate cases themselves or to hire external lawyers to do so. The legal profession, for its part, is either unable or unwilling to fill the gap. Most lawyers receive rudimentary training on human rights only. The Law Society has not taken a proactive stance to address these deficiencies. Only a few lawyers have a background in human rights issues without, however, having necessarily had sufficient experience or training in dealing with torture survivors. Moreover, in the absence of the availability of

²⁰⁴ <http://www.uls.or.ug/departments.html>

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legal aid, most lawyers are reluctant to litigate human rights cases on a pro bono basis - there is no developed pro bono culture in Uganda and lawyers would commonly expect someone, if not the victim themselves then most likely the NGOs referring cases, to pay for litigation.

5. Involving grassroots communities

Several NGOs have very strong links to local communities and actively engage with and support local groups and victims. In the course of the work of the Coalition Against Torture, some NGOs have pledged that they will mobilise grassroots people and communities in broader awareness raising and advocacy campaigns, for example KHRI in Kumi, AHURIO in the Rwenzori region, the Gulu District NGO forum and the People's Voice for Peace Gulu. A torture victims association is in the midst of being formed according to UPDAIF. There are also steps to set up a nationwide Victim Rights Working Group, though the initial focus will be on the North.

These developments reflect a growing momentum towards involvement and representation of grassroots communities in regional and national discourse. However, with few exceptions, community groups have not been targeted in training programmes and there is much scope to have greater community participation in the development and delivery of trainings, and in broader advocacy campaigns.

B. The role of ACTV: History, services, capacity, training and legal programme

ACTV is the only organisation of its kind in Uganda, dedicated solely to assisting torture victims. Other local human rights NGOs and organisations have torture victims amongst

those approaching them for assistance of one kind or another, but only ACTV that has as its main strategic objective the provision of "holistic treatment and rehabilitation services (physical, mental, legal, social) to torture survivors."²⁰⁵ For this reason torture survivors are routinely referred to it not only by other human rights NGOs but a range of other organisations including the Uganda Human Rights Commission (UHRC).²⁰⁶ Again, while some other NGOs also campaign against torture and engage in preventative training of state officials in the context of their wider human rights advocacy projects, ACTV does so within its clearly defined mission "to provide quality treatment and rehabilitation services to torture victims as well as to advocate against torture."²⁰⁷ To these ends its other strategic objectives are: "to advocate against torture; to create awareness among the perpetrators and the community at large about torture; to generate information about the state of torture through research, monitoring, inspection visits to detention centres and documentation; to provide socio-economic rehabilitation services to survivors of torture."²⁰⁸

ACTV was formed in 1993 in Kampala under the guidance of the Danish-based International Rehabilitation Centre for Torture Victims (IRCT). Its headquarters and main activities are centred in Kampala, but in 2006 it opened a branch office in Gulu, Northern Uganda. It is registered as a non-political and non-government organisation, dedicated to the promotion and protection of human rights with emphasis on the health and rehabilitation of victims of torture by security agencies and armed groups. Its main activities are: medical treatment; physiotherapy; nursing

²⁰⁵ ACTV, *Annual Report*, t 2005, p. 6.

²⁰⁶ One of ACTV's important activities is to provide medical-legal reports for the UHRC. Thus torture survivors who lodge claims with Human Rights Tribunal are sent by it to ACTV for that purpose; ACTV provides these reports, and in addition offers the full range of its services to such persons.

²⁰⁷ ACTV, *Annual Report*, 2005, p. 6.

²⁰⁸ Ibid.

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and care; social and trauma counselling; legal advice; referrals for specialised treatment and legal redress; awareness education; advocacy; networking and liaising with relevant NGOs/CBOs, government institutions and international organisation; inspection of detention places/centres.

ACTV has gone through various stages of development over the past 14 years.²⁰⁹ Formed by a Ugandan medical doctor who was himself a torture survivor, it initially concentrated on physical and psychological services for victims. The current director and several new staff were engaged in 2004, and a three-year Strategic Plan put into operation for the period 2005-2007. Backed by an active Board, one of the aims for the first year - to offer care services to at least a total of 600 victims of torture - was surpassed: by the end of 2005 a total of 752 new clients had benefited.²¹⁰ In 2006 a total of 1145 new clients were offered medical treatment, psychological counselling and legal services.²¹¹

From its inception ACTV has used the UN Convention against Torture definition of torture when assessing whether a client falls within its programme. Most victims who have passed through its doors are those who have suffered since the present Government came to power in 1986, although it has also treated victims of the two Obote eras and that of Idi Amin.²¹² Today those who come to ACTV are 'ordinary' people tortured by the army, police and prison service, political victims engaged in opposition to the current Government, and refugees tortured in Uganda's neighbouring countries. In Gulu, naturally, the situation is quite different, with many thousands of persons in Northern Uganda having fallen

victim to either the LRA or the UPDF, or both. The opening of the Gulu branch has led to an immediate and very substantial increase in numbers treated. Thus of the 1145 new ACTV clients received in 2006, a total of 519 (45%) were registered in Gulu.²¹³

3. Quality, quantity and capacity of treatment of torture survivors

That the number of new clients is increasing dramatically each year reflects the growing need for ACTV services.²¹⁴ This is an indicator that torture still exists in Uganda as well as the fact that ACTV's outreach activities are having the desired effect of having victims coming to it for physical and psychological treatment and legal redress. Current staff in Kampala includes the director, two financial/administrative officers, two medical doctors, a legal officer, a physiotherapist, a communications and advocacy officer, a social worker/counsellor, a nurse, a secretary/receptionist and other support staff. In addition use is made of volunteers, including nursing personnel. Clients needing special medical and/or psychiatric attention are referred. To run and operate the Gulu office three more professional and one support staff person were recruited in 2006.

ACTV keeps detailed statistics and information on each client, catering for the individual's needs and enabling the overall data to be used to detect patterns of torture, perpetrators, gender issues, places, age and several other aspects. Every new client is assessed to determine whether they fall within the torture definition; those that do not qualify are referred to relevant NGOs/agencies where they can get assistance.²¹⁵ A comprehensive "Client Survey Questionnaire" form is used for data capture, including all relevant personal details; the

²⁰⁹ This background was provided in an interview with one of the longest-serving ACTV staff members in November 2006.

²¹⁰ ACTV, *Annual Report* 2005, pages 2-3.

²¹¹ ACTV, *Draft Annual Report*, 2006, p. 2. In 2004 ACTV treated 437 victims of torture.

²¹² Interview with Mr Fred Muzira (Social Worker/Counsellor), on 23 November 2006 who said he knew of two men with PTSD from the Obote II era who still come to ACTV for treatment.

²¹³ Draft Annual Report 2006, p. 2.

²¹⁴ 2004: 437; 2005: 752; 2006: 1145.

²¹⁵ Annual Report 2005, p. 6.

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effect of the torture on employment, education, family life; the circumstances of the torture; property losses; the type of torture; perpetrators, and so on. Detailed records are kept and maintained on psychosocial counselling and medical treatment. Each client is assigned an identity number to ensure security. Where legal issues arise the client is passed to the legal officer (see below).

The annual reports and other publications²¹⁶ summarise some of the key statistics and analyses which have brought to bear on the data, while other aspects are used for research, for example, the relationship between the types of torture used and the victims' individual characteristics (gender, age, ethnicity, nationality, social-economic status).²¹⁷ In brief, ACTV has a comprehensive and holistic approach incorporating group counselling sessions, follow-up by the social worker and trauma counsellor, the development of a Self-Help Group, occupational therapy and skills training, amongst others.²¹⁸

4. Improving access to ACTV services

- Northern Uganda

The new Gulu Satellite Treatment Centre has brought a quantitative and qualitative change to the treatment of Northern victims, who previously had to travel to Kampala or could only be seen when ACTV visited the area. In April 2006 an agreement was signed between ACTV and Save the Children in Uganda (SCiU) for an 18-month grant (US\$85,000) to enable more victims of torture in Gulu district to access ACTV services. With this grant ACTV was able to recruit three professional and one support staff based in Gulu, as well as rent a building from where the victims of torture are treated. (Previously, ACTV had

been hiring rooms in Gulu each time its treatment team went there, logistically difficult and costly.) The new staff will also help to continually provide holistic treatment to the victims of torture there and reduce the number of staff that have to regularly travel to Gulu from Kampala to provide services. In November 2006, the French Embassy agreed to fund the construction and equipping of the Satellite Treatment Centre in Gulu Town, so ACTV will have its own permanent structure - an agreement to this effect has been signed and preparations for construction of the centre are underway.

- Prisons

ACTV has worked with prisoners and in prisons for several years, but is now placing greater emphasis on this. In 2006 eleven Local Administration and three Central Government Prisons were visited in the Districts of Mpigi, Mityana, Bushenyi, Kampala, Mityana, Wakiso and Mukono. A total of 258 new clients (of whom 218 were male and 40 female) were registered as victims of torture, and given holistic treatment.²¹⁹ The treatment team included a medical doctor, nurse, trauma counsellor and a physiotherapist.

A major finding was that in addition to the torture by state officials (security forces and prison officers) there are incidents of inmates torturing fellow detainees with impunity. To combat these tendencies ACTV organised anti-torture sensitisation workshops in those districts so that prison warders and other security officials can join the campaign against torture. In addition to Local Government Prisons, ACTV got permission to visit Central Government Prisons in various parts of Uganda; however, because of funding restrictions it is not always possible to carry

²¹⁶ Such as the biannual newsletter, TortureWatch.

²¹⁷ Annual Report 2005, p. 17.

²¹⁸ Draft Annual Report, p. 2.

²¹⁹ ACTV, *Draft Annual Report*, 2006, pp. 11-12. In comparison, ACTV treated 149 inmates who were victims of torture in 2005, the year when the leadership of Uganda Prison Service denied ACTV permission to visit Central Government Prisons - see ACTV, *Annual Report* 2005, p. 9.

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out follow-up visits in some Central Government Prisons.²²⁰ Group counselling sessions were also organised in different prisons to restore hope in clients.

5. The communications and advocacy strategy

ACTV places considerable emphasis on increasing awareness on torture and its consequences, and in expanding and consolidating its networking and advocacy activities in ways which complement its other core work. Media messages are developed and aired on local radio stations in English and vernacular languages; media sensitisation workshops for print and electronic houses are held; public events including marches, meetings and special talk shows are organised around days such as the UN International Day in Support of Victims of Torture (June 26); collaboration with other human rights organisations, both local and international, is on-going; work with community-based organisations is being intensified. These and related activities have a multiple purpose: to raise the profile of the issue as part of a preventative strategy; to make organisations, officials and others at all levels in Uganda aware of ACTV's work so that torture victims are referred to it; and to make torture victims themselves aware of ACTV, thus affording them the opportunity to seek help directly.²²¹

A key aspect is awareness workshops on torture for security personnel and local leaders. Thus in 2005 some 778 such participants were trained on matters like the concept of torture and its consequences, and Uganda's legal obligations to combat torture, and handling torture victims. Those exposed to these workshops include special police constables, local administrative police, prison

officers, and local council representatives.²²² In addition to the regular ACTV newsletter, other information, education and communication materials are produced and distributed, including posters, stickers and fact sheets. In 2006 such work continued.

ACTV continues to participate in regional and international activities related to torture, and in 2005 was accredited with the International Council for Torture Victims ((IRCT).

6. Legal programme

Since 2004 ACTV has engaged a legal officer to enhance its holistic approach to what it can offer torture victims. The officer has played an important role in the advocacy and communications programmes of the organisation, bringing expert knowledge of the local, regional and international legal issues which arise in work with the media, training, outreach, networking, and so on. This is a vital and on-going part of the legal department. In addition, individual victims have individual needs, including legal needs, and here too the legal officer has become increasingly involved. There is recognition that there is considerable scope for developing on the foundation which has been laid, either in strengthening ties with legally focussed organisations or developing greater in-house capacity. Simply put, when torture victims come to ACTV for medical, psychological and other such immediate needs, then where it is possible to help with their legal requirements these should be tackled as well.

²²⁰ Ibid. Thus Gulu Central Prison was visited only once in 2006. Since re-granting ACTV permission to Central Government Prisons, the working relationship between ACTV and the Uganda Prisons Service is said to be very amicable.

²²¹ ACTV, *Annual Report*, 2005, pp. 12-16.

²²² Ibid. In 2006 nine trainings sessions were held for 456 security forces in Mityana, Bushenyi and Mpigi Districts between February and November 2006. Of the total number of officers trained, 372 were male and 84 were female. The security officers included special police constables, prison warders, and local administration police, and special duty intelligent agents/ detectives. The training sessions focused on: The Concept of Torture, the Types/ Methods and Consequences of Torture, The Code of Conduct of Prison and Police Officers. Local government/district leadership also attended opening and closure events during which they supported what facilitators presented regarding the need to stop torture: see Draft Annual report 2006, p. 15.

VIII. CONCLUSION: Challenges and Perspectives

Torture is a systemic problem in Uganda, as an instrument of political repression, as a tool used in law-enforcement, and as one of the methods employed in the conduct of war. Thousands of survivors suffer from the physical injuries and psychological consequences of torture. They also suffer from a lack of recognition and justice for the wrongs done to them. Even following the large-scale atrocities committed in Uganda's past, the current Government has only taken half-hearted steps to improve the human rights situation, none of which has been torture-specific. There is still no specific offence of torture and impunity is rife. In the absence of effective access to justice, the Ugandan Human Rights Commission carries the burden of being expected to provide justice and reparation. However, it has encountered many obstacles in its operations, the most serious of which is the lack of enforcement of its awards by the Government. Problems are even more marked in the North where large scale victimisation is coupled with a lack of capacity of justice institutions and the Ugandan Human Rights Commission.

There are, on the other hand, a series of nascent developments that carry the potential of a strengthening of victims' rights and a more effective prevention of torture. Civil society organisations have formed a Coalition Against Torture; a Victims Rights Working Group has recently been formed, with a particular focus on Northern Uganda; and a group of torture survivors is planning to establish an association.

These initiatives are marked by renewed discussions of core problems and of strategies on how to overcome them. Most organisations acknowledge the lack of legal capacity, which is compounded by a shortage

of active human rights lawyers. To date, litigation has focused mainly on habeas corpus and prevention, with only a handful of cases seeking to assert victims' rights and ensuring accountability. There is no developed culture of strategic litigation that would assist in tackling systemic problems, either before domestic courts or regional bodies, such as the African Commission on Human and Peoples' Rights. However, isolated cases brought before the High Court show the potential for public interest litigation in Uganda.

A combination of targeted training on required skills and joint selection and litigation of key cases promises to set important precedents for the benefit of large groups of torture survivors and those at risk of torture. Civil society organisations will have to develop their legal programmes in parallel, in close consultation with victims, victims associations and community groups as the ultimate beneficiaries. It is vital that any such legal programmes are made sustainable in the long-term and benefit from staff of the highest possible calibre. International actors have a key role in supporting such programmes. This applies in particular to donors that should make consistently available the required funding. International human rights organisations can further this goal through sharing their expertise and collaborating on projects with a view to enhancing capacity as well as developing and implementing appropriate strategies.

It is also crucial that the strengthening of organisational and individual legal capacity and strategies is accompanied by activities that tackle deep-running problems of access to justice and law-enforcement falling short of acceptable standards. Rights awareness campaigns amongst grassroots communities and advocacy by or on behalf of victims, in particular on addressing shortcomings in the present system, are key strategies to this end. This will include collaboration and critical

A BASELINE SURVEY ON TORTURE SURVIVORS

engagement with institutions such as the UHRC and JLOS on current access to justice initiatives, with a particular focus on specific obstacles experienced by torture survivors.

While law-enforcement agencies have taken some steps towards greater human rights observance, there is still a marked lack in their practical application that reflects the absence of stringent policies to ensure compliance. Training programmes for officials, be they conducted by the agencies themselves or with the UHRC or NGOs, have contributed to a

greater awareness, although shortcomings remain regarding the understanding of the nature and legal prohibition of torture. Moreover, the impact of training is limited because it is not fully evaluated and not backed up by anti-torture policies. It is therefore essential for civil society actors to call for practical implementation measures and for agencies to make the prohibition of torture operational in the conduct of forces through appropriate monitoring and accountability mechanisms.

APPENDIX 1: LIST OF INTERVIEWS

NOVEMBER/DECEMBER 2006

KAMPALA

- 23/11/06: Meeting with eight ACTV clients (Ugandan torture survivors)
- 24/11/06: Meeting with a group of twenty ACTV clients (refugee torture survivors)
- 27/11/06: Meeting with Patrick Tumwine, HURINET
- 27/11/06: Meeting with Livingstone Sewanyana, FHRI
- 28/11/06: Meeting with Henry Nzeyimana, Save the Children
- 28/11/06: Meeting with Dr. Johnson O.R. Byabashaija, Commissioner General of Prisons
- 29/11/06: Meeting with Asst Supt Simeo Nsubugu, Crime Prevention Officer, Uganda Police Force
- 29/11/06: Meeting with Norris Maranga, Criminal Defence Lawyer
- 29/11/06: Meeting with Deo Nkuzingoma, President of the Uganda Law Society
- 29/11/06: Meeting with Byenkya Tito, Executive Director of Ugandan Law Society
- 29/11/06: Meeting with Soroti and Kumi Human Rights Initiative
- 30/11/06: Meeting with J.K. Zirabamuzule, Sameul Okira and Martin Mugambwa, Uganda Prisoners' Aid Foundation
- 30/11/06: Meeting with Richard Buteera, Director of Public Prosecutions
- 30/11/06: Meeting with Prof. Joseph Kakooza and Florence Ochago, Uganda Law Reform Commission
- 01/12/06: Meeting with Moses Adriko, Former President of the Uganda Law Society

GULU

- 04/12/06: Meeting with James Otto and Patricia Okello, HURIFO
- 05/12/06: Meeting with a group of twenty ACTV clients (survivors of torture, mainly by UPDF)
- 05/12/06: Meeting with Adam Rajeb, Human Rights Commission Gulu Office
- 06/12/06: Meeting with Florence Ochola, Regional Advisor Partnership, Save the Children Gulu,
- 06/12/06: Meeting with Oywa Rosalba, People's Voice for Peace, Gulu
- 06/12/06: Meeting with Paul White, UNOHCHR, Gulu

KAMPALA

- 07/12/06: Meeting with Evelyn Edroma, Senior Technical Advisor of JLOS
- 07/12/06: Meeting with Margaret Sekagya, Chairperson Uganda Human Rights Commission
- 07/12/06: Meeting with Emmanuel Kasimbazi, Senior Lecturer in the Makerere University Law Faculty

JANUARY/FEBRUARY 2007

TORTURE IN UGANDA

30/01/07: Meeting with Gad Tumushabe, Principal Legal Officer (planning, research and inspectorate), Judicial Services Commission

31/01/07: Meeting with Prof. J. Oloka-Onyango, Director of HURIPEC (Human Rights and Peace Centre Makerere University)

31/01/07: Meeting with the Judiciary

01/02/2007: Meeting with Major Charles Wacha Angulo, UPDF Human Rights Dept, UPDF Headquarter Bombo, outside Kampala

01/02/07: Meeting with Mugisha Muntu, MP for East African Legislative Parliament

01/02/07: Meeting with Patrick Oboi MP, FDC

02/02/07: Meeting with Sharon Lamwaka, ACTV Communications and Advocacy Officer

06/02/07: Meeting with Christine Nsubuga, Director Legal and Tribunals, UHRC

06/02/07: Meeting with Namusobya Salima, Senior Legal Officer, Refugee Law Project

08/02/07: Meeting with Stephen Kadaali, CEO ACTV

08/02/07: Meeting with Fred Muzira, Social Worker/Counsellor, ACTV