

Uganda and the United Nations Human Rights Mechanisms

**A Compilation on the Occasion of the 60th Anniversary of
the Universal Declaration of Human Rights**



OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

This publication was produced by the OHCHR country office in Uganda, in cooperation with the Human Rights Council and Treaties Division and the Special Procedures Division in OHCHR Geneva.

The publication was co-funded by the European Commission.

For further information and queries, please kindly contact the Office at:

OHCHR Uganda
Plot 12 A, Baskerville Avenue, Kololo
P.O. Box 7184
Kampala
Uganda

Tel: +256 414 236272/414 257 992

Fax: +256 414 346 130

Web: www.ohchr.org

Acknowledgment

The Office of the United Nations High Commissioner for Human Rights (OHCHR) in Uganda wishes to thank the European Commission for its financial support without which this publication would not have been possible. OHCHR Uganda would also like to express sincere thanks to Dr. Nelson Musoba and Dr. Chris Mbazira for their valuable contributions and to colleagues in the Human Rights Council and Treaties Division and the Special Procedures Division at OHCHR Headquarters for their indispensable encouragement and support throughout the preparation of the publication. Special thanks go to Mr. Sagnik Chattopadhyay, Ms. Jane Connors, Ms. Christina Meinecke, and Ms. Lydie Ventre.

Acronyms

AGHA	Action Group for Health, Human Rights and HIV/AIDS (AGHA) Uganda
CAT	Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment/Committee against Torture
CED	Committee on Enforced Disappearances
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women/Committee on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CMW	Committee on Migrant Workers
CRC	Convention on the Rights of the Child/Committee on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disability/Committee on the Rights of Persons with Disabilities
ECOSOC	Economic and Social Council
GA	General Assembly
GC	General Comment
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICCPR	International Covenant on Civil and Political Rights
ICRMW	International Convention on the Rights of Migrant Workers and All Members of their Families
ICPED	International Convention for the Protection of All Persons from Enforced Disappearances
IFHHRO	International Federation of Health and Human Rights Organizations
HRBA	Human Rights Based Approach
HRC	Human Rights Committee/Human Rights Council
HURINET	Human Rights Network - Uganda
HURIPPEC	Human Rights and Peace Centre
OHCHR	Office of the United Nations High Commissioner for Human Rights
NHRI	National Human Rights Institutions
NTD	Neglected Tropical Diseases
SPD	Special Procedures Division
SPT	Subcommittee on Prevention of Torture
UDHR	Universal Declaration of Human Rights
UHRI	Universal Human Rights Index
UN	United Nations
UPR	Universal Periodic Review

List of Contents

Acknowledgement

Acronyms.....	i
List of Contents.....	iii
Introduction.....	1
1. United Nations Human Rights Treaty Bodies.....	2
1.1 Brief History and Overview.....	2
1.2 Who are on the Committees?.....	3
1.3 Main Functions and Roles.....	3
1.4 Other Activities.....	10
2. Uganda and the UN Treaty Bodies.....	11
2.1 Ratification.....	11
2.2 Individual Complaints Procedure.....	11
2.3 Reporting.....	11
2.4 Uganda and the UN Treaty Bodies: Reflections on the Past and Thoughts for the Future in the Implementation of Economic, Social and Cultural Rights (by Dr. Chris Mbazira).....	13
2.5 Uganda and Treaty Reporting: List of Documents.....	25
2.6 How to Search Documents of the Treaty Bodies and other UN Human Rights Mechanisms.....	27
2.7 Uganda Reports to the Committee on the Rights of the Child.....	27
2.8 Contacting the Human Rights Treaty Bodies.....	55
2.9 Further Information and Reading.....	55
3. United Nations Special Procedures.....	56
3.1 Brief History and Overview.....	56
3.2 Establishment, Nomination, Selection and Appointment.....	56
3.3 Who are the Special Procedures Mandate-holders?.....	57
3.4 Main Functions and Activities.....	57
3.5 Public Reporting.....	60
4. Uganda and the UN Special Procedures.....	61
4.1 Communications.....	61
4.2 Country Visits.....	72
4.3 Special Procedures from the Perspective of Civil Society: The Case of the Special Rapporteur on the Right to Health (by Dr. Nelson Musoba).....	73
4.4 Mission Report on the Visit to Uganda by the Special Rapporteur on the Right to Health.....	75
4.5 Current UN Special Procedures and Mandate-holders.....	91
4.6 Contacting Special Procedures.....	93
4.7 Further Information and Reading.....	94
5. United Nations Universal Periodic Review.....	95
5.1. Overview of the Universal Periodic Review (UPR).....	95

Introduction

2008 marked the 60th anniversary of the Universal Declaration of Human Rights (UDHR). On 10 December 1948, the United Nations (UN) General Assembly adopted and proclaimed the Declaration as “a common standard of achievement for all peoples and nations”. It was the first international human rights document adopted at a universal level and has continued to provide a fundamental source of inspiration of national and international efforts to promote and protect human rights. As Uganda and the world celebrate this landmark document, it is opportune to reflect upon achievements made and remaining gaps in the national and international protection regimes of human rights.

Since the adoption of the UDHR, the UN has provided the forum for an impressive period of standard-setting and the elaboration of international human rights treaties that legally codify and expand the rights set forth in the Declaration. In parallel, several mechanisms tasked to monitor and ensure effective implementation of international human rights instruments have been established. These mechanisms are known as either *Charter-based* or *treaty-based* bodies and have undergone significant developments since 1948. The Charter-based mechanisms include those established by the UN Human Rights Council, such as the UN special procedures and the Universal Periodic Review (UPR). The treaty-based mechanisms are bodies created under the international human rights treaties, so called treaty bodies, and are composed of independent experts mandated to monitor State parties’ compliance with their treaty obligations.

This publication represents a modest attempt to explain the work and functions of these UN human rights mechanisms and how they relate to Uganda as of 2008, the year of the 60th anniversary of the UDHR. As such, it aims at enhancing awareness and understanding of the UN human rights mechanisms and their role in promoting the respect for human rights in Uganda. Consequently, the publication gives an overview of (1) the UN treaty bodies, (2) the UN special procedures and (3) the UPR and how Uganda has engaged with them. With a view to provide local perspectives on these interactions, two Ugandan human rights scholars and professionals, Dr. Chris Mbazira and Dr. Nelson Musoba, share their insights and experiences on specific aspects of the UN treaty bodies and special procedures respectively.

The Office of the UN High Commissioner for Human Rights is mandated to promote and protect the enjoyment and full realization, by all people, of all rights established in the UN Charter, in the UDHR and in international human rights laws and treaties. As such, OHCHR provides secretariat support to all of these mechanisms and works for their enhanced awareness and effectiveness. OHCHR Uganda hopes that the present publication will provide a useful and informative tool in promoting understanding of the UN human rights mechanisms in Uganda, with a view to further the protection and promotion of human rights in the country.

Mrs. Eleanor Roosevelt, chairperson of the UN Commission on Human Rights, holding a poster of the Universal Declaration of Human Rights, adopted on 10 December 1948.



1. The United Nations Human Rights Treaty Bodies

1.1 Brief History and Overview

The same day that the General Assembly adopted the Universal Declaration of Human Rights on 10 December 1948, it mandated the UN Commission on Human Rights to embark on the process of drafting a legally binding covenant on human rights. This decision was based on a common agreement among UN member States that in order to enforce the rights set forth in the UDHR they needed to be translated into legal form as treaties which would directly bind States which ratified them. The forum for the discussion and negotiation of such treaties has been the UN Commission on Human Rights (replaced by the UN Human Rights Council in 2006), which has submitted draft treaty texts for formal adoption by the General Assembly ever since.

This period of standard-setting has led to the adoption of nine core international human rights treaties which create legal obligations for States parties to promote and protect human rights at the national level. These international human rights instruments are as follows:

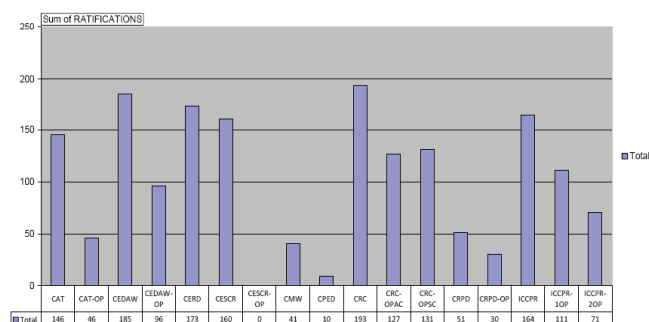
- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965¹
- The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
- The International Covenant on Civil and Political Rights (ICCPR), 1966
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979
- The Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment (CAT), 1984
- The Convention on the Rights of the Child (CRC), 1989
- The International Convention on the Rights of Migrant Workers and All Members of their Families (ICRMW), 1990
- The Convention on the Rights of Persons with Disability (CRPD), 2006
- The International Convention for the Protection of All Persons from Enforced Disappearances (ICPED), 2006

Some instruments have expanded their scope of protection by means of the adoption of Optional Protocols, which are

either procedural or substantive in character. Among the first category count the Optional Protocols to the ICCPR (ICCPR-OP-1), CEDAW (OP-CEDAW), CRPD (OP-CRPD) and CAT (OP-CAT). The first three Protocols provide for an individual complaints procedure in case of alleged violations of the rights set forth in the respective treaty. The Optional Protocol to CAT, adopted in 2002, establishes a system of regular visits to persons deprived of their liberty with a view to reinforce measures to prevent torture. With respect to substantive protocols, the second Optional Protocol to the ICCPR (ICCPR-OP-II) commits States parties to it to take all necessary measures to abolish the death penalty within its jurisdiction. To enhance protection of children's rights, two Optional Protocols to the Convention on the Rights of the Child were adopted in 2000: on the Sale of Children, Child Prostitution and Child Pornography (OP-CRC-SC) and on the Involvement of Children in Armed Conflict (OP-CRC-AC), respectively.

At the time of writing, all UN member States had ratified one or more of these instruments and more than 80% of UN member States had ratified four or more.

Current Status of Ratification of UN Human Rights Treaties²



At the time of the adoption of the first legally binding international human rights treaty, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), it was recognized that States parties would require encouragement and assistance in meeting their international obligations to put in place measures to ensure the enjoyment of the rights provided in the treaty by everyone within the State. Each treaty therefore creates an international committee of independent experts tasked to monitor, by various means, implementation of its provisions. These committees are also known as UN human rights treaty bodies.

¹ The year indicates the time of adoption of the treaty by the UN General Assembly.

² Source: Human Rights Treaties Branch, OHCHR, 2009.

There are today eight committees, or treaty bodies, that monitor States parties' implementation of UN human rights treaties:

- The Committee on the Elimination of Racial Discrimination (CERD): monitoring ICERD
- The Committee on Economic, Social and Cultural Rights (CESCR)³: monitoring ICESCR
- The Human Rights Committee (HRC): monitoring ICCPR and its second optional protocol
- The Committee on the Elimination of Discrimination against Women (CEDAW): monitoring CEDAW
- The Committee against Torture (CAT): monitoring CAT
- The Subcommittee on Prevention of Torture (SPT)⁴
- The Committee on the Rights of the Child (CRC): monitoring CRC and its two substantive protocols
- The Committee on Migrant Workers (CMW): monitoring ICRMW
- The Committee on the Rights of Persons with Disabilities (CPRD): monitoring CPRD



The Committee on the Rights of Persons with Disabilities, the most recently established UN treaty body, during in its first session, held in Geneva from 23 to 27 February 2009.⁵



Mr. Mohammed Al-Tarawneh (Jordan), chairperson of the Committee on the Rights of Persons with Disabilities, in interview with a staff member of OHCHR in Geneva.

1.2 Who are on the Committees?

Each committee is composed of independent experts (ranging in number from 10 to 23 members, please see table below) of recognized competence in the field of human rights and who serve in their personal capacity. They are nominated and elected for fixed, renewable terms of four years by States parties. However, the newer treaties provide that Committee members may only be elected once. When committee members are elected, consideration should be given to their expertise in the subject matter, equitable geographical distribution, representation of different forms of civilization and of the principal legal systems, and balanced gender representation.

For instance, the Convention on the Rights of Persons with Disabilities provides that “members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities” (article 34(4)). In the case of the Sub-Committee on Prevention of Torture, there is a specific requirement that members shall have “proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty” (article 5(2)).

Basic facts on the UN treaty bodies⁶

Committee	No. of members	No of States Parties to treaty monitored
CERD	18	173 (89%)
HRC	18	161 (83%)
CESCR	18	158 (81%)
CEDAW	23	185 (96%)
CAT	10	145 (75 %)
CRC	18	193 (99 %)
CMW	10 (14) ¹	37 (19%)
SPT	10 (25)	35
CRPD	12 (18)	27 (14%)

1.3 Main Functions and Roles

The treaty bodies perform a number of functions aimed at monitoring how the treaties are being implemented by States parties. All treaty bodies are mandated to *receive and consider reports* submitted regularly by States parties. Also, they issue *guidelines* to assist States with the preparation of their reports, elaborate *general comments* interpreting the treaty provisions and organize *discussions* on themes related to the treaties. Some of the treaty bodies may consider *complaints or communications* from individuals alleging that their rights have been violated by a State party, provided that the State has recognized the competence of the committee to this effect For instance,

⁶ Report on the working methods of the Human Rights treaty bodies relating to the state party reporting process, UN Doc. HRI/MC/2008/4, 5 June 2008.

³ Contrary to all other committees, which are established by the respective treaty, the CESCR was established by ECOSOC resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to ECOSOC as per Part IV of the Covenant.

⁴ The Subcommittee on Prevention of Torture is mandated to visit places where persons are or may be deprived of their liberty with a view to strengthening protection of such individuals against torture and other cruel, inhuman or degrading treatment or punishment (articles 4 and 11 of OP-CAT).

⁵ Photos included in this publication on the UN treaty bodies in session in Geneva were taken by and received with thanks from Danielle Kirby, OHCHR staff member.

in the case of violations under the ICCPR, the State party must have ratified the Optional Protocol to the Covenant to this effect. Some may also conduct *inquiries*, including visits to the country concerned.

Although the treaty bodies are presented together as part of a coordinated treaty monitoring system which is going towards enhanced harmonization and coordination,⁷ it should be noted that each treaty body is an *independent committee of experts* which has the mandate to monitor implementation of a *specific treaty*. Although the treaty bodies continue their efforts to coordinate their activities, procedures and practices may differ from committee to committee.

The main activities of UN treaty bodies can hence be identified as the following:

- 1) Consideration of States parties' reports
- 2) Consideration of individual complaints
- 3) Inquiries and country visits
- 4) Adoption of general comments
- 5) Organization of days of discussion

1) Consideration of States Parties' Reports

The primary mandate, common to all of the treaty bodies, is to monitor implementation of the relevant treaty by reviewing reports submitted periodically by States parties. The idea of monitoring human rights through review of reports originates from a 1956 resolution of the United Nations Economic and Social Council (ECOSOC) which requested reports on progress made in the advancement of human rights. This model was incorporated into ICERD in 1965, the two Covenants of 1966 and every core international human rights convention adopted thereafter.

Each State party is required to submit a comprehensive initial report usually within one year of the entry into force of the treaty ratified (two (2) years in the case of the CRC and the ICESCR). The State party then must continue to report periodically (usually every four or five years, depending on the treaty) on further measures taken to implement the treaties. The reports must set out the legal, administrative and judicial measures taken by the State in this respect. To ensure that the reports contain adequate information to allow the committees to do their monitoring work, each treaty body issues guidelines on the form and content of State reports.⁸

⁷ Notably, in 2006 the treaty bodies adopted a set of harmonized reporting guidelines which are common to all committees. Please see UN Doc. HRI/MC/2006/3, 10 May 2006.

⁸ See the harmonized reporting guidelines and treaty specific guidelines referred to in footnote 6 above.



The Committee on Migrant Workers, established in 2004 and the second youngest UN treaty body, sits in deliberation at its 10th session in April 2009.



Purpose of reporting

States parties should regard the process of preparing their initial and periodic reports not only as an aspect of the fulfillment of their international human rights obligations, but first and foremost as an opportunity to take stock of the state of human rights protection within their jurisdiction for the purpose of policy planning and implementation. In particular, the report preparation process offers an occasion for each State party to:

- (a) Conduct a **comprehensive review** of the measures it has taken to harmonize national law and policy with the provisions of the relevant international human rights treaties to which it is a party;
- (b) **Monitor progress** made in promoting the enjoyment of the rights set forth in the treaties in the context of the promotion of human rights in general;
- (c) **Identify problems and shortcomings** in its approach to the implementation of the treaties; and
- (d) **Plan and develop appropriate policies** to achieve these goals.

This way, treaty reporting provides an important tool for a State to assess what has been achieved, and what more needs to be done, to promote and protect human rights. At national level, the reporting process should be such as to encourage and facilitate public scrutiny of government policies and constructive engagement with relevant actors of civil society conducted in a spirit of cooperation and mutual respect. At the international level, the reporting process creates a basis for constructive dialogue between States and the treaty bodies.

Examination of States parties reports

Although there are variations from committee to committee with respect to the reporting procedure, some basic stages are common to all treaty bodies, namely the following:

- (1) Submission by the State party of its **(initial) report**;
- (2) Adoption of a **list of issues** by the committee;
- (3) Submission of a **written reply** by the State party to the list of issues;
- (4) **Formal consideration** of the report by the committee;
- (5) Adoption of **concluding observations** and recommendations by the committee;
- (6) **Implementation** of concluding observations and preparation of subsequent **periodic report** by the State party (return to stage (1)).

1) Submission of initial report

The report must be submitted to the UN Secretary-General in one of the six working languages of the UN, after which it is processed by the Secretariat and translated into the committee's working language. Once processed, the report is scheduled for consideration by the committee at one of its regular sessions. Due to considerable backlog of reports for most of the treaty bodies, there may be a delay after submission of a report before it can be considered. Most committees try to give priority to initial reports.

Some information presented in States' reports (basic facts and statistics about the country, its constitutional and legal system, etc) presented to each treaty body is relevant to all treaties. Therefore, in 1991, the treaty bodies decided to allow States to submit a so called "core document" forming a common initial part of each report to any of the treaty bodies. Subsequently, reports submitted under the revised, harmonized reporting system will consist of two parts: the common core document and the treaty-specific document.⁹

⁹ Please see harmonized guidelines on reporting under the international human rights treaties, including guidelines on the core common document, adopted in 2006 (see UN Doc. HRI/MC/2006/3, 10 May 2006) as well as the new guidelines on the treaty-specific document adopted by individual treaty bodies (for a recent compilation on the latter, see UN Doc. HRI/GEN/2/Rev.5, 29 May 2008).

2) List of issues and questions

Before the session at which a committee will formally consider the report, a list of issues and questions is drawn up and submitted to the State party. The list of issues provides an opportunity for the committee to request additional information which may have been omitted in the report. The list of issues also allows the committee to begin the process of questioning the State party in more detail on specific issues raised by the report and which are of particular concern. Many States parties find the list of issues a useful guide and indication as to the kind of questions they are likely to be asked when their report is formally considered by the committee. It hence allows the State delegation to prepare itself for the formal consideration of its report and makes the dialogue between the State and the committee more constructive, informed and concrete.

3) Written reply to list of issues

The State party is normally requested to submit a written reply to the list of issues and questions prior to the consideration of the report. The written reply thus forms a supplement to the report. Similar to State reports, concluding observations and list of issues, these replies are public documents and are available at OHCHR website (please see below).

4) Formal consideration of report

All treaty bodies invite States parties to send a delegation to attend the session at which the committee is considering their report in order to allow Governments to respond to the committee's questions and provide additional information on their efforts to implement the provisions of the relevant treaty. This encounter between the State party and the committee members is not an adversarial procedure. Rather, the aim is to engage in a constructive dialogue so as to assist the Government in implementing the human rights treaty as fully and effectively as possible. States are not obliged to send a delegation to attend the session, although they are strongly encouraged to do so. Some treaty bodies may proceed with consideration of a State party's report in the absence of a delegation, others require a delegation to be present. The committees hold their sessions in Geneva, either in Palais des Nations or Palais Wilson. As an exception to this rule, CEDAW meets once a year in New York at UN Headquarters and the Human Rights Committee usually holds its March/April session in New York.

5) Concluding observations and recommendations

The examination of a report culminates in the adoption of “concluding observations” intended to give the reporting State practical advice and encouragement on further steps to implement the rights in the treaty. They normally highlight positive aspects as well as principal subjects of concern and recommendations of the effective implementation of the treaty concerned. States are asked to publicize the concluding observations within the country as widely as possible so as to create public debate on how to further promote and protect the human rights concerned.



A staff member of OHCHR Uganda hands over a certificate to a representative of the Uganda People's Defence Forces (UPDF), at a treaty body and familiarization workshop in Mbale (eastern Uganda) in 2007. The workshop was jointly organized by the Uganda Human Rights Commission (UHRC) and OHCHR and focused on the implementation of UN treaty body concluding observations in Uganda.

6) Implementation and follow-up of concluding observations and submission of the next periodic report

After the submission of the initial report, States are required to submit further reports at regular intervals: so called “periodic reports”. An important element of any periodic report will be reporting back to the committee on steps taken by the State party to implement the treaty body’s concluding observations on its previous report, bringing back the reporting cycle back to its starting point.

In order to assist States in implementing their recommendations, the treaty bodies have begun to introduce procedures to ensure effective follow-up to their concluding observations. For instance, some committees request that States report back to the country rapporteur or follow-up rapporteur of the committee within an agreed time frame on the measures taken to specific recommendations, or “priority concerns”. The rapporteur then reports back to the committee. A pioneering procedure was recently tried by the CEDAW Committee as it undertook its first-ever follow-up visit at the invitation of a State party

(Luxembourg) to discuss the Committee’s concluding observations.

It is common for States parties to organize national workshops and other awareness-raising activities which bring together a wide range of stakeholders, including government officials, national human rights institutions (NHRIs) and representatives of civil society, to foster dialogue and reach common agreement on how to effectively implement the concluding observations. Such workshops may result in the adoption of national action plans specifying the necessary steps – such as dissemination and translation of the concluding observations, review of national legislation, and adoption of new policies – and which identify the timeframe and responsible authority for the specific interventions planned for to give effect to each concluding observation. National workshops may also review the state of implementation of concluding observations adopted by several treaty bodies over a certain period of time. For instance, representatives from the Government of Indonesia, the Indonesian national human rights institution, non-governmental organizations (NGOs) and the media met in Jakarta in December 2008 to discuss follow-up to recommendations of CAT (May 2008), CERD (August 2007), CEDAW (August 2007) and CRC (Jan 2004) and agreed upon a plan of action to implement the concluding observations of these treaty bodies.

What happens if a State does not report?

Most committees have developed procedures by which they may proceed with the examination of the state of implementation of the relevant treaty by a State party even though no State report has been received. The committee may formulate a list of issues and questions for the State party, which is invited to send a delegation to attend the session. Information may also be received from UN partners and NGOs and, on the basis of this information and the dialogue with the State party, the committee will issue its concluding observations and recommendations. The review may proceed even if the State party declines to send a delegation to the session. The review procedure is used only in exceptional cases.

In most cases, however, notification by the committee that it intends to consider the situation in the absence of a report is sufficient to persuade the State party to produce a report within a short deadline. For example, the Committee on Economic, Social and Cultural Rights decided in 2008 to schedule the consideration of Mali and Tanzania in view of their long overdue initial reports on the implementation of ICESCR in the two States parties respectively.

The role of non-State actors and National Human Rights Institutions (NHRIs) in the reporting process

In addition to the State party report, the treaty bodies may receive information on the human rights situation in the country concerned from other sources, including UN agencies, other intergovernmental organizations, NGOs, and NHRIs.

Many NGOs and other civil society actors active in the State party under consideration, for instance, submit so called “alternative” or “shadow” reports in parallel to the initial and/or periodic State party report. These reports provide the committees with important additional information and give an alternative perspective on the state of treaty implementation in the country concerned. Likewise, NGOs and other non-State actors can provide vital input to the drafting of the list of issues. NGOs furthermore play an important role in the consideration of State party reports and some of the treaty bodies allow for oral presentations by NGOs. For instance, the Human Rights Committee sets aside the first morning meeting of each plenary session to enable representatives of NGOs to provide oral information. The Committee on Economic, Social and Cultural Rights allows for oral presentations before the Committee within the framework of its “NGO hearings” and NGOs may sit in as observers during the Committee’s dialogue with the State.

National human rights institutions, usually mandated to monitor Governments’ compliance with international human rights obligations, play an equally important role in all stages of the treaty reporting process. This is the case of the Uganda Human Rights Commission (UHRC) which is constitutionally mandated to “monitor the Government’s compliance with international treaty and convention obligations on human rights”.¹⁰ Two treaty bodies, CRC and CERD, have adopted specific general comments which, *inter alia*, encourage States parties to consult NHRIs during the preparation of their reports, while underlining the importance of States to respect the independent role of national institutions in providing information to the committee.¹¹ The committees generally discourage representatives from NHRI to participate as part of the government delegation during the formal consideration of a report in view of the fact that it may

compromise the independence of NHRIs. Two treaty bodies, CERD and CMW, give NHRIs the opportunity to make oral statements during the official examination of State reports. CESCR, CEDAW and CRC allow NHRIs to join the informal committee meetings with NGOs or separate informal meetings between the committee members and the national institution is organized prior to the session. Perhaps the most important activity performed by national institutions in relation to the reporting process is, however, that of bringing the treaty body recommendations “back home” by making them understandable in the national context and advocating for their effective implementation. Among other things, NHRIs can inform the national parliament about progress, or lack thereof, in the implementation of concluding observations with a view to hold the government accountable for non-implementation.¹²

Each treaty body has separate rules with respect to its interaction with NGOs and national human rights institutions. These guidelines are outlined in the working methods specific to each treaty body (available at the website of each treaty body).

2) Consideration of Individual Complaints

At the time of writing, five of the treaty bodies (HRC, CERD, CAT, CEDAW and the CRDP) may consider complaints or communications from individuals who believe their rights have been violated by a State party.¹³ Complaints may also be brought by third parties on behalf of individuals provided they have given their written consent or where they are incapable of giving such consent. It is important to stress that the complaints procedure is *optional* for States parties: a treaty body cannot consider complaints relating to a State party unless the State has expressly recognized the competence of the treaty body in this regard, either by a declaration under the relevant treaty article or by accepting the relevant Optional Protocol.¹⁴ The Committee

¹² For more information on the role of NHRIs in UN treaty body system, see Amrei Müller and Frauke Seidenticker (eds), *The Role of National Human Rights Institutions in the United Nations Treaty Body Process*, Bonn-Berlin: The German Institute for Human Rights, December 2007.

¹³ The Committee on Migrant Workers (once 10 States parties have accepted this procedure in accordance with article 77 of the Convention on the Rights of all Migrant Workers and members of their families) and the Committee on Enforced Disappearances (CED) (once the Committee becomes operational) will also have the mandate to consider individual complaints.

¹⁴ The HRC can consider individual communications brought against States parties to ICCPR-OP-1; CEDAW can consider individual communications brought against States parties to the OP-CEDAW; CAT can consider individual communications brought against States parties that have made the requisite declaration under article 22 of CAT; CERD can consider individual communications brought against States parties that have made the requisite declaration under article 14 of ICERD; CMW can consider individual communications brought against States parties that have made the requisite declaration under article 77 of ICRMW. The Committee on the Rights of Persons with Disabilities can consider individual communications brought against States parties to OP-CRPD. The Committee on Enforced Disappearances will be able to consider individual communications brought against States parties who have made the requisite declaration under article 31 of the International Convention for the Protection of All Persons from

¹⁰ See the 1995 Constitution of Uganda, article 52 (g).

¹¹ See CRC general comment 2, para. 21. CESCR has also issued a general comment (No. 10) which acknowledges the role of NHRI in monitoring implementation of the ICESCR at the national level. In 2008, CEDAW issued a statement on its relations with national human rights institutions, noting that “close cooperation” between the Committee and NHRIs is “critical”. See Annex II in *Results of the fortieth session of the Committee on the Elimination of all forms of Discrimination against Women* (UN Doc. E/CN.6/2008/CRP.1, 11 February 2008).

on the Rights of the Child is the sole treaty body without the mandate to consider complaints of violations by States parties to the treaty it is tasked monitor.

In some respects, the individual complaints procedure is quasi-judicial. For instance, a committee can recommend the award of compensation, release of prisoner, or order a re-trial, etc. However, the decisions cannot be enforced. They are non-binding and of a recommendatory character, similar to the concluding observations adopted with respect to States' reports. Nevertheless, in many cases States parties have implemented the committee's recommendation and granted a remedy to the complainant. For instance, the Human Rights Committee, in the case of *Devon Simpson v. Jamaica*, where the complainant claimed a violation of articles 7 and 10(1) of the ICCPR as a result of solitary confinement, deplorable prison conditions and worsening medical conditions, found a violation of article 10 of the ICCPR. Pursuant to article 2(3)(a) of the ICCPR, the Committee thus considered that the author of the complaint was "entitled to an appropriate remedy, including adequate compensation, an improvement in the present conditions of detention and due consideration of early release".¹⁵

3) Inquiries and Country Visits

Four of the treaty bodies – CAT, CEDAW, CRPD and CED – may, on their own initiative, initiate inquiries in a State party to the respective convention. In the case of CEDAW, the committee can initiate a confidential investigation if it has received "reliable information of grave or systematic violations" of the Convention on All Forms of Elimination of Discrimination against Women (article 8, CEDAW-OP). The committee submits its findings to the State concerned who may respond within six months. Upon this information, the State party may be invited to inform the committee on remedies that have been implemented following the inquiry by the CEDAW committee. Likewise, the Committee on the Rights of Persons with Disabilities may designate one or more of its members to conduct a confidential inquiry, including a visit to the State party concerned if warranted and upon the consent of the State, if it receives reliable information on grave and systematic violations by a State party (article 6, CRPD-OP). In the case of CAT, the committee may designate one or more members to make a confidential inquiry if there are "well-

founded indications that torture is being systematically practiced" in a place under the jurisdiction of that State party. Such inquiry, if the State agrees, may include a visit to the State concerned. The entire process is confidential in nature, although a summary of the proceedings may be made public in the annual report of the committee. As with individual complaints, States parties to CEDAW and CAT must have recognized the competence of the committee to undertake such inquiries. Article 33 of the ICPED provides for the Committee on Enforced Disappearances to undertake in-country visits if a State party "is seriously violating the provisions of [the] Convention". All these inquiry procedures allow States parties to opt-out; i.e. at the time of ratifying the respective treaty, States can refuse to recognize the competence of the Committee to initiate and conduct inquiries.



The Committee on the Rights of Persons with Disabilities may designate one or more of its members to conduct a confidential inquiry, including a visit to the State party concerned if warranted and upon the consent of the State, if it receives reliable information on grave and systematic violations by a State party (article 6, CRPD-OP).

Also, the Subcommittee on Prevention of Torture may visit any place under the State party's jurisdiction and control where "persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence" (article 1). This is to give effect to the objective of the Optional Protocol, namely "to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment" (article 4). States parties to the Optional Protocol must also establish independent national preventive mechanisms (such as NHRIs, ombudsperson, parliamentary commission) which will conduct regular visits to places of detention.

Enforced Disappearance. Finally, the General Assembly in November 2008 adopted the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. When this Optional Protocol enters into force, the Committee on Economic, Social and Cultural Rights will be able to consider communications from individuals claiming a violation of their rights under the ICESCR.

¹⁵ See *Devon Simpson v. Jamaica*, Communication No. 695/1996 (19 March 1996), UN Doc. CCPR/C/73/D/695/1996, para. 9.

4) General Comments or Recommendations

Each of the treaty bodies publishes its interpretation of the provisions of the human rights treaty it monitors in the form of so called general comments (GC) or recommendations. They cover a variety of subjects, including a comprehensive interpretation of substantive provisions (such as right to life or right to food), general guidance on information that should be included in the periodic reports, and specific recommendations as to measures needed to enhance implementation of the treaty.

The role of the general comments in providing interpretation of treaty rights, and their interrelationship, is important. It may be exemplified by GC No. 15 on the right to water, adopted in 2003 by the Committee on Economic, Social and Cultural Rights. Although the International Covenant on Economic, Social and Cultural Rights does not explicitly provide for a human right to water, GC No. 15 sets out that such a right falls within the right “to an adequate standard of living ... including adequate food, clothing and housing” as provided by article 11 of the Covenant. In the words of the Committee:

Article, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living “including adequate food, clothing and housing”. The use of the word “including” indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.

Moreover, the Committee has previously recognized that water is a human right contained in article 11, paragraph 1 (see General Comment No. 6 (1995)). The right to water is also inextricably related to the right to the highest attainable standard of health (art. 12, para. 1) and the rights to adequate housing and adequate food (art. 11, para. 1). The right should also be seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity.¹⁶



The Committee on Economic, Social and Cultural Rights has issued nineteen general comments on the provisions and implementation of the International Covenant on Economic, Social and Cultural Rights. The most recent general comment, adopted in 2008, is on the right to social security (article 9 of ICESCR).

Below follows some examples of other general comments adopted by each treaty body:

Committee on the Elimination of Racial Discrimination

- On the establishment of national institutions to facilitate the implementation of the Convention (No. 17)
- On non-citizens (No. 11)

Human Rights Committee

- Right to life (No. 6)
- Prohibition of torture or cruel, inhuman or degrading treatment (No. 20)
- Continuity of obligations (No. 26)

Committee on Economic, Social and Cultural Rights

- The right to adequate housing (No. 4)
- The right to adequate housing: forced evictions (No. 7)

Committee on the Elimination of Discrimination against Women

- Avoidance of discrimination against women in national strategies for the prevention and control of AIDS (No. 15)
- Violence against women (No. 19)

Committee against Torture

- Refoulement and communications (No. 1)
- Implementation of article 2 by States parties (No. 2)

Committee on the Rights of the Child

- Adolescent health and development (No. 4)
- HIV/AIDS and the rights of the child (No. 3)

¹⁶ General Comment No. 15, The right to water (articles 11 and 12 of the ICESCR), para. 3.

5) Days of Discussion

Some treaty bodies hold days of general discussion on a particular theme or issue of concern to the treaty body. These thematic discussions are usually open to external participants, such as UN partners, delegations from States parties, NGOs, and national human rights institutions. The outcome of the discussion may assist the treaty body in the drafting of a new general comment. For example, on 17 November 2008, the Committee on Economic, Social and Cultural Rights held a day of discussion on Non-discrimination and Economic, Social and Cultural Rights, which offered an opportunity to the Committee to review its draft general comment on non-discrimination in the light of the comments and suggestions made by the experts.



Members of the Committee on Migrant Workers at work during its 10th session, held in Geneva from 20 April to 1 May 2009. On 1 May, the Committee organized a roundtable discussion on the right to freedom of association for migrant workers to mark the International Labour Day.

1.4 Other Activities

State to State complaints

Four of the treaties – CAT (article 21), ICRMW (article 76), ICERD (articles 11-13), and ICCPR (articles 41-43) – allow for States parties to complain to the treaty body about alleged violations of the treaty by another State party. CAT and ICRMW procedures require that domestic remedies have first been exhausted and it applies only to States that have made a declaration accepting the inter-state complaints mechanism.

Resolution of inter-State disputes concerning interpretation or application of a convention

Three treaties, CEDAW (article 29), CAT (article 30) and ICRMW (article 92), provide for disputes between States parties concerning interpretation or application of the convention to be resolved (first) by negotiation, and

(falling that), by arbitration. One of the States involved may refer the dispute to the International Court of Justice (ICJ) if the parties fail to agree arbitration terms within 6 months. States parties may opt out from this possibility by making a declaration at the time of ratification. ICERD (article 22) also provides for a similar procedure of referral to the ICJ for decision on a dispute between two or more States parties on interpretation or application of the Convention.¹⁷

Meeting with States parties

In addition to the consideration of initial and periodic reports, the UN treaty bodies meet with States parties on other occasions. Each treaty (with the exception of the ICESCR) provides for a formal meeting of States parties to be held every two years, usually at UN Headquarters, in order to elect half of the members of the treaty body. Also, article 50 of the Convention on the Rights of the Child provides for a conference of States parties to be convened to vote on any proposed amendments to the Convention. Most committees have also adopted the practice of holding regular informal meetings with the States parties to their treaty to discuss matters of mutual concern related to the implementation of the treaty and the work of the treaty body. The CRPD provides for the convening of a conference of States parties which is empowered to elect members to the committee and consider any other issue of relevance to the treaty.

Annual Chairpersons meetings

Since 1995, with a view to enhance coordination and harmonization of the work of the different committees, the chairpersons of the treaty bodies meet annually. Informal consultations with States parties, UN partners and NGOs have also been a feature of these meetings. Since 1999, chairpersons have met with special procedures mandate-holders (both thematic and country mandates) of the former UN Commission on Human Rights and, since 2006, of the Human Rights Council. These discussions have focused on technical questions, such as increased information sharing between treaty bodies and special procedures. Since 2002, the annual chairpersons' meeting has been complemented by an "inter-committee meeting", which includes the chairpersons and two additional members from each committee.

¹⁷ Recently, the ICJ pursuant to an application by Georgia against the Russian Federation on the basis of article 22 of the ICERD, ordered Georgia and Russia, within South Ossetia and Abkhazia and adjacent areas in Georgia, to, *inter alia*, refrain from committing, sponsoring, defending or supporting any act of racial discrimination, ensure security of persons, the right to freedom of movement and residence, and the protection of property without distinction as to national or ethnic origin (Case concerning the Application of the International Convention on the Elimination of All forms of Racial Discrimination (*Georgia v. Russian Federation*), Order of the ICJ, 2 December 2008)

2. Uganda and the UN Treaty Bodies

2.1 Ratification

Uganda is a State party to all but one of the nine core international human rights instruments. It has hence ratified (year of ratification in brackets) the following UN human rights treaties: the International

Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1980); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1985); the Convention Against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment (CAT, 1986); the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1987); the International Covenant on Civil and Political Rights (ICCPR, 1995); the Convention on the Rights of the Child (CRC, 1990); the International Convention on the Rights of Migrant Workers and All Members of their Family (ICRMW, 1995); and the Convention on the Rights of Persons with Disability (CRPD, 2008).¹⁸ The only treaty among the core international human rights instruments to which Uganda is not a State party is the International Convention for the Protection of All Persons from Enforced Disappearances.

With respect to the Optional Protocols, Uganda has ratified ICCPR-OP-I, CPRD-OP and both Optional Protocols to the CRC. Uganda has not yet ratified ICCPR-OP-II aiming at the abolition of the death penalty, CEDAW-OP allowing for individual complaints and OP-CAT.

2.2 Individual Complaint Procedure

To date, Uganda has only accepted the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by Uganda of rights set forth in the International Covenant on Civil and Political Rights. At the time of writing, the Human Rights Committee had yet not received any individual complaints relating to Uganda.

2.3 Reporting

As is indicated in the below chart, Uganda has submitted one core common document (in 1996) and submitted initial reports on the implementation of the ICCPR, CAT, ICERD, CEDAW, CRC and its two Optional Protocols. Uganda has submitted periodic reports on the implementation of convention rights as well as recommendations and concluding observations relating to ICERD, CEDAW and CRC. Accordingly, Uganda has been considered in regular committee sessions by the Human Rights Committee (in 2004), the Committee against Torture (in 2005), the Committee on the Elimination of Racial Discrimination (in 1984 and 2003), the Committee on the Elimination of Discrimination against Women (in 1995 and 2002) and the Committee on the Rights of the Child (in 1997, 2002, and 2008). A comprehensive list of these reports and their respective UN document symbol is provided below.

Reporting on the implementation in Uganda of the ICESCR is 18 years overdue (Uganda's initial report was due in 1988) and reporting on the ICRMW is overdue by 12 years (Uganda's initial report was due in 1996). Uganda is also yet to submit a common core document in line with the guidelines for the common core document agreed by the meeting of human rights treaty body chairpersons.



Government officials and civil society representatives speaking at a regional workshop, held in Mbarara (western Uganda) in September 2007, on the implementation of treaty body concluding observations in Uganda.

¹⁸ Please see chart below on ratification and reporting status of Uganda.

UGANDA AND THE UN TREATY BODIES: RATIFICATION AND REPORTING STATUS AS OF 2008

	ICCPR	ICESCR	CAT	ICERD	CEDAW	CRC	ICRMW	CPWD	CED
Signature					1985	1990		2007	2007
Ratification	1995	1987	1986	1980	1985	1990	1995	2008	
Reservations Amendments to treaty provisions			A: 17(7) 18(5)	A: 8	A: 20(1)	A: 43			
OP I	1995					OPSC (2001)		2008	
OP II						OPAC (2002)			
Reporting 1) Date of con- sideration	1 st 2004	No initial report submitted	1 st 2005	1 st 1984 2 nd -10 th 2003	1 st -2 nd 1995 3 rd 2002	1 st 1997 2 nd 2005	No initial report submitted		
OP I						1 st 2008			
OP II						1 st 2008			
Next due date for submission	2008	Due since 1989	2008	Overdue 2005	4 th submitted in 2009	2011	Due since 1996	2010	

2.4 Uganda and the UN Treaty Bodies: Reflections on the Past and Thoughts for the Future in the Implementation of Economic, Social and Cultural Rights

By Dr. Christopher Mbazira^{1*}

1. Introduction

Since it gained its independence from Britain in 1962, Uganda has faced a number of economic, social and political challenges.² One of the manifestations of these challenges has been the ups and downs the country has experienced in the area of the promotion and protection of human rights. The violations of human rights that characterized the dictatorship of Idi Amin between 1971 and 1979 are fresh in the minds of many Ugandans. At the same time, however, the country has demonstrated a commitment to uphold and adhere to the human rights standards enshrined in the international human rights instruments. The country has a fairly good record of ratification and accession to international and regional human rights treaties; it is party to the two Covenants forming part of the International Bill of Rights and has ratified the majority of the other core UN human rights treaties. Uganda has also participated in the adoption of, and endorsed, several of the UN declarations relevant to human rights promotion and protection.

It should be noted, however, that the extent to which a country has discharged its human rights obligations as enshrined in the international instruments is only judged by the extent to which domestic laws, programmes and policies have been modified to give effect to the international standards. This is in addition to the extent to which laws, policies and programmes have been implemented. In other words, with respect to human rights, one needs to examine the extent to which the international human rights treaties have been domesticated. An international survey of the extent of domestication would show that many countries have ratified but not fully domesticated the human rights instruments. A number of reasons could explain this state of affairs, including sheer neglect of the obligations and practical and ideological obstacles. The ideological obstacles have arisen in some respect from the ideologically based status accorded to human rights or categories thereof. It is on the basis of such ideological ascriptions that the contours between different categories of human rights have been defined. The most common

being the characterisation assigned to civil and political rights, traditionally perceived as negative, immediate and enforceable rights, vis-à-vis economic, social and cultural rights, traditionally perceived as positive, programmatic and non-enforceable rights. This characterisation has greatly affected the domestication of economic and social rights.³

Against the above background, this section examines the extent to which Uganda has domesticated the international standards that relate to economic and social rights found in the international treaties. In this respect, it examines the extent to which the country has discharged the obligations that follow Uganda's ratification of the ICESCR.⁴ The practical and ideological factors that have contributed to the flaws and deficiencies in the domestication will be examined. The ideological considerations impacting on economic and social rights will be examined from an international perspective by illustrating the manner in which these rights have evolved as against ideologically based objections to their protection.

2. Economic and social rights: Beyond ideological bifurcation

The adoption by the UN General Assembly on 10 December 2008 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights appears to have brought to closure over half a century of bickering over the legal nature of economic and social rights. When the UDHR was adopted in 1948, it did not draw any distinctions between civil and political rights on one hand and economic and social rights on the other. The legal status of economic and social rights only became an issue when in 1950 the UN General Assembly asked the UN Commission on Human Rights to prepare a draft Covenant on human rights with a clear expression of economic and social rights.⁵ The pronouncement by the General Assembly led to a division of States into camps either supporting or opposing economic and social rights.

Interestingly, this division appeared to be caused by the Cold War, with the so called "Western States" showing more commitment to ideals that emphasised individual liberty as reflected in the protections extended by civil and political rights. In contrast, the so called "Eastern States"

^{1*} Dr. Christopher Mbazira is a lecturer at the Department of Public and Comparative Law, Faculty of Law, Makerere University, Kampala, and a researcher in the Human Rights and Peace Centre (HURIPEC) at the same faculty.

² See Kanyeihamba, G. *Constitutional and political history of Uganda: From 1894 to the present* (2002) Centenary Publishing House Ltd.

³ See Craven, M., *The International Covenant on Economic, Social and Cultural Rights: A perspective on its development* (1995) Oxford University Press, and Arambulo, K., *Strengthening the supervision of the International Covenant on Economic, Social and Cultural Rights: Theoretical and procedural aspects* (1999) INTERSENTIA.

⁴ Adopted by UN General Assembly Resolution 2200A (XXI) of 16 December 1966 in New York, entered into force on 3 January 1976.

⁵ See GA Resolution 421 E (V), 14 December 1950, U.N. Doc. A/1775 (1950).

championed aspects of rights that give effect to socialist ideals, considered to be an embodiment of economic and social rights.⁶ It is believed that it was the desire to realize a compromise between States that led to the adoption of two separate covenants, the ICESCR and the ICCPR.⁷ This was done so that States that believed in civil and political rights would ratify the ICCPR and the ICESCR for those that believed in economic and social rights.

The above notwithstanding, time was to prove that the objections to economic and social rights were beyond mere State balkanisation based on the Cold War. The objections were based on philosophical ascriptions arising from perceptions of what constitutes human rights. Indeed, evidence on the record shows reluctance on the part of the so called socialist States to ratify the ICESCR. China, for instance, only ratified the ICESCR in 2001. While on its part, Russia signed the Covenant in 1968, it only ratified it in 1973 around the same time as Germany and the United Kingdom.

The most prominent philosophically based objection to economic and social rights has been based on the perception that human rights, *per se*, engender negative obligations. This view is based on the belief that the role that human rights should play is to protect the individual from infractions perpetrated by the State. It thus endorses those rights that take the form of claims limiting the power of government over the governed.⁸ Thus, the individual must be placed in a place that protects him or her from unjustifiable State interference.⁹ It is on these grounds that economic and social rights have been opposed; this is because these rights are believed to engender positive obligations. It has, for instance, been argued, with respect to the domestication of human rights, that a bill of rights is a protective device which only dictates to States what may not be done but cannot stipulate what may be done.¹⁰



Human Rights Day is celebrated throughout the world and in Uganda every year on 10 December, the day of the adoption of the Universal Declaration of Human Rights. The Declaration did not draw any distinctions between civil and political rights on one hand and economic and social rights on the other.

It has also been submitted that economic and social rights are not human rights because they are not absolute. Being absolute means that individuals are entitled to the rights without any prerequisites or conditions attached to their enjoyment. The defect with economic and social rights, it has been submitted, is that they require resources to be realised – unlike civil and political rights whose realisation is not viewed as dependent on resources.¹¹ Related to this is the submission that economic and social rights lack the essential element of universality – as they extend benefits not to individuals but to groups, which ascribes the individual to the whims of groups forming the community.¹² The rights are also perceived as vague; phrases such as “just and favourable conditions of work”, “decent standard of living” and “adequate clothing, food and housing” lack precision.¹³ This vagueness, it is argued, puts economic and social rights beyond the purview of courts.¹⁴

6 See Craven, M., *The International Covenant on Economic, Social and Cultural Rights: A perspective on its development* (1998) Oxford University Press, at 9.

7 See Robertson, B., ‘Economic, social and cultural rights: Time for a reappraisal’, *New Zealand Business Roundtable* September 1997.

8 Malcolm N Shaw *International law* (1986) Grotius Publications Limited, Cambridge, at 172.

9 Peces-Barba, G., ‘Reflections on economic, social and cultural rights’ (1981) *Human Rights Law Journal* 281, at 282–3. See also Orwin, C., and Pangle, T., ‘The philosophical foundations of human rights’ in Plattner, M., (ed.) *Human rights in our time – Essays in memory of Victor Baras* (1984) Westview Press 1, at 16.

10 Didcott, J., ‘Practical workings of a Bill of Rights’ in Van der Westhuizen, J., and Viljoen, H., (eds.) *A bill of rights for South Africa* (1988) Butterworths, at 59.

11 Bossuyt, M., ‘International human rights systems: Strengths and weaknesses’ in Mahoney, K., and Mahoney, P., (eds.) *Human rights in the twentieth century* (1993) Martinus Nijhoff 47, at 52.

12 See Donnelly, J., ‘The relative universality of human rights’ (2007) 29 *Human Rights Quarterly* 281.

13 Andreassen, B., Skålnes, T., Smith, G., and Stokke, H., ‘Assessing human rights performance in developing countries: The case for a minimum threshold approach to economic and social rights’ in Andreassen, B., and Eide, A., (eds.) *Human rights in developing countries 1987/88: A year book on human rights in countries receiving Nordic aid* (1988) Chr. Michelsen Institute, Danish Center for Human Rights and Norwegian Institute of Human Rights 333, at 335.

14 Neier, A., ‘Social and economic rights: A critique’ (2006) 13 *Human Rights Brief* 1, at 3.

2.1 Hoisting economic and social rights above the objections

Human rights scholarship and practice has dissipated these objections against economic and social rights and hoisted them as human rights norms on the same basis as civil and political rights. Thus, “a black-and-white distinction between civil and political rights on the one hand and economic, social and cultural rights on the other hand is mistaken ... a more integrated approach compassing both sets of rights is preferable”.¹⁵ It has been demonstrated that *all* categories of rights engender both negative and positive obligations.¹⁶ All rights are believed to be defined by a continuum of obligations; one side of the continuum defines positive obligations while the other defines the negative ones. The rights, whether civil and political or social and economic, oscillate between the two sides of the continuum as may be determined by the context.¹⁷ The same argument applies to the resource based objection; civil and political rights, like economic and social rights, also require resources to be realised.¹⁸ By way of example, the right to vote, a classical civil and political right, requires that voters be registered, ballot paper and boxes procured and transported, and electoral officials paid emoluments; all this requires resources. While the vagueness of economic and social rights has been acknowledged, it has been submitted that this state of affairs has been perpetrated by the continued denial of justiciability to the rights. This has deprived the rights of the opportunity to have their parameters, scope and the obligations they engender clarified.¹⁹

What has hoisted the justiciability of economic and social rights beyond doubt is the practice that international and regional inter-governmental bodies and organisations have adopted in protecting and promoting human rights. Economic and social rights have been protected and promoted alongside civil and political rights without any distinctions being drawn between them. Almost all human rights treaties adopted under the auspices of the UN guarantee both civil and political rights and economic and social rights. Indeed, very recently the Office of the UN High Commissioner for Human Rights adopted Fact Sheet

No. 33, in which it asserts the justiciable status of economic and social rights and details the negative consequences of failure to observe them.²⁰ Regional treaties adopted at continental levels have generally not been any different.²¹ Supported by civil society, the UN has been emphatic on the need to observe economic and social rights. At the 1993 United Nations World Conference on Human Rights,²² it was noted that human rights are universal, indivisible and interdependent and interrelated and that the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. In expressing dismay at the violation of human rights, the Vienna Declaration and Programme of Action does not distinguish between civil and political rights, on one hand, and economic and social rights, on the other hand:

The World Conference on Human Rights also expresses its dismay and condemnation that gross and systematic violations and situations that constitute serious obstacles to the full enjoyment of all human rights continue to occur in different parts of the world. Such violations and obstacles include, as well as torture and cruel, inhuman and degrading treatment or punishment, summary and arbitrary executions, disappearances, arbitrary detentions, all forms of racism, racial discrimination and apartheid, foreign occupation and alien domination, xenophobia, poverty, hunger and other denials of economic, social and cultural rights, religious intolerance, terrorism, discrimination against women and lack of the rule of law.²³

It was at this conference that the UN Commission on Human Rights was encouraged, in cooperation with the Committee on Economic, Social and Cultural Rights (hereinafter “the Committee”), to continue the examination of an optional protocol to the ICESCR to provide for the judicial enforcement of the rights. This is a process that the Commission began, taken on later by the Human Rights Council, and that led to the adoption of the Optional Protocol, thus hoisting the justiciability of economic and social rights beyond doubt. The Optional

15 Van Hoof, F., ‘The legal nature of economic, social and cultural rights: A rebuttal of some traditional views’ in Alston, P., and Tomasevsky, K., (eds.) *The right to food* (1984) Martinus Nijhoff, at 16.

16 See Mbazira, C., ‘Bolstering the protection of economic and social rights under the Malawi Constitution’ (2007) *Malawi Law Journal*, at 220.

17 Sepúlveda *The nature of the obligations under the International Covenant on Economic, Social and Cultural Rights* (2003) INTERSENTIA, at 125.

18 See Alston, P., and Quinn, G., ‘The nature and scope of State Parties obligations under the International Covenant on Economic, Social and Cultural Rights’ (1987) 9 *Human Rights Quarterly* 172.

19 See Scott, C., and Macklem, P., ‘Constitutional ropes of sand or justiciable guarantees? Social rights in a new South African Constitution’ (1992) 141 *University of Pennsylvania Law Review* 1, at 72.

20 OCHCR Fact Sheet No. 33, *Frequently Asked Questions on Economic, Social and Cultural Rights* (December 2008).

21 See, for instance, the African Charter on Human and Peoples Rights, adopted on 27 June 1981 by the OAU Assembly of Heads of State and Government in Nairobi, Kenya OAU Doc CAB/LEG/67/3 rev 5, (1982) 21 *International Legal Materials* 58, entered into force 21 October 1986. See also Mbazira, C., ‘Enforcing the economic and social rights in the African Charter on Human and Peoples’ Rights: Twenty years of redundancy, progression and significant strides’ (2006) 6 *African Human Rights Law Journal* 333. It should be noted, however, that the Council of Europe adopted the European Social Charter in 1961 as a separate treaty from the European Convention on Human Rights which protects a broad range of civil and political rights and provides for the right of individual petition.

22 The World Conference on Human Rights was held from 14 to 25 June 1993 in Vienna, Austria.

23 See para 30 of the *Vienna Declaration and Programme of Action*, A/CONF.157/23, 12 July 1993.

Protocol gives the Committee the competence to receive and adjudicate communications brought by individuals or State parties alleging the violation of the rights enshrined in the ICESCR.

It should be noted, however, that while such international mechanisms for the enforcement of economic and social rights are welcome, due to their relative inaccessibility, ultimate protection of the majority of people is dependent on the extent to which the rights are domesticated. This occurs through adequate reflection of the rights in domestic legislation, policy and programmes. The question whether or not Uganda has done this will be answered by examining the extent to which the country has domesticated the ICESCR. However, this will be done against the background of the nature of the obligations that this instrument engenders.



The Committee on Economic, Social and Cultural Rights was established in 1985 to carry out the monitoring functions previously assigned to ECOSOC as per Part IV of the International Covenant on Economic, Social and Cultural Rights. Above: The Committee on Economic, Social and Cultural Rights sits in its 42nd session in May 2009.

3. Rights and obligations under the ICESCR

The ICESCR, like the majority of international human rights instruments, gets its inspiration from the UDHR. However, the ICESCR expands on the economic and social rights in the UDHR and goes further to define the nature of the obligations they give rise. The rights protected by this instrument include the following:

- (i) Right to self-determination (art 1);
- (ii) Right to non-discrimination in the enjoyment of the rights (arts 2(2) and (3));

(iii) Right to work and related rights such as just and favourable conditions of work, fair and equal remuneration, safe and healthy working conditions, equal opportunity in promotion, rest leisure and reasonable working hours, and the right to form and join trade unions (arts 6 and 7);

(iv) Right to social security including social assistance (art 9);

(v) Right to assistance by the family, including protection of mothers before and after birth and of children and young persons (art 10);

(vi) Right to an adequate standard of living including adequate food, clothing and housing, and to continuous improvement of living conditions (art 11);

(vii) Right to the enjoyment of the highest attainable standard of physical and mental health (art 12);

(viii) Right to education (art 13); and

(ix) Right to cultural life and benefits of science and its application (art 15)

The obligations that States assume under this treaty could be categorised into two: general obligations and specific obligations. The general obligations relate to the international duties relevant to effectuating the treaty other than those that attached to specific rights. These include the duty to act individually and collectively with other States and actors to implement the Covenant and the duty to report on the steps undertaken to implement the rights domestically. The specific obligations apply to the specific substantive rights; they detail the content and scope of each of the rights. It should be noted, however, that there is a point of interaction between the specific and general obligations. Indeed, all the general obligations ultimately aim at ensuring that the specific obligations are discharged.²⁴

²⁴ For this reason, the analysis here does not draw any sharp distinction between the obligations. It also limits the scope of the discussion of the obligations to those that apply to the specific rights in a general manner as can be deduced from article 2 of the Covenant and to those that relate to State reporting as can be deduced from article 16. The scope and content of a number of the specific rights has been detailed by the Committee in a number of its general comments. See, for instance, GC No. 9, *The domestic application of the Covenant*, U.N. Doc. E/C.12/1998/24 (1998), GC No. 12, *The right to adequate food*, U.N. Doc. E/C.12/1998/5 (1999), GC No. 14, *The right to the highest attainable standard of health*, U.N. Doc. E/C.12/2000/4 (2000), and GC No. 15, *The right to water*, UN. Doc. E/C.12/2002/11 (2002). All general comments are reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 105 (2003).

3.1 Obligation to adopt measure to progressively realise rights

Article 2(1) is the linchpin in defining the obligations the ICESCR gives rise to, and for this reason, it is worth setting out the article in detail:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

This overview does not comment on all the obligations that can be deduced from the above provision. The following discussion is restricted to the obligations that arise from the phrases “take steps”, “by all appropriate means”, “to achieve progressively the full realization of the rights” and “to the maximum of its available resources”. Of course this is not to underestimate the obligation to take steps through international assistance and co-operation. This obligation is very relevant and is closely related to the obligations arising from the phrases detailed above, since it provides room for States to use external resources by calling upon other State Parties to assist them discharge their obligations.

The obligation to “take steps” implies that ratification of the Covenant is by no means in itself adequate. The State must take some form of action to implement the Covenant, one prerequisite being that such action must be through appropriate means. A number of questions arise from the question of what constitutes “appropriate means”: does it entail incorporating the Covenant into domestic law – and by what means should this be done, what legal measures should States take – and is the adoption of legislation a prerequisite?²⁵ Other questions may arise from issues such as the time period within which appropriate steps have to be undertaken. The Committee has answered some of these questions in one of its general comments.²⁶ For instance, it notes that steps to progressively realise the rights must be taken within a reasonably short time after the Covenant’s entry into force in the State concerned and that such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognised in the Covenant.²⁷

25 Alston & Quinn, at 162.

26 Committee on Economic, Social and Cultural Rights, General Comment 3, *The nature of States parties’ obligations* (Fifth session, 1990), U.N. Doc. E/1991/23, annex III at 86 (1991), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 14 (2003).

27 As above, para 2.

The phrase “adoption of legislative measure” has been undercut by the construction that some authors have given to it. It has, for instance, been submitted that it is clear from the Covenant that legislation is not mandatory but a matter for each State party to determine whether or not it is needed.²⁸ Going by this view, the article would only “require legislative action to be taken in cases where existing legislation is in violation of the obligations assumed under the Covenant”.²⁹ The Committee has, however, given the phrase a more enhanced interpretation by holding that in many instances legislation is highly desirable and in some cases may even be indispensable.³⁰ The adoption of legislative measures is, however, by no means exhaustive of the obligations of States parties.³¹ In this regard, the Committee has advised that additional measures which might be considered appropriate, such as the provision of judicial remedies with respect to rights which may be considered justiciable.³² Additionally, the Committee has observed that other measures which may also be considered “appropriate” for the purposes of article 2 (1) include administrative, financial, educational and social measures.³³

The construction that has been given by the Committee to the phrases “to the maximum of its available resources” and “with a view to achieving progressively the full realization of the rights” has been to recognise the role that resources play in the realisation of the rights. This is in addition to the fact that progressive realisation does not mean redundancy; a State party must begin immediately to take steps to realise the rights. In advancing this interpretation, the Committee has devised the minimum core obligations approach. This approach is based on the view that each right has a minimum core content, which is its essential elements, without which the right risks losing its substantive significance as a right. According to the Committee:

[It] is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to

28 Alston & Quinn, at 167.

29 As above.

30 General Comment No. 3, at para 3.

31 General Comment No. 3, at para 4.

32 General Comment No. 3, at para 5.

33 General Comment No. 3, at para 7.

establish such a minimum core obligation, it would be largely deprived of its *raison d'être*. By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2 (1) obligates each State party to take the necessary steps “to the maximum of its available resources”. In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.³⁴

The minimum core obligations approach emphasises the fact that it is simply unacceptable for any human being to live without sufficient resources to maintain his or her survival.³⁵

3.2 Reporting obligations under the ICESCR

Article 16(1) of the ICESCR details the reporting obligations imposed on States parties:

The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

Going by the provisions of the Covenant, the reports are supposed to be submitted to the UN Secretary-General for onward transmission to the Economic and Social Council (ECOSOC).³⁶ However, in 1985 ECOSOC established and relinquished to the Committee the task of monitoring the implementation the Covenant.³⁷ This Committee had initially, in 1978, been established as a Sessional Working Group on the Implementation of The International Covenant on Economic, Social and Cultural Rights.³⁸ The Committee has since 1988, when it started operating, entrenched itself and adopted procedures for State reporting on the same basis as other treaty bodies. In its first General Comment,³⁹ the Committee outlined the purpose which State reporting serves:

The reporting obligations which ... are designed principally to assist each State party in fulfilling its obligations under the Covenant and, in addition, to

provide a basis on which the Council, assisted by the Committee, can discharge its responsibilities for monitoring States parties' compliance with their obligations and for facilitating the realization of economic and social rights in accordance with the provisions of the Covenant. The Committee considers that it would be incorrect to assume that reporting is essentially only a procedural matter designed solely to satisfy each State party's formal obligation to report to the appropriate international monitoring body. On the contrary, in accordance with the letter and spirit of the Covenant, the processes of preparation and submission of reports by States can, and indeed should, serve to achieve a variety of objectives.

The Committee then goes on to enumerate the seven objectives which reporting serves. These include:

- (i) With respect to the initial report, the objective is to ensure that a comprehensive review is undertaken with respect to national legislation, administrative rules and procedures, and practices in an effort to ensure the fullest possible conformity with the Covenant;
- (ii) To ensure that the State party monitors the actual situation with respect to each of the rights on a regular basis and is thus aware of the extent to which the various rights are, or are not, being enjoyed by all individuals within its territory or under its jurisdiction;
- (iii) To enable the State to demonstrate that it has undertaken clearly stated and carefully targeted policies, including the establishment of priorities which reflect the provisions of the Covenant;
- (iv) To facilitate public scrutiny of government policies with respect to economic and social rights and to encourage the involvement of the various economic, social and cultural sectors of society in the formulation, implementation and review of the relevant policies;
- (v) To provide a basis on which the State party itself, as well as the Committee, can effectively evaluate the extent to which progress has been made towards the realization of the obligations contained in the Covenant;
- (vi) To enable the State party itself to develop a better understanding of the problems and shortcomings encountered in efforts to realize progressively the full range of economic, social and cultural rights; and

³⁴ General Comment No. 10, at para. 10.

³⁵ Bilchitz, D., 'Towards a reasonable approach to the minimum core: Laying the foundations for future socio-economic rights jurisprudence' (2003) 19 South African Journal on Human Rights, at 15.

³⁶ Article 16(2).

³⁷ See ECOSOC Resolution 1985/17.

³⁸ See ECOSOC Resolution 1978/10.

³⁹ General Comment No. 1, at para. 1.

(vii) To facilitate the exchange of information among States and to develop a better understanding of the common problems faced by States and a fuller appreciation of the type of measures which might be taken to promote effective realization of each of the rights contained in the Covenant.

As is the case with other treaty bodies, the Committee has adopted a set of guidelines, recently revised, to be used by States in the preparation and submission of their reports. By way of summary, the guidelines apply to initial and then the subsequent reports. The initial report has to contain core information on the demographic, geographic, legal and political status of the country. Like the initial report, all subsequent periodic reports must contain information on the legal, practical and other measures undertaken by the State to implement each of the rights in the Covenant. Initial reports are due two years after entry into force of the Covenant while periodic reports are due every five years.⁴⁰

Again, like other treaty bodies, the Committee has developed the practice of receiving alternative reports from NGOs and other civil society organisations, both international and domestic, for the purposes of supplementing information contained in the report of the State under consideration. The alternative reports (also called “shadow” reports) have the potential of drawing attention of the Committee to inaccuracies and distortions in the government report and may also offer suggestions on more appropriate approaches to realise the rights and discharge the obligations.⁴¹ The Committee has developed the practice of issuing concluding observations, which come in the form of comments on the State report and also as recommendations on what ought to be done to improve the realisation of the rights. The other practice the Committee has adopted is to consider, *in absentia*, the extent of realisation of the rights in countries that have failed to submit reports as required by the Covenant.

4. Uganda and the ICESCR: Extent of compliance

4.1 Over 20 years on, no report under the ICESCR

Uganda ratified the ICESCR on 21 April 1987 by which the country undertook not only to uphold all the rights

protected by the treaty but also to abide by the obligations it imposes on States parties. Among them is the duty to submit an initial report and, subsequently, periodic reports as detailed above. Unfortunately, however, Uganda has not discharged this obligation over twenty years since its ratification of the Covenant. This is in spite of the fact that Uganda has submitted reports under treaties ratified much later than the ICESCR, including the ICCPR and the Convention on the Rights of the Child.⁴² The failure of Uganda to report under the ICESCR has denied the country of the benefits of reporting as per the objectives of State reporting outlined by the Committee. On the basis of the above, it should be noted that the submission by Uganda of its initial report and all overdue reports is a matter of urgency. One recommendation would be that Uganda follows a practice which has allowed States to submit consolidated reports covering all overdue reports in one report. This means that Uganda would submit its initial report consolidated with the three other overdue reports on the implementation of the ICESCR.

Recently, some civil society organisations, including the Human Rights and Peace Centre (HURIPPEC) at the Faculty of Law, Makerere University, and the Human Rights Network-Uganda (HURINET) have laid down strategies of ensuring that Uganda discharges its reporting obligations. This is in addition to ensuring that the country is reviewed by the Committee even in the absence of a state report. At a workshop held on 27 November 2008,⁴³ HURIPPEC, HURINET and other organisations committed themselves to produce and submit to the Committee what they described as a “shadow-shadow” report in the absence of a State report. According to these organisations, should Uganda decide to report before they submit their report, the “shadow-shadow” report will be converted into a shadow or alternative report.

4.2 Extent of domestication of the rights

Uganda, like many Commonwealth countries, has a dualist legal system. As such, international law is not applicable in domestic jurisdictions unless provision is made for this by domestic law.⁴⁴ Going by the Constitution of the Republic of Uganda, Parliament is enjoined to make laws to govern the ratification of international treaties, conventions and agreements.⁴⁵ It is by virtue of this constitutional imperative that Parliament in 1998 promulgated the Ratification of

⁴² Ratified on 21 September 1995 and 10 September 1990, respectively.

⁴³ Seminar on the Role of State-reporting and Strategies for Effective Shadow Reporting under the International Covenant on Economic, Social and Cultural Rights, Hotel Africana, Kampala, 27 November 2008.

⁴⁴ See Brownlie, I., *Principles of public international law* (1990) Oxford University Press, at 32 – 33.

⁴⁵ Article 123(2).

⁴⁰ See Rules of Procedure of the Committee.

⁴¹ See Scott Leckie ‘The Committee on Economic, Social and Cultural Rights: Catalyst for change in a system needing reform’ in Alston, P., & Crawford, J., (eds.) *The future of human rights treaty monitoring* (2000) Cambridge University Press, Cambridge 129, at 134.

Treaties Act.⁴⁶ This Act requires all ratified treaties to be laid before Parliament as soon as possible.⁴⁷ While it is not mentioned what Parliament should then do with the treaties, the logical deduction is that this process is for the purposes of giving the treaty domestic legal effect. There are indeed numerous examples of treaties that have been domesticated through this process. This process has taken two forms; either through adopting the whole text of the international treaty as a schedule to the domesticating Act (as was done with respect to the Geneva Conventions, 1949⁴⁸) or, alternatively, through the transformation of the provisions of the treaty into provisions of an Act of Parliament, sometimes redrafted guided by the spirit of the treaty. An example of the second form is with respect to the Children's Act, inspired by the Convention on the Rights of the Child.⁴⁹



Dr. Mbazira writes that the Children's Act (2000) is one example of how one of the core UN human rights treaties ratified by Uganda, the Convention on the Rights of the Child, has been domesticated into Ugandan law, through the passing of an Act of Parliament.

The ICESCR has never been laid before Parliament; for this reason, one could say that the treaty has not been domesticated. This notwithstanding, there is evidence of domestication, through the second form, of some of its provisions. This is because the Constitution protects

some economic and social rights. Additionally, there are a number of pieces of legislation that touch on such aspects as health, water and social security. Yet, the country has adopted a number of economic and social programmes with implications for the realisation of several of the rights in the ICESCR. It should be noted, however, that this form of incorporation is by no means comprehensive. Within the Constitution, the bulk of the economic and social rights are protected as National Objectives and Directive Principles of State Policy (Directive Principles). The only economic and social rights located in the body of the Constitution in the Bill of Rights include the right to education;⁵⁰ the rights of children to basic education, not to be deprived of medical treatment or education by reason of religious or other beliefs and their protection from social or economic exploitation and from hazardous work;⁵¹ the right to culture and similar rights;⁵² the right to a clean and healthy environment;⁵³ and several labour related rights such as right to work under satisfactory conditions, equal pay for equal work without discrimination, the right to practice one's profession, protection of women during pregnancy, and after birth, and rights to form and join trade unions, collective bargaining and withdraw of labour.⁵⁴

Visibly missing from the above collection of rights are the rights to physical and mental health, water, food, social security and assistance, and housing. These can only be deduced from a reading of the Directive Principles as located close to the preamble of the Constitution but outside the body of the Constitution. Parts of the Principles titled "Protection and promotion of fundamental and other human rights and freedoms" and "Social and economic objectives" contain several economic and social rights and impose on the State a variety obligations relevant to the realisation of economic and social rights. The rights and obligations that could be read from these parts include the right to development,⁵⁵ obligation to endeavour to fulfil rights to social justice and economic development and to ensure that all Ugandans enjoy the rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.⁵⁶

46 Chapter 204, Laws of Uganda, 2000.

47 Section 4.

48 See Geneva Conventions Act, Chapter 363, Laws of Uganda, 2000.

49 See Children's Act, Chapter 59, Laws of Uganda, 2000.

50 Article 30.

51 Article 34.

52 Article 36.

53 Article 39.

54 Article 40.

55 Objective IX.

56 Objective XIV.



Article 12 of the ICESCR guarantees the right of everyone to the highest attainable standard of physical and mental health. Above: St. Mary's Hospital in Acholi region (northern Uganda)

The Principles also detail what they describe as “Educational Objectives” which include the promotion of free and compulsory primary education and taking appropriate measures to afford every citizen equal opportunity to attain the highest educational standard possible.⁵⁷ The State is also required to take all practical measures to ensure the provision of basic medical services to the population and to promote a good water management system at all levels.⁵⁸ This is in addition to taking appropriate measures to encourage people to grow and store food, establish food reserves and encouraging and promoting proper nutrition through mass education in order to build a health State.⁵⁹ The Principles also require the State to develop cultural and customary values that are consistent with fundamental rights, human dignity and democracy.⁶⁰

The location of several of the economic and social rights in the Directive Principles and the status ascribed to these Principles can be traced back to the reasoning of the Commission which collected the Ugandan population’s views on and made suggestions with regard to the adoption of the Constitution. The Commission reasoned that:

There is consensus that economic and social rights should be spelt out in the Constitution. At the same time, we are mindful of the fact that the economic situation of the country would make it impossible for the people to enjoy these rights immediately on the coming into effect of the new Constitution or indeed in the foreseeable future. Even countries which are economically more advanced than Uganda find it prudent not to make them enforceable rights. Nevertheless, provision of such rights in a non-enforceable form will set vitally important directions for future policy and programmes of government.⁶¹

This reasoning is reflected by the status the Constitution itself accords to the Directive Principles:

The following objectives and principles shall guide all organs and agencies of the State, all citizens, organisations and other bodies and persons in applying or interpreting the Constitution or any other law and in taking and implementing any policy decisions for the establishment and promotion of a just, free and democratic society.⁶²

It should be noted, however, that a 2005 amendment of the Constitution has advanced the status of the principles. Article 8A, as introduced by the amendment, provides as follows:

- (1) Uganda shall be governed based on principles of national interest and common good enshrined in the national objectives and directives of state policy.
- (2) Parliament shall make relevant laws for purposes of giving full effect to clause (1) of this article.

While almost in the same terms as the first provision which describes the status of the rights, article 8A’s location in the body of Constitution gives the imperative to give legal effect to the objectives. In this respect, the provision opens up space for judicial activism for the purposes of developing an integrated reading of the Constitution. This approach reads the objectives together with the provisions in the bill of rights as has been the case in India.⁶³ Constitutional justification for this approach would be found in article 50 of the Constitution, which entitles any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened to apply to a competent court for redress which may include compensation. This is in addition to any person

57 Objective XVIII.

58 See Rules of Procedure of the Committee.

59 Objective XXII.

60 Objective XXIV.

61 See Republic of Uganda, *Report of the Uganda Constitutional Commission: Analysis and recommendations*; para 23.85, at 651.

62 Objective I (i), 1995 Constitution of Uganda.

63 See Mbazira, C., *Public interest litigation and judicial activism in Uganda: Improving the enforcement of economic and social rights*, HURUPEC Working Paper 24 [Forthcoming].

or organisation bringing an action against the violation of another person's or group's human rights. Indeed, evidence from the courts shows a willingness of Ugandan judges to use article 50 to promote economic and social rights and to broaden the scope of application of the Directive Principles.⁶⁴ In one case, a judge observed:

This article does not permit sentence of an exclusion order to threaten the right to life or lead to the loss of life through deprivation of shelter, food and essential sustenance. It permits, in my view, only one derogation to the right to life and that is a sentence of death. Otherwise the right to life is inviolable. I take this view guided by the National objectives and directive principles of state policy which we are enjoined to apply in interpreting this Constitution in part 1 thereof.⁶⁵

The above approach is indicative of the high potential and possibility in Uganda to give economic and social rights judicial enforcement in spite of their incomprehensive domestication. This approach can be bolstered by applying provisions of statutes that have elements relevant to economic and social rights as discussed below. In addition, a number of government policies and programmes that advance the rights have been issued. Examples of such statutes, policies and programmes are explored below.



According to article XIV on general social and economic objectives of the Ugandan Constitution, all Ugandans shall enjoy the rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits. Above: An IDP camp in Gulu district, Acholi region (northern Uganda).

64 *British American Tobacco (BAT) v The Environment Action Network (TEAN)* Civil Appl No. 27/2003. *Advocates Coalition for Development and Environment v Attorney General* Miscellaneous Cause 0100/2004. *Greenwatch v Attorney General & Anor* Misc Application No. 140 of 2002.

65 Justice Egonda-Ntende in *Salvatori Abuki and Anor v Attorney General* (Abuki case) Constitutional case No. 2 of 1997.

4.3 Domestication through statutes of Parliament and government policies and programmes

As mentioned above, Uganda has laws on such aspects as water, health and social security, all relevant to the economic and social rights of health, water and social security and assistance. Examples of such statutes include the Public Health Act,⁶⁶ the Water Act,⁶⁷ and the National Social Security Fund Act.⁶⁸ What is, however, notable with most of the legislation is that it does not adopt a human rights based approach (HRBA) – i.e. based on the notion that all government programmes, policies and action should be directed at furthering the realisation of human rights as laid down in the UDHR and other international human instruments. The principles that guide the application of the HRBA include the following: equality and non-discrimination; definition of rights and obligations; participation and empowerment; and monitoring and accountability. The HRBA has been accepted by the Uganda Human Rights Commission (UHRC). The UHRC has recognised the HRBA as an indispensable approach to guide the State in its development processes. To this effect, the UHRC has adopted a set of HRBA guidelines to development.⁶⁹

The Human Rights Based Approach (HRBA) is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed at promoting and protecting human rights. It is based on the concept that development is about promoting and protecting human rights because development can impact on human rights positively or negatively. HRBA penetrates all development practice to the point that the boundaries of human rights and development disappear as both become conceptually and operationally inseparable parts of the same processes of social change.⁷⁰

Historically, Uganda has not followed a HRBA in its legislative processes. The same could be said with regard to the different programmes which successive governments have adopted as mechanisms of poverty eradication. Most of the legislation adopted by the colonial State was aimed at facilitating executive administration. It was intended to make the power of the government felt at all levels of society, irrespective of whether or not human rights were violated in the process. This explains why most of

66 Chapter 281, Laws of Uganda, 2000.

67 Chapter 152, Laws of Uganda, 2000.

68 Chapter 222, Laws of Uganda, 2000.

69 Uganda Human Rights Commission *Human Rights Based Approach Guidelines to National Development Planning /Programmes* (2008).

70 At pages 3 – 4 of the Guidelines.

the legislation was mainly punitive and crafted to impose obligations on the citizen without a definition of any rights and obligations to realise these rights.⁷¹ As a matter of fact, the processes of adopting these legislations were not participatory. The laws were impositions from England. Unfortunately, a good number of these laws continue to exist on our statute books. An example of this is the Public Health Act, dominated by dos and don'ts as seen for instance in sections 45 and 50. The former provides that no child shall be admitted to or attend any school until there has been produced to the person in charge of the school a certificate or other satisfactory evidence that vaccination has been done on the child. Any person who admits a child in contravention of this commits an offence.



Sections 50 of the Public Health Act, Dr. Mbazira writes, provides that no child shall be admitted to or attend any school until a certificate or other satisfactory evidence that vaccination has been done on the child has been produced to the person in charge of the school.

The problem, however, is that there is no corresponding right to be vaccinated and a duty on the State to discharge its obligations in this regard. All that is provided for is a duty on a parent or guardian to cause the child to be vaccinated. This is not followed by any provision that the parent or guardian can demand the vaccination as of right.⁷² The Act also penalises any person who knowing that he or she is suffering from a venereal disease accepts or continues in employment at any factory, shop, hotel, restaurant, house, or any place in any capacity entailing the care of children.⁷³ Like section 45, this provision is not followed by any provisions that guarantee the right to get treatment for a venereal disease.

While some of the legislations in this category use the

word “right” and actually confer the right, there are no provisions that empower the individual to enforce these rights. An example of legislation of this nature is the Water Act. Although this Act confers the right to use water, it does not provide for a mechanism by which those whose rights have been violated can seek redress. It should be noted, however, that some post-1986 legislation, in spite of some flaws, can be said to adopt a HRBA. An example of this is the Education Act of 2008,⁷⁴ which attempts to define the right to basic education. Equally, the Act describes the obligations on the State in this respect with sufficient detail. There is also a fairly reasonable monitoring process, though this is intended for policing purposes and not for purposes of monitoring the realisation of benchmarks. What needs to be done, therefore, is to enhance the approach adopted in the Education Act in order to give the HRBA wide application in the legislative process.

Examples of policies and programmes that are relevant to economic and social rights include the Health Sector Strategic Plan (HSSP),⁷⁵ the Uganda Malaria Control Strategic Plan (UMCSP),⁷⁶ the Universal Primary Education (UPE) Policy,⁷⁷ and the Poverty Eradication Action Plan (PEAP).⁷⁸ It should be noted, however, that some of them suffer from the same deficiency as legislation, which is the failure to adopt a HRBA. The clearest example of this deficiency is to be found in the PEAP. The PEAP was adopted in 1997 as an overarching framework to guide public action to eradicate poverty by providing a framework within which different sectors are to develop detailed plans. The PEAP sets out the country's priorities, including restoring peace and dealing with consequences of conflict and improving regional equity, restoring sustainable growth in the incomes of the poor, addressing drop outs in UPE and planning for post-primary education, cutting mortality rates, and using public resources transparently and efficiently to eradicate poverty. Several commitments are made to improve health, education, access to safe water, social assistance and housing. Unfortunately, none of these is expressed as a right. It should also be noted that government has not followed PEAP through to its conclusion; without any reasons being advanced publicly, PEAP has been abandoned for a National Development Plan (NDP). Yet, at the moment, the process of developing the NDP has not been given wide publicity and consultation as is dictated by the HBRA.

71 Mbazira, C., *Ensuring a Human Rights Based Approach to legislation in Uganda*. Paper presented at a workshop on the Human Rights Based Approach to legislation organized by the Uganda Human Rights Commission in conjunction with the UNDP, 20 November 2008 at Imperial Resort Beach Hotel, Entebbe.

72 See section 38.

73 Section 50.

74 Act 13 of 2008.

75 Ministry of Health, 2005.

76 Ministry of Health, 2005.

77 Ministry of Education and Sports (1992) *Government White Paper on the Education Policy*.

78 Ministry of Finance, Planning and Economic Development, 1997, revised in 2000 and 2004.

5. Conclusion and way forward

This analysis has illustrated the fact that while Uganda has ratified the ICESCR, it has not fully discharged the obligations it has assumed under this instrument. The country has not submitted any State report since its ratification of the treaty. As demonstrated, this omission has denied the country of the benefits of State reporting. With regard to domestication, Uganda has not domesticated the ICESCR in its entirety, given that only a few of the rights protected by this instrument are entrenched as part of the Bill of Rights. In spite of this, a number of the rights have been protected as part of the Directive Principles; yet, some are protected within legislation on such aspects as water, public health and education. This is in addition to the existence of government policies and programmes which advance different aspects of economic and social rights. It has, however, been noted that these legislations, policies and programmes do not follow a HRBA.

In light of the above, this paper makes some suggestions regarding how the promotion and protection of economic and social rights can be advanced in Uganda. The suggestions are detailed below:

- (i) As a matter of urgency, Uganda should prepare and submit to the Committee its State report in accordance

with the guidelines developed by the Committee for this purpose;

- (ii) All the rights in the ICESCR should be domesticated through the adoption of concrete pieces of legislation directed at giving effect to the rights as protected by the Covenant;
- (iii) In addition to legislation, the government should advance economic and social rights through the adoption of policies and programmes that advance the rights or aspects thereof;
- (iv) All policies and programmes relevant to economic and social rights should adopt a HRBA as a means of ensuring that citizens can demand the rights and hold the State accountable for the failure to discharge its obligations; and
- (v) To give effect to the economic and social rights in the Directive Principles, the judiciary should adopt pragmatic approaches in construing the constitution and, while taking advantage of article 8A, should adopt the integrated approach of interpretation. This would entail the use of the Directive Principles in giving content to the rights in the Bill of Rights.

End of article

2.5 Uganda and Treaty Reporting: Documents

Below follows an exhaustive list of all initial and periodic reports submitted by Uganda to the UN treaty bodies as well as the list of issues and concluding observations adopted by the respective treaty body in response to these reports. This list aims at providing an overview of the whole spectrum of documents that are issued in the process of reporting to the UN treaty bodies, and to facilitate access to these documents. They all contain useful information on legal, political, juridical and other developments in Uganda concerned with human rights protection and promotion. The written replies by the Government of Uganda to the list of issues are also included, as available at OHCHR website (<http://www.ohchr.org>). Subsequent to the list, the procedure for where and how to find these documents on the internet is explained.

Core document **UN Doc. HRI/CORE/1/Add.69, 7 March 1996**
(<http://www.unhchr.ch/tbs/doc.nsf/0/d731be449e6e5bdc12563f500473776?Opendocument>)

International Covenant on Civil and Political Rights

Initial report **UN Doc. CCPR/C/UGA/2003/1, 25 February 2003**
([http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.UGA.2003.1.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.UGA.2003.1.En?Opendocument))

List of issues **UN Doc. CCPR/C/80/L/UGA, 28 November 2003**
(<http://daccessdds.un.org/doc/UNDOC/LTD/G03/455/68/PDF/G0345568.pdf?OpenElement>)

Concluding observations **UN Doc. CCPR/CO/80/UGA, 4 May 2004**
([http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.80.UGA.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.80.UGA.En?Opendocument))

Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment

Initial report **UN Doc. CAT/C/5/Add.32, 30 June 2004**
(<http://daccessdds.un.org/doc/UNDOC/GEN/G04/424/07/PDF/G0442407.pdf?OpenElement>)

Concluding observations **UN Doc. CAT/C/CR/34/UGA, 21 June 2005**
([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))

International Convention on the Elimination of All forms of Racial Discrimination

Initial report **UN Doc. CERD/C/71/Add.2 and CERD/C/SR.680 and 687**

Second-tenth report **UN Doc. CERD/C/358/Add.1, 24 October 2001**
([http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.358.Add.1.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CERD.C.358.Add.1.En?Opendocument))

Concluding observations **UN Doc. CERD/C/62/CO/11, 2 June 2003**
([http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.62.CO.11.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CERD.C.62.CO.11.En?Opendocument))

Convention on the Elimination of All Forms of Discrimination against Women

Initial and second report **UN Doc. CEDAW/C/UGA/1-2, 20 July 1992**

Concluding observations **UN Doc. A/50/38, 31 May 1995**
(<http://www.un.org/esa/gopher-data/ga/cedaw/14/a50-38.en>, see pp. 278-344)

Third report **UN Doc. CEDAW/C/UGA/3, 3 July 2000**
(<http://daccessdds.un.org/doc/UNDOC/GEN/N00/523/73/IMG/N0052373.pdf?OpenElement>)

Concluding observations **UN Doc. A/57/38, 2002**
(<http://www2.ohchr.org/english/bodies/cedaw/docs/co/UGANDACO.pdf>)

Convention on the Rights of the Child

Initial report **UN Doc. CRC/C/3/Add.40, 17 June 1996**
([http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.3.Add.40.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.3.Add.40.En?OpenDocument))

List of issues **UN Doc. CRC/C/Q/UGA/1, 16 June 1997**
([http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.Q.UGA.1.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.Q.UGA.1.En?OpenDocument))

Concluding observations **UN Doc. CRC/C/15/Add.80, 21 October 1997**
([http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.80.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.80.En?OpenDocument))

Second report	UN Doc. CRC/C/65/Add.33, 5 November 2004 (http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.65.Add.33.En?OpenDocument)
List of issues	UN Doc. CRC/C/Q/UGA/2, 17 June 2005 (http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.Q.UGA.2.En?OpenDocument) http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.RESP.96.pdf
Written reply	
Concluding observations	UN Doc. CRC/C/UGA/CO/2, 23 November 2005 http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.UGA.CO.2.En?OpenDocument

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

Initial report	UN Doc. CRC/C/OPSC/UGA/1, 7 April 2008 (http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPSC.UGA.1.doc)
List of issues	UN Doc. CRC/C/OPSC/UGA/Q/1, 27 June 2008 (http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPSC.UGA.Q.1.pdf)
Written reply	UN Doc. CRC/C/OPSC/UGA/Q/1/Add.1, 8 Sept 2008 (http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.OPSC.UGA.Q.1.Add.1EN.doc)
Concluding observations	UN Doc. CRC/C/OPSC/UGA/CO/1, 16 October 2008 (http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.OPSC.UGA.CO.1.pdf)

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

Initial report	UN Doc. CRC/C/OPAC/UGA/1, 17 July 2008 (http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.OPAC.UGA.1.doc)
List of issues	UN Doc. CRC/C/OPAC/UGA/Q/1, 27 June 2008 (http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPAC.UGA.Q.1.pdf)
Written reply	UN Doc. CRC/C/OPAC/UGA/Q/1/Add.1 (http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.OPAC.UGA.Q.1.Add.1.pdf)
Concluding observations	UN Doc. CRC/C/OPAC/UGA/CO/1, 17 October 2008 (http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.OPAC.UGA.CO.1.pdf)



OHCHR Uganda staff member and a representative from civil society in group work session during a regional workshop on the implementation of concluding observations in Uganda.

2.6 How to Search Documents of the Treaty Bodies and other UN Human Rights Mechanisms

OHCHR has dedicated websites for each of the UN treaty bodies. Here you can find information on past and future events, the human rights instruments (text, status of ratification, reservations and declarations), the work of the treaty bodies (mandates, sessions, annual reports, working methods, General Comments, press releases), reporting guidelines, and relevant links. These sites are accessible from the general overview of UN treaty bodies:

<http://www2.ohchr.org/english/bodies/treaties/index.htm>.

The OHCHR website also includes a treaty body search engine, where you can search UN documents relative the convention, country, type and document symbol.

OHCHR Treaty Body Search: <http://tb.ohchr.org/default.aspx>
(By convention, country, type and document symbol)

The United Nations ODS (Official Documents System) website is also a useful search engine. On this site, you can find any UN official document that has been catalogued electronically. If you already have the UN Document number (for instance UN Doc. CRC/C/OPAC/UGA/1 with respect to Uganda's initial report on the implementation of the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict), it is a particularly easy search tool.

UN Official Documents: <http://documents.un.org> (By any UN document symbol)

The Universal Human Rights Index (UHRI) is a new information tool designed to facilitate access to conclusions and recommendations made by United Nations human rights mechanisms. This website contains all the concluding observations issued by the treaty bodies since 2000, as well as conclusions and recommendations of the Human Rights Council's special procedures concerning specific countries adopted since 2006.

Universal Human Rights Index: <http://www.universalhumanrightsindex.org>

2.7 Uganda Reports to the Committee on the Rights of the Child

One way to describe the reporting procedure of the UN treaty bodies and exemplify how Uganda has engaged with the treaty bodies, may be to examine Uganda's reports to a specific committee. In this respect, it is opportune to use the recent consideration by the Committee on the Rights of the Child of Uganda's initial report on implementation of the Optional Protocol to the Convention on the Rights of the Child on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. This process entails four key documents, all of which are reproduced below in chronological order:

- (i) The **initial report** of Uganda;
- (ii) The **list of issues** of the Committee (adopted in June 2008);
- (iii) The **written reply** by Uganda to the list of issues;
- (iv) The **concluding observations**, adopted by the Committee in October 2008, subsequent to the formal consideration of Uganda's initial report in September 2008.

The reporting cycle continues in 2011, when Uganda is due, as requested by the Committee in its concluding observations, to submit its next report on the implementation of the Optional Protocol.

I. Initial report of Uganda on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

COMMITTEE ON THE RIGHTS OF THE CHILD CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 12 (1) OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Initial reports of States parties due in 2004⁹⁷ UGANDA

Preface

Uganda is committed to the full realisation of children's rights as enshrined in the Convention on the Rights of the Child and its attendant Protocols. This is evident in the measure Uganda has taken to place its laws in conformity with the CRC and its attendant protocols, the administrative structures and the law enforcement mechanisms. This report presents progress made by Uganda on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. It is the initial report on this Optional Protocol. The report was developed based on the guidelines provided by the United Nations Child Rights Committee.

The report presents policy initiatives, child friendly legislations that have been enacted, programmes specifically for prevention and protection of children from sale, prostitution and pornography and the administrative and enabling environment for implementing the programmes and enforcement of laws. Government efforts have been enhanced by the contribution by the Civil Society organisation, Development partners as well as the private sector. Government on its part continues to provide an enabling environment, coordinate collaborative initiatives and monitors actions taken to fulfil the rights of children.

Uganda in the past had a specific framework for all actors to protect the rights of children in areas of survival, development, protection and participation. Following the embracing the Sector wide approaches, Uganda developed a Poverty Eradication Action Plan (PEAP) that is the overarching national planning framework. Children's concerns have been integrated into the PEAP and are therefore in the Sector Investment Plans through which all funding is channelled. The area of protection that is emphasised in the Optional Protocol has been dealt with under sectors such as health, education, justice law and order and social development. Government will continue to pursue these and will do further analysis in order to achieve full protection of children and enable them enjoy their rights.

Syda Bbumba
Minister of Gender, Labour and Social Development

List of acronyms

ADF	Allied Democratic Forces
ANPPCAN	African Network for the Prevention and Protection Against Child Abuse and Neglect
CAO	Chief Administrative Officer
CEAWC	Eradication of the Abduction of Women and Children
CFPU	Child and Family Protection Unit
CRC	Convention on the Rights of the Child
CR	Children's Rights
CRESS	Child Rights Education and Support Services
DDPs	District Development Plans
DPAC	District plan of Action for Children
FCC	Family and Children's Court
FIDA	Federation International de Abogadabos (Uganda Association of Women Lawyers (FIDA-Uganda))
GoU	Government of Uganda
GUSCO	Gulu Support the Children Organization
IRC	International Rescue Committee
LRA	Lords Resistance Army
MGLSD	Ministry of Gender, Labour and Social Development
NCC	National Council for Children
NGOs	Non-Governmental Organizations
PCA	Penal Code Act
PEAP	Poverty Eradication Action Plan
PSWO	Probation and Welfare Office/Officer
SCA	Secretary for Children Affairs
SCD	Street Children's Desk
SDIP	Social Development Sector Strategic Investment Plan
SPLA	Uganda Bureau of Statistics
UDHS	Uganda Demographic Health Survey
UN CRC	United Nations Convention on the Rights of the Child
UCRNN	Uganda Child Rights NGO Network
UK	United Kingdom
UN	United Nations
UNICEF	United Nations Children Education Fund
UNPAC	Uganda National Programme of Action for Children
UPE	Universal Primary Education
UPDF	Uganda People's Defense Force
UPFC	Uganda Parliamentary Forum for Children
UYDEL	Uganda Youth Development Link

CONTENTS

	<i>Paragraphs</i>
INTRODUCTION.....	1 - 5
I. IMPLEMENTATION OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY.....	6 - 32
II. EXISTING LAWS ON PROHIBITION OF THE SALE OF CHILDREN, CHILD PORNOGRAPHY AND CHILD PROSTITUTION.....	33 - 40
III. PENAL/CRIMINAL PROCEDURE.....	41 - 54
A. Legislative jurisdiction over offences.....	41 - 44
B. Judicial jurisdiction over offences.....	45 - 46
C. Administrative jurisdiction over offences	47 - 54
IV. PROTECTION OF THE RIGHTS OF CHILD VICTIMS.....	
V. PREVENTION OF THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY.....	64 - 81
A. Administrative measures	65 - 73
B. Legislative measures.....	74 - 81
VI. INTERNATIONAL ASSISTANCE AND COOPERATION.....	82 - 85

INTRODUCTION

1. The government of Uganda ratified the United Nations Convention on the Rights of the Child (UN CRC) in 1990. In 1996 Uganda domesticated the CRC by enacting a law for children, the Children Statute, now Children Act (Cap 59), Laws of Uganda. To further strengthen the protection of children, Uganda also ratified the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography on 19th August 2002. Since this came after the domestication of the Convention, there is need to ensure that all provisions of the Optional Protocol become part of the national legislation to facilitate adequate protection of the rights of children. This will be done during the revision of the Children Act that is currently underway.

2. This report is a fulfilment of the obligation of States Parties to produce an initial report on the progress made in the implementation of the Optional Protocol from the time of ratification. The report is based on the guidelines provided for reporting by the UN Committee on the Rights of the Child.

Public administration

3. The public administration system of Uganda comprises of the centralised system that focuses on central governments depending on the Parliament as the national legislative body and the government ministries and departments as the administrative units. Government Ministries have been decentralised and have officers performing their activities under district local governments. The Local Government system consists of both the elected District Councils the public administrative units.

The economy of Uganda

4. Uganda has experienced a strong economic growth over the past decade. Real GDP growth at market prices to date has averaged over 6.5% per annum since the early nineteen nineties. The determinant of Uganda's economic growth has been identified as the relative improvement in security, macroeconomic stability, and improvement in terms of trade resulting from coffee price boom in the mid-nineties. Industrial production has seen the highest growth per annum averaging 10.4%, the service industry has also been averaging a growth rate of 7.5% and agriculture has been averaging 4.4% growth per annum.¹

¹ Poverty Eradication Action Plan 2004/5 Report Page 31.

Preparation of this report

5. This report has been prepared after a process of consultation with the relevant government Departments, civil society institutions and other stakeholders. Documents were reviewed and interviews were carried out with key officials in the relevant institutions. The report has also benefited from case studies from selected districts or areas of the country most affected by the problems that the Optional Protocol seeks to address. A cross-section of stakeholders was consulted in two separate workshops targeting government officials, the civil society including those that represent children, and development partners. The preparation of the report has therefore taken into consideration the participation of all the relevant stakeholders.

I. IMPLEMENTATION OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

The Legal Status of the Optional Protocol in Domestic Law

6. The government of Uganda ratified the Optional Protocol to the Convention on the Rights of the Child in 2002. This came at a time when the government had already enacted a specific law for children. To date there is no specific law that domesticates this Optional Protocol; however, some of the provisions are addressed in the Penal Code, that is the section on sexual offences, specifically prohibiting prostitution and sexual intercourse with a person below the age of 18 years; and the Media Council Act that gives the mandates the Media Council to monitor exposure of children to pornography. The review of the Children Act will also take into consideration all the protocols, including this one, to comprehensively address the rights of children.

7. The Constitution of Uganda provides for the protection and promotion of human rights and freedoms is a constitutional mandate enshrined in the 1995 Constitution of Uganda. Article 45 of the Constitution states that the rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms

specially mentioned shall not be regarded as excluding others not specifically mentioned. The Constitution in principle provides guidance on what should be in the enabling law and has therefore laid a foundation for review and reform of other laws to cater for protection of children against sexual abuse and exploitation as provided for in the Optional Protocol.

8. In this vein reviews have been planned including revision of the Sexual Offences Laws, the Domestic Relations Laws; and drafting of new legislation including the Domestic Violence law, among others. This Optional Protocol will form part of the guiding principles for law revision and drafting processes to consolidate its provisions in national legislation.

Institutional framework for implementation of the Protocol

9. The implementation of this Optional Protocol to the UN Convention on the Rights of the Child in Uganda, like the implementation of the main UNCRC has been a collective effort by the Government, NGOs, donors, and religious organizations. As one of the key responses to the Optional Protocol, Government created an enabling environment for the implementation of the CRC and its attendant protocols. Through the decentralisation system of governance, administrative units have been formed at lower levels ranging from Local Council one at the village level to Local Council five at the district level. At all these levels there is a Secretary for Children who is responsible for all issues relating to children. In addition the public service has also provided for two Community Development Assistants at each sub-county to cater for social needs of communities including handling matters of children. At the district level there is Probation and Social Welfare Officer (PSWO).

10. In a bid to take services closer to the people, government created more districts, reducing the number of people each local government is supposed to handle. This in effect facilitates effective service delivery. Each district has a Police Station and at least two police posts in each sub-county. Government has also designated Family and Children Courts (FCC) in addition to the Magistrate's Courts in each district. These maintain law and order and provide legal services within reach for communities including children. Currently there is a toll free help line that children faced with abuse can call and solicit for help.

11. Government works closely with Development partners, NGOs and faith-based organizations to meet the needs of children and these have provided a significant proportion of the resources (financial, material, technical, human and organizational) for the implementation of these treaties. Some of the institutions that have been helpful in the implementation of the Protocol can be identified as below:

The Ministry of Gender Labour and Social Development

12. The Ministry of Gender Labour and Social Development (MGLSD) takes the responsibility for the vulnerable and the marginalised in addition to mainstreaming gender at all levels of government. Children are a mandate of the ministry. The MGLSD has a Department of Children and Youth, Gender and Community Development and a Labour unit (handling child labour as well) and district staff. Under the Decentralization policy the role of line ministries is policy guidance, standard setting, capacity building and monitoring. The Ministry together with its partners has drafted the child labour policy, and more recently, the Orphans and Other Vulnerable Children Policy and Action Plan, 2004. The Ministry however, has some human resource limitations to effectively implement programmes affecting children affecting implementation of its activities.

The National Council for Children

13. The National Council for Children (NCC) is a body that was created by government to coordinate and monitor all issues pertaining to children under the NCC Statute of 1996. After wide consultations with stakeholders, there has been consensus to restructure the NCC to make it financially independent and more autonomous, in order for it to carry out its role of providing a structure and mechanism for proper coordination, monitoring and evaluation of policies and programmes relating to the survival, development and protection of children rights. Consequently a Cabinet Memorandum showing details of the proposed bill to amend the NCC Statute of 1996 has been written by the Ministry of Gender, Labour and Social Development for consideration by Cabinet. It is proposed that NCC be replaced by a new body to be called Uganda National Children Authority (UNCA).

Uganda National Programme of Action for Children (UNPAC)

14. On ratification of the CRC, Uganda prepared a framework document for implementing the CRC, the UNPAC, aimed at translating child survival, protection and development targets into government policies and sectoral plans. The lead agency for coordinating and monitoring it was the NCC. However, with the introduction of Sector Wide approaches, Uganda now has the Poverty Eradication Action Plan (PEAP) as its overarching national policy framework. The PEAP is also Uganda's Poverty reduction Strategic Paper (PRSP). During the preparation of the PEAP and the two reviews, efforts were made to mainstream children's issues to form part of the core national planning framework. Several child rights issues have been integrated into the PEAP, a lot more can be done. Sector Investment Plans and other related policies including, the Social Development Sector Investment Plan (SDSIP), Education Sector Investment Plan (ESIP), Health Sector Support Investment Plan (HSSIP), Universal Primary Education (UPE policy), the National Gender Policy, among others, draw their plans and guidelines from the PEAP.

The Local Government Council

15. The Children Act Section 10 provides for the support of children by local authorities. For every Local Council, there is an adult representative for children known as the Secretary for Children's Affairs. The implementation of the CRC and its attendant protocols take place at the district and lower levels where a larger percentage of the population is situated. Under the Local Government Act, policy implementation and service delivery is the responsibility of Local Governments, while the Central Government is responsible for setting of national goals and setting national priorities through policy, setting standards, and resource allocation so as to deliver services to their population. Local Councils therefore have an opportunity to influence planning and budgeting for children at the lower levels up to the district. Attempts have been made to make the district development plans (DDPs) "child-friendly", however, this has not happened throughout the country. A survey carried out by the MoGLSD revealed that only 73% of the districts had integrated childcare and protection activities into the DDPs. Districts still lack the capacity to fully integrate childcare and protection issues into their respective DDPs. The main reasons for this are; inadequate staff (in terms of quality and quantity); inadequate funds; and lack of awareness/appreciation of the issues affecting children by district authorities.

Uganda Human Rights Commission

16. The Uganda Human Rights Commission is an independent Constitutional body established to promote and protect human rights. It is established under article 51(1) of the Constitution of the Republic of Uganda of 1995 and by the Uganda Human Rights Commission Act No. 4 of 1997. The function of the UHRC is to empower the public by giving them basic knowledge about their rights. The Commission is doing a lot in the areas of training police force and other child advocates on issues that concern child protection and investigating violations of Children's rights. It can and has made orders for appropriate redress where a violation is proven. While Article 50 of the Constitution gives a similar duty to the courts, the UHRC is not a substitute for the courts, but an additional organ available for citizens, especially those who may find it challenging to follow the ordinary legal system and it complements the work of the judiciary.

The Uganda Police

17. There is a Children and Family Protection Unit (CFPU) in most police stations and these handle cases of child abuse and neglect including those provided by this Optional Protocol. This unit has been instrumental in protecting women and children from violence and abuse as well as educating the public on laws and legal procedures. However, it is note worthy to indicate that some districts/polic stations do not have trained CFPU officers. Training more of such personnel and deploying them evenly throughout the country would go a long way to protect children from sexual exploitation as well as other rights violations.

18. The Criminal Investigations Department (CID) has the role to investigate criminal offences such as sexual abuse and exploitation. A well-conducted investigation facilitates a child's healing process, because the child knows that they are receiving justice and being protected.

Probation and Social Welfare Office (PSWO)

19. The Probation and Welfare Officer is crucial in the care and protection of children through provision of technical guidance and advice (The Children Act Part V). The Probation and Social Welfare Officer is one of the central persons in the implementation of the Children Act and all other stakeholders interact with him/her at

one point. Because the PSWO is based at district level, the Community Development Officers (CDOs) have been given authority to represent the PSWO at lower levels. One of the key responsibilities of PSWO in the implementation of the Optional Protocol is to assist the parents and the victims of sexual abuse obtain medical examination reports and to have evidence required in court, provide initial counselling to child victim and the family so as to cope with abuse and to also ensure that the child is protected from any form of abuse. Government faces the challenge of adequate funding for the offices of the PSWOs, which in turn affects fulfilment of children's rights; however, efforts have been made to fill the funding gap through resources from partners as well as other local government sources.

Family and Children's Court

20. The Children Act Section 13 calls for the establishment of the Family and Children Court (FCC). The court has power to hear criminal cases against a child, except those which carry the maximum death sentence such as murder, defilement and rape; and civil cases related to only applications concerning childcare and protection such as maintenance cases, or parentage cases. Grade II Magistrates in the various districts in Uganda have the jurisdiction to handle cases brought to the FCC. While FCCs are not fully functional in all the districts, plans are underway to institute them in all districts. For cases beyond the FCC, children are tried in ordinary courts and are supposed to be detained in remand homes. Government has not been able to institute functional remand homes in all the districts; however, alternative places have been designated for remand of children in conflict with the law. Functional remand homes exist in Kampala, Kabale, Mbale, Kabarole and Gulu.

Uganda Child Rights NGO Network (UCRNN)

21. UCRNN is a coalition of NGOs working in the field of child rights in Uganda. UCRNN aims to uphold rights and responsibilities as set out in the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and the Uganda's Children Act. Coordination for about 70 NGOs working in the field of child protection and development is provided by the umbrella organization, UCRNN. While the UCRNN could have provided a good structure and mechanism for NGO co-ordination, it does not have adequate human and financial resources to effectively perform the requisite

co-ordination functions. The challenge is to build capacity of the UCRNN to be able to co-ordinate the efforts of NGOs and other actors in the children's activities.

The dissemination of information to public about the Protocol

22. Efforts on dissemination of the Optional Protocol is being done by Uganda Child Rights NGO Network (UCRNN), Save the Children in Uganda, the Uganda Human Rights Commission and a number of other focused organizations through posters, leaflets, brochures and pamphlets on the Sale of Children, Child prostitution and Child Pornography. A study by the MGLSD together with ILO/IPEC that has been widely disseminated also highlighted the problem and recommends urgent action to eliminate it.

Evaluation of the implementation of the Protocol

23. This is the first report to the UN Committee on the CRC concerning the implementation of the Optional Protocol. Other measures that have been put in place to facilitate the evaluation of the implementation of the protocol include the following.

Coordination efforts

24. According to the decentralization policy, functions of central government department include: policy and legislative development, quality assurance (including monitoring and supervision) inspection, training, technical advise and guidance in their respective area of mandate. The lead agency for coordinating and monitoring the implementation of child rights related programme is the National Council for Children (NCC), while the MGLSD formulates policy, develops standards and carries out supervisor and monitoring of implementation. Quarterly and annual reviews and evaluations are done by these institutions; more can still be done with adequate provision of resources and strengthening of these institutions. Each line ministry is carrying out child advocacy and developing policies, which affect children independently as part of their mandates and not consciously as a process of implementing the Optional Protocol to the UN CRC. This situation will improve when NCC, the body which has the mandate to coordinate and monitor implementation of the CRC in Uganda is restructured as proposed in the government white paper on constitutional review.

The PEAP

25. The PEAP, which is Uganda's framework for development planning ought to support the implementation of the Optional Protocol. However, in its present form, the PEAP largely addresses and provides resources for the child's rights to survival (health) and development (education) while issues of protection and participation in matters that affect them still demands more attention. Initiatives under health and education therefore attract conditional grants from central government. Child protection and participation issues are not considered a priority hence they do not receive conditional grants. Local governments may prioritise them but have to raise local revenue to finance their implementation.

A Street Children's Desk (SCD)

26. A street children's Desk was established having realised that several offences mentioned in the Optional Protocol Article 3 para. 1 are mostly committed against street children whom the state has a duty to protect according to the Constitution. Uganda has over 10,000 street children in and 85% of these are homeless (Caritas Australia 2001). The Street Children's Desk (SCD) together with the National Street Children Committee in the MGLSD department of Youth and Child Affairs co-ordinate activities of all NGOs working with street children. As a result a practice guideline and training manual for working with street children has been developed. A programme of reintegration of street children back into their communities has also been launched. Some success has been registered in Kampala after an exercise was undertaken in June 2002, involving removal of children from the streets. The exercise comprised of major phases namely removal, rehabilitation, resettlement and public mobilisation and sensitisation. Key actors such as the Solicitor General, Ministry of Justice and Constitutional Affairs, officials the National Rehabilitation Centre Police and Kampala City Council Welfare Department were involved.

Child Labour Unit

27. A Child Labour Unit and the National Planning Committee on child labour has been set up within the Department of Labour, Employment and Industrial Relations, MGLSD. The members to the sub-committee were drawn from line ministries workers' and employers' representatives, NGOs, academia and the media. The purpose of the Unit and the committee is to develop programme to address the issue of child labour which

includes child prostitution and pornography among other Worst Forms of Child Labour (WFCL) Pornography is one of the forms of commercial sexual exploitation. Over 64% of the children involved in prostitution are also engaged in pornography. Over 95% of the children are paid money for sex (MGLSD 2004).

The Uganda Parliamentary Forum for Children (UPFC)

28. UPFC was launched on 15th July 2005 and it has since established 28 district policy networks. The UPFC is an advocacy forum in Parliament that undertakes the protection of children by initiating bills and reviewing legislature in favour of children's rights. Members of Parliament monitor the policies and programmes designed for children.

District-level mechanism

29. Following the decentralization policy, the first DPAC was developed in January 1994. Since then, NCC and partners at the national level have facilitated the development of 34 DPACs now integrated into the respective District Development Plans. Local Government Authorities and District Development Committees ensure implementation of programmes for children at district and community levels. Key officers in districts responsible for implementation of children's concerns in the District Development Plans are: Secretary Children's Affairs (SCA), Chief Administrative Officers (CAO), District Planners, District Probation and Social Welfare Officers, District Education Officers and District Director of Health Services. A number of NGOs participate in the district planning and review meeting. Linkages between government and NGOs exist, but can be strengthened further.

Challenges of implementing the Protocol

30. Budgetary allocations and expenditures on departments that are responsible for implementation of the Optional Protocol to the UN CRC is low both at the national and districts levels. From the analysis of central government on community and social services which include children among several other issues only less than 1% is allocated them. At the district level, the situation is the same. The Community Services directorate which handles children among several other issues receives barely 1% of the financial resources. The other issue handled by community department include community development, gender, social rehabilitation, labour, culture and youth.

31. A detailed study of NCC and its functioning indicated inadequate funding and weak structure, thus the inability for it to effectively execute its mandate. Government has indeed in its White Paper on constitutional amendment accepted all the recommendations made by the Constitutional Review Commission on the restructuring of the National Council for Children (NCC).

32. The delay in domesticating the Optional Protocol is also a challenge on the part of the implementing institutions. While the Children Act has provisions relevant to the Optional protocol, it does not effectively provide for protection of children against sexual abuse and exploitation. This also means that these issues cannot be reflected in the PEAP and therefore cannot be implemented by the sectors and the districts. Government has noted the challenges associated with the children's law and is currently reviewing it to take into consideration the provisions in the Optional Protocols well as other concerns for children.

II. EXISTING LAWS ON PROHIBITION OF THE SALE OF CHILDREN, CHILD PORNOGRAPHY AND CHILD PROSTITUTION

33. The Children Act does not have specific provisions against the sale of children, child prostitution and child pornography. It however assigns institutions and persons responsibility for the protection of the rights of children against all forms of abuse and exploitation. This is mainly because the Children law was enacted prior to ratification of the Optional Protocol. However, Uganda is committed to the protection of children from abuse and exploitation and this is to a large extent dealt with in the Penal Code, Cap.120.

Sexual exploitation

34. The Penal Code prohibits sexual intercourse with a girl below the age of eighteen years,² which is defilement. The law however does not provide the same for the boy child, who is dealt with under indecent assault in the same law.³ The law currently seems to protect the girl child more than the boy; however, this has been dealt with in an amendment bill that was tabled before the 7th Parliament seeking to amend the definition of defilement to cover both boys and girls below the age of 18 year. This Bill is yet to be passed and it is hoped that it will be a priority for the 8th Parliament as well.

² Cap 120, Laws of Uganda S.129.

³ S. 147.

35. The law also prohibits procurement of a girl below the age of eighteen years and any attempts to do so.⁴ Other related offences are provided within this section on the law that emphasise protection of girl children from any form of sexual violence.

Abduction

36. The practice of abduction has been reported in Uganda associated with the Lord's Resistance Army (LRA) who abduct both boys and girls and conscript them in the army and make them sexual slaves. Under the Penal, Cap. 120, this is dealt with under Section 126. This section of the law prohibits abduction in itself and the sexual act after abduction is then dealt with in the rest of the sections under defilement and procurement.

37. While abduction and sexual abuse is prohibited by law, it has been a challenge for the government of Uganda to address the problem because the rebels are at large. A few who have been apprehended have been punished while others applied for amnesty as provided by law. Government has also referred the matter of non-repentant rebel leaders to the International Criminal Court. An alternative option of a peace deal is also being pursued and it is hoped that this will provide lasting solutions to the problem.

Pornography

38. The Penal Code also protects children against pornography⁵ that includes dealing in obscene publications and pornographic materials; trading, distribution, publicly exhibiting, making or possessing obscene writings, drawings, prints, paintings, printed matter, pictures, posters, photographs, cinematography films tending to corrupt morals of others. The law further orders for destruction of such materials in pursuance of Article 7 of the Optional Protocol on confiscation goods and materials and proceeds from the offences. In addition the Electronic Media Act provides for the Media Council to protect children from exposure to pornography by monitoring activities of the electronic media.

Improperly inducing consent, as an intermediary for the adoption of a child

39. According to Article 3 of the Optional Protocol the State Parties should ensure that the above act is covered under the criminal or penal law. The Penal Code⁶ creates

⁴ S.131 and 132.

⁵ S. 166.

⁶ S. 159.

the offence of child stealing to cover the above act, that “any person who with the intent to deprive any parent, guardian or other person who has a lawful charge over the child under the age of fourteen years forcibly, fraudulently, entices or detains the child or harbors him/her, commits a felony and is liable to imprisonment for seven years.” Government realises the need to consolidate all laws relating to children in the Children Act. The revision of the Children Act will take into consideration all the above provisions as well as those in the Optional Protocol that are not yet adequately dealt with.

III. PENAL/CRIMINAL PROCEDURE

A. Legislative jurisdiction over offences

The Constitution

40. The Constitution is the supreme law of the land giving binding force on all authorities and persons throughout Uganda Article.⁷ The Uganda Constitution provides for respect for human dignity and protection from inhuman treatment,⁸ protection from slavery and servitude,⁹ and for the rights of children generally, including the best interest of the child, the rights to education and the rights to protection from social or economic exploitation, among others rights.¹⁰ All these provide a framework within which enabling law should be drafted.

Government making bodies

41. The governance system has institutions that are responsible for law making. The main institution in charge of the law making process and its implementation is the Ministry of Justice and Constitutional Affairs. In addition, the government put in place the Uganda Law Reform Commission to study and review all laws and matters of legislation and recommend to Parliament for legislation or amendment.¹¹ Currently the Uganda Law Reform Commission is spearheading the review of the Children Act, identifying all contradictions, missing provisions including issues in this Optional Protocol that need to be domesticated in the Act.

Parliament

42. The Constitution gives Parliament power to make laws on all matters.¹² The laws are drafted by the Ministry of Justice and Constitutional Affairs, approved by Cabinet

⁷ 1 (3) Constitution 1995.

⁸ Article 24.

⁹ Article 25.

¹⁰ Article 34.

¹¹ Statute No. 6 1990.

¹² Article 79.

and tabled before Parliament to debate and enact them.

43. The institutions responsible for legislative jurisdiction over the sale of children, prostitution and child pornography are therefore in place and the guiding principles are provided by the Constitution. It only remains for existing laws to be amended and where need be, a specific law provided to domesticate the Optional Protocol. The review of the Children Act will be the main determinant of the course of action.

B. Judicial jurisdiction over offences

Jurisdiction of Courts

44. Uganda has made efforts to have courts at all levels in the community. These range from the lowest court system based on the local council system to the statutory systems that include Magistrate’s Courts and High Court. The Judicial jurisdiction over offences is determined depending on whether the offence is criminal or civil. Article 129, Section 1 of the Constitution states that, the judicial power of Uganda shall be exercised by the courts of Judicature, which shall consist of:

- (a) The Supreme Court of Uganda;
- (b) The Court of Appeal of Uganda;
- (c) The High Court of Uganda.

There are also Magistrates Courts ranging from the jurisdiction of Chief Magistrate, Magistrates Grade I and II. At the community level cases are also handled by the Local Council Executive. The offences arising from crimes relating to the Optional Protocol largely fall under the jurisdiction of the High Court, that is, those whose maximum sentence is either life imprisonment or death.¹³

45. The Local Council Courts do not have the mandate to try any cases relating to sexual abuse and exploitation, however, due to proximity to communities, they have become the initial point of reporting. They support the communities to access the right channels of reporting. In addition, at each local council, there is a Secretary for Children who handles all children’s concerns in the community.

C. Administrative jurisdiction over offences

46. Uganda has set up adequate institutions to handle administrative issues of children whose rights are violated under the Optional Protocol. These include the Directorate

¹³ S.157 Magistrates’ Courts Act.

of Public Prosecutions (DPP), the Police, the Probation and Social Welfare Office (PSWO). These are located at both the central government level and local governments. Emphasis is placed in the local governments (districts) since most of Uganda's population is rural and services can reach them better in their local governments.

The Director of Public Prosecutions (DPP)

47. The institution that handles investigations of cases relating to offences under the Optional Protocol is the Directorate of Public Prosecutions.¹⁴ The powers of the Directorate of Public Prosecutions are of a general nature applying to all criminal proceedings and include investigation, institution of criminal proceedings under a competent jurisdiction. The directorate has representation in all the districts for proximity with the communities including children.

The Uganda Police

48. The police have been mandated under sections 31 of the Police ACT, part V, to institute criminal proceedings against individuals involved in criminal activities including the violation of the rights of children. Accordingly, there is a Family and Children's Unit in many police stations that handles cases of child abuse and neglect. By reporting to this unit the police officer investigates into the matter and takes relevant action. In addition, the Criminal Investigations Department (CID) role is to investigate criminal offences such as sexual exploitation or sexual abuse of children. These work hand in hand with those specifically trained to handle children and family matters. The challenge still remains to have adequate numbers of these specialized police to adequately provide redress to children who are abused.

The Probation and Social Welfare Office (PSWO)

49. The Probation and Social Welfare Officer is crucial in the care and protection of children through provision of technical guidance and advice (The Children Act Part V). The PSWO is the central person in the implementation of the Children's Act and all other stakeholders interact with him/her at one point on children's concerns. One of the key responsibilities of PSWO in the implementation of the Optional Protocol is to provide access to justice and other forms of redress to victims of sexual abuse including, obtaining a medical examination report, having adequate

evidence required by court, providing initial counselling to child victims and the family so as to cope with abuse and to also ensure that the child is protected from any form abuse. To make easy the work of the PSWO, government also has two Community Development Assistants (CDAs) in each sub-county. A district consists of several sub-counties, ranging from a minimum of eight to a maximum of 31. The CDAs handle children's issues at the lower levels and where there is need, refer them to the PSWO. Likewise, the PSWO may refer a child to a CDA for continued support after redress has been initiated or provided.

Extradition

50. There is some evidence that Uganda is a source country for trafficked persons, primarily women and children. Over the past eighteen years, a terrorist organization, the Lord's Resistance Army (LRA), has abducted tens of thousands of women and children and forced them to carry stolen goods, to cook, to serve as sex slaves and to become rebel soldiers. There is no other evidence of trafficking under circumstances different from the above.

51. Uganda does not have strong specific actions and legislations to deal with trafficking save for the regular legal framework. Under the law, the Penal Code prohibits trafficking. Any violation of this law leads to prosecution under the criminal justice system. The government of Uganda however is using the military approach to deal with the LRA rebels who abduct children and take them to the Sudan and other bases where they are located for purposes of using them as sex slaves and otherwise. Some children have been rescued militarily, others have escaped from the rebels while the UN and the Civil Society are using the negotiation and advocacy approaches to get the rebels release the children. This has also resulted in the return of some children, however, a large number still remain in captivity. The only workable legal procedure instituted against the rebels considering that they have their bases in and out of Uganda is the request to the International Criminal Court to prosecute their leaders. In order to deal with the problem of child abduction by children, the Uganda government has also set up the Amnesty Commission to receive offenders and grant them amnesty. It is hope that this would put an end to the insurgency and the children would in turn be released.

52. With the practice of trafficking being on the increase in some countries, Uganda will not be free from the vice for a long time. There is need for Uganda to enact a law

¹⁴ Article 120, Constitution.

that can effectively protect children from trafficking both from within and outside the country. This would require considering provisions in the Optional Protocol that lead to extradition of perpetrators who may have left the country. The government will also work at a law that will monitor and return into the country children who are trafficked and provide them with psycho-social support to address the trauma they faced during abuse.

Other measures

53. A committee for the Eradication of the Abduction of Women and Children (CEAWC) was set up on the basis of the Presidential decree in 2002. The government has also worked in partnership with both local and international agencies to offer support to the rescued children abductees. Some of these Organisations include, the UNHCR, UNICEF, the World Vision, the Gulu Support for Children Organization (GUSCO), the International Rescue Committee (IRC), Save the Children in Uganda, AVSI and the Kitgum Children and Women's Association (KICWA) among others.

IV. PROTECTION OF THE RIGHTS OF CHILD VICTIMS

Measures adopted to protect rights and interests of child victims

54. In light of Articles 8, 9 paragraphs 3 and 4, of the Optional Protocol, measures have been adopted to protect the rights and interests of child victims. Uganda as a signatory has several measures in place designed to prevent these abuses as well as protect children affected with these abuses as well as other rights violations.

Protecting the best interests of children

55. Article 34 (1) of the Constitution of the Republic of Uganda emphasizes the principle of best interest of the child. Section 3 of the Children Act also sets out this principle as the guiding principle in the making of any decision concerning a child. In order to popularise the best interest of the child as well as other provisions on child protection, the Children Act has been disseminated among leaders, Local Councils specifically targeting Secretaries for Children, development workers, civil servants, communities and children themselves. In a bid to promote the best interest of the child, government has also gazetted institutions and designated Officers to oversee that the best interest of the child is maintained at all times and in all actions. These are the PSWOs, CDAs and Secretaries for

Children at all levels whose mandate is to ensure children's rights are adhered to.

Initiating criminal investigations

56. The police are empowered in the Police Act Cap 303, sect 31, to institute criminal proceedings to persons suspected of wrongdoing. Under section 27 of the Act, the Police can make searches while in section 24 they can make arrests. Following the ratification of the Convention on the Rights of the Child, the Police have designated a special unit known as the "Family and Child Protection Unit". These are found at almost all Police stations and posts and handle issues relating to the family, children and child abuse cases. This special unit ensures that children faced with abuse get redress with minimum delay.

57. The Family and Child Protection Unit have been very instrumental in handling cases of children arrested as prostitution suspects. In Uganda, prostitution is a criminal offence. According to the law, any person who benefits from the proceeds of prostitution commits an offence and is liable to arrest and criminal proceedings including imprisonment. This is one of the areas of law that creates challenges for the law because it discriminates against women and girls. The law on prostitution punishes the people who gain from prostitution but not their clients. In Uganda the trend has been that women are the service providers while the men are the clients. The law therefore punishes the women and not the men. In addition the area is a challenge due to contradictions to the law, making it rather difficult for law enforcers to effectively implement the law. The Penal Code Act criminalises sexual intercourse with a person below the age of 18 years; the law considers these persons incapable of consenting to sexual intercourse. The Children Act also protects children from being charged in the same manner as adults in matters of a criminal nature. However, the same Children Act places the age of criminal responsibility at 12 years. The Family and Child Protection Unit has been able to identify children from suspects of prostitution, counselled and released them.

58. Government does recognise that whatever remedies are currently in place are not adequate to protect children, especially those engage in prostitution. It is clear that this children are there for reasons beyond their control. With the increasing number of orphans and vulnerable children, the possible is that most of the children engaged in prostitution belong to this category. The form of vulnerability is children who are exploited and are therefore forced onto the street to engage in prostitution and bring the money to the adults

in their lives. There is need for studies and analysis of this phenomenon. The review of the Children Act is one such process that will identify the underlying causes to this phenomenon and thereafter effectively provide for protection and redress of children faced with this abuse. In addition, the review process will harmonize all the laws relating to children to eliminate contradictions.

Making the procedures child sensitive

59. Where children are in conflict with the law such as children being involved in prostitution among other cases, the Government has put measures for protection of their rights. The Uganda government created the Child care and Protection Unit, the Family and Children's Court (FCC) and Probation and Welfare Officers (PSWOs), which are a specialized departments handling children matters. The FCC handle minor cases of children in conflict with the law and are located close the communities, e.g. at counties. Courts where children's cases are heard generally address children's issues in a friendly and a child sensitive manner. For example, children in conflict with the law are required to go to court or any other session related to what they suspected for together with the Probation Officer and the child's parent or guardian (Section 16 (1) (d) Children Act. The Children Act also requires that the proceedings be as informal as possible and by inquiry other than cross-examination. In addition, children have the right to legal representation (Section 16 (1) (e) Children Act (Cap 59). The civil society has contributed a lot in providing free legal services. These include, Legal Aid Project, FIDA Uganda, DANIDA and Legal Aid Clinic of the Law Development Centre. The Directorate of Public Prosecutions is also required to provide these services.

60. The civil society has also been vigilante in providing redress to children affected by sexual abuse. Such NGOs include, Hope After Rape, Uganda Youth Development Link (UYDEL) and Slum Aid Project. These provide services such as psychosocial counselling, vocational training and financing and other related support services. An annual report of UYDEL for the year 2004 indicates that it provided counselling to a total of 1560 children (639 boys, 921 girls).

Protecting the privacy and identity of child victims

61. Proceedings in court are held in camera and the media is therefore prohibited from publicizing court proceedings concerning children (Section 16 (1) (b) Children Act (Cap 59). The press is also barred from court proceedings

involving children. Where a child's name and photo has to appear in any publication, the identification is changed and the face is hidden. These ensure the privacy of children and the protection of their identity.

Ensuring the safety of child victims and others

62. Currently, there is no specific law that ensures the protection families and witnesses, individuals and organisations from intimidation and retaliation in respect of pursuit of justice in defense of child victims. However, when this happens and it is reported, the Police always take action by cautioning the perpetrator. The civil society has again taken steps on this and provides protection services to child victims of sexual abuse and exploitation. Hope After Rape give custody to children while their cases are under investigations. In some cases, relatives of these child victims keep the children while their cases are handled to ensure safety.

V. PREVENTION OF THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

63. The most effective way of protecting children from child sexual abuse, child pornography and child stealing is prevention. It is generally acknowledged that it is better to take steps to prevent child abuse, neglect and exploitation than to deal with its consequences. Preventive strategies should be specific about what is being prevented, how it can be achieved and the demonstration of the results. There are many possible strands, including livelihood issues, education and training, awareness raising, measures to protect women and children, visible procedure for reporting and monitoring instances of abuse, neglect and exploitation, and an effective police and judiciary system. There are direct and indirect measures and institutions that have been put in place to prevent the above offences from taking place. They include the following.

A. Administrative measures

64. Administratively, there are several institutions mandated by government to provide preventive measures to prevent child trafficking, child pornography and child prostitution. These include measures right from the community level where there are Secretaries for Children in the Local Councils. At the village level, Local Councils represent ten (10) family units. These have among them

also the Secretary for Defence. The people in each village are registered with the Local Councils and visitors to the village have to be reported. Village Local Councils are also linked. They build up into Local Council two (2) consisting of many villages and go up to LC 4 for municipalities and LC 5 for districts. These have been helpful in identifying wrong members in communities as well as strangers who may take advantage of children. They also follow up through their LC network in case a crime is reported.

65. Within the government civil service, there are Community Development Assistants and Community Development Officers at sub-county level who support the Probation and Social Welfare Officer based at the district. There is a fully fledged Community Services Department at the district. These sensitize communities delivering messages on protection and in case of abuse where it should be reported and the relevant procedures to be taken. To prevent trafficking, the Immigration department has strict border check points at every terminal and can easily identify persons wrongly taking children out of the country. The challenge has been trafficking as a result of abduction that sometimes beats the UPDF and get away with the children. Efforts have been made to follow up some of these children and reintegrate them with their families.

66. Among the civil society, Save the Children is working in partnership with local authorities to combat the phenomenon. The organisation working in partnership with local organisation is mobilizing the communities and training them to be able to detect cases of child trafficking and to offer the necessary protection. Save the Children has for example identified bus terminals as entry points for protection of children under the risk of being trafficked. The taxi touts and bus owners or operators, are accordingly trained to interview children and ask them where they are going. By interviewing children, they are able to get details about the safety of children on account of where they are going. Others like Kids in Need have removed children from the streets who are at the risk of entering child prostitution and being exposed to pornography.

Universal Primary Education

67. Children out of school are most susceptible to engage in activities like pornography and prostitution as they do not have full time occupation. Some spend most of their time in places like bars, lodges and restaurants, markets and helping out with domestic chores, some of which expose them to dangers of exploitation (MGLSD 2004). Children

are also employed as domestic workers and this makes them very vulnerable to sexual abuse and exploitation as well as trafficking.

68. Government has introduced Universal Primary Education (UPE) whose intention is to have all school going children accessing education. This has been faced with the challenge of high drop out rates and low achievement rates. Some children are still out of school due to lack of other facilities such as scholastic materials and other social factors such as HIV/AIDS in the family, child headed families and a host of other challenges. There are demands on the government to make UPE compulsory and to address those challenges that face children with special needs that keep them out of school. In the current Poverty Eradication Action Plan, government also plans to open up vocational training institutions to absorb UPE graduates. In addition, this year (2006) government has declared Universal Post Primary Education and Training (UPPET). This will go a long way to protect children from these vices.

69. The girl child is more prone to these abuses and government has specifically instituted affirmative action to facilitate girls' entry into tertiary education by adding 1.5 points to their final school examination scores. This has seen more girls getting to higher levels of education than in the past. The numbers are still low but progress is being made. Other support to the education sector includes UNICEF's support to the government of Uganda working together with other development partners to develop and launch the National Strategy for Girls' Education in Uganda. The strategy aims at eliminating barriers arising out of socio cultural factors like early marriages, discrimination of girls, engagement in domestic work, and FGM been identified as form of sexual exploitation by CEDAW. However, there is a lack of a policy framework to make children remain in school in after enrolment. Girls have especially continued to drop out of school due to voluntary/uninformed and forced marriages. Over 60% of girls drop out at A- level while the girl drop out rate at O-level is 30% (UNCRNN 2002).

MGLSD

70. Efforts taken by government to prevent the sale of children, child prostitution and child pornography has been through the creation of child labour unit and Street Children Desk in the MGLSD. The MGLSD has also done various sensitization programmes. The Ministry gives support to NGOs, which encourages them to be involved in activities

geared towards the prevention of child prostitution, sale and pornography for example the ministry has given Save the Children in Uganda a financial grant to implement a Programme called “Child Protection and Empowerment”. The Ministry is also in the process of developing a Community Mobilization and Empowerment Strategy with support from development partners such as UNICEF, DFiD, DANIDA, UNDP, Development Cooperation of Ireland, GTZ, among others. These programmes remind parents of their duty to provide education to all their children and to avoid getting them to marry early. Other messages that are delivered include health conditions that arise out of early marriage and pregnancy including the risk of HIV/AIDS infection.

71. The Department of Labour in the Ministry of Gender, Labour and Social Development has been able to raise awareness on the Worst Forms of Child labour with financial and technical support from a UN body ILO/IPEC as well as media organisations. In this partnership, the media organisations have educated the masses and laid the foundations for elimination of the Worst Forms of Child Labour. The government is yet to pass a law the censures pornographic materials for example on the Internet. In the print media, those involved can be subjected to the law, but they use loopholes in the existing laws to continue publishing pornographic material which affects children. All these loopholes will be identified and addressed in the revision of the Children Act. However, there is also the need to harmonise all laws to be responsive to the rights of children

Uganda Human Rights Commission

72. The Uganda Human Rights Commission is an independent Constitutional body established to promote and protect human rights. The function of the UHRC is to empower the public by giving them basic knowledge about their rights. In addition to educating the masses on issues of rights, the Human Rights Commission has investigated child abuses under the regimes prior to the NRM Government and has already submitted its report to Government. Currently the Commission investigates and reports matters of child abuses to government. It has recently introduced the department for children that specifically handles children’s issues considering the increase on abuses on children. While the Commission is making considerable effort to fight child abuse and neglect and exploitation through highlighting cases of abuse, limited success has been realised in bringing to book the culprits. The Commission has however, successfully

brought to book some culprits on negligence and failure to maintain their children.

B. Legislative measures

The Uganda Constitution 1995

73. The Uganda Constitution 1995 (Chapter 1 Article 34 (4) provides for the protection of children from hazardous and exploitative labour. The Constitution spells out the following rights of children; Children are entitled to be protected from social and economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or interfere with their education to be harmful to their health or physical, mental, spiritual, moral or social development. This provision has been compounded under the Children Act Cap 59.

74. The Constitution outlines the duties and obligations of the State. It effectively outlines the fact that the State is responsible for acting through its institutions to protect and prevent children from abuses for example the Uganda Human Rights Commission. While the Constitution has laid down the duties of the institutions in protecting children’s rights, the enforcement and implementation is left to the state organs such as the line ministries in particular the MGLSD. At the moment the government needs to popularize the Constitution underlining the key factors that violate the rights of children. Popularizing the Constitution requires that the Constitution is translated into local languages and made available to communities. Communities also need to be educated about the contents.

The Penal Code Act (PCA)

75. The PCA has also played a vital role in the prevention of sale of children, child prostitution and child pornography. The measures are enshrined in section 147 of the penal Code Act states that any person who unlawfully and indecently assaults a boy under the age of eighteen commits a felony and is liable to imprisonment for fourteen years, with or without corporal punishment. It further stipulates under section, Section 131 subsection 1(a) states that, any person “who, procures or attempts to procure any girl or woman under the age of twenty-one years to have unlawful connection, either in Uganda or elsewhere, with any person or persons; b) procures or attempts to procure any woman or girl to become either in Uganda or elsewhere, a common prostitute; c) procures or attempts to procure any woman or girl to leave Uganda, with intent that she may become an inmate of or frequent a brothel elsewhere;

or; d) procures or attempts to procure and woman or girl to leave her usual place of abode Uganda, such place not being a brothel, with intent that she may, for the purposes of prostitution, become an inmate of or frequent a brothel either in Uganda or elsewhere, commits an offence and is liable to imprisonment for seven years". It's upon this Penal Law that courts and the police criminalize and penalize child offender.

The Family and Children's Court

76. The FCC handles matters concerning families and children. The court has power to hear criminal cases against a child, except those which carry the maximum death sentence such as murder, defilement and rape; and civil cases related to only applications concerning childcare and protection such as maintenance cases, or parentage cases.

77. NGOs in collaboration with government have put in place innovative model projects like Save the Children's Child Rights Education and Support Services (CRESS). There is good working relationship among NGOs and between NGOs and government of Uganda on children's issues. Government should be commended for providing an enabling environment for promotion of children's rights. It should however be noted that such interventions are on a very small scale (CRESS project operates in only 2 districts out of 81 and even within the 2 districts the project is only active in 9 out of 33 lower local governments).

78. As a result of this collective effort, a number of achievements have been recorded. These include: increased awareness by community of the problem and as a result more crimes are being reported to Police and LCs; more arrest of violators; children and families are becoming more aware of the dangers of child sexual abuse; reporting of early marriages (sometimes the children themselves); and a successful network and collaboration has been established between NGOs and Government. The following NGOs have been key in tackling the problem of child sexual exploitation and abuse: Slum Aid Project, Reproductive Health Care initiative, Family Protection Unit in the Uganda Police, Uganda Association of Women Lawyers (FIDA), Friends of Children Association, Uganda Muslim Supreme Council, African Network for Prevention and Protection against Child Abuse and Neglect (Uganda Child Rights NGO Network (UCRNN), National Association of Women's Organization, African Centre for Treatment and Rehabilitation of Torture Victims, Uganda Youth Development Link (UYDEL), Legal Aid Project and Hope After Rape.

Means used to raise awareness about the offences prohibited by the Protocol

79. Both Government institutions and NGOs have, with the support of donors, been involved in awareness creation through development and distribution of child rights advocacy materials. Some of the materials specify worst forms of child labour like the ones talked about in the protocol. These materials are produced in various forms and format such as; calendars, posters, brochures, t-shirts, caps and audio/visual materials on child sexual exploitation which is part of the Optional Protocol. Dissemination of The Children Act is also done through debates, essay competitions, music, dance and drama, child rights clubs in schools and Child rights Advocates in the communities. This law for children has also been simplified and translated into some languages; more needs to be done considering the diversity of languages spoken in Uganda. The day of the African Child that is commemorated annually is used as a special day to advocate for children in general. While much has been done on the sensitization and awareness of the Convention on the Rights of the Child in general, there have not been much efforts geared towards the Optional Protocol on child sale, prostitution and pornography.

Participation of children, communities and victims of abused is ensured

80. Children especially in schools, have opportunities to express their views through songs, drama, debates, clubs and story telling. A major IEC campaign is the Sara initiative, which is being implemented to promote the development of the girl child. Through such means the children and communities learn how to avoid circumstances that expose them to child sale, prostitution and pornography. Children engaged in these initiatives are supported to discuss in a participatory manner matters relating to the Protocol. This happens where the facilitators are well trained. Comparatively, such initiatives only reach a handful of children.

VI. INTERNATIONAL ASSISTANCE AND COOPERATION Prevention

81. In light of article 10 paragraph 3 of the Optional Protocol Uganda as a State Party cooperates with the international community in addressing issues like poverty and under development, which contribute to the vulnerability of

children and consequently to the sale of Children, Child Prostitution, Child Pornography and Child Sex Tourism. The ILO-IPEC programme on 'Building the Foundations for Elimination of the Worst Forms of Child Labour' is one of the international initiatives that have been undertaken. This programme addresses wider issues of child labour including building institutional capacity, increasing awareness about the problem, building the knowledge base through research and undertaking direct action programmes. Child prostitution and pornography are some of core elements addressed under the programme.

82. International organisations are also extending support to rehabilitation and resettlement of formally abducted children in the northern part of the country. These include UN agencies such as UNDP, UNOCHA, WFP, UNICEF and donor agencies. The partners are further urging the government to resolve the conflict through peaceful means as in a bid to reduce risks of abduction and trafficking that children suffer.

Protection of victims

83. Child victims are given physical and psychological recovery services where child victims are rehabilitated and counselled. ANNPCAN a regional organisation provides services to child victims. ANNPCAN Uganda Chapter

serves as a national centre for the prevention and protection of children against child abuse and neglect as well as for the promotion, defense and advocacy for child rights. World Vision, Save the Children in Uganda and IRC are all involved in providing services to children in the north who are rescued from abduction. It is important however to underline the fact that the services are very much limited and many children cannot be adequately reached.

Law enforcement

84. Uganda has ratified several international and regional instruments, which give special protection to children. The positive act of ratification has committed the government to comply with the obligations set out therein, for example, enacting or amending existing laws to bring them in conformity with the instruments. On analysis of the legal status of the Optional Protocol in domestic law in Uganda, to a large extent article 3 paragraph 1 has indeed been to a large extent incorporated into the domestic legal instruments and especially as seen in our criminal law the Penal Code Act Cap 120 and the Children Act Cap 59. The police, CFPU and the courts ensure that the law is enforced and justice administered. Despite the legal framework, the resultant effect has been that a lot of factors, notably cultural and socio-economic have tended to overtake its efforts as far as children's welfare is concerned.

REFERENCES

ANPPCAN (1999). *African Charter on the Rights and Welfare of the Child*. Nairobi. Kenya.

GoU (2000). *Implementation on the UN Convention of the Rights of the Child in Uganda*. Kampala: First periodic Report Ministry of Gender, Labour, and Social Development.

ILO & MoGLSD (2004). *Report of the Sectoral Study on Child Labour and commercial Sex Exploitation of Children in Uganda*. International Labour Office and Ministry of Gender Labour and Social Development. Kampala. Uganda.

MFPED (2002) *The Poverty Eradication Action Plan; A Summary Version*. Ministry of Finance Planning and Economic Development.

Sanyu Semafumu and Anne-Marie Nassali Ssemakula (July 1995). *Suffer the Children: A preliminary investigation into Child Abuse in Uganda*. FIDA Uganda. Kampala. Uganda.

Kamya S, Chemonges E., Mwendu J, (2004). *Child Development: Issues and trends in children's rights. Course content for the training practitioners and Social Workers*. Dept. of SWSA Makerere University Kampala.

The Republic of Uganda (2003). *The UN CRC: What has been achieved in Uganda and what remains to be done*. A summary of the first periodic report. MoGLSD. Kampala. Uganda.

The Republic of Uganda (2003). *SDIP 2003-2008: Integrating human progress with economic growth for sustainable development*. MoGLSD. Kampala. Uganda.

The Republic of Uganda (July, 2001). *Implementation of the Children Statute 1996: Local Council Guidelines*. Save the Children UK in collaboration with MoGLSD. Kampala. Uganda.

The Republic of Uganda (1995). *The Constitution of the Republic of Uganda*. Kampala. Uganda.

The Republic Uganda (1970). *The Magistrates' Courts Act, 1970. Act No. 13 of 1970*. Kampala. Uganda.

The Republic of Uganda. (1997). *The Children Statute 1996*. Kampala. Uganda.

The Republic of Uganda. (2003). *The Children Act*. Kampala. Uganda.

UCRNN (2003): *Uganda's Poor Vulnerable Children, The PEAP and The Rights of the Child; An Analysis of the PEAP from a Child Rights Perspective*. Kampala, Uganda Child Rights NGO Network.

Uganda Child Rights NGO Network (2005). *NGO complementary report on the implementation of the UN Convention on the Rights of the Child*. Kampala.

UNCRC: *The United Nations Convention on the Rights of the Child, 1989*.

Walakira E. J: *An Investigation into Commercial Sex Exploitation of Children in Uganda*, published in Mawazo Journal Vol. 8 June 2002.

End of report

II. List of issues of the Committee on the Rights of the Child

OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

List of issues to be taken up in connection with the consideration of the initial report of Uganda (CRC/C/OPSC/UGA/1)¹

The State party is requested to submit in written form additional and updated information, if possible, before 8 August 2008.

1. With reference to articles 2 and 3, please provide data (including by sex, age, urban/rural areas) for the years 2005, 2006, and 2007 on the following:
 - (a) The number of reported cases of sale of children, child prostitution and child pornography, with additional information on the type of follow-up provided on the outcome of the cases, including prosecution and sanctions for perpetrators;
 - (b) The number of child victims provided with recovery assistance and compensation as defined in article 9, paragraphs 3 and 4, of the Optional Protocol.
2. Please update the Committee on measures taken to establish an effective system of data collection on violations of the provisions of the Optional Protocol.
3. Please inform the Committee whether the State party has adopted or considered adopting a national plan of action to combat violations of the Optional Protocol.
4. Please clarify the role played by the Ugandan Commission on Human Rights in monitoring implementation of the provisions of the Optional Protocol and whether the Commission has the mandate to receive complaints from, or on behalf, of children on violations of the Optional Protocol.
5. Please inform the Committee of progress made in the reform of the Penal Code with regards to incorporation of the provisions of the Optional Protocol.
6. Please clarify whether legal persons can be held accountable for offences covered by the Optional Protocol.
7. Please explain how the State party may establish jurisdiction over offences in accordance with articles 4 and 5 of the Optional Protocol.
8. Please inform the Committee of the social reintegration assistance as well as physical and psychosocial recovery measures available for victims of offences covered by the Optional Protocol and the State budget allocations for this purpose.
9. Please indicate whether special training is provided to professionals, such as prosecutors, judges, social workers and medical professionals, who come into contact with child victims of the offences under the Optional Protocol.

End of list of issues

¹ UN Doc. CRC/C/OPSC/UGA/Q/1, 27 June 2008.

III. Written reply by the Government of Uganda to the List of Issues

WRITTEN REPLIES BY THE GOVERNMENT OF UGANDA¹ TO THE LIST OF ISSUES (CRC/C/OPSC/UGA/Q/1) TO BE TAKEN UP IN CONNECTION WITH THE CONSIDERATION OF THE INITIAL REPORT OF UGANDA SUBMITTED UNDER ARTICLE 12, PARAGRAPH 1, OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Introduction

1. The Government of Uganda ratified the United Nations Convention on the Rights of the Child (UNCRC) in November 1990. In May 2002, the Government also ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. In fulfilment of Uganda's obligation as a State party to the Optional Protocol to report on the implementation of the protocol, a report was prepared and submitted to the United Nations Committee on the Rights of the Child in September 2006 (CRC/C/OPSC/UGA/1). The Committee read the report and raised issues which needed to be clarified before the Ugandan delegation defended the Uganda report in September 2008. The present report is responding to the issues raised by the Committee in this respect (CRC/C/OPSC/UGA/Q/1).

2. The Ministry of Gender, Labour and Social Development (MGLSD) prepared this report with its key stakeholder Ministries and other government agencies responsible for the implementation of the Optional Protocol. Preparations entailed both review of literature and findings from the field research, documents from child-oriented development actors, as well as government implementation, monitoring and evaluation reports.

Issue No. 1 (a) *With reference to articles 2 and 3, please provide data (including by sex, age, urban/rural areas) for the years 2005, 2006 and 2007 on:*

(b) *The number of reported cases of sale of children, child prostitution and child pornography, with additional information on type of follow-up provided on the outcome of the cases, including prosecution and sanctions for perpetrators;*

Response

3. There is no concrete data on Child Trafficking in Uganda. However in 2006, the MGLSD commissioned a study, "The rapid assessment report on trafficking of children including child soldiers", by Rogers Kasirye. According to the research, over 12,000 children are trapped in commercial sexual exploitation, over 20,000 children and youth living in slums are products of trafficking, between 25,000 and 30,000 children were abducted by the Lords Resistance Army (LRA) rebel group in the north, 10,000 street children are living on the streets in Uganda.

4. In order to address this problem, a bill on prevention of trafficking in persons has been tabled before Parliament. It specifically criminalizes human trafficking, sale of children, use of children in prostitution and child pornography.

Issue No. 1 (b) *The number of child victims provided with recovery assistance and compensation as defined in article 9, paragraphs 3 and 4 of the Optional Protocol.*

Response

5. The Ministry of Gender, Labour and Social Development in partnership with an NGO, Uganda Youth Development Link (UYDEL) is carrying out a number of recovery programmes which have assisted the following children.

¹ The written reply was received on 5 September 2008 and is available at: <http://www2.ohchr.org/english/bodies/crc/crcs49.htm#opac>.

Table 1

Number of children by district according to the drop-in centres (orphans and vulnerable children) majority of whom were slum youths trafficked for prostitution, house girls, child labour) and outreach posts (January-June 2007)

No.	District	Area	Males	Females	Total
	District centre and outreach post				
1	Kampala	Kalerwe (Dobbi)	1	30	31
		Kalimali	0	31	31
		Makindye	2	19	21
		Beiruti	2	33	35
		Kayanja	0	11	11
		Kakajjo	5	39	44
		Nakulabye	2	77	79
2		Mukono	Mukono	38	46
3	Wakiso	Masooli	126	123	249
4	Busia	Busia	0	138	138
5	Kalangala	Kalangala	5	5	10
Total			181	552	733

6. According to the table above, it is evident that there are more girls/women trafficked as compared to boys/men. Based on this therefore, the Government will enact stringent laws and regulations to address the skewed trafficking of persons that is leaning more towards girls and women than boys. One such measure is the law to ensure compulsory enrolment and retention of children under universal primary education. Its emphasis will be put on the girl-child.

Issue No. 2 *Please update the Committee on measures taken to establish an effective system of data collection on violations of provisions of the Optional Protocol.*

Response

7. There is no substantive system of data collection on violations of the protocol, but the MGLSD has developed a comprehensive Orphans and Vulnerable Children (OVC) management information system which will capture information on all OVC interventions. Victims of the violations of the Optional Protocol are one of the categories this system will report on.

Issue No. 3 *Please inform the Committee whether the State party has adopted or considered adopting a national plan of action to combat violations of the Optional Protocol.*

Response

8. The plan was developed and is now in the process of being adopted by the MGLSD. Copies of the plan are available.

Issue No. 4 *Please clarify the role played by the Ugandan Human Rights Commission in monitoring implementation of the provisions of the Optional Protocol and whether the Commission has the mandate to receive complaints from, or on behalf of, children on violations of the Optional Protocol.*

Response

9. The Ugandan Human Rights Commission (UHRC) is mandated by the Constitution under article 52 to do the following:

- (a) To investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right;
- (b) To visit jails, prisons, and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations;
- (c) To establish a continuing programme of research, education and information to enhance respect of human rights;

- (d) To recommend to Parliament effective measures to promote human rights including provision of compensation to victims of violations of human rights and their families;
- (e) To create and sustain within the society the awareness of the provisions of the Constitution as the fundamental law of the people of Uganda;
- (f) To educate and encourage the public to defend the Constitution at all times against all forms of abuse and violation;
- (g) To formulate, implement and oversee programmes intended to inculcate in the citizens of Uganda awareness of their civic responsibilities and an appreciation of their rights and obligations as free people;
- (h) To monitor the government's compliance with international treaty and Convention obligations on human rights; and to perform any other functions as may be provided by law.

10. The UHRC has generally monitored the implementation of the Optional Protocols as part of fulfilment of its mandate to monitor the Government's compliance with international treaty and convention obligations on human rights. The UHRC has been pointing out inadequacies in the law and issues such as the plight of children in Lords Resistance Army (LRA) captivity, child trafficking, child sacrifice, child domestic workers, child prostitutes, child marriages and the lack of an organized system for rehabilitation of child victims in its annual reports. For example in its ninth annual report, the UHRC reported on child vulnerability and protection and discussed in depth the extent of child vulnerability. In its eighth annual report, it made a brief assessment of selected government polices in relation to vulnerability. In the 1998 annual report, the Commission brought to the fore the problem of ritual killings and expressed deep concern about the problem; because of the increasing problem of child sacrifice, the Commission has been echoing its recommendation to Parliament of setting up a commission of inquiry to investigate the problem.

11. Most of the issues in the Optional Protocol are criminal in nature and the UHRC does not handle complaints of such nature, but refers them to other service centres. The UHRC has however, as mentioned before, flagged these issues in its annual reports for action by the relevant authorities. Furthermore, in order to enhance monitoring, UHRC has a special unit - the Vulnerable Persons Unit in the Directorate of Monitoring and Inspections - to focus on the vulnerable groups in Uganda which include children, among others. UHRC shall continue to monitor and where necessary and deemed appropriate take on complaints of violations of the Optional Protocols.

Issue No. 5 *Please inform the Committee of progress made in the reform of the Penal Code with regards to incorporation of the provisions of the Optional Protocol.*

Response

12. The Uganda Penal Code Act contains a number of provisions that could be used effectively in some cases of child trafficking, sale of children and child pornography, depending on the facts of the particular case. These include: child stealing (sect. 159); procurement for prostitution (sect. 131); procuring defilement by threats or fraud (sect. 132); allowing premises to be used for defilement of girls under 18 (sect. 133); detention with sexual intent (sect. 134); living on earnings of prostitution (sect. 147); kidnapping/abduction (sects. 239-246); wrongful confinement (sect. 247); buying/selling persons as slaves (sect. 249); abduction for slavery (sect. 245); habitual dealing in slaves (sect. 250); compulsory labour (sect. 252); abduction for sexual purposes (sect. 126), as well as numerous prostitution-related offences.

13. However, the current Penal Code Act does not fully address all the provisions of the Optional Protocol and as such Government is in the process of enacting a specific law on human trafficking and amending the Act.

Issue No. 6 *Please clarify whether legal persons can be held accountable for offences covered by the Optional Protocol.*

Response

14. This has been catered for under the draft bill on the prevention of trafficking in persons where section 10 provides: "Where a body corporate is convicted of an offence it shall be liable to a fine [...] and the court may issue an order to wind up the body [...]"

Issue No. 7 *Please explain how the State party may establish jurisdiction over offences in accordance with articles 4 and 5 of the Optional Protocol.*

Response

15. This has been catered for under the draft bill on Prevention of Trafficking in Persons where, section 20 provides: “A criminal action arising from a violation of this Act shall be filed where the offence was committed or where any of its elements occurred, or where the trafficked person actually resides at the time of commission of the offence [...]”

Issue No. 8 *Please inform the Committee of the social reintegration assistance as well as physical and psychological recovery measures available for victims of offences covered by the Optional Protocol and the State budget allocations for this purpose.*

Response

16. Social reintegration assistance as well as physical and psychological measures available for victims of offences covered by this protocol include the following:

- (a) Emotional and psychosocial support/counselling;
- (b) Income generation activities and/or programmes;
- (c) Parental relation integration;
- (d) Life skills building;
- (e) Drop-in centres where they meet with peers as well as street and slum based outreach service, to obtain information and get advice on how to quit and leave a better meaning life;
- (f) Advocacy campaigns against human trafficking and child soldiering by women and children whose rights are previously violated. This is done using drama, music, radio and poems, etc.;
- (g) Livelihood and vocational skills training: victims are empowered with positive livelihood and other vocational skills, through sports, music, testimonies and traditional methods of dealing with stigma and stress.

17. With regard to budgetary allocations, there is no clear budget allocation to support victims of this protocol, however, there are general budgetary allocations to children’s programmes which impact on reduction of the vulnerability of children to circumstances that lead to sale of children, child prostitution and child pornography.

18. The education sector is one of those that receive a substantial percentage of the budget and allocations here have been increasing mainly because of the implementation of the Universal Primary Education (UPE) programme from 683.60 (24 per cent) in 2006/07 to 717.80 (22 per cent) in 2007/08 with an increase of 34.20 (8 per cent). Like wise, the allocations to Law and Order Sector has also been increasing from 189.97 (7 per cent) in 2006/07 to 229.13 (7 per cent) in 2007/08 which is an increase of 39.16 (9 per cent). The economic function and social services sector has also experienced increased allocations from 356.95 (13 per cent) in 2006/07 to 398.88 (12 per cent) in 2007/08 which is an increase of 41.93 (10 per cent).

19. Despite other competing programmes in the sector, Government remains committed to child-related programmes.

Issue No. 9 *Please indicate whether special training is provided to professionals, such as prosecutors, judges, social workers and medical professionals, who come into contact with child victims of the offences under the Optional Protocol.*

Response

20. No specific training has been provided to prosecutors, judges and medical professionals; however there has been widespread sensitization on the draft bill on prevention of trafficking in persons which seeks to criminalize pornography, trafficking of persons including children.

21. The MGLSD has carried out special training on the Convention on the Rights of the Child funded by Ministry of Finance and Economic Planning (MFEP) and through tailor-made courses supported by United Nations Children's Fund (UNICEF). One hundred and twenty officers in the categories of Probation Officers, Community Development Officers, Youth Officers and Gender Officers were trained. This training has been extended to non-governmental organizations and community-based organizations. In addition, MGLSD carried out training of District Officers in the areas of Acholi, Lango and Teso on sexual gender based violence: these areas were chosen due to the high prevalence of such violence as a result of armed conflict.

End of written reply

IV. Concluding Observations by the Committee on the Rights of the Child²

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 12(1) OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Concluding observations: UGANDA

1. The Committee considered the initial report of Uganda (CRC/C/OPSC/UGA/1) at its 1346th meeting (see CRC/C/SR.1346), held on 16 September 2008, and adopted at its 1369th meeting, held on 3 October 2008, the following concluding observations.

Introduction

2. The Committee welcomes the submission of the State party's initial report, although it regrets the delay in its submission. The Committee further welcomes its written replies (CRC/C/OPSC/UGA/Q/1/Add.1) to the list of issues and appreciates the constructive dialogue with a high-level and multi-sectoral delegation.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its previous concluding observations adopted on the State party's second periodic report on 30 September 2005 (CRC/C/UGA/CO/2) and with the concluding observations adopted on the initial report under the Optional Protocol on the involvement of children in armed conflict

I. General observations

Positive aspects

4. The Committee notes with appreciation :

- (a) The Child Orphans and Other Vulnerable Children's Policy and Action Plan of 2004;
- (b) The Child Labour Unit established within the Department of Labour to address the worst forms of child labour;
- (c) The establishment of Children and Family Protection Units (CFPU) in police stations;
- (d) The collaboration with the Office of the United Nations High Commissioner for Human Rights through the agreement, which established a national country office in Uganda in 2006.

II. Data

5. The Committee is concerned at the lack of data, disaggregated by age, sex, minority group and geographic location, on the prevalence of the sale of children, child prostitution and child pornography.

6. The Committee recommends that the State party establish a central database for registering violations of child rights and that it ensure that data relating to offenses covered by the Protocol, are systematically collected and disaggregated inter alia by age, sex, minority group and geographic location and analysed, as they provide essential tools for measuring policy implementation.

² UN Doc. CRC/C/OPSC/UGA/CO/1, 16 October 2008.

III. General measures of implementation

Coordination and evaluation of the implementation of the Optional Protocol

7. The Committee is concerned at the State party's information that the National Council for Children is not able to effectively execute its mandate due to inadequate funding and weak organization.

8. The Committee recommends that the State party review the coordination of the Optional Protocol as soon as possible and ensure that the National Council for Children has a clear mandate and adequate human and financial resources in order to ensure its effective implementation. In particular, the Committee recommends that the State party strengthen the coordination between the National Council and the Ministry of Gender, Labour and Social Affairs.

National Plan of Action

9. The Committee, while noting information in the State party reply to the list of issues that an Action Plan has been developed and in the process of being adopted, regrets that there is no National Plan of Action in place to combat the violations of the Optional Protocol, in view of the high incidence of sale of children, child prostitution and child pornography.

10. The Committee recommends that the State party, as a matter of priority, adopt the National Plan of Action to combat violations of the provisions of the Optional Protocol and implement it in consultation with relevant civil society actors.

Dissemination and training

11. The Committee notes that awareness-raising activities on the provisions of the Protocol are inadequate and have primarily been undertaken by civil society without State party support. The Committee furthermore is concerned that training on the Optional Protocol among professionals, for example the police, lawyers, prosecutors, judges, social workers and immigration officials is insufficient.

12. The Committee recommends that the State party:

- (a) Make the provisions of the Optional Protocol widely known, particularly to children, their families and communities, through, in particular the school curricula and long-term awareness-raising campaigns;**
- (b) Promote, in line with article 9(2) of the Protocol, awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the Protocol, including by encouraging the participation of the community and, in particular, children and child victims, in such information, education and training programmes;**
- (c) Develop cooperation with civil society organisations and the media in order to support awareness-raising and training activities on issues related to the Optional Protocol.**
- (d) Continue and strengthen systematic gender-sensitive education and training on the provisions of the Optional Protocol for all professional groups working with child victims of the crimes covered by the Optional Protocol.**

Allocation of resources

13. The Committee is concerned that insufficient resources have been allocated to the implementation of the provisions of the Protocol and in particular notes the lack of resources for criminal investigations, legal assistance and physical and psychological recovery measures for victims. The Committee furthermore notes that the National Poverty Eradication Action Plan does not adequately incorporate a child rights perspective to enable the allocation of resources therein for the implementation of the provisions of the Optional Protocol.

14. The Committee encourages the State party to significantly increase budget allocations for coordination, prevention, promotion, protection, care, investigation and suppression of acts covered by the Optional Protocol, including by earmarking human and financial resources for the implementation of programmes relating to its

provisions, and in particular for criminal investigations, legal assistance and physical and psychological recovery of victims to relevant authorities and civil society organizations. Finally, the Committee urges the State party to include a child-rights perspective, including the provisions of the Optional Protocol in the National Poverty Eradication Action Plan.

Independent monitoring

15. The Committee welcomes the work undertaken by the Uganda Human Rights Commission (UHRC). However, the Committee is concerned that UHRC does not have the human and financial resources to monitor the Optional Protocol or children's rights generally and that it does not have child accessible complaints mechanisms at the regional and local levels. The Committee is also concerned the UHRC has been refused immediate unannounced access to agencies subject to its mandate.

16. The Committee recommends that the State party ensure that adequate human and financial resources are allocated to the Ugandan Human Rights Commission (UHRC) in order for it to exercise its mandate to monitor human rights treaties and be accessible for children at regional and local levels. The Committee also recommends that the UHRC be given unfettered access to any agency within its mandate.

IV. Prevention of the sale of children, child prostitution and child pornography (art. 9, paras. 1 and 2)

Measures adopted to prevent offences referred to in the Optional Protocol

17. The Committee notes as positive certain initiatives for preventive action, such as the introduction of Children and Family Protection Units in police station, the creation of the Media Council to monitor exposure to pornography and collaboration with ILO/IPEC. The Committee, however, notes that preventive measures are inadequate and that documentation and research are insufficient on the root causes, nature and extent of the sale of children, child prostitution and child pornography. Finally, the Committee is concerned over reports indicating the sale of children for sacrifices and the ritual killings.

18. The Committee recommends that the State party allocate specific budget resources for preventive measures and that these be carried out in collaboration with UNICEF, ILO/IPEC and civil society organisations. Furthermore, the Committee encourages the State party to carry out further documentation and gender-sensitive research on the nature and extent of the sale of children, child prostitution and child pornography, in order to identify the root causes, the extent of the problems and prevention measures.

19. The Committee recommends that the State party identify the regions most affected by violations under the Optional Protocol and to design specific prevention measures in this regard, including collaboration and bilateral agreements with neighbouring States. Furthermore, the Committee recommends that the State party comply with the recommendation of the Uganda Human Rights Commission to hold a public inquiry to investigate reports indicating the sale of children for sacrifices and ritual killings. It further recommends that a targeted media campaign be implemented to condemn such practices.

Adoption

20. The Committee notes the rising number of applications for legal guardianship of children and the reduced number of applications for adoption. The Committee is concerned that this may be aimed at circumventing the regulations which apply to adoption and result in practices contrary to the Optional Protocol.

21. The Committee recommends that the State party stringently scrutinize applications for legal guardianship of children in order to avoid practices contrary to the Protocol. Furthermore, the Committee recommends that the State party ratify the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

V. Prohibition of the sale of children, child pornography and child prostitution and related matters (arts. 3; 4, paras. 2 and 3; 5; 6 and 7)

Existing criminal or penal laws and regulations

22. The Committee, while noting the pending bill on the prevention of trafficking in persons, is concerned that not all the provisions of the Optional Protocol have been fully incorporated into the Penal Code. The Committee is also concerned that child victims of sexual exploitation may be criminalized and notes that the Penal Code provides less protection for boys who have been victims of violations of the Optional Protocol.

23. The Committee recommends that the State Party expedite the adoption of the legal reform bill and bring its Penal Code in full compliance with articles 2 and 3 of the Optional Protocol. The Committee also recommends that in its legislation the State party ensure that all children affected by violations of the Optional Protocol be treated as victims, not offenders. Furthermore, the Committee recommends that the State party ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

Jurisdiction

24. The Committee regrets that the Penal Code does not establish jurisdiction over all offences under the Optional Protocol and notes that the draft bill on prevention of trafficking in persons does not include the nationality of the victim as an element for the establishment of jurisdiction.

25. The Committee recommends that the State party ensure that all legal and practical measures necessary be undertaken in order to be able to effectively establish jurisdiction over offences in accordance with article 4 of the Optional Protocol.

VI. Follow-up and dissemination

Follow-up

35. The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia by transmitting them to relevant government ministries, the Cabinet and district as well as community authorities, for appropriate consideration and further action.

Dissemination

36. The Committee recommends that the report and written replies submitted by the State party and related recommendations (concluding observations) adopted be made widely available, including through the Internet (but not exclusively), to the public at large, civil society organizations, the media, youth groups, professional groups in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring. Furthermore, the Committee recommends that the State party make the Optional Protocol widely known to children and their parents through, inter alia, school curricula and human rights education.

VII. Next report

37. In accordance with article 12, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol in its combined third, fourth and fifth periodic report under the Convention on the Rights of the Child, due on 15 March 2011.

End of concluding observations

2.8 Contacting the Human Rights Treaty Bodies

Queries on the work of the UN treaty bodies can be addressed to OHCHR which serves as the Secretariat for the treaty bodies.

Postal address:
Office of the High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneva 10, Switzerland

General inquiries:
Tel: +41 22 917 90 00
Email: InfoDesk@ohchr.org

2.9 Further Information and Reading

As noted above, OHCHR has dedicated websites for each of the UN treaty bodies <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>. Here you can find information on past and future events, the human rights instruments (text, status of ratification, reservations and declarations), the work of the treaty bodies (mandates, sessions, annual reports, working methods, general comments, press releases), reporting guidelines, and relevant links. For instance, to find this information on the UN Committee on the Rights of the Child, please see <http://www2.ohchr.org/english/bodies/crc/index.htm>.

Please kindly also see Fact Sheet No. 30 on The United Nations Human Rights Treaty System: An introduction to the core human rights treaties and the treaty bodies, available at: <http://www.ohchr.org/Documents/Publications/FactSheet30en.pdf>

To learn more about the individual complaints procedures, please consult Fact sheet No. 7/Rev.1 on The Complaint Procedure, available at: <http://www.unhcr.ch/html/menu6/2/fs7.htm>.



Participants at a joint UHRC-OHCHR workshop on implementation of concluding observations in Mbale (eastern Uganda) in 2007.

3. United Nations Special Procedures

3.1 Overview and Brief History

The term special procedures has been developed since 1967 in light of the practice of the UN Commission on Human Rights, replaced in 2006 by the UN Human Rights Council, to describe a diverse range of procedures established to promote human rights and prevent violations in relation to specific themes or to examine the situation in specific countries. As at November 2008, there were 30 thematic mandates and 8 country-specific mandates.¹

Contrary to the current situation, the first special procedures were country-specific. In 1967, the Commission on Human Rights was authorized by the ECOSOC to examine information regarding “gross violations of human rights” and to study “situations which reveal a consistent pattern of violations of human rights” (ECOSOC Resolution 1235). Subsequently, the same year, the Commission on Human Rights set up the first special procedure: The Ad Hoc Working Group of Experts to investigate charges of torture and ill-treatment of prisoners, detainees or persons in police custody in South Africa. In 1975, in response to the *coup d'état* in Chile, the Commission established the Working Group on the Situation of Human Rights in Chile. It was not until 1980 that the first thematic mandate was created, namely the Working Group on Enforced or Involuntary Disappearances. Since then, the number of thematic procedures has increased, and since 1995 with an emphasis on economic, social and cultural rights. To exemplify this trend, it suffices to note that in 1998 there were twenty-six (26) country-specific mandates, a number halved by 2003 to thirteen (13) and further reduced to only eight (8) country-specific special procedures as of 2008.

3.2 Main Functions and Activities

The principal functions of special procedures are to:

- **Analyze** the relevant thematic issue or country situation, including through country-visit;
- **Advise** on measures which should be taken by Government/s concerned and other relevant actors;
- **Alert** UN organs, in particular the Human Rights Council, and the international community to the need to address specific situations (“early warning” functions);
- **Advocate** on behalf of victims of violations through

measures such as requesting urgent action by relevant States and calling upon Governments to respond to specific allegations of human rights violations and provide redress;

- **Advocate** and mobilize international and national communities and the Human Rights Council to address particular human rights issues;
- **Follow-up** to recommendations.

In the discharge of their work, mandate-holders are called upon to take into account all available source of information that they consider to be credible and relevant. This includes information from Governments, inter-governmental organizations, NGOs, national human rights institutions, victims of alleged human rights violations, relatives of victims and witnesses. Whenever feasible and appropriate, mandate-holders should endeavour to consult and meet with such sources, and they should cross-check information received to the best extent possible. In their information-gathering activities, they should be guided by the principles of discretion, transparency, impartiality and even-handedness. They should rely on objective and dependable facts based on evidentiary standards that are appropriate to the non-judicial character of the reports and conclusions they are called upon to draw up.

In fulfilling their mandates, special procedures undertake four principal activities: (i) communications; (ii) country visits; (iii) thematic analysis; and (iv) awareness-raising. Below follows a brief description of each activity.



Country visits are an essential means for special procedures mandate-holders to obtain direct and first-hand information on a human rights situation. Above: The Special Rapporteur on the right to adequate housing, Ms. Raquel Rolnik, discusses migrants' housing conditions (Hulumale compound) during her mission to the Maldives in February 2009.

¹ A list of all current special procedures and the respective mandate-holders is available at the end of this chapter.



Members of the Working Group on Arbitrary Detention visiting a former detention centre in Buenos Aires during a mission to Argentina from 21 to 24 July 2008.²

3.3 Establishment, Nomination, Selection and Appointment

Special procedures are established by the UN Human Rights Council subsequent to broad intergovernmental negotiations and discussion. As such, special procedures mandate-holders are accountable to and report to the Human Rights Council. The Human Rights Council specified the roles, status, prerogatives and responsibilities of special procedures in its Resolution 5/2 of 17 June 2007, which contains a Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council.

Any of the following entities may nominate candidates as special procedures mandate-holders: Governments; regional groups operating within the UN human rights system; international organizations or their offices; NGOs; other human rights bodies; and individuals. On this basis, a public list of candidates is produced by the Secretariat of the Human Rights Council (i.e. OHCHR). Nominations of candidates may be submitted to the Secretariat through hrcspecialprocedures@ohchr.org. A consultative group subsequently submits a list of candidates who possess the highest qualifications for the mandate in question and meet the general requirements. The President of the Human Rights Council then identifies an appropriate candidate for each special procedure vacancy and the appointment of mandate-holders will be completed upon the subsequent approval by the Human Rights Council. Special procedures are given different names: Special Rapporteurs, Independent Experts, Working Group, Special

² This and photos below from special procedures' country visits to the Maldives and Paraguay were received with thanks from Special Procedures Division, OHCHR.

Representative of the Secretary-General, or Representative of the Secretary-General. Although the title differs, there are no major differences in their general responsibilities or methods of work.

Mandate-holders' tenure is no longer than six years. With respect to thematic special procedures, two terms of three years is the rule.

3.4 Who are the Special Procedures Mandate-holders?

Mandate-holders are selected on the basis of their expertise, experience in the field of the mandate, independence, impartiality, personal integrity, and objectivity. The Code of Conduct specifies that all special procedures mandate-holders have to make the following declaration in writing upon assumption of his or her mandate:

I solemnly declare that I shall perform my duties and exercise my functions from a completely impartial, loyal and conscientious standpoint, and truthfully, and that I shall discharge these functions and regulate my conduct in a manner totally in keeping with the terms of my mandate, the Charter of the United Nations, the interests of the United Nations, and with the objective of promoting and protecting human rights without seeking or accepting any instruction from any other party whatsoever.³

Due consideration is also given to gender balance and equitable geographical representation, as well as to an appropriate representation of different legal systems. While overall regional diversity is important, any link between a given region and any particular mandate would undermine the necessary emphasis on expertise and impartiality. Also, the requisite independence and impartiality are not compatible with the appointment of individuals currently holding decision-making positions within the executive or legislative branches of their Governments or in any other organizations.

As noted in the declaration above, special procedures mandate-holders act in their personal capacity. They are not UN staff, nor are they remunerated or get any other financial awards for their work, although their expenses are defrayed by the UN. Legally speaking, mandate-holders are considered as "experts on mission" and, as such, enjoy certain functional privileges and immunities as provided for under the 1946 Convention on the Privileges and Immunities of the United Nations.

³ Human Rights Council, Resolution 5/2, 17 June 2007 on Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council, article 5.

(i) Communications

Special procedures use two main types of communications to alert Governments and other relevant actors on a human rights situation: *Urgent appeals* and *letters of allegation*.

Urgent appeals are used to communicate information in cases where the alleged violations are time-sensitive in terms of involving loss of life, life-threatening situations or either imminent or ongoing damage of a very grave nature to victims that cannot be addressed in a timely manner under letters of allegation. An urgent appeal includes a summary of the facts, indication of specific concerns in light of international instruments and case law, and a request to the Government to provide information on the substance of the allegations and to take urgent measures to prevent or stop the alleged violation. Governments are generally requested to provide a satisfactory answer within 30 days.

Letters of allegation communicate information about violations that are alleged to have already occurred and in situations where urgent appeals do not apply. The letter of allegation requests the Government concerned to provide information on the substance of the allegations, measures taken to investigate and punish alleged perpetrators, information about remedies made available to the victims, and legislative, administrative and other steps taken to avoid reoccurrence of such violations. Governments are usually requested to provide a reply within two (2) months.

In appropriate cases, including those of grave concern or in which a Government has repeatedly failed to respond to communications, mandate-holders may decide to make such urgent appeals public by issuing a *press release*. Mandate-holders may do so separately or jointly. In 2007, 46 per cent of all communications were joint communications by two or more special procedures. In general, mandate-holders should engage in dialogue with the Government through the communications procedure before resorting to a press release. A total of 1003 communications, submitted to 128 countries, were issued by special procedures during 2007.⁴ Out of this number, only 32% of communications received a written reply from the government/s concerned.

Follow-up to communications is done in several ways, including through: (i) reporting to the Human Rights Council and other appropriate bodies on communications sent and replies received; (ii) analysis of general trends, and (iii) maintaining a systematic and constructive dialogue with Governments concerned.

(ii) Country visits

Country visits are an essential means for special procedures mandate-holders to obtain direct and first-hand information on a human rights situation. They facilitate an intensive dialogue with all relevant State authorities and allow for contact with and information-gathering from victims, witnesses, civil society actors, the academic community and international agencies present. All country visits occur at the invitation of the State. The State may take initiative to a visit, or the mandate-holder may solicit an invitation, or the country may have issued a so called “standing invitation” to all thematic special procedures. By extending such an invitation, States indicate that they will, in principle, automatically accept a request to visit by any special procedure. As of August 2008, 62 States have extended a standing invitation. On average, thematic special procedures undertake approximately two to four country visits per year.

Considerations which may lead a mandate-holder to request a country-visit include, among others, human rights development at the national level (whether positive or negative), the availability of reliable information regarding human rights violations, or a wish to pursue a particular thematic interest. Other factors may include considerations of geographical balance, the expected impact of the visit, and the willingness of national actors to cooperate, the likelihood of follow-up to recommendations, or the recent adoption by one or more treaty bodies of relevant concluding observations. The preparation of country visits is carried out on the basis of close cooperation and consultation between the mandate-holder(s) and the Permanent Mission of the State concerned in Geneva, as well as with OHCHR and other relevant UN agencies. In connection to the preparation of the programme, the Government must offer appropriate guarantees to ensure the protection of witnesses and the absence of any reprisals against any person cooperating with the mission in any way. Country visits require freedom of inquiry, including access to relevant facilities, such as prisons and detention centres and contacts with NGOs. Any person or group who cooperates with a special procedure is entitled to protection by the State from harassment, threats or any other form of intimidation or retaliation.

The mandate-holder shares with the Government his or her preliminary findings and recommendations during a departure briefing with the authorities. The mandate-holder issues an official report on the visit and contains information on principal meetings, an analysis of the situation, and a set of conclusions and recommendations

⁴ Source: *Special Procedures Bulletin*, Tenth Issue, July-September 2008.

towards the Government and other relevant actors. A draft report is submitted to the Government to correct any misunderstandings or factual inaccuracies. Comments by the Government concerned on the substance of the report should be annexed to the report, or, they may upon request also be issued as an official document.

In their regular reports to the Human Rights Council, special procedures mandate-holders report on the number of requested country visits and the response by the Government(s) concerned. Special procedures also report on human rights violations by non-state actors. For example, the Special Rapporteur on the situation of human rights in Somalia reported, during 1996 to 2000, on abuses perpetrated by warlords and militia and also addressed actions by UN agencies in the absence of a central government in the country.



The Special Representative of the Secretary-General on Internally Displaced Persons, Mr. Walter Kälin, meets with the Minister for Relief, Disaster Preparedness and Refugees, Mr. Musa Ecweru, during a working visit to Uganda in 2006.



Mr. Walter Kälin in interview with a representative from a local TV station in Gulu while visiting northern Uganda.

(iii) Thematic Studies

Mandate-holders may opt to devote a separate report to a particular topic of relevance to the mandate. Such studies may be initiated by the mandate-holder or undertaken pursuant to a specific request by relevant bodies. Studies should be thoroughly researched and where appropriate take account of replies to questionnaires and other requests for information transmitted to UN agencies, NGOs, treaty bodies, regional organizations, other experts. For example, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance recently published a report on manifestations of defamation of religions and in particular on the serious implications of Islamophobia on the enjoyment of all rights (UN Doc. A/HRC/9/12, 2 September 2008). Another example is the report on the intersection between culture and violence against women by the Special Rapporteur on violence against women, its causes and consequences (UN Doc. A/HRC/4/34, 17 January 2007). Also, in early 2008, the Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment issued a report on strengthening the protection of women against torture (UN Doc. A/HRC/7/3, 15 January 2008).



The Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Manfred Nowak, in discussion with a prison director during his visit to Paraguay in March 2009.

(iv) Awareness-raising

Awareness-raising is an important element in relation to the conduct of most special procedures, but the precise nature of activities will vary from one mandate to the other. All mandate-holders have a webpage on the OHCHR website that provides information on their mandate, links to their reports and other relevant documents. For instance, information about the Special Rapporteur on the Situation of Human Rights Defenders (Mrs. Margaret Sekaggya from Uganda) is available at <http://www2.ohchr.org/english/issues/defenders/index.htm>. Four times a year, OHCHR publishes “The Special Procedures Bulletin” and, annually, “Facts and Figures” on Special Procedures.

3.5 Public reporting

As noted above, mandate-holders report on their activities on a regular basis to the Human Rights Council and the General Assembly. In the case of country visits, full details of the action taken will be provided in the mandate-holder's official report on his/her visit. The report on the first visit to Uganda by the Special Rapporteur on the Right of Everyone to the Highest Attainable Standard of Physical and Mental Health is reproduced in full below to provide a useful example of such reports.

In the case of communications, a summary of the exchange of information and essence of Governments' replies are issued separately, attached as an addendum to their main report. The sections of such separate reports that relate to communications submitted to the Government of Uganda are reproduced below. Mandate-holders present their reports to the Human Rights Council and in some cases to the General Assembly. This opportunity for interactive dialogue is an important element in the awareness-raising of the issues at stake and constitutes an integral part of cooperation between States and special procedures.

4. Uganda and Special Procedures

4.1 Communications

Six different special procedures have expressed concern over events in Uganda by means of the submission of letters of allegation and/or urgent appeals to the Government of Uganda. The below chart refers to these communications as reported in the public reports of special procedures to the Commission on Human Rights (up until 2006) and, subsequently, to the Human Rights Council. Since communications are confidential until the presentation and publication of their annual reports, the list inevitably does not reflect communications which may have been submitted during the past year and which will only be made public upon publication of their forthcoming annual reports. Information on communications submitted to the Government of Uganda as contained in the addendums to their annual reports is reproduced after the chart below.

Special procedure	Mandate-holder	Type of communication (and reply by Government ¹)	Summary of communication reproduced in report
Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions	Mr. Bacre Waly Ndiaye	Letter of allegation	UN Doc. E/ CN.4/1992/30, 1992
Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions	Mr. Bacre Waly Ndiaye	Letter of allegation (follow-up)	UN Doc. E/ CN.4/1993/46, 23 December 1993
Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment	Ms. Asma Jahangir Mr. Theo van Boven	Urgent appeal, 23 September 2002 (with follow-up) (No reply)	UN Doc. E/ CN.4/2003/68/Add.1, 12 February 2003
Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment	Ms. Asma Jahangir Mr. Theo van Boven	Letter of allegations, 17 September 2003 (No reply)	UN Doc. E/ CN.4/2004/7/Add.1, 24 March 2004
Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment	Ms. Asma Jahangir Mr. Manfred Nowak	Letter of allegation, 15 July 2004 (No reply)	UN. Doc E/ CN.4/2005/7/Add.1, 17 March 2005
Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression	Mr. Aмеbyi Ligabo	Letter of allegation, 7 March 2006 (No reply)	UN Doc. A/HRC/4/27/ Add.1, 26 March 2007
Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression	Mr. Aмеbyi Ligabo	Letter of allegation, 13 March 2006 (No reply)	UN Doc. A/HRC/4/27/ Add.1, 26 March 2007

Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression	Mr. Aamebyi Ligabo	Urgent appeal, 14 June 2006 (No reply)	UN Doc. A/HRC/4/27/ Add.1, 26 March 2007
Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment	Mr. Philip Alston Mr. Manfred Nowak	Joint letter of allegation, 8 August 2006 (No reply)	UN Doc. A/HRC/4/20/ Add.1, 12 March 2007 UN Doc. A/HRC/4/33/ Add.1, 20 March 2007
Special Rapporteur on the Independence of Judges and Lawyers	Mr. Leonardo Despouy	Letter of allegation, 2 April 2007 (No reply)	UN Doc. A/HRC/8/4/ Add.1, 28 May 2008
Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression	Mr. Aamebyi Ligabo	Letter of allegation, 23 April 2007 (No reply)	UN Doc. A/HRC/7/14/ Add.1, 25 February 2008
Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment	Mr. Manfred Nowak	Letter of allegation, 19 September 2007 (No reply)	UN Doc. A/HRC/ C/7/3/Add.1, 19 February 2008
Special Rapporteur on the Right to Food	Mr. Jean Ziegler	Letter of allegation, 19 October 2007 (No reply)	UN Doc. A/HRC/7/5/ Add.1, 5 March 2008
Special Representative of the Secretary-General on the Situation of Human Rights Defenders	Ms. Hina Jilani	Letter of allegation, 30 November 2007 (No reply)	UN Doc. A/HRC/ C/7/28/Add.1, 5 March 2008
Special Rapporteur on the Situation of Human Rights Defenders and Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment	Ms. Margaret Sekaggya Mr. Leandro Despouy Mr. Manfred Nowak	Letter of allegation, 12 August 2008	A/HRC/10/12/Add.1, 4 March 2009
Special Rapporteur on the Situation of Human Rights Defenders and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression	Ms. Margaret Sekaggya Mr. Frank William La Rue Lewy	Urgent appeal, 22 September 2008	A/HRC/10/12/Add.1, 4 March 2009

As at the time of publication of the annual report of the respective special procedure mandate-holder.

Communications submitted to the Government of Uganda: Excerpts from the Addendums to their Annual Reports

1) Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Bacre Waly Ndiaye (UN Doc. E/CN.4/1993/46, 23 December 1993)

618. The Special Rapporteur sent a letter to the Government of Uganda following up on allegations of extrajudicial, summary or arbitrary executions transmitted to that country in 1991, for which no replies had been received (see E/CN.4/1992/30, paras. 557-562).

2) Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Asma Jahangir (UN Doc. E/CN.4/2003/3/Add.1, 12 February 2003)

Urgent appeal

502. On 23 September 2002, the Special Rapporteur jointly with the Special Rapporteur on torture sent an urgent appeal, regarding Stephen Otim, David Penytoo, Alex Otim, Pidu Lukwiya, Tony Kitara, Aida Lagulu, George Obita, Francis Onen, Martin Ojara, Alex Okwerowat, Charles Picha, Justo Ojwiya, Michael Lakony, Jekeph Odong, Paul Akuch Okot, Federiko Ocan, Bosco Oti, Moses Atuku Akena and Goerge Abedo who are said to be held by the Ugandan army, the Uganda People's Defence Forces (UPDF) in Gulu Municipality, northern Uganda. It is alleged that on 16 September 2002, Peter Oloya was killed by the UPDF in a suspected extrajudicial execution within the prison grounds, as they tried to illegally remove all 21 prisoners from Gulu Central Prison. The 21 men were reportedly arrested in March. Peter Oloya and Stephen Otim were allegedly arrested and charged with the murder of Pabbo District Chairman (a local government official) whilst canvassing for the opposition during the local government elections in Gulu. They were both key campaigners for the opposition multipartyist candidate, and it seems that their arrest may be due to their political activities during the campaign. The rest of the men were arrested on murder and treason charges related to the ongoing conflict between the Ugandan government and the rebel Lord's Resistance Army (LRA). The men were all held on remand in Gulu Central Prison. Following the raid by the UPDF all 21 prisoners, including the body of Peter Oloya, were illegally moved to military detention at the UPDF's 4th Barracks in Gulu, where they remain. In view of the death of Peter Oloya in suspicious circumstances, fears have been expressed that they may be at risk of torture or other forms of ill-treatment while in UPDF custody at the military barracks.

Follow-up to previously transmitted communications

The Special Rapporteurs have received follow-up information concerning David Pentyoo, Alex Otim, Tony Kitara, Aida Lagulu, George Obita, Francis Onen, Martin Ojara, Alex Okwerowat, Charles Picha, Justo Ojwiya, Michael Lakony, Jekeph Odong, Paul Akueh Okot, Federiko Ocan, Bosco Oti, Moses Atuku Akena and George Abedo, members of the Uganda Young Democrats (UYD). Their cases were included in a joint urgent appeal transmitted by the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions on 23 September 2002 (E/CN.4/2003/68/Add.1, para. 1862). They were reportedly transferred from military custody in Gulu municipality, northern Uganda, to Kigo prison in Kampala on 14 November 2002. They were allegedly imprisoned without trial on charges of treason. It is reported that when they were allowed to see their relatives and lawyers, the detainees claimed that they had been tortured by security agents at the military barracks. Alex Otim and Joseph Odong were reportedly released and charges against them were dropped in November 2002. The Special Rapporteurs have been informed that in February 2003, the High Court of Uganda ordered that the body of Peter Oloya, who was reportedly shot by soldiers of the Uganda People's Defence Forces (UPDF) in Gulu Central Prison in September 2002, be released to his family for burial. The Special Rapporteurs would appreciate receiving information concerning the implementation of this order. It is also reported that the High Court ordered that the State "pays to each of the surviving prisoners the sum of Uganda Shillings 10,000,000 (about \$5,200) for the violation of their personal liberty and freedom from torture, cruel, inhuman and degrading treatment or punishment". The Special Rapporteur would appreciate receiving information concerning the payment of this sum to each of the concerned prisoners.

No replies

3) Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Asma Jahangir (UN Doc. E/CN.4/2004/7/Add.1, 24 March 2004)

Communication sent

565. On 17 September 2003, the Special Rapporteur and the Special Rapporteur on Torture sent a communication to the Government of Uganda regarding the case of Nsangi Murisdi, a small businessman who was reportedly killed while in custody at Uganda's Violence Crime Crack Unit (VCCU) on 14 June 2003. He was reportedly picked up by VCCU officers from his workplace in Owino Market in Kampala and taken to VCCU headquarters in Kireka. His relatives were allegedly denied access to him. On 18 June, the family reportedly received news of his death in custody. The death certificate reportedly gave the causes of death as extensive loss of fluid and blood, severe bleeding in the brain and extensive burns on the buttocks. No action was allegedly taken to investigate his death.

4) Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston (UN Doc. E/CN.4/2005/7/Add.1, 17 March 2005)

Allegation sent with the Special Rapporteur on torture, 15 July 2004, Patrick Mamenero Owomugisha, aged 25. He was allegedly arrested on 20 July 2002 from his home in Kabale, near the Rwanda border, with his father, Mzee Denis Mamenero. Patrick Mamenero Owomugisha reportedly died a few days later in CMI custody of a "subdural haematoma" allegedly caused by a blunt instrument. It is alleged that at the time of his death, he was en route to the military hospital. The certificate of death was reportedly signed on 24 July 2002, by a doctor of Mulago Hospital. The CMI reportedly 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 reportedly arrested and charged with murder on 22 October 2002 in the UPDF court martial. However, he was reportedly granted bail on medical grounds on advice to the Court of a doctor from Mbuya Military Hospital. It is also reported that the CMI paid the Mamenero family about one million Uganda shillings (U.S. \$ 503) as condolences. According to the information brought to the attention of the Special Rapporteurs, 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. The Special Rapporteur has also been informed that the CMI interrogators questioned Mzee Denis Mamenero about a relative who was a former UPDF officer alleged by Ugandan authorities to be involved in forming the People's Redemption Army (PRA). He was allegedly denied permission to attend his son's burial.

5) The right to freedom of opinion and expression, Report of the Special Rapporteur, Amebyi Ligabo, Addendum (UN Doc. A/HRC/4/27/Add.1, 26 March 2007)

687. On 7 March 2006, the Special Rapporteur sent a letter of allegation concerning *Radio Katwe* website, whose access was allegedly blocked by the Authorities a week before the presidential elections of Thursday 23 February 2006. It was reported that the Government-controlled Uganda Communications Commission instructed Uganda's leading telecommunications company, MTN, to block the website on the basis that Ugandan law empowers the Commission to direct any telecom operator to operate networks in such a manner that is appropriate to national and public interest. Concern was expressed that this decision was in direct connection with the highly critical reporting by *Radio Katwe* of the ruling party, and could therefore have been an attempt at silencing all criticism in the run-up to the presidential elections. Moreover, according to information received, on 24 February 2005, the website and radio station of the independent daily newspaper, The Monitor, were blocked in Uganda, reportedly to prevent The Monitor Group from publishing early results concerning the presidential elections. The website was, however, accessible outside of Uganda. The Monitor Group was intending to publish a running vote based on actual results from the different polling stations. The Uganda Broadcasting Council, the Electoral Commission, the police and the Internal Affairs Ministry, all urged The Monitor to stop compiling independent results.

688. On 13 March 2006, the Special Rapporteur sent a letter of allegation concerning the independent radio station *Choice FM*. According to information received, on 1 March 2006, police accused the radio station of posing a security threat following a programme it aired, which featured opposition and ruling party candidates. The opposition candidates reportedly criticised local civilian and military authorities for alleged corruption and mistreatment of detainees. Following the radio programme, a local court issued a warrant allowing police to carry out a search at the stations' premises, during which they reportedly confiscated audiotapes and disks and ordered the station to turn over a copy of its licence, its programming policy guidelines and a recording of the broadcast. The radio station could not hand over the broadcast since the necessary equipment malfunctioned. No explanation was provided for the search. Moreover, on Friday, 3 March 2006, the police arrested Radio FM's radio programme manager, Martin Ojara Mapenduzi, detained him and released him the next day after paying bail. The authorities threatened to prosecute him and other journalists working at the station if the station failed to turn over all the documents requested.

689. On 14 June 2006, the Special Rapporteur sent an urgent appeal concerning editor James Tumusiime and reporter Semujju Ibrahim Nganda, both working for the independent *Weekly Observer*. According to the information received, the two journalists were summoned to a police station in Kampala in December 2005, when they were charged with promoting sectarianism. They were released on bail on the same day, after being charged. The charges allegedly stem from a report by Mr Nganda published on 1 December 2005, which described that the opposition Forum for Democratic Change (FDC) had accused a small group of army generals and the President of persecuting the FDC leader Kizza Besigye. Mr Tumusiime and Mr Nganda were called to appear before a court on 15 June 2006. If convicted, they would be facing up to five years' imprisonment. Concern was expressed at the authority's resorting to the criminal law for a media related offence. Concern was heightened at various reports on alleged intimidation by the authority against the press and journalists in relation to the trials against Kizza Besigye. A communication was sent by the Special Rapporteur on this issue on 5 December 2005.

Observations

690. At the time this report was finalized, the Special Rapporteur had not received any replies to the communications sent. The Special Rapporteur therefore invites the Government to respond to these allegations.

6) Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston (UN Doc. A/HRC/4/20/Add.1, 12 March 2007)

Uganda: Death in Custody of Abdu Semugenyi

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of Uganda has failed to cooperate with the mandate that he has been given by the General Assembly and the Commission on Human Rights.

Letter of allegation dated 8 August 2006 sent with the Special Rapporteur on the question of torture.

We would like to bring to your Government's attention information we have received concerning Abdu Semugenyi, a 55-year-old businessman, who was reportedly tortured to death in a government "safe house" maintained by the Joint Anti-Terrorist Task Force in Kampala.

According to the information received, security agents arrested Abdu Semugenyi in April 2006, along with another man, while they were driving in the village of Ntoroko, near Kasese in western Uganda. It would appear that his arrest was motivated by suspected links with the Allied Democratic Forces, a rebel group. The two men were then transferred to the Karugutu barracks of the Uganda Peoples' Defense Force in western Uganda and from there taken to a so-called "safe house" maintained by the Joint Anti-Terrorist Task Force in Kololo, a neighborhood of Kampala. There Abdu

Semugenyi was subjected to torture by state security agencies. On 4 May 2006 he died of electrocution.

The authorities first denied holding Semugenyi. Subsequently, however, they claimed that he was killed while trying to escape. The authorities have so far refused to hand over his body to his family.

Without in any way implying any conclusion as to the facts of the case, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We would in particular like to draw your Government's attention to paragraph 9 of Resolution 2005/39 of the Commission on Human Rights, which reminds all States that "prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person." Also, article 12 of the Convention against Torture requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and its article 7 requires State parties to prosecute suspected perpetrators of torture.

Furthermore, we would like to recall paragraph 3 of Resolution 2005/39 of the Commission on Human Rights which, "Stresses in particular that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and takes note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture".

We would also like to refer Your Excellency's Government to the fundamental principles applicable under international law to deaths in custody or on the occasion of purported attempts to escape from custody. Article 6 of the International Covenant on Civil and Political Rights provides that no one shall be arbitrarily deprived of his or her life. As the Human Rights Committee has clarified, "arbitrarily" means in a manner "disproportionate to the requirements of law enforcement in the circumstances of the case" (Views of the Committee in the case *Suárez de Guerrero v. Colombia*, Communication no. 45/1979, § 13.3). In order to assess whether the use of lethal force was proportionate to the requirements of law enforcement, there must be a "thorough, prompt and impartial investigation" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Commission added that this obligation includes the obligation "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to ... prevent the recurrence of such executions".

We therefore urge your Government to hand over the body of Abdu Semugenyi to his family and to initiate an inquiry into the circumstances surrounding his death, with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate the family. We also request that your Government adopts effective measures to prevent the recurrence of such acts of torture, i.e. primarily to immediately proceed to closing all so-called "safe houses" where detainees are held incommunicado, releasing the detainees or handing them over to the authorities and the facilities competent under the criminal procedure law. We would finally suggest that – in addition to criminal investigations into the circumstances of the death of Abdu Semugenyi – your Excellency's Government institute an independent commission of inquiry into the general question of safe houses run by security forces, currently and in the recent past.

Moreover, it is our responsibility under the mandates provided to us by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all cases brought to our attention. Since we

are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place or if they have been inconclusive, please explain why.
3. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please indicate whether the body of Abdu Semugenyi has been handed over to his family and whether compensation has been paid to the family.
5. Please provide the details, and where available the results, of any inquiry into the general question of safe houses run by security forces.

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak (UN Doc. A/HRC/4/33/Add.1, 20 March 2007)

Abdu Semugenyi, aged 55, businessman. Security agents arrested Abdu Semugenyi in April 2006, along with another man, while they were driving in the Village of Ntoroko, near Kasese in western Uganda. His arrest was motivated by suspected links with the Allied Democratic Forces, a rebel group. The two men were then transferred to the Karugutu barracks of the Uganda Peoples' Defence Force in western Uganda and, from there, taken to a so-called "safe house" maintained by the Joint Anti-Terrorist Task Force in Kololo, a neighborhood of Kampala. There Abdu Semugenyi was subjected to torture by state security agencies. On 4 May 2006, he died of electrocution. The authorities first denied holding Semugenyi. Subsequently, however, they claimed that he was killed while trying to escape. The authorities have so far refused to hand over his body to his family.

7) Special Rapporteur on the Independence of Judges and Lawyers, Leonardo Despouy, Addendum, UN Doc. A/HRC/8/4/Add.1, 28 May 2008)

301. On 2 April 2007, the Special Rapporteur sent an allegation letter concerning the intrusion of armed police personnel and disregard for judicial independence and order at the High Court on 1 March 2007 in Kampala, which led to a decision by the judiciary to suspend all court activities nationwide since 2 March 2007. According to the information received, following the adjournment of the final decision by the High Court in respect of the bail application made by twelve alleged members of the People's Redemption Army (PRA), who had been held since November 2005 on charges of treason and conspiracy, and the decision of the High Court to grant them bail in the meanwhile, armed men in police uniform surrounded the Registry, where they intimidated and assaulted civilians and vandalized court property, before they prevented those released on bail from leaving the Court and proceeded to re-arrest them. All twelve co-accused men in the trial were returned to Luzira Prison despite being granted bail; some were forcibly removed from the High Court building. Furthermore, three of the accused were held incommunicado for nearly a day after being taken into police custody and were only returned to Luzira prison late on 2 March 2007. It is further reported that some of the defendants, a journalist and one counsel, who subsequently required medical treatment, were mistreated during the incident. Previously, on 16 November 2005, a group of armed security operatives reportedly belonging to a specialized anti-terrorist unit, had invaded High Court during proceedings related to the same case, also in an attempt to intimidate and threaten judges and lawyers, and to disrupt judicial proceedings.

Communications received

None.

Special Rapporteur's comments and observations

302. The Special Rapporteur is concerned at the absence of an official reply and urges the Government of Uganda to provide at the earliest possible date, and preferably before the end of the ninth session of the Human Rights Council, a detailed substantive answer to the above allegations.

8) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo (UN Doc. A/HRC/7/14/Add.1, 25 February 2008)

Letter of allegations sent on 23 April 2007

1. The Special Rapporteur brought to the attention of the Government the situation of journalists Sam Matekha, working for Radio Simba, Richard Ssemakula, working with "Bukedde" newspaper, and Charles Ssekajja, working for Ddembe FM, who were allegedly injured by the police during a stand off at the High Court while covering a case involving suspected members of the People's Redemption Army (PRA) on 1 March 2007. Several other journalists were reportedly beaten and prevented from taking pictures, while others had their equipment confiscated. It is reported that Chris Ahimbisibwe, working with the "New Vision" newspaper, was attacked by military personnel outside the Bushenyi court premises for taking a picture of a group of suspected members of the PRA.

Observations

2. The Special Rapporteur regrets that he has not received a response to the communication mentioned above.

9) Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, Manfred Nowak, Addendum (UN Doc. A/HRC/C/7/3/Add.1, 19 February 2008)

Date 19/09/07

Patrick Kabula, Kahindo Balilie and Bikay Kusimuweri, all of them Congolese refugees/asylum seekers. Together with 38 other persons, they were detained incommunicado from 13 to 17 August 2007. On 17 August, they were transferred to the custody of Kampala magistrate's court, before being remanded to Luzira Prison in Kampala until their court hearing on 23 August 2007, following which they were released on bail. All the detainees have been charged with "conspiracy to commit a felony". While in detention, Kahindo Balilie, Patrick Kabula, and Bikay Kusimuweri were repeatedly beaten and kicked. They suffered bruising and injuries to their backs. Kahindo Balilie suffered internal bleeding after being beaten and kicked, including in the groin, and jumped on. All 41 of the detainees were held in harsh conditions at the headquarters of the RRU in Kireka, Kampala, squeezed into small rooms and forced to sleep in turns on cement floors covered in water. They received food only three times in five days.

10) Special Rapporteur on the right to food, Jean Ziegler (UN Doc. A/HRC/7/5/Add.1, 5 March 2008)

Communication sent

99. On 19 October 2007, the Special Rapporteur brought to the Government's attention information received concerning the economic exploitation of a group of peasants in Naluwondwa Parish, Madubu sub-county, Buwelka Constituency, Mubende district which has produced a precarious food security and housing situation for these communities. According to the allegations received, in August 2001, approximately 2000 people were evicted from their permanent land of abode. During this eviction, the allegations received indicated that houses were demolished, property destroyed and staple crops like cassava and potatoes were ruined in order to clear the way for a coffee plantation. According to the information, the military was involved in carrying out this eviction, acting on the orders of the Resident District Commissioner. The land was reportedly leased to a German-based company, Neumann Kaffee Gruppe, which operates as a coffee exporting company and which is registered in the country as Kaweri Coffee Plantation Ltd. Supported by the Uganda Investment

Authority (UIA), Kaweri Coffee Plantation was reported to be the biggest coffee plantation in the country where coffee is one of the major export crops and accounts for most export revenues. According to the information received, in June 2002 the African Development Bank (ADB) approved a loan of USD 2.5 million to finance the plantation project. Information further indicated that approximately 50 among the evicted peasants have been employed as casual labourers on the coffee plantation. They and the other casual labourers on the plantation, approximately a thousand persons, earn around 2000 Uganda Shillings (approximately 1 USD) for 10 hours of work per day. According to this information, this income, which fails to meet the standard set at 6,000 Shillings (approximately 3 USD) by the minimum wage regulation, does not procure them access to sufficient and adequate food.

11) Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani (UN Doc. A/HRC/7/28/Add.1, 5 March 2008)

Letter of allegations

1907. On 30 November 2007, the Special Representative sent a letter of allegations to the Government concerning Ugandan and Kenyan defenders of Lesbian, Gay, Bisexual, Transgender (LGBT) rights, including Ms Victor Juliet Mukasa, and members of Sexual Minorities Uganda (SMUG) as well as Amakula, a renowned non-LGBT film organisation based in Kampala which promotes African talent and human diversity. According to the information received, on 23 November 2007, Ugandan and Kenyan defenders of LGBT rights, including Ms Victor Juliet Mukasa and members of SMUG, were prevented from delivering their speeches at the Commonwealth Heads of Governments Meeting (CHOGM) Speaker's Corner in Kampala during the People's Space. They were reportedly forcibly removed from the building by police officers and were threatened with sticks not to enter the premises again.

1908. The LGBT defenders waited outside quietly for seven hours to be allowed back in the building, in vain. On 22 November 2007, Amakula showed at CHOGM a film that addressed homosexuality. The following day, two members of Amakula were expelled from the People's Space. The People's Space was established "to provide opportunities to share in the diversity and richness of the Commonwealth people", and was designed to give people "renewed energy to facilitate social change with a clear sense of building the future together". Concern was expressed that the expulsion of the aforementioned individuals from the People's Space may be related to their peaceful activities in defence of LGBT rights.

Observations

1909. The Special Representative regrets that, to date, no response has been received from the Ugandan Government, but hopes that further information regarding the above communication and the concerns raised in it, regarding the treatment of members of SMUG and Amakula, is provided in the near future.

12) Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Addendum (UN Doc. A/HRC/10/12/Add.1, 4 March 2009)

Letter of allegations

2608. On 12 August 2008, the Special Rapporteur, together with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent a letter of allegations on the situation of Usaam "Auf" Mukwaya, Onziema Patience, Valentine Kalende, and Julian "Pepe" Onziema, all members of Sexual Minorities Uganda (SMUG), a local organization advocating on behalf of Uganda's lesbian, gay, bisexual, and transgender (LGBT) people and on HIV/AIDS issues in Uganda; and Nikki Mawanda, programme coordinator of Transgender, Intersex, Transsexual (TIT), an organization that supports the needs of transgender, transsexual, and intersex Ugandans. According to the allegations received:

2609. On 4 June 2008, police arrested Usaam Mukwaya, Onziema Patience, and Valentine Kalende in Kampala, after a protest at the 2008 "HIV/AIDS Implementers Meeting." The activists were protesting against statements made by Kihumuro Apuuli, director general of the Uganda AIDS Commission, who on 2 June declared that "gays are one of the

drivers of HIV in Uganda, but because of meager resources we cannot direct our programmes at them at this time.”

2610. Police took the three activists to the Jinja Road Police Station and detained them until 6 June. Authorities finally released the activists on bail after charging them with criminal trespass, under Section 302 of the Uganda Penal Code, despite the fact that sponsors of the Implementers Meeting had invited the activists to attend the conference.

2611. The defendants last appeared before a Kampala court on 25 July, where several witnesses of the State (mainly police officers) and the defendants were cross-examined. The judge adjourned the hearing until 1 August. At previous hearings held on July 9 and 10, the judge adjourned the case following the public prosecutor’s request to give police additional time to locate new witnesses.

2612. After the court hearing, a patrol car stopped the taxi Mukwaya was riding in and four men identifying themselves as police officers, three of them with uniforms and the fourth with plain clothes, detained him and put him in the police’s pickup truck. The police officers drove towards Jinja Road where a civilian car with tinted screens was waiting for them parked in front of Shoprite. Police officers forced Mukwaya into the other car with three other policemen; two wore suits and one wore a police uniform. The men drove around for about 30 minutes and took Mukwaya to an undisclosed location. Two female and one male police officer were waiting. The police confiscated Mukwaya’s mobile phone, which contained contact names and numbers of members of SMUG and other LGBT rights organizations. The police asked Mukwaya if he was Nikki, when he said he was not they asked him his name. The three police officers then pushed him through a dark corridor into a room where they made him sit on a chair. Mukwaya, 26, saw four other men around his age in the room. One had a broken leg and the other three appeared to have been beaten. One of the women officers scraped his knuckles with a razor-like object. His abductors asked him questions in Luganda, a local language, about the activists’ funders and supporters, and about his own role “among the homosexuals.” They also demanded information about Pepe and Nikki. They demanded the address of the SMUG office, as well as the residence and office of Mukwaya’s lawyer. Before dawn, they forced him to strip to his underwear, asked him if he was a man or a woman, and made him walk around the room in his underwear. In the room, there was a machine that suspended above a cushioned bench, and a prisoner’s arms are restrained by extensions alongside the device. As it is lowered by a switch, the extensions stretch the prisoner’s arms. Mukwaya was ordered by a policeman to lie on the bench face-up, and threatened that he should provide information on the organization’s source of funds. Mukwaya said nothing and his arms were stretched, leaving him with intense pain. After about 15 minutes, the machine was turned off and he was asked how much he was paid to be a homosexual. When he did not answer, they left him sleeping on the bench. The following day, 26 July, the police dropped Mukwaya off at Mulago round-about in central Kampala. On 28 July, activists accompanied Mukwaya to file an official complaint before the Uganda Human Rights Commission (UHRC). He also visited a doctor who documented the ill-treatment. On 29 July he went to the African Centre for Torture Victims (ACTV) to receive psychological support. As of today, police have not detained the people responsible for Mukwaya’s torture.

2613. Concern was expressed that Usaam Mukwaya, Onziema Patience, Valentine Kalende, and Julian Onziema, and Nikki Mawanda may be at risk of torture or other forms of ill-treatment. Concern was also expressed in regard to the physical and psychological integrity of Usaam “Auf” Mukwaya. Further concerns were expressed that the arrests and detention of Usaam “Auf” Mukwaya, Onziema Patience, Valentine Kalende, Julian Onziema and Nikki Mawanda might be solely connected to the reportedly non-violent exercise of their right to freedom of opinion and expression, of assembly and of association

Urgent appeal

2614. On 22 September 2008, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent an urgent appeal on the situation of George Oundo and Kiiza Brendah. George Oundo and Kiiza Brendah work as lesbian, gay, bisexual and transgender (LGBT) activists, promoting and protecting the rights of the lesbian, gay, bisexual and transgender community in Uganda. According to the information received:

2615. On 10 September 2008 George Oundo and Kiiza Brendah were arrested in the home of Oundo, in the village of Nabweru, Wakiso district, outside Kampala. The policemen removed gay literature from Oundo’s home, and transferred them to Nalukologolo police station. On 11 September 2008 they were transferred to Nabweru police station, where they

were subjected to extensive interrogation about lesbian, gay, bisexual and transgender (LGBT) human rights defenders. George Oundo and Kiiza Brendah were detained for seven days and released on 18 September 2008. They were held at the police station without charge and have not been brought before a court within the constitutional limit of 48 hours. Upon their release on 18 September they were ordered to present themselves at the police station again on 24 September 2008.

2616. Concern was expressed about the arrest and detention without charges of George Oundo and Kiiza Brendah. Concern was also expressed with regard to their physical and psychological integrity. Further concerns were expressed that the arrests and detention of George Oundo and Kiiza Brendah might be solely connected to the reportedly non-violent exercise of their right to freedom of opinion and expression, of assembly and of association.

Observations

2617. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to the communications of 5 August 2005, 30 November 2007, 12 August 2008 and 22 September 2008. She considers response to her communications an important part of the cooperation of Governments with her mandate.

2618. The Special Rapporteur welcomes the end of the judicial proceedings against Usaam “Auf” Mukwaya, Onziema Patience, Valentine Kalende, and Julian “Pepe” Onziema. However, she remains concerned about the vulnerability of human rights defenders advocating for the rights of lesbian, gay, bisexual and transgender people in Uganda, and urges the Government of Uganda to create a safe environment conducive to their legitimate work.

4.2 Country visits

1) Visits to Uganda by Special Procedures

Four special procedures have visited Uganda upon the invitation of the Government: the Special Rapporteur on the Right to Education, the Special Representative of the Secretary-General on Internally Displaced Persons, the Independent Expert on the Effects of Structural Adjustment Policies and Foreign Debt on the Full Enjoyment of Human Rights, and the Special Rapporteur on the Right of Everyone to the Highest Attainable Standard of Physical and Mental Health. Their reports, including description of purpose of the visit, stakeholders met with, main findings and recommendations, are available at <http://www2.ohchr.org/english/bodies/chr/special/countryvisitsn-z.htm>. The mission report on the first visit to Uganda by the Special Rapporteur on the Right of Everyone to the Highest Attainable Standard of Physical and Mental Health is reproduced in full below.

Special procedure	Mandate-holder	Time of Visit	Mission report
Special Rapporteur on the Right to Education	Ms. Katarina Tomaševski	26 June – 2 July 1999	UN Doc. E/ CN.4/2000/6/Add.1, 9 August 1999
Special Representative of the Secretary-General on Internally Displaced Persons	Mr. Francis M. Deng	10 – 16 August 2003	UN Doc. E/ CN.4/2004/77/Add.1, 3 March 2004
Independent Expert on the Effects of Structural Adjustment Policies and Foreign Debt on the Full Enjoyment of Human Rights	Mr. Bernards Mudho	26 – 30 May 2003	UN Doc. E/ CN.4/2004/47/Add.1, 1 March 2004
Special Rapporteur on the Right of Everyone to the Highest Attainable Standard of Physical and Mental Health	Mr. Paul Hunt	17 – 25 March 2005, 4 – 7 February 2007	UN Doc. E/ CN.4/2006/48/Add.2, 19 January 2006 UN Doc. A/HRC/7/11/ Add.2, 21 March 2007

In addition to the official visit to Uganda by the Special Representative of the Secretary-General on Internally Displaced Persons in 2003, Mr. Francis Deng, his successor, Mr. Walter Kälin, undertook a working visit to Uganda from 28 June to 4 July 2006. During this visit, the Special Representative travelled to Gulu, Lira and Pader districts, areas which, the Special Rapporteur writes in his report “had seen some of the worst displacements since the conflict between the Government of Uganda and the Lord’s Resistance Army began”.¹ During the visit, the Special Representative met with the President of

Uganda, the Prime Minister, and the Minister for Relief, Disaster Preparedness and Refugees. In addition, Mr. Kälin consulted with traditional and religious leaders, representatives of local governments, Uganda police and UPDF commanders, UN agencies, NGOs and residents of IDP camps, including men and women leaders. The Special Representative also participated in a national conference designed to address obstacles for the implementation of the Uganda National IDP Policy.²



The Special Representative of the Secretary-General on IDPs, Mr. Walter Kälin, in a meeting with members of the IDP community during his visit to Gulu (northern Uganda).

2) Requested visits

The Special Rapporteur on Freedom of Expression and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions both requested to visit Uganda in 2006. A visit to Uganda by the Independent Expert on the Question of Human Rights and Extreme Poverty visits has been agreed to in principle and/or is under consideration.

3) Standing Invitation

Currently, Uganda has not yet issued a standing invitation to special procedures.

¹ See UN Doc. A/HRC/4/38, 3 January 2007, paras. 11-16

² Ibid.

4.3 Special Procedures from the Perspective of Civil Society: The Case of the UN Special Rapporteur on the Right to Health *By Dr. Nelson Musoba*³

In 2005, at the invitation of the Government of Uganda, the UN Special Rapporteur on the Right to the Highest Attainable Standard of Physical and Mental Health (hereinafter “the Special Rapporteur”), then Paul Hunt, carried out a first mission to Uganda. This mission, which produced a report with recommendations to the GoU,⁴ focused on Neglected Tropical Diseases (NTDs) through the perspective of the right to health.

In 2007, the Special Rapporteur visited Uganda for a second time with a view to understand how Sweden and the Swedish International Development Cooperation Agency (Sida) contribute to the realization of the right to health in Uganda.⁵ During this second visit, Paul Hunt participated in a workshop organized by the Action Group for Health, Human Rights and HIV/AIDS (AGHA) Uganda (AGHA) with support from the International Federation of Health and Human Rights Organizations (IFHHRO). In June 2008, AGHA and IFHHRO held a consultative meeting to evaluate the progress made by the Government of Uganda on the recommendations of the Special Rapporteur. The two visits of Paul Hunt to Uganda can be commended for advancing the human rights aspect in health in Uganda and especially bringing into the limelight the issue of NTD through his report of January 2006.

Some of the issues from the Special Rapporteur’s visit have been built onto AGHA’s areas of health rights advocacy. AGHA’s work largely focuses on stigma and discrimination, health workforce issues, health sector financing (including additional funding for the health sector), transparency and accountability. The report of the Special Rapporteur furthermore advanced the issue of community participation in health management. In this respect, in 2007, AGHA released a report based on a survey that evaluated the participation of civil society organizations (CSOs) in health sector planning and implementation in eight selected districts.⁶ The organization has also undertaken

follow-up training with local governments on the findings and recommendations of the survey.

An article in AGHA’s last newsletter argues that if health inequities in Africa are to be reduced, primary health care should be re-conceptualized to include NTD as they are diseases of the poor and disadvantaged. Paul Hunt’s report also advanced the need for greater health rights monitoring which AGHA has been implementing. For instance, in December 2008 AGHA together with IFHHRO conducted another regional training on Monitoring the Right to Health to equip medical associations with knowledge of the concept of the right to health, and practical knowledge on monitoring the right to health.



The Special Rapporteur on the right to the highest attainable standard of physical and mental health, Mr. Paul Hunt, with the then Executive Director of AGHA-Uganda, Dr. Nelson Musoba, at the AGHA-IFHHRO training in February 2007.⁷

In June 2008, AGHA and IFHHRO organized a consultative meeting to review the work done by the Special Rapporteur on the Right to Health over the past six years and discussed recommendations for the future. This meeting brought together various stakeholders and created partnerships for AGHA with other human rights stakeholders like Sida, OHCHR, the Uganda Human Rights Commission (UHRC), the Ministry of Health (and its Human Rights Desk); Uganda Medical Workers Union, Uganda National Health

³ Dr. Nelson Musoba is member of the Executive Committee of the Action Group for Health, Human Rights and HIV/AIDS (AGHA) Uganda and Senior Health Planner at the Health Planning Department of the Ugandan Ministry of Health.

⁴ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Addendum, Mission to Uganda, UN Doc. E/CN.4/2006/48/Add.2. The report is reproduced in full below.

⁵ Report from the Stakeholders’ Meeting with the UN Special Rapporteur on the right to health, February 2007.

⁶ Report of data collection using the Monitoring Toolkit For Promoting transparency and accountability in the health sector: Civil society engagement in health budget planning & monitoring, AGHA 2008,

⁷ Photo received with thanks from AGHA-Uganda.

Consumers Organization, Makerere Medical School, and Uganda Protestant Medical Bureau. The results from this meeting and the research conducted by AGHA include: (a) a prioritized list of recommendations for the new Special Rapporteur on the Right to Health regarding future country visits; (b) a prioritized list of recommendations for the health sector on preparing for and following up on country visits of the Special Rapporteur, and (c) examples of best practices and lessons learned from Uganda.

The discussion and the recommendations were compiled into a report which was presented at a conference organised by IFHHRO reviewing the work of the Special Rapporteur on the Right to Health in London in September 2008. At this conference, the report was shared with the new Special Rapporteur, Anand Grover, and highlighted the following areas: access to health information and education, AGHA's Health Rights Leadership campaign, community participation, AGHA's project on health sector planning and accountability with CSO participation as a key component, and Health Professionals with Health Workforce Advocacy as one of AGHA's program areas. AGHA hosts a coalition named Health Workforce

Advocacy Forum (HWAF) which tackles stigma and discrimination. In this connection, AGHA has conducted an anti-stigma and discrimination campaign in different parts of Uganda (i.e. in Lyantonde, Rakai and Tororo). The report among others recommends that health professionals can work with the Special Rapporteur on the Right to Health in several ways, including: by providing the necessary information, during and after his visits; asking questions about accountability to stakeholders, including their own professions and the Government of Uganda; write reports and report incidences that negate the right to health; act as monitors on a continuous basis; participate in the planning, implementation and evaluation of the Special Rapporteur's recommendations and other health related activities; and initiate ideas, programmes for better human advancements.

In conclusion, AGHA's short but very rich encounter with the previous Special Rapporteur on the Right to Health has not only added value and been of concrete benefit as demonstrated above but has also demonstrated that targeted engagement of civil society with the new Special Rapporteur could provide synergies and greatly enrich the contribution towards realizing the right to health.

End of article

4.4 Mission Report on the Visit to Uganda by the Special Rapporteur on the Right to Health

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt¹

Addendum

MISSION TO UGANDA

Summary

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (“the right to health”) visited Uganda from 17 to 25 March 2005 in order to consider the issue of neglected diseases through the prism of the right to health. Neglected diseases are also known as “poverty-related” or “tropical” diseases. When they do not kill, neglected diseases inflict severe and permanent disabilities and deformities on almost 1 billion people around the world, especially among the poorest populations in developing countries. In addition to the physical and psychological suffering they cause, neglected diseases impose an enormous economic burden on affected communities due to lost productivity and other issues. In turn, this contributes to the entrenched cycle of poverty, ill health, stigmatization and discrimination experienced by neglected populations. While there are some drugs and vaccines for neglected diseases, these interventions do not always reach those who need them - even when the drugs and vaccines are donated. Additionally, more research and development is urgently needed in relation to neglected diseases. The record shows that if only driven by market considerations, research and development gives insufficient attention to neglected diseases.

In Uganda, neglected diseases include: lymphatic filariasis (elephantiasis), onchocerciasis (river blindness), leprosy, human African trypanosomiasis (sleeping sickness), soil-transmitted helminths and others. The report identifies the main features of a right-to-health approach to these diseases in the Ugandan context: information and education; community participation; the role of health professionals; tackling stigmatization and discrimination; an integrated health system; enhanced research and development; the role of donors and the international community; and monitoring and accountability. While the focus of the report is Uganda, much of the analysis has general application to other countries where neglected diseases are prevalent. The Special Rapporteur is extremely grateful to the Government of Uganda for inviting him to visit the country, thus enabling him to undertake a national case study in relation to neglected diseases and the right to health. He is also very grateful to the World Health Organization with which he worked in very close cooperation throughout the mission.

¹ UN Doc. E/CN.4/2006/48/Add.2, 19 January 2006.

CONTENTS

	<i>Paragraphs</i>
I. INTRODUCTION	1 - 9
A. What are neglected diseases?	4 - 8
B. The global burden of neglected diseases	9
II. NEGLECTED DISEASES AND THE RIGHT TO HEALTH IN UGANDA	10 - 31
A. Uganda: a brief background	10 - 14
B. International human rights framework	15 - 16
C. National legal and policy frameworks	17 - 21
D. Health challenges in Uganda	22 - 25
E. Neglected diseases	26 - 31
III. KEY FEATURES OF A RIGHT-TO-HEALTH APPROACH TO NEGLECTED DISEASES	32 - 93
A. Access to health information and education	33 - 35
B. Community participation	36 - 41
C. Health professionals	42 - 48
D. Tackling stigmatization and discrimination	49 - 54
E. An integrated health system responsive to local priorities	55 - 61
F. Research and development	62 - 69
G. Donors and the international community	70 - 85
H. Monitoring and accountability	86 - 93
IV. CONCLUSION	94 - 96
Appendix 1. Global burden of selected neglected diseases	25
Appendix 2. Selected neglected diseases in Uganda	28

I. INTRODUCTION

1. At the invitation of the Government of Uganda, the Special Rapporteur carried out a mission to Uganda from 17 to 25 March 2005 in order to address the issue of neglected diseases. The mission provided a unique opportunity for the Special Rapporteur to examine in depth one important right-to-health issue - neglected diseases - building on the commendable work being done in this area by health professionals at the national and international levels, in particular through the Ministries for Health in Uganda and the World Health Organization (WHO). The Special Rapporteur expresses his sincere appreciation to the Government for the openness and cooperation extended to him throughout the course of his mission. He is deeply grateful to the WHO offices in Geneva and Kampala, and to the Office of the United Nations High Commissioner for Human Rights (OHCHR), for their indispensable support. In addition to providing the Special Rapporteur with expert advice on neglected diseases, WHO also provided financial support for the mission. In the Special Rapporteur's view, the mission provided a model of how a Government, a specialized agency and human rights independent expert can and should cooperate, with each party respecting the distinctive role of the others.

2. The report of the mission does not purport to address other vital health challenges in Uganda, nor does it analyse in depth the broader issues related to the right to health in the country. Instead, in the context of neglected diseases, the report addresses issues related to: access to health care for marginalized populations in Uganda; underlying determinants of health, such as access to clean drinking water and sanitation; access to drugs and other control mechanisms for neglected diseases; the crucial role of health professionals; and the impact of neglected diseases on the health of people living in poverty, and other marginalized groups, in rural and urban areas. It focuses on key elements of a right-to-health approach to neglected diseases, such as community participation, access to health information and education, non-discrimination, monitoring and accountability, and international cooperation and assistance. The Special Rapporteur hopes that this brief analysis of the right to health in the Ugandan context will contribute to addressing the urgent need, at both the national and international levels, for attention and action to effectively combat neglected diseases and realize the human rights of those affected.

3. The Special Rapporteur consulted with a wide range of actors in Uganda, including representatives of the Government of Uganda, the National Human Rights Commission, international organizations, associations of health professionals, communities and individuals affected by neglected diseases, non-governmental organizations (NGOs), development partners and pharmaceutical companies. He had the honour to be received by the Minister of Gender, Labour and Social Development; the Minister of State for Health (General Duties); the Minister for Internal Affairs; the Minister of State for Northern Uganda Rehabilitation; the Minister for Finance, Planning and Economic Development; and the Minister of Tourism, Trade and Industry. He also held discussions with representatives of United Nations agencies, including the World Health Organization (WHO), the United Nations Children's Fund (UNICEF), UNAIDS, the World Food Programme (WFP) and OHCHR, and with development partners such as the World Bank, the Department for International Development (DFID), Development Cooperation Ireland, and the Danish International Development Agency (DANIDA). He also met with representatives of NGOs, including Médecins sans Frontières, Oxfam, Obalanga Human Rights and Health Association, YMCA and Uganda Youth Development Link. During the mission the Special Rapporteur visited health centres and communities affected by neglected diseases in Gulu, Lira and Katakwi districts as well as the urban slum areas of Kampala. He visited, inter alia, the Lacor Hospital and Awer camp in Gulu district, Amuria HC-IV and Obalanga camp in Katakwi district and Dokolo HC-IV, Lira district and Kisenyi HC-II in Kampala, and urban slums of Kakaju zone and Irumun Centre. The Special Rapporteur expresses his sincere gratitude to all the people he met.



The Special Rapporteur on the right to health, Mr. Paul Hunt, at a workshop on health and human rights, organized by the Ministry of Health and the World Health Organization (WHO) during his follow-up visit to Uganda in 2007.¹²⁸

¹²⁸ Photo received with thanks from WHO-Uganda.

A. What are neglected diseases?

4. Neglected diseases vary in the extent of the burden they impose, and in the availability and accessibility of appropriate treatments. In general, they fall into two categories: (a) Endemic, chronic and disabling diseases for which effective treatment or preventive strategies exist, such as leprosy, soil-transmitted helminths, lymphatic filariasis and onchocerciasis; and (b) The growing epidemic of deadly diseases for which modern effective treatment does not currently exist, or is not safe, such as buruli ulcer, Chagas' disease, leishmaniasis and African trypanosomiasis/sleeping sickness.

5. Low cost and easy to use tools exist for the control and prevention of most neglected diseases, i.e. those that fall into the first category. The tendency for the diseases to be localized assists targeted programme delivery. Also, population-wide interventions such as mass drug administration and vector control are largely free of discrimination and do not further marginalize excluded groups. Several interventions bring rapid physical relief that helps stimulate acceptance and further demand.

6. The problem in relation to this category of diseases has primarily been one of neglect; for example, exploiting the potential of existing tools against these diseases has not been a priority at either the national or international level.

7. There is no standard global definition of neglected diseases. However, WHO describes them as those diseases that "affect almost exclusively poor and powerless people living in rural parts of low-income countries".¹ The key elements are that these are diseases affecting principally poor people in poor countries, for which health interventions - and research and development - are regarded as inadequate to the need. The Special Rapporteur notes that they are referred to elsewhere in the literature as "tropical" or "poverty-related" diseases. For the purposes of his mission to Uganda, however, he has elected to use the term "neglected diseases".

8. Although neglected diseases are by no means homogeneous, it has been noted that many share the following common characteristics: (a) They typically affect neglected populations - the poorest in the community, usually the most marginalized and those least able to demand services. These often include women, children and ethnic minorities, displaced people, as well as those living in remote areas with restricted access to services. Neglected diseases are a symptom of poverty and disadvantage; (b)

The introduction of basic public health measures, such as access to education, clean water and sanitation, would significantly reduce the burden of a number of diseases. Improved housing and nutrition would also help in some cases; (c) Where curative interventions exist, they have generally failed to reach populations early enough to prevent impairment; (d) Fear and stigma attach to some diseases, and lead to delay in seeking treatment as well as to discrimination against those affected; (e) Although the eradication of certain diseases can be achieved at low cost per patient, the total cost at the national level can be significant in view of the number of people affected by the diseases; (f) The development of new tools - new diagnostics, drugs and vaccines - has been underfunded or neglected, largely because there has been little or no market incentive.

B. The global burden of neglected diseases

9. Appendix 1 contains a brief summary of the global burden of neglected diseases. These diseases continue to cause immense suffering and lifelong disabilities among the poorest populations in developing countries, in particular those living in rural areas. According to WHO, "the health impact of these neglected diseases is measured by severe and permanent disabilities and deformities in almost 1 billion people".² Globally, nearly 70 per cent of all disability-adjusted years due to neglected diseases occur in children under 14 years.³ In addition to the physical and psychological suffering they cause, neglected diseases inflict an enormous economic burden on affected communities owing to lost productivity and high costs associated with long-term care, which in turn contributes to the entrenched cycle of poverty, ill health, stigmatization and discrimination experienced by neglected populations.

II. NEGLECTED DISEASES AND THE RIGHT TO HEALTH IN UGANDA

A. Uganda: a brief background

10. Beginning in 1961, under the authoritarian leadership of its first Prime Minister, Milton Obote, Uganda experienced nearly 10 years of multiparty democracy. However civil unrest grew throughout this period owing to tribal, religious and political differences. In February 1966, Prime Minister Obote suspended the Constitution and assumed all government powers. In September 1967, a new Constitution proclaimed Uganda a republic and further concentrated power in the Prime Minister's hands. On 25

January 1971, Idi Amin Dada ousted Obote's Government and seized power in a military coup. His eight years of rule saw a period of massive human rights violations, economic decline and social disintegration. During the 1970s and 1980s the country went through a prolonged period of civil unrest and much of the infrastructure for basic services was destroyed.

11. In 1986, National Resistance Army leader Yoweri Museveni was sworn in as President, bringing stability and the beginnings of an economic renaissance. During the mid-1990s Uganda showed a strong economic performance, following a wide range of economic reform initiatives. Poverty levels declined from 56 per cent in 1992 to 35 per cent in 2000. However, over the past five years, economic growth and other key macroindicators have been more disappointing. Uganda has a population of 24.7 million people, with a population growth rate of 3.4 per cent and a per capita GDP of US\$ 320. Thirty-five per cent of the population continue to live on less than 1 US dollar a day.

12. At the same time, insecurity has persisted in the northern regions of Uganda owing to the ongoing conflict between the Lord's Resistance Army (LRA) rebel group and Government forces. The conflict continues to have a devastating social and economic impact. Since 1986, attacks on civilians by LRA have contributed to internal displacement and forced villagers to seek refuge outside of their homes and communities. In late 1996, the Government ordered the displacement of large numbers of people into "protected villages" in order to protect civilians from further attacks and to undermine civilian support for the rebels.

13. By 2004, an estimated 1.6 million people were displaced and confined to about 200 temporary settlements, with populations ranging from 500 to 60,000 per settlement. These people live without independent means of subsistence, and many live in inadequately protected and serviced camps where they continue to suffer from violent attacks by LRA. Access to clean drinking water, adequate sanitation and basic health services in many of the camps is extremely limited, a situation which has fuelled high levels of morbidity and mortality.⁴ Poverty levels in Northern Uganda average between 38 and 67 per cent, compared to other regions with an average of 20 per cent poverty.⁵ A recent survey by WHO found that crude mortality rates in Gulu, Kitgum and Pader were above the emergency threshold of 1 death per 10,000 per day,⁶ and well above the nationwide rate of 0.46 for Uganda.⁷

14. In the face of these challenges, the Government of Uganda has committed itself to achieving stability, growth and poverty reduction, and to meet development targets within the framework of the Millennium Development Goals (MDGs). In relation to health, the Government has sought to implement its international commitments through the national Poverty Eradication Action Plan (PEAP), the National Health Policy, the Health Sector Strategic Plan (HSSP), the Uganda National Minimum Health Care Package (UNMHCP) and other pro-poor health-related policies. These and other related national policy frameworks are introduced in the sections below.

B. International human rights framework

15. Uganda has ratified a wide range of international and regional human rights instruments which contain important provisions related to the right to health, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the African Charter on Human and Peoples' Rights. These instruments provide a framework for legislation and policy at the national level. The Government has also committed itself to meeting various health-related goals and targets through its participation in international and regional conferences, including the Millennium Summit of the General Assembly.

16. As a party to international human rights treaties, the Government of Uganda has an obligation to respect, protect and fulfil the right to health for those within its jurisdiction. The international community also has a responsibility to assist Uganda in the fulfilment of its human rights obligations, including through international assistance and cooperation. NGOs, health professionals, businesses and others also have important responsibilities regarding the right to health in Uganda.

C. National legal and policy frameworks

17. The Constitution of the Republic of Uganda is grounded in basic human rights principles, including non-discrimination and equality for all citizens, with specific provisions to ensure the human rights of women, people with disabilities and children.⁸ Preambular paragraph XX provides that the State shall take all practical measures to ensure the provision of basic medical services to the population, while other sections commit the State to promoting access to the underlying determinants of health,

such as water, encouraging the production and storage of food, and promoting nutrition through education and other means to support a healthy population. Preambular paragraph XIV (ii) states that all Ugandans shall enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.

18. The Government has sought to implement its obligations regarding the right to health through its national poverty reduction strategies, national health policy and health sector strategic plans. PEAP for 2005-2008 sets out a strategy for poverty eradication based on five pillars: (a) economic management; (b) production, competitiveness and incomes; (c) security, conflict resolution and disaster management; (d) good governance; and (e) human development, including health.

19. The Health Sector Strategic Plan II for the period 2005-2010 seeks to reduce morbidity and mortality from major causes of ill health through universal delivery of UNMHCP. The overriding priority of HSSP II will be the fulfilment of the health sector's contribution to meeting the goals of PEAP and MDG, namely reducing fertility, malnutrition, maternal and child mortality, HIV/AIDS, tuberculosis and malaria, as well as disparities in health outcomes. The National Health Policy and Health Sector Strategic Plans have been formulated within the context of the Constitution and the Local Government Act, 1997, which decentralized governance and service delivery. The Government has engaged in a process of health-care decentralization in order to ensure that district leaders are directly involved in, and accountable for, health policies for the communities they represent.⁹

20. The Ugandan health sector is generally underfunded. Only 30 per cent of HSSP I funding requirements were met and, although attempts have been made to mobilize additional funds for the health sector, these have been constrained by macroeconomic concerns and rigid sector ceilings. Although the health sector's share of total expenditure has grown from 6 to 8 per cent of the Government budget, only 3 per cent of GDP is allocated to health. Moreover, the medium-term expenditure framework ceiling reflects fiscal targets for maintaining macroeconomic stability as a condition for accessing International Monetary Fund loans. This requires the Government to control inflation at 5 per cent and reduce its fiscal deficit to 6.5 per cent of its GDP by 2009/2010. Without some flexibility, the Government will be unable to

make the health sector investments necessary to meet the poverty reduction objectives reflected in its PEAP.

21. Following on the findings of an inter-ministerial review in 1999 and a participatory poverty assessment, in 2001 the Government abolished user fees for health-care services in public health units. This policy change resulted in a marked increase in the utilization of health services. However, it also led to increased pressure on supplies for health services with drugs frequently out of stock throughout the system. Other problems reportedly include corruption in the form of drug "leakage" into the private sector, as well as requests for informal payments by health personnel in some areas. The second participatory poverty assessment (PPA) report found that although "cost-sharing" has been abolished, community members still often have to make under-the-table payments.¹⁰ The PPA2 notes that people are concerned that drugs "leak" to private facilities, which are largely run by government health workers.¹¹

D. Health challenges in Uganda

22. The Government has achieved impressive health successes in some areas. For example, it has achieved the target of halting and beginning to reverse the spread of HIV/AIDS by 2015, by openly addressing and mainstreaming HIV/AIDS prevention and control into different sectors within national policies and programmes, including PEAP.¹² The Government has also committed to the elimination and eradication of other diseases, such as onchocerciasis and polio. It established a strong community-directed treatment with ivermectin for onchocerciasis and a National Disease Control Department to prevent both endemic and epidemic diseases, as well as national programmes to combat schistosomiasis and lymphatic filariasis. It has attained the elimination levels set by WHO in relation to guinea worm and leprosy, achieved 90 per cent coverage in measles immunization and made some progress in the prevention and control of malaria. Overall, the country has seen a steady improvement in health conditions since 1999, including increased coverage of health facilities.

23. However, significant health challenges persist. Access to health-care facilities is limited by poor infrastructure, especially in the rural areas where only 49 per cent of households have access to health care. Communicable diseases such as malaria, parasitic infection, HIV and TB are widespread and contribute to high levels of morbidity and mortality. Poor sanitation and water fuel high rates of cholera, diarrhoea, schistosomiasis and malaria among certain populations. According to reports, recently the

Government has shifted away from its comprehensive HIV-prevention policy towards an emphasis on abstinence. In addition, the country has experienced a severe shortage of condoms since late 2004 as a result of problems related to procurement and timely distribution. These factors reportedly have contributed to a recent rise in HIV-infection rates, which have climbed to 7 per cent for men and 9 per cent for women nationally. At the same time, in August 2005 the Global Fund to Fight AIDS, Tuberculosis and Malaria announced the suspension of all its grants to Uganda due to “evidence of serious mismanagement” of the funds.

24. Child mortality rates remain alarmingly high, with a reported increase between 1995 and 2000 from 81 to 88 deaths per 1,000 live births.¹³ These deaths are attributable mainly to malaria, diarrhoea, acute respiratory infection, malnutrition, AIDS and maternal conditions such as early pregnancies, lack of access to safe contraception, brief spacing between pregnancies and lack of access to education and information for young women. In addition, 2.2 million people were afflicted with soil-transmitted helminthiasis in 2004 and 16.7 million were exposed to schistosomiasis, the majority of whom were children. Intestinal parasites in children contribute to anaemia, poor growth and poor cognitive performance - conditions which continue to fuel poverty.¹⁴

25. Maternal mortality rates in Uganda have stagnated at 505 deaths per 100,000 births.¹⁵ Women also suffer disproportionately from diseases, due to a variety of sociocultural, economic and biological factors, and bear the burden of caring for family members afflicted with illnesses such as HIV/AIDS, malaria and lymphatic filariasis.¹⁶ High rates of domestic violence in Uganda further contribute to the overall burden of ill health for women.¹⁷ The Government has established a Task Force on Infant and Maternal Mortality with responsibility for producing a national strategy to address the problem.¹⁸ However, the MDG targets related to the reduction of child and maternal mortality will not be achieved if serious measures are not adopted through a number of sectors, such as health, education and water.

E. Neglected diseases

26. Neglected diseases in Uganda include lymphatic filariasis (elephantiasis), schistosomiasis (bilharziasis), onchocerciasis (river blindness), trachoma, buruli ulcer, soil-transmitted helminths, leishmaniasis, leprosy and human African trypanosomiasis (sleeping sickness). Most of these diseases are endemic in more than one district or

community. Some are life-threatening, while others result in high morbidity and severe disability.

27. In all cases, neglected diseases affect the most marginalized populations in Uganda. Those who have been displaced as a result of the conflict are particularly vulnerable, as they subsist in camps with poor sanitary conditions, overcrowding, inadequate shelter, lack of access to safe and potable water, and limited access to health services.¹⁹ Although medical services are provided in some camps by the district’s health system, less than half of the population in Gulu, Kitgum and Pader districts has access to health-care services within 5 km walking distance.



The Special Representative of the Secretary-General on IDPs, Mr. Walter Kälin, meets with community members during his visit to Gulu. During his visit, the Representative expressed concern that, despite the improvement in security in the first half of 2006, serious humanitarian and human rights problems persisted for IDPs, including poor health and sanitation conditions, lack of access to education, and high levels of sexual and gender-based violence.²

28. Neglected communities in urban areas also are vulnerable to neglected diseases. The Special Rapporteur visited the urban slum areas of Kampala, including Kisenyi, where the lack of an effective system for draining surface water during the rainy season adds to regular flooding in the area and exacerbates unsanitary conditions. Moreover, the slums lack effective sanitation systems and very few public latrines are available to the population.

29. These conditions facilitate the transmission of diseases which persist in conditions of poverty, where they cluster and frequently overlap. Unsafe water and poor sanitation sustain transmission cycles and favour the proliferation of vectors. A lack of access to health-care services, low levels of literacy, inadequate nutrition and poor personal hygiene all help to increase vulnerability to infection and

² See UN Doc. A/HRC/4/38, 3 January 2007, para. 13.

work against prevention and treatment efforts.

30. By way of summary, appendix 2 identifies a selection of neglected diseases in Uganda and signals: the number of cases, the population at risk, the main form of prevention or treatment, their effectiveness and safety, the cost of treatment and a rough estimate of the cost of delivery.

31. Diseases such as HIV/AIDS, tuberculosis and malaria continue to pose massive health and human rights challenges in Uganda. However, in recent years these diseases have attracted national and international resources and attention and, in certain respects, have met with impressive successes. By contrast, while neglected diseases such as lymphatic filariasis cause immense suffering, they tend to result in lifelong disabilities rather than death, and therefore have not received the attention and funding of high-mortality diseases, like AIDS.²⁰ For the purposes of the present report, the Special Rapporteur therefore focuses primarily on the diseases listed in appendix 2.

III. KEY FEATURES OF A RIGHT-TO-HEALTH APPROACH TO NEGLECTED DISEASES

32. In this section, the Special Rapporteur identifies key interrelated features of a right-to-health approach to neglected diseases. The analysis is introductory, not exhaustive.

A. Access to health information and education

33. Access to health-related information and education is a crucial aspect of the right to health. Individuals are entitled to a full range of health information that bears upon them and their communities. This includes information on preventive and health-promoting behaviour, as well as how to access health services. The Government should be commended for ensuring that public information campaigns form a key part in various health initiatives, such as on HIV/AIDS and measles, and for its commitment to health promotion as reflected in its Health Policy Statement 2004/2005.

34. While the Government has a legal duty to disseminate accessible educational information on neglected diseases to all the population, especially to marginal groups, the Special Rapporteur found relatively little public information about most neglected diseases. Moreover, harmful misconceptions about neglected diseases are widespread.

For example, some people believe that traditional curses or dark spiritual forces cause lymphatic filariasis. As a result, they are likely to first seek help from traditional medicines until the disease has reached an advanced stage. Public information campaigns, such as on transmission and prevention, would help reduce the rate of morbidity and mortality caused by neglected diseases.

35. More can and should be done to dispel damaging myths and misinformation about neglected diseases. The Special Rapporteur recommends that the Government adopt public information campaigns targeting disadvantaged rural and urban communities, including internally displaced persons camps, which should utilize the mass media, village health teams, health professionals, church and other faith networks, schools, trade unions, and so on so as to raise awareness of neglected diseases and to promote non-discriminatory behaviour towards afflicted persons. Information should always be available in local languages.

B. Community participation

36. An integral feature of the right to health is the active and informed participation of individuals and communities in health decision-making that affects them. Those living in poverty are entitled to participate in the identification of priorities and targets that guide the technical deliberations underlying policy formulation. In most cases, a local community will have a very keen sense of its health priorities. A participatory approach can help to avoid some of the top-down, technocratic tendencies often associated with old-style development plans.²¹

37. To its credit, Uganda actively encourages participation in health decision-making. For example, the Constitution underlines the importance of “active participation of all citizens at all levels”²² and civil society organizations have been involved in the preparation of Uganda’s PRSP/PEAP.²³

38. Crucially, Uganda has a new policy of decentralization in the health sector. Within district health systems, there are four levels of organization and administration, the lowest being Village Health Teams, also known as Village Health Committees (Health Centre I).²⁴ From the right-to-health perspective, these Village Health Teams have a pivotal role to play in providing grass-roots community participation in the health sector.

39. Although considerable progress has already been made to roll out the four-tier decentralized structure within health districts, the entire structure is not yet in place. The Government has tended to give priority to establishing the higher levels; however, the lower tiers (Health Centres I and II) are beginning to attract the attention they deserve. For example, in some districts the appointment and training of Village Health Teams has begun. HSSP II confirms that priority will now be given to accelerating the operationalization of the health sub-districts, including Village Health Teams.²⁵

40. Effective Village Health Teams can help to dispel the neglect that characterizes the diseases and populations that are the focus of the present report. They can help to ensure that local needs are clearly identified, understood and addressed. Moreover, the Teams can provide the crucial grass-roots delivery mechanisms for community interventions in relation to neglected diseases, and health protection generally.

41. Community participation has a vital role to play in the struggle against neglected diseases. Vehicles for community participation, in particular Village Health Teams, are already an integral feature of Uganda's decentralized health structure. However, it is imperative that the authorities give serious attention to the urgent development of Village Health Teams. The teams must be provided with adequate resources, training and support. They should be both listened to and used strategically as delivery mechanisms in relation to neglected diseases. Also, there must be smooth and effective coordination, cooperation and collaboration between the local political structure and Health Centres I-IV.

C. Health professionals

42. Health professionals have an indispensable role to play in the realization of the right to health. Presently, Uganda employs and retains too few health professionals to deliver a basic level of health services and protection to the entire population. Between 1990 and 2002, there were five doctors per 100,000 people.²⁶ Qualified staff fills only 42 per cent of approved posts.²⁷ In 2000, only 40 per cent of health units had trained staff. Each year, only about 60 to 120 doctors graduate from medical school, and only some 10 to 20 per cent of them are assimilated.

43. To its credit, the Ministry of Health recognizes that there are not enough trained health workers to implement

HSSP and that they are unevenly distributed with most going to the urban areas and well-placed districts.²⁸ PEAP 2004/5-2007/8 includes amongst its health priorities the recruitment and deployment of health workers, including pay reform on general wages and hardship allowances.²⁹

44. The Special Rapporteur notes that he was informed by some NGOs that in some cases health professionals engage in corrupt practices, such as siphoning public drugs to the private sector or referring patients to their personal private clinics.

45. In Uganda, human resources in the health sector constitute a major, urgent issue that demands a report of its own. The issue has multiple dimensions: inadequate health budget allocation that precludes the appointment of a sufficient number of health professionals; the application of a rigid ceiling on the health budget; the "skills drain" from Uganda to income-rich countries, as well as rural-to-urban migration within Uganda; poor terms and conditions; human rights training for health professionals; the corrupt practices of some health professionals; and so on. The Special Rapporteur was informed that in recent years the Ministry of Health has returned recruitment funds to the treasury. Because of space constraints, the Special Rapporteur here confines himself to only two aspects of this crucial topic.

46. First, in cooperation with development partners, the Government must urgently re-examine this issue and devise a coherent strategy, and costed plan of action, for human resources in the health sector. The maintenance of the status quo is incompatible with Uganda's right-to-health obligations.

47. Second, neglected diseases give rise to special human resource issues that require distinctive policies. Most of the disadvantaged communities afflicted by neglected diseases are located in remote rural areas far from modern amenities. When visiting health facilities in Gulu, Lira and Katakwi, the Special Rapporteur was informed that it was difficult to hire and retain health professionals in these rural districts.

48. Firm measures must be taken to break this cycle of deprivation. Two specific proposals should be given urgent consideration. First, compelling incentives should be introduced to attract health professionals to, and retain them in, isolated disadvantaged communities. Second, on qualifying, all health professionals might be required to work for a certain period in an isolated disadvantaged community.

D. Tackling stigmatization and discrimination

49. Stigmatization and discrimination are two major impediments to the enjoyment of the right to health. Often, stigmatization is based on myths, misconceptions and fears - including, for example, misconceptions related to certain diseases or other health conditions. Fear of stigmatization can lead people living with neglected diseases to avoid diagnosis, delay seeking treatment and hide the diseases from family, employers and the community at large. Discrimination involves acts or omissions which may be directed towards stigmatized individuals.

50. The socio-economic consequences of stigmatization and discrimination associated with neglected diseases can have devastating consequences for individuals and groups that are already marginalized. For example, stigma related to tuberculosis can be greater for women: it may lead, inter alia, to ostracism, rejection and abandonment by family and friends, as well as loss of social and economic support.³⁰ Social and behavioural research on stigma and neglected diseases suggests that women also may experience more social disadvantages than men, in particular from physically disfiguring conditions like lymphatic filariasis.³¹

51. In northern Uganda, the Special Rapporteur heard testimonies from children, men and women who had experienced ostracism and discrimination as a result of conditions related to lymphatic filariasis. Their experiences highlighted the devastating impact this disease can have for those affected, not only on their health, but also on their rights to work, education, housing and food. In Obalanga, the Special Rapporteur was told stories of the myths and misconceptions surrounding lymphatic filariasis. Some individuals continued to believe that individuals afflicted with hydrocele had contracted it by riding a bicycle, while others referred to the widespread and persistent belief in their community that hydrocele was indicative of male virility. The Special Rapporteur was impressed by the initiative of one community-based organization, the Obalanga Health and Human Rights Centre, which provides support to people affected by lymphatic filariasis, advocates for accessible and affordable treatment, and endeavours to combat stigma and discrimination.

52. The International Covenant on Economic, Social and Cultural Rights proscribes any discrimination in access to health care and underlying determinants of health, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health, on a

number of grounds. The guarantee of non-discrimination and equal treatment in relation to the right to health under international law is an obligation of immediate effect. Uganda's Constitution guarantees non-discrimination and equality to all citizens, and provides for the protection of the human rights of particular vulnerable groups, such as people with disabilities and women. The Government has taken a number of measures to implement these national and international obligations, such as identifying gender issues as a national priority in PEAP and establishing a ministry with specific responsibility for addressing gender issues. In addition, the mandate of the Uganda Human Rights Commission includes the promotion and protection of non-discrimination and equality.

53. Wide-ranging measures are required to combat all forms of discrimination and stigma associated with neglected diseases in Uganda, including through the implementation of health-related laws and policies which confront discrimination in the public and private sectors. As referred to in section A above, public information campaigns should be developed to raise awareness of neglected diseases and to promote non-discriminatory behaviour towards afflicted persons. In addition, human rights training for health professionals should be integrated into the curricula of medical schools in Uganda.

54. The Government is encouraged to take measures to ensure that health policies and practices promote equal access to health services, and to integrate a gender perspective throughout its policies and programmes.³² The Government, development partners and other actors should support and foster vital community-based initiatives such as the Obalanga Centre.

E. An integrated health system responsive to local priorities

55. The right to health gives rise to an obligation to establish a system of health protection which provides equality of opportunity for all people to enjoy the highest attainable standard of health. It requires the State, and all other actors in a position to assist, to establish a health system that gives a high priority to the control and elimination of neglected diseases that are experienced by disadvantaged populations.

56. In international human rights law, the State has an obligation to use its maximum available resources to establish an effective health system.³³ For example, if a State already has a mass drug administration (MDA) in

relation to one disease and, at minimal extra cost, another drug for another disease could be safely administered with it, the State has a responsibility to organize such co-administration.

57. In Uganda, many districts experience several neglected diseases which all require MDA. However, the delivery mechanisms for MDA are different for each disease. Conceivably, interventions for neglected diseases could be integrated into Ugandan Child Health Days, which use health facilities and outreach services as distribution channels, but this possibility requires further careful examination. Indeed, generally speaking, the possible alignment of MDA delivery mechanisms needs additional urgent consideration.

58. The Special Rapporteur is pleased to note that during HSSP II the vertical interventions that tended to characterize the Government's approach to neglected diseases will be reconsidered with a view to implementing a more integrated approach.³⁴

59. From the perspective of the right to health, a key objective must be an *integrated* health system that is responsive to local priorities. In this context, "integrated" has two meanings. First, so far as possible, an intervention for one disease should be designed in such a way that it can also be used as a vehicle for one or more interventions in relation to one or more other diseases. Second, so far as possible, all interventions should form part of the regular health system. In no circumstances may any intervention undermine or jeopardize progress towards the long-term goal of an effective, inclusive health system of good quality for all.

60. The Ministry of Health, and other relevant actors, should urgently examine the possible alignment of various mass drug administration delivery mechanisms. Further research is urgently needed regarding the possible co-administration of some drugs, such as Albendazole, Ivermectin, Praziquantel and Azithromycin.

61. All relevant actors should urgently consider whether or not the national and international programmes in relation to HIV/AIDS, tuberculosis and malaria could also enhance interventions for other diseases that are health priorities in particular localities. At the international, national and district levels, there must be closer and more effective coordination among the various global initiatives.

F. Research and development

62. The right to health encompasses an obligation to engage in research and development that addresses the health needs of the entire population, including disadvantaged groups. In all countries there is a large number of compelling - and competing - research and development needs. Space does not permit the present report to explore how prioritization of research and development can take place in a manner that is respectful of the right to health. However, an essential point is that the prioritization process must take into account the health needs of those living in poverty, as well as other disadvantaged groups. The record shows that this rarely happens.

63. Currently, only 10 per cent of global funding for research and development goes towards diseases that affect 90 per cent of the world's population. Of the 1,393 new drugs approved between 1975 and 1999, only 1 per cent (16 drugs) was for tropical diseases and tuberculosis.³⁵ To give a more specific example from the Ugandan context, only one drug for sleeping sickness is less than 40 years old (eflornithine),³⁶ and the first-line treatment for second-stage cases is a toxic drug (melarsoprol) that has been in use since 1949.³⁷ Moreover, studies in Arua District report that 15 per cent of patients are not responding to eflornithine, as well as there being 30 per cent resistance to melarsoprol. In short, while the specific requirements vary, there is an urgent need for more research and development in relation to neglected diseases.

64. Low-income countries like Uganda have limited technical capacity in the field of research and development. They also lack the economic capacity to provide substantial incentives to influence research and compensate for market failures. In recognition of these difficulties, a number of global private-public partnerships have been established to enhance research and development into neglected diseases, and to improve drug accessibility through price reductions and cash/product donations. More, however, needs to be done.

65. Research and development is understood to encompass classic medical research and development into drugs, vaccines and diagnostics, as well as operational or implementation research into, for example, the social, economic, political and policy issues that determine access to health care and protection. As already noted, classic research and development is needed in the Ugandan context. So far as the second element is concerned, this is also urgently needed with a view to tackling societal obstacles to health technologies.

66. While more research and development is urgently needed in relation to neglected diseases in Uganda (and beyond), this must not obscure the fact that a number of relevant drugs and vaccines already exist but they are not reaching all those who need them. Thus, a central challenge is to enhance access to what already exists, while also engaging in research and development that will lead to more effective medical interventions.

67. The Doha Declaration confirms that the TRIPS Agreement should be implemented in a manner supportive of WTO members' right to protect public health and promote access to medicines for all. The TRIPS Agreement contains "flexibilities" which a country may utilize to design a national patent law that protects public health. The Doha Declaration allows least developed countries not to provide patent protection for pharmaceuticals up to 2016. The Ugandan Patent Act of 1993, enacted two years before TRIPS, is not reflective of the TRIPS "flexibilities". Thus, the legislation should be revised to take full advantage of the TRIPS "flexibilities", as reaffirmed by the Doha Declaration.

68. The Special Rapporteur understands that the Government is establishing the Uganda National Health Research Organization to promote and strengthen national health research. He urges the Government to ensure that the Organization: engages in both classic research and development, and operational or implementation research; gives high priority to neglected diseases; advises on the most strategic use of governmental incentives to encourage research and development on neglected diseases; receives adequate national funding; and is established as a matter of priority.

69. Apart from the Government, others have major responsibilities in relation to research and neglected diseases in Uganda. These are very briefly discussed in the next section.

G. Donors and the international community

70. The primary obligation for implementing the right to health falls upon the State. However, States have the obligation to take steps individually and *through international assistance and cooperation* towards the full realization of various rights, including the right to health. The responsibility of those States that are in a

position to assist, to engage in international assistance and cooperation towards the enjoyment of economic, social and cultural rights, is recognized in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and elsewhere.³⁸

71. Uganda very much depends on aid. In 2001 the amount of official development assistance received was US\$ 782 million. Donors have played a very significant role in Uganda, particularly in the health sector. The Health Policy Statement 2003/2004 estimates that donors contributed 81 per cent of the 2003/2004 development health budget. The donor support is largely managed through a sectorwide approach (SWAp).

72. DFID is the largest bilateral donor. The central focus of its policy is a commitment to nationally agreed targets, including basic health care and universal primary education. It supports SWAp and a number of health initiatives such as the Family Health Projects and the AIDS Service Organization (TASO). The assistance provided by the United States Agency for International Development (USAID) focuses on improving collaboration between TB and HIV VCT services. Other donors assisting the Government in the areas of health, development and poverty reduction include Sweden, Denmark, Germany, Italy, Ireland, UNICEF, the African Development Bank, the World Bank and the European Union. Some donors are project-specific, for example, USAID, Germany and Spain.

73. At the global level, pharmaceutical companies, including Novartis, GSK, Merck, Aventis, Bayer and Bristol Myers Squibb, donate drugs for neglected diseases. Uganda is among the beneficiaries of these donations. Most of the drug donation programmes have nationwide coverage of the endemic areas; however this is subject to problems of insecurity in some districts. While some donations are given for as long as needed, others are time-limited, thereby causing a lack of sustainability of programmes and compounding the funding challenges facing the health sector.

74. A number of Uganda's development partners deserve credit for making considerable financial contributions towards the country's health sector. Also, the management of donor contributions by way of a sectorwide approach and budget support is to be warmly welcomed. However, despite existing donor

support, there remains a wide gap between the cost of a national minimum health-care package in Uganda and the funds that are currently made available for this purpose. For example, according to HSSP, US\$ 28 per person per year is needed to finance Uganda's national minimum health-care package. WHO *Report of the Commission on Macroeconomics and Health* estimates that for a low-income country the minimum financing needed to cover essential health interventions is around US\$ 30 to 40 per person per year.³⁹ Yet in Uganda the public expenditure - from both the national Government and donors - is only US\$ 9 per person per year, in addition to US\$ 7 per person per year from households and employers. In short, as a United Nations report recently put it: "Uganda is a basket case in chronic underfinancing of the health sector."⁴⁰ Thus, the Special Rapporteur recommends that development partners increase their sustainable and predictable contributions to the health sector in Uganda.

75. While recognizing the serious security issues, the Special Rapporteur has formed the view that most donors have paid insufficient attention to the health problems in northern Uganda, where individuals and communities are among the most vulnerable and disadvantaged on the continent.

76. The United Nations is commended for recently strengthening its engagement in the north. To give just one example, WHO has recently opened a sub-office in Gulu, and OHCHR has set up a human rights presence to undertake human rights monitoring and training, and to work on a protection strategy in cooperation with the National Human Rights Commission and the United Nations Country Team. However, on the whole, it appears to the Special Rapporteur that the United Nations was slow to recognize the severity of the humanitarian crisis in northern Uganda. For many years the acute needs of the local population did not receive the international attention and support it desperately needed. To this day, adequate and well-coordinated international assistance does not reach the people of northern Uganda. Thus, as a matter of urgency, the international community and all donors should devote more attention to, and invest more health and other resources in, northern Uganda.

77. Budget ceilings: In recent years, there has been much controversy in Uganda about macroeconomic policies, the application of inflexible ceilings to the health budget, and the absorption of foreign funds that are available to the health sector.

78. From the perspective of the right to health, the following points must be kept in mind when considering this important issue. First, the Government is obliged to take into account its binding national and international right-to-health obligations to all those within its jurisdiction.

79. Second, if the Government declines health resources from overseas, prima facie this would be inconsistent with its international obligation to use the maximum resources available for the implementation of the right to health. However, if there were objective and rational grounds for declining such foreign funds, the Government would not be in breach of its international right-to-health obligations. In such a situation, the Government has the burden of proving that the resources have been declined on objective and rational grounds that are consistent with all of its national and international human rights obligations. When evaluating the grounds for any decision to decline foreign funds, special regard must be given to the impact of the decision on Uganda's most vulnerable individuals and communities, including those living in poverty.

80. Third, development partners may not apply any pressure on the Government to impose inflexible budget ceilings that would or may have the effect of restricting the flow of available funds into the health sector.

81. "A global epidemic of global initiatives": Uganda benefits from a large number of global initiatives for different diseases, such as the Global Alliance for Leprosy Elimination, the Global Alliance for the Elimination of Lymphatic Filariasis, and the National Onchocerciasis Control Programme. These global programmes translate into a range of national initiatives. Although these initiatives bring significant benefits, they also place a very considerable administrative burden on the Ugandan authorities. As argued elsewhere in the present report, much greater integration among interventions and initiatives is needed at the district, national and international levels, so as to make the most effective use of scarce resources (see section on "An integrated health system responsive to local priorities"). Donors and the international community have a particular responsibility to better coordinate their activities, working in close cooperation with the Ministry of Health.

82. WHO: The Special Rapporteur urges WHO to more proactively assume a coordinating role among the myriad health partners working throughout Uganda. For example, WHO could provide a regular forum for information exchange and discussion across a very wide range of health actors. WHO is also encouraged to collect more – and better quality - health information from the local level, with a view to enhancing local, national and international policy-making. Further, it is urged to invest more resources in neglected diseases and neglected populations.

83. Research and development: Donors and the international community should give a higher priority to health research and development in Uganda. They should actively seek new funding mechanisms for research and development in relation to neglected diseases. They may need to increase direct funding for public research and enhance private sector incentives, such as tax credits. Intellectual property regimes must not be allowed to constrain access to essential medicines. So far as necessary, new intellectual property frameworks for neglected diseases and essential medicines should be explored. The fruits of research and development in relation to neglected diseases must be translated into specific drugs, vaccines and diagnostics that are accessible to the afflicted populations. Donors and the international community should help Uganda enhance its economic and technological capacity so it can determine its own research and development agenda and priorities in relation to neglected diseases.

84. Pharmaceutical companies: A number of pharmaceutical companies deserve credit for initiatives that enhance access to essential medicines and medical care. However, they should be encouraged to improve their coordination amongst themselves, as well as with other actors working in the health sector. While on mission, the Special Rapporteur was informed that the pharmaceutical companies were invisible outside the major urban areas, other than when organizing seminars to promote their products. Accordingly, they should be encouraged to regularly visit disadvantaged communities, urban and rural, including the internally displaced persons camps, to learn at first hand about the health realities of those living in poverty. Regular visits of this type should be reported to the companies' national and international headquarters with a view to informing policies and finding ways in which the companies can assist in the implementation of the right to health for all.

85. The international and regional human rights systems: Whenever possible, the international and regional human rights machinery should draw attention to the issue of neglected diseases and neglected populations. For example, when Uganda submits its periodic reports to the Committee on Economic, Social and Cultural Rights and the African Commission on Human and Peoples' Rights, among others, the Government's reports and the human rights bodies should give careful attention to the issue of neglected diseases and neglected populations.

H. Monitoring and accountability

86. A right-to-health accountability mechanism establishes which health policies and institutions are working and which are not, and why, with the objective of improving the realization of the right to health for all. Such an accountability device has to be effective, transparent and accessible.

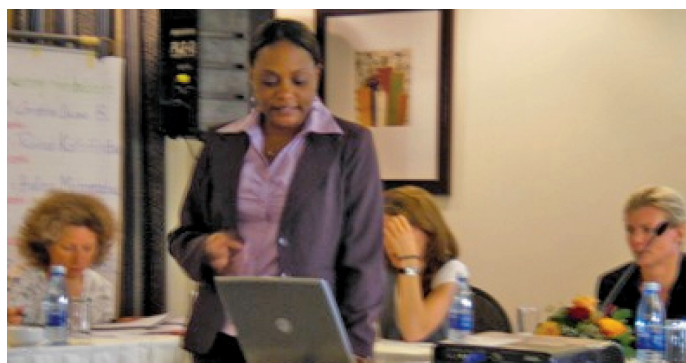
87. Monitoring is a precondition for accountability. While it is commonplace for the impact of health policies to be monitored, it is less common (a) for a health policy to be assessed against a right-to-health standard and (b) for those responsible for the policy to be held to account for the discharge of their duties arising from the right to health. This, however, is what the right to health requires, with a view to enhancing enjoyment of the right to health for all, including those living in poverty.

88. The Ministry of Health monitors the impact of health policies in Uganda. Also, these policies are subject to general mechanisms of accountability. For example, parliamentarians hold the Minister of Health to account in relation to the discharge of his responsibilities. However, it is not clear whether these general mechanisms provide adequate accountability in relation to neglected diseases and the right to health. In addition to general mechanisms of accountability, a right-to-health approach also requires one or more mechanisms that provide accountability in relation to specific right-to-health standards.

89. In Uganda, there appear to be two main mechanisms of human rights accountability: first, by way of the Constitution and the courts, and second via the Uganda Human Rights Commission. Both have a role to play in relation to the right to health. While the Constitution enshrines elements of the right to health, it is doubtful that the Ugandan judicial process provides the most appropriate mechanism for holding national and international policymakers to account in relation to neglected diseases.

90. The Uganda Human Rights Commission provides more promising possibilities. The Commission is a constitutional body established to promote and protect human rights in Uganda. As an independent institution, it reports annually to Parliament. It has a wide range of functions and powers. As its annual report (2003) reveals, the Commission's work encompasses poverty eradication and human rights, as well as the right to health. Indeed, the Commission has produced at least two publications specifically on the right to health.

91. **A right-to-health approach to neglected diseases and populations requires accessible, transparent and effective human rights mechanisms of monitoring and accountability. The existing mechanisms need to be enhanced. It is recommended that, for an experimental period of three years, the Uganda Human Rights Commission establish a right-to-health unit that is responsible for monitoring those policies, programmes and projects relating to neglected diseases. For example, relying on existing data, the unit should track the incidence of neglected diseases and the initiatives taken to address them.**



Ms. Roselyn Karugonjo-Segawa, Director of the Monitoring and Inspections Directorate of the Uganda Human Rights Commission, gives a presentation on the Right to Health Unit of the UHRC, established in 2006 with support of UNDP and on the recommendation of Mr. Paul Hunt, at a WHO/Inwent workshop on Health and Human Rights in Dar es Salaam in April 2009.

92. **Further, the right-to-health unit should go beyond monitoring and hold all actors to account in relation to neglected diseases and the right to health. For example, adopting an evidence-based approach, the unit would**

endeavour to assess which initiatives are working and which are not - and if not, why not. In its monitoring and accountability functions, the unit should consider the acts and omissions of all actors bearing on neglected diseases in Uganda. Significantly, the unit should monitor and hold to account national and international actors in the public and private sectors.

93. **The unit should consist of a health professional and a human rights expert. They should submit a public annual report to Parliament which would indicate where successful initiatives have led to positive health outcomes, as well as highlight where there are concerns. Whenever possible, realistic and practical recommendations should be identified for all actors. At all times, the unit's yardstick should be the national and international right-to-health standards to which the Government of Uganda has agreed to be bound.**

IV. CONCLUSION

94. Throughout section III, the Special Rapporteur identifies a number of conclusions and recommendations and he will not repeat them here.

95. The present report considers neglected diseases in Uganda through the prism of the right to health, with a view to identifying what needs attention if these diseases are to be tackled in a manner that reflects the Government's national and international right-to-health obligations. It does not attempt to set out a right to health *programme* for neglected diseases; that would require further discussions with a range of actors, as well as more space than is available in the present report. However, the report identifies the key interrelated features that such a programme should encompass.

96. Although the report focuses on Uganda, many of the points have general application to other countries where neglected diseases are prevalent. The Special Rapporteur will be very pleased to discuss the issues raised in the present report with the Government of Uganda, as well as other interested parties.

Notes

- 1 *Global Defence against the Infectious Disease Threat*, (WHO, 2002), p. 96.
- 2 *Ibid.*, p. iv.
- 3 *Intensified Control on Neglected Diseases* (Berlin, 2003), p. 14.
- 4 *Health and Mortality Survey among Internally Displaced Persons in Gulu, Kitgum and Pader Districts*, Preliminary Draft, July 2005, pp. 31 and 40.
- 5 HSSP II; UNHCR 2003, p. 56.
- 6 WHO Health and Mortality Survey, p. 21.
- 7 Uganda Bureau of Statistics, *National Demographic and Health Survey (1995 to 2000-2001)*.
- 8 See arts. 21, 33, 34 and 35 of the Constitution of the Federal Republic of Uganda, 1995.
- 9 *Health Sector Strategic Plan II 2005/06-2009/10*, Final Draft, July 2005, pp. viii-ix, and *National Health Policy 1995*, p. 6.
- 10 *Second Participatory Poverty Assessment Report*, p. 113.
- 11 PPA2 p. 118.
- 12 UNAIDS, 2004 Report on the Global AIDS Epidemic.
- 13 *Millennium Development Goals Report*, 2003, p. 13.
- 14 *Global Defence against the Infectious Disease Threat*, WHO, 2003, p. 124.
- 15 UDHS 2000/2001.
- 16 *The Revised National Strategic Framework for HIV/AIDS Activities in Uganda, 2000/04-2005/06*, p. 12.
- 17 Office of the United Nations High Commissioner for Refugees, 2003, p. 103.
- 18 *Millennium Development Goals Report*, 2003, p. 13.
- 19 WHO, March 2005.
- 20 *Global Defence against the Infectious Disease Threat*, (WHO, 2002), p. 96.
- 21 Participation is not confined to the two stages signalled here, i.e. making policy choices and implementation. It also applies, for example, to monitoring and accountability.
- 22 Preamble, art. II (i). E/CN.4/2006/48/Add.2, page 24
- 23 See PEAP 2000, summary and objectives, pp. 6 and 12, *PRSP, Resource Allocation to the Health Sector in Uganda*, paper No. 7, 2004, p. 16.
- 24 In addition to the four levels within the health districts, there are also levels V (General Hospital), VI (Regional Referral Hospital), and VII (National Referral Hospital). In this report, the focus is on levels I-IV because of their special relevance to community participation.
- 25 *Health Sector Strategic Plan II, 2005/6-2009/10*, July 2005, p. x.
- 26 *Human Development Indicators*, 2003, www.undp.org/hdr2003/indicators/cty_f_UGA.html, 20/02/05.
- 27 IPPH, pp. 8-11.
- 28 *Health Sector Review Paper*, Ministry of Health, 2003, p. 44.
- 29 *Ibid.*, p. 167.
- 30 World Health Organization, *A Human Rights Approach to Tuberculosis*, 2001, p. 12.
- 31 Coreil J., Mayard G., Addiss D., *Support Groups for Women with Lymphatic Filariasis in Haiti*, Report Series No. 2, Social, Economic and Behavioural Research, TDR, 2003, p. 42.
- 32 General comment No. 14, para. 20.
- 33 See, for example, article 2 of the International Covenant on Economic, Social and Cultural Rights.
- 34 *Health Sector Strategic Plan II, 2005-2005/6-2009/10*, July 2005.
- 35 Trouiller P., Olliaro P., Torreele E., Orbinski J., Laing R., Ford N., “Drug development for neglected diseases: a deficient market and a public-health policy failure”, *The Lancet*, vol. 359, 22 June 2002, p. 2189.
- 36 Stich A., Abel P. and Krishna S., “Clinical review of human African trypanosomiasis”, *BMJ*, vol. 325, 27 July 2002.
- 37 Legros et al, “Treatment of human African trypanosomiasis - present situation and needs for research and development”, *The Lancet*, vol. 2, July 2002, p. 437.
- 38 See, for example, article 2 of the International Covenant on Economic, Social and Cultural Rights and article 4 of the Convention on the Rights of the Child as well as general comment No. 14 (para. 13), of the Committee on Economic, Social and Cultural Rights and CRC/GC/2003/3, paras. 14 and 42.
- 39 WHO, 2001, p. 16.
- 40 Office of the United Nations Resident Coordinator, *Uganda: Promise, Performance and Challenges: for Attaining the PEAP and MDGs*, 2003, p. 50.

4.5 Current UN Special Procedures and Mandate-holders

Thematic mandates

Economic, Social and Cultural Rights

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living
Ms. Raquel Rolnik (Brazil) (since May 2008)

Special Rapporteur on the right to education
Mr. Vernor Muñoz Villalobos (Costa Rica) (since July 2004)

Independent expert on the question of human rights and extreme poverty
Ms. Maria Magdalena Sepulveda (Chile) (since May 2008)

Special Rapporteur on the right to food
Mr. Olivier de Schutter (Belgium) (since May 2008)

Independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights
Mr. Cephas Lumina (Zambia) (since May 2008)

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health
Mr. Anand Grover (India) (since August 2008)

Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights
Mr. Okechukwu Ibeanu (Nigeria) (since July 2004)

Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises
Mr. John Ruggie (USA) (since July 2005)

Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation.
Ms. Catarina de Albuquerque (Portugal) (since 2008)

Civil and Political Rights

Special Rapporteur on extrajudicial, summary or arbitrary executions
Mr. Philip Alston (Australia) (since July 2004)

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
Mr. Frank William La Rue Lewy (Guatemala) (since August 2008)

Special Rapporteur on freedom of religion or belief
Ms. Asma Jahangir (Pakistan) (since July 2004)

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
Mr. Manfred Nowak (Austria) (since November 2004)

Special Rapporteur on the situation on human rights defenders
Ms. Margaret Sekaggya (Uganda) (since May 2008)

Special Rapporteur on the independence of judges and lawyers
Mr. Leandro Despouy (Argentina) (since August 2003)

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism
Mr. Martin Scheinin (Finland) (since July 2005)

Working Group on enforced or involuntary disappearances (since 1980)

Working Group on Arbitrary Detention (since 1991)

Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance
Mr. Githu Muigai (Kenya) (since August 2008)

Specific Groups

Special Rapporteur on the sale of children, child prostitution and child pornography
Ms. Najat M'jid Maala (Morocco) (since May 2008)

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people
Mr. James Anaya (United States of America) (since May 2008)

Representative of the Secretary-General on the human rights of internally displaced persons
Prof. Walter Kälin (Switzerland) (since September 2004)

Special Rapporteur on the human rights of migrants
Mr. Jorge A. Bustamante (Mexico) (since July 2005)

Independent Expert on minority issues
Ms. Gay J. McDougall (United States of America) (since July 2005)

Independent expert on human rights and international solidarity
Mr. Rudi Muhammad Rizki (Indonesia) (since July 2005)

Special Rapporteur on trafficking in persons, especially women and children
Ms. Joy Ngozi Ezeilo (Nigeria) (since August 2008)

Special Rapporteur on violence against women, its causes and consequences
Ms. Yakin Ertürk (Turkey) (since July 2003)

Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination (since 2005)

Working Group on people of African descent (since 2002)

Special Rapporteur on contemporary forms of slavery, including its causes and consequences
Ms. Gulnara Shahinian (Armenia) (since May 2008)

Country-specific mandates

Independent Expert on situation of human rights in Burundi
Mr. Akich Okola (Kenya) (since July 2004)

Special Representative of the Secretary-General for human rights in Cambodia
Mr. Yash Ghai (Kenya) (since November 2005)

Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea
Mr. Vitit Muntarbhorn (Thailand) (since July 2004)

Independent Expert appointed by the Secretary-General on the situation of human rights in Haiti
Mr. Michel Forst (France) (since August 2008)

Special Rapporteur on the situation of human rights in Myanmar
Mr. Tomas Ojea Quintana (Argentina) (since May 2008)

Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967
Mr. Richard Falk (United States of America) (since May 2008)

Independent Expert on the situation of human rights in Somalia
Mr. Shamsul Bari (Bangladesh) (since May 2008)

Special Rapporteur on the situation of human rights in the Sudan
Ms. Sima Samar (Afghanistan) (since July 2005)

4.6 Contacting Special Procedures

All mandate holders receive support from OHCHR in the execution of their respective mandates. The Special Procedures Division (SPD) of OHCHR in Geneva provides support to thematic special procedures with thematic, fact-finding, policy and legal expertise, research and analytical work, and administrative and logistical services. SPD also supports the mandate-holders in the development of tools and methodologies to improve coordination among special procedures and to strengthen linkages between them and OHCHR, the UN system and other partners. Importantly, in the area of communications, the Quick Response Desk processes communications sent by mandate-holders through the database on communications and the dedicated email urgent-action@ohchr.org which centralizes incoming information to be submitted to the attention of mandate-holders.

The contact details of the SPD are as follows:

Address:

Special Procedures Division

c/o OHCHR-UNOG

8-14 Avenue de la Paix

1211 Geneva 10

Switzerland

Fax : +41.22.917.90.06

Email: urgent-action@ohchr.org

Website: <http://www2.ohchr.org/english/bodies/chr/special/index.htm>

For further information on how to submit communications, please see the OHCHR website <http://www2.ohchr.org/english/bodies/chr/special/communications.htm>. Communications should contain a factual description of the alleged violation and be submitted by individuals or organizations acting in good faith with direct or reliable knowledge of the violation they are reporting. They should not be politically motivated, abusive or based solely on media reports. Please specify which special procedure(s) mechanism the information is addressed to in the subject line of the e-mail or fax, or on the envelope.

For further information or to submit information other than specific information on alleged human rights violations, please contact spdinfo@ohchr.org.

4.7 Further Information and Reading

The OHCHR website contains information on the system of special procedures and on specific mandates: <http://www2.ohchr.org/english/bodies/chr/special/index.htm>. Here you can find pages devoted to each special procedure. The pages contain detail on the mandate, country visits, links to reports, press statements, and how to submit information, etc. For instance, to learn more about the Special Rapporteur on the Right to Education please visit the dedicated website at: <http://www2.ohchr.org/english/issues/education/rapporteur/index.htm>.

To learn more about special procedures, please consult Fact Sheet No. 27 on “Seventeen Frequently Asked Questions about United Nations Special Rapporteurs” (to be updated). It is available at: <http://www.ohchr.org/Documents/Publications/FactSheet27en.pdf>. See also:

- Manual of the United Nations Human Rights Special Procedures (available at: <http://www2.ohchr.org/english/bodies/chr/special/index.htm>)
- United Nations Special Procedures: Facts and Figures 2007 (available at: <http://www2.ohchr.org/english/bodies/chr/special/docs/SP2007FactsFigures.pdf>)

5. Universal Periodic Review

5.1. Overview of the Universal Periodic Review (UPR)

As noted elsewhere in this publication, the UN Commission on Human Rights was replaced by the UN Human Rights Council in 2006. The Human Rights Council is the principal intergovernmental human rights body of the UN and consists of 47 UN member States. At the establishment of the Human Rights Council, the General Assembly mandated the Council to “undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States” (GA resolution 60/251). The resolution established that “the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies”. The subsequent year, on 18 June 2007, the Human Rights Council responded to this request and adopted detailed modalities regarding the Universal Periodic Review (UPR) mechanism. Resolution 5/1 of the Human Rights Council sets out these modalities, including the basis of the review, the principles and objectives to be followed, the periodicity and order of review of countries, outcome and follow-up to review, etc. It furthermore decided that the review will be conducted in one working group composed of the 47 member States of the Council. Subsequently, unlike the UN human rights treaty bodies and special procedures, the UPR constitutes a mechanism whereby States’ implementation of human rights treaties is monitored by other States and not by independent expert bodies. As set forth in Resolution 5/1 of the Human Rights Council, the review process is based on the following instruments: the UN Charter, the UDHR, human rights instruments that the State has ratified, and applicable parts of international humanitarian law.

According to the calendar of review, all 193 member States will be reviewed under the first four year cycle of

the UPR (please see chart on next page). As such, the UPR is a significant innovation of the Human Rights Council in that it is based on the philosophy of equal treatment for all countries. It provides an opportunity for all States to declare what actions they have taken to improve the human rights situation in their countries and to discuss challenges to the enjoyment of human rights. As of the time of writing, no similar mechanism of this kind exists. Uganda is scheduled for review in 2011. This review will, as is the case with all States, be conducted on the basis of three core documents:

- 1) **Information prepared by the State concerned**, which can take the form of a national report, and any other information considered relevant by the State concerned, which could be presented either orally or in writing (not exceeding 20 pages). States are encouraged to prepare the information through a broad consultation process at the national level with all relevant stakeholders.
- 2) **A compilation prepared by the OHCHR** of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents (not exceeding 10 pages).
- 3) **Additional, credible and reliable information provided by other relevant stakeholders** to the UPR, which will be summarized by OHCHR (not exceeding 10 pages). Stakeholders include, inter alia, NGOs, NHRIs, human rights defenders, academic institutions and research institutes, regional organizations, as well as civil society representatives.

Further information about the UPR can be found on OHCHR website <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>. Information may also be sought at the following addresses:

For States: UPRStates@ohchr.org

For NGOs: civilsocietyunit@ohchr.org

For NHRIs: jklok@ohchr.org

For Stakeholders: UPRsubmissions@ohchr.org

