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Uganda

Doubly Traumatized

Lack of access to justice for female victims of sexual and gender-based violence in northern Uganda

Women who are subject to violence should be provided with access to the mechanisms of justice – Article 4(d), UN Declaration on the Elimination of Violence against Women.

1 Introduction

Many women and girls in northern Uganda suffer sexual and gender-based violence committed by state actors, including official authorities and military officers, and non-state actors within the family and in the community.¹ These women victims of violence in northern Uganda often face insurmountable difficulties in trying to ensure that the perpetrators are brought to justice. Many are afraid to report rape and other forms of violence, not only because of intimidation, hostility and ridicule from the community, but also due to state inaction in ensuring redress. As a result, the justice system in northern Uganda ignores, denies and tacitly condones violence against women and girls and protects suspected perpetrators. Amnesty International considers victims' lack of access to justice as an issue of serious concern warranting the immediate attention of the Ugandan government and the international community.

¹The northern Uganda region includes the sub-regions, North West, North Central and North East Uganda. This report focuses on North Central sub-regions which comprise of Lang'oo and Acholi districts visited by Amnesty International delegates and most affected by the conflict between the rebel Lords Resistance Army (LRA) and the government of Uganda.

Amnesty International visited five districts of northern Uganda (Gulu, Amuru, Kitgum, Pader and Lira) in August 2007. During this visit, delegates were told about the frustrating experiences of female victims of violence in attempting to access justice, the discrimination they suffer in the process and the entrenched culture of impunity that prevails regarding cases of rape, defilement, domestic violence, assault and other forms of violence.

Often, there are no police officers to report cases to. Police posts and stations are few and far between in the whole of northern Uganda. Many times the police officers who are available to report to are not sensitive to the rights of victims in the context of the trauma of the violence (including rape). The majority of police officers in northern Uganda are Special Police Constables (SPCs) who are newly deployed, with limited training. They are ill equipped and unmotivated. Even the basic ingredients of laying a report to the police and other authorities seemed undermined; most police stations and police posts do not have medical examination forms. These forms have to be filled by the medical officer carrying out the medical examination and are crucial for documenting evidence of violence. Where the medical examination forms are available, there is usually an inadequate supply and they quickly run out. Obtaining the forms usually requires the payment of an illegal “photocopying fee” by the victim or her family who are often too poor to afford these costs. Even when the victim obtains the medical examination form, it is not clear which medical officer is authorised to fill in the forms. Victims have to wait for inordinately long periods for the medical examination to be conducted, as government doctors and medical officers are very few. Victims are often charged for the medical examination. In addition, medical officers who conduct the examination are reluctant to give evidence in court. Although the court structure is taking shape and the judiciary is beginning to function in a limited manner in northern Uganda, these courts are barely adequate and have overwhelming caseloads. All these constraints often mean that even where a case is referred for trial, very few cases, if any, are successfully concluded. The result is that many female victims of sexual and gender-based violence have lost trust in the justice system – they often opt to remain silent.

The comprehensive government plan, *National Peace, Recovery and Development Plan for Northern Uganda (PRDP)* is a welcome development. This plan seeks to “consolidate peace and security and to lay a foundation for recovery and development in northern Uganda.” The plan aims at ensuring the enhancement of police and judicial services in northern Uganda over the next three years. However, Amnesty International considers that the current justice system in northern Uganda is grossly inadequate particularly in ensuring the protection of women and girls from sexual and gender-based violence perpetrated on a day to day basis. Addressing the lack of access to justice by women victims of violence requires the immediate and urgent attention of the government.

2 Background

Violence against women² is endemic in the whole of Uganda.³ The high prevalence of violence against women is the result of inequalities between women and men, girls and boys, in Ugandan society in general whether in times of peace or conflict.

The UN Committee on the Elimination of Discrimination against Women (UN CEDAW Committee), considered Uganda's third periodic report on the implementation of the UN Convention on the Elimination of Discrimination against Women (CEDAW) in 2002. The Committee stated that "it was concerned about the high incidence of violence against women, such as domestic violence, rape, including marital rape, incest, sexual harassment and other forms of sexual abuse of women." The Committee called on the Ugandan government to address the "persistent patriarchal patterns of behaviour and the existence of stereotypes relating to the role of women in the home and society...and which perpetuate direct and indirect discrimination against women."⁴

The incidence of violence against women in northern Uganda has been exacerbated by the effects of nearly 21 years of protracted conflict between the Lord's Resistance Army (LRA) and government forces. Since 2006, there has been a cessation of hostilities between the LRA and the government as a result of peace talks between the two parties.

The conflict was characterised by sexual and gender-based violence against women and girls perpetrated by the LRA and government soldiers. UNICEF estimates that more than 32,000 children were abducted by the LRA between 1986 and 2002 and used as child combatants and sex slaves.⁵ Women and girls were also at risk of sexual and gender-based violence by the government's Uganda Peoples' Defence Forces (UPDF) including mass rapes. In addition,

² Article 1 of the UN Declaration on the Elimination of Violence against Women, proclaimed by the UN General Assembly on 20 December 1993, defines violence against women as: "...any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or in private life."

³The high prevalence rate of sexual and gender-based violence against women in Uganda generally is confirmed by the government study, Republic of Uganda, Uganda Bureau of Services *Uganda Demographic and Health Survey 2006*, August 2007, Chapter 18, pp 281-305.

⁴*Concluding Observations of the Committee on the Elimination of Discrimination against Women, Uganda*, UN Doc. A/57/38 (2002), paras 133-135.

⁵ UNICEF (2005) "Children bear the brunt of Uganda's 19-year old war" available at < http://www.unicef.org/infobycountry/uganda_25704.html >

during the conflict women and girls would face different forms of sexual and gender based violence in their day to day lives from family members and other members of the community.

The nature and scale of crimes committed during the conflict in northern Uganda resulted in indictments issued by the International Criminal Court (ICC) against the LRA. In 2005, the court issued its first ever arrest warrants in respect of five senior LRA commanders who were indicted with crimes against humanity, including sexual enslavement, rape, mutilation and abduction of girls committed during the conflict in northern Uganda.⁶

The gender-based violence committed during this conflict continues to aggravate the discrimination against women and girls in northern Uganda today.⁷ Amnesty International delegates were informed by victims of violence, representatives of the police, the judiciary, local and international non-governmental organisations (NGOs) and UN agencies working in northern Uganda that the incidence of violence against women and girls remains particularly high. Forms of violence against women and girls include rape, child sexual abuse, and physical assault all perpetrated especially within camps for internally displaced persons' (IDPs) where most of the population still live.⁸

⁶Amnesty International has emphasized the need to address impunity for crimes committed during the conflict despite the ongoing peace process and called for the execution of the ICC warrants in respect of the LRA leaders. See Amnesty International *Uganda: First ever arrest warrants by the International Criminal Court a first step towards addressing impunity* (AI Index: AFR 59/008/2005), and *Uganda: Proposed national framework to address impunity does not remove government's obligation to arrest and surrender LRA leaders to the International Criminal Court* (AI Index: AFR 59/002/2007) available at < <http://www.amnesty.org> >

⁷ "The Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation", adopted in March 2007 by women's rights advocates and activists, as well as survivors of sexual violence in situations of conflict acknowledges that "gender-based violence committed during conflict situations is the result of inequalities between women and men, girls and boys, that predated the conflict, and that this violence continues to aggravate the discrimination against women and girls in post-conflict situations."

⁸As of May 2007, up to 1.6 million people remain displaced from their homes as a result of the conflict and were living in IDP camps scattered throughout northern Uganda. The living conditions in these camps have been deplorable and characterised by the lack of adequate water, food, sanitation, proper shelter leading the UN in 2005 to characterise the situation in northern Uganda as "the biggest forgotten, neglected humanitarian emergency in the world today." The IDP camps in northern Uganda were established as 'protected villages' (referring to the system where the Ugandan government tasked the army with the protection of civilians within camps set-up during the conflict). Every camp would have a military detachment situated near by with government soldiers providing civilian protection. Many military detachments are still in place. Since the beginning of this year, the government (backed by the UN and donor agencies) has embarked on a programme which focuses on IDPs returning to their homes and to other decongested 'satellite' IDP camps. However, most IDPs especially in the Acholi sub-region remain in IDP camps. See "UN Under-Secretary General for Humanitarian Affairs Briefing

3 Violence against Women – the legal framework

3.1 International legal framework

Uganda is party to international human rights treaties which expressly prohibit violence against women. These include; the African Charter on Human and Peoples' Rights, the UN International Covenant on Civil and Political Rights, the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, the UN Convention on the Rights of the Child and the UN Convention on the Elimination of All Forms of Discrimination against Women.

Uganda ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1985. The UN CEDAW Committee, charged with overseeing the implementation of CEDAW, stated in its General Recommendation 19 that violence against women constitutes a violation of women's internationally recognized human rights. According to the Committee, the denial of equal rights to women reinforces violence against them:⁹

“[T]he definition of discrimination includes gender-based violence, that is, violence that is directed at a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”¹⁰

In paragraph 24 (t), the Committee calls on state parties to take all measures necessary to prevent gender-based violence. Such measures should include not only legal measures such as penal sanctions, civil remedies and avenues for compensation, but also preventive measures such as public information and education programmes, and protective measures, including support services for victims of violence.¹¹

to the UN Security Council on recent visits to Somalia and northern Uganda” 21 May 2007, available at < <http://www.un.org/News/Press/docs/2007/sc9020.doc.htm>>

⁹General Recommendation 19 of the CEDAW Committee, UN. Doc. A/47/38 at 1 (1993), Paras 6-7.

¹⁰General Recommendation (as above) Para 6.

¹¹General Recommendation (as above) Para 24 (t).

The CEDAW Committee has emphasized the obligation of states:

“To take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private actors; [and to] ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence, give adequate protection to all women, and respect their integrity and dignity.”

The Optional Protocol to CEDAW offers women direct means to seek redress at the international level for violations of their rights. However, Uganda has not yet ratified the Optional Protocol, thereby limiting the ability of women victims of violations under CEDAW to directly approach the Committee for remedies.

The UN Special Rapporteur on violence against women in her 1996 report defines violence in the family as “violence perpetrated in the domestic sphere which targets women because of their role within that sphere or as violence which is intended to impact, directly and negatively, on women within the domestic sphere.”¹² In a subsequent report, the Rapporteur stated that “violence within the family comprises, *inter alia*, woman-battering, marital rape... [and] traditional violent practices against women including forced marriage...”¹³ In her 1996 report, the Special Rapporteur argued that:

“Depending on its severity and the circumstances giving rise to state responsibility, domestic violence can constitute torture as it involves some form of physical and/or psychological suffering, including death in some cases... This view challenges the assumption that intimate violence is a less severe or terrible form of violence than that perpetrated directly by the State.”¹⁴

The standard of “due diligence” is articulated through many international instruments and reports. States have a duty towards all individuals within its jurisdiction, including women, not only to protect them from human rights abuses committed by state officials but also those committed by private individuals. States are accountable for their efforts to protect individuals and to bring perpetrators of abuses to justice. According to the UN Declaration on the Elimination of Violence against Women, states should: “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private actors.” Due diligence requires the state to adopt comprehensive measures in addition to legislation to address gender-based violence including the training of state personnel, the adoption of practical

¹²UN Doc E/CN.4/1996/53, para 18.

¹³UN Doc E/CN.4/1999/68 para 17.

¹⁴UN Doc E/CN.4/1996/53, paras 42, 44.

policies and mechanisms to protect women's rights as well as ensuring that relevant legal mechanisms are accessible to women victims of gender-based violence.

The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, signed but not yet ratified, by Uganda on 18 December 2003 also states that: "Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman and degrading punishment and treatment shall be prohibited" (Article 4). The Protocol also requires states to "prohibit, prevent and punish all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public."

The UN Convention on the Rights of the Child, ratified by Uganda on 17 August 1990 also obliges state parties to protect persons under the age of 18 from "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse" (Article 19). The African Charter on the Rights and Welfare of the Child ratified by Uganda on 17 August 1994 provides that state parties "shall take measures to protect the child from all forms of torture, inhuman and degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse..." (Article 16(1)).

3.2 Domestic legal framework

Article 33 of the Uganda Constitution provides that "women shall be accorded full and equal dignity of the person with men" (Article 33(1). Article 33(2) further provides that "the state shall provide the facilities and opportunities necessary to enhance the welfare of the women to enable them to realise their full potential and advancement."

Article 33(6) of the Constitution provides that "laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this constitution." However despite this provision, there is continued existence of legislation, customary laws and practices on inheritance, land ownership, widow inheritance, polygamy, forced marriage, bride price and guardianship of children which conflict with the Constitution and CEDAW.¹⁵

¹⁵ The UN Committee on the Elimination of Discrimination against Women in its *Concluding Observations of the Committee on the Elimination of Discrimination against Women, Uganda*, UN Doc. A/57/38 (2002), Para 153, noted with concern that laws which discriminate against women continue to exist including customary laws and practices of inheritance, land ownership, widow inheritance,

In Ugandan law, rape and other sexual and gender-based crimes are provided for under Chapter XIV of the Penal Code. The offence of rape is defined as “the unlawful carnal knowledge [by a person] of a woman or girl without her consent or with her consent, if the consent was obtained by force, threats or intimidation.” The maximum penalty on conviction for rape is death.

Section 129 of the Penal Code provides that “any person who performs a sexual act with another person who is below the age of 18 years, commits a felony known as defilement and is on conviction liable to life imprisonment.”¹⁶ This section also provides for the offence of “aggravated defilement” punishable by death.¹⁷

Amnesty International is concerned that the Penal Code does not recognize marital rape as a criminal offence, mainly due to the presumption, especially in customary law that consent to sexual intercourse is given by the act of marriage. Amnesty International is also concerned at the lack of a comprehensive law which deals with domestic violence. At present, domestic violence including marital rape may only be dealt with under the lesser criminal charge of assault which carries with it a lower maximum sentence of up to five years imprisonment and does not deal with other forms of domestic violence, including sexual and psychological violence. A draft Domestic Violence Bill which seeks to, *inter alia*, criminalise marital rape and other forms of domestic violence; make provision for appropriate penalties and civil remedies is currently under the consideration of the Law Commission.

4 Not safe from anyone

The spotlight on northern Uganda is usually on crimes committed in the context of the conflict. Amnesty International strongly reiterates that addressing impunity for the crimes

polygamy, forced marriage, bride price guardianship of children and adultery law that discriminate against women. Amnesty International welcomes the Constitutional Court’s decision abolishing the crime of adultery which was discriminative against women. Amnesty International is however concerned that more than five years since the Committee’s recommendations, there is no progress on legal reform to address these issues.

¹⁶This provision was brought into legal effect by the recently enacted Penal Code (Amendment) Act, 2007 which came into legal force on 17 August 2007.

¹⁷Aggravated defilement is defined as where, ‘a person performs a sexual act with another person who is below the age of eighteen years’ in circumstances where the victim is below the age of fourteen years; the offender is infected with Human Immunodeficiency Virus (HIV); where the offender is a parent or guardian of, or a person in authority over the victim; where the victim is a person with a disability; or where the offender is a serial offender.” Under this law, the offence of attempted defilement is punishable by a maximum prison term of 18 years.

committed during the conflict by both the LRA and the government army, including rape and other forms of violence against women, will be crucial to ensuring post-conflict peace and justice in northern Uganda.¹⁸ However, Amnesty International's recent research reveals that despite the cessation of hostilities, violence against women remains high, in part due to state inaction in ensuring accountability of suspected perpetrators. Testimonies by victims show a range of perpetrators including UPDF soldiers, law enforcement officers, local council leaders and civilian persons, spouses and relatives of female victims of violence.

Many women and girls have suffered violence in the hands of different suspected perpetrators. The case of 17 year old Auma Jane¹⁹ of Pader district illustrates this:

“In the year 2001, I came back with other girls from captivity by the rebels. I was 11 years old at the time. I was received by a local council official in a place called Awere...I thought that he would take me to other government officials who would help me to trace my family members...He asked me to stay at his home for some time...After a few months, he ordered me to become the wife to his eldest son...I could not believe this since I had trusted him. Because I had nowhere to go and I feared returning back to rebel captivity...I accepted to be the son's wife...It was like a forced marriage and the son would beat me almost everyday when he came back home drunk...Later, I managed to tell my story to sub-county officials who I had met by chance. They convinced the local council official and the son to let me leave...That is how I found myself here (an NGO shelter for formerly abducted girls)...”²⁰

Amnesty International also interviewed women and girls who have recently been attacked by UPDF soldiers or LRA members who had deserted and were now back within the community. 17 year old Atieno Mildred of Amuru District told Amnesty International that in December 2006, she was raped by a UPDF soldier who she identified as having been based in the military detachment near the camp. She said that the soldier was on patrol on the day of the rape incident. Atieno said that she knew this was a UPDF soldier because “he wore the official UPDF uniform...”

“...The rape ordeal has left me devastated. My body system is totally destroyed as [a] result of the ordeal...I conceived as a result of the rape and worse, on medical

¹⁸ See Amnesty International *Uganda: Proposed national framework address impunity does not remove government's obligation to arrest and suspended LRA leaders to the International Criminal Court* (AI Index AFR 59/002/2007) available at < <http://www.amnesty.org> >.

¹⁹ The testimonies and accounts included in this report do not disclose the real names of the victim in order to maintain both privacy and security of the witness, source or victim.

²⁰ Amnesty International interview with Auma Agnes, Pader district, 28 August 2007.

examination about four months later, I tested HIV positive...As a result my marriage is in a lot of difficulty. My husband does not understand my situation and constantly blames me for the incident.”²¹

Atieno said that she is unable to pursue justice because although she is sure that the perpetrator was a UPDF soldier, she cannot positively identify the perpetrator since she saw him only during the rape incident. According to her, “the process of going to the military detachment to identify the soldier is scary and intimidating.” Amnesty International recorded similar accounts in a number of camps visited during the mission. However, even in cases where women were able to identify the UPDF suspected perpetrators of rape and other forms of violence, they recounted to Amnesty International how their efforts to report incidents to the police and other authorities have not borne any fruit even where the alleged UPDF perpetrators were known. For example, four elderly women in Kitgum district were arbitrarily arrested in September 2005 by soldiers attached to a specific UPDF battalion in Kitgum District who were well known to local council officials and NGOs. The women were detained in the military barracks and each caned 50 strokes over a period of two days by the soldiers who alleged that they were “witches”. All of them sustained serious injuries worsened by their old age.²² The elderly women reported the case to the police and filled in the medical examination forms. They told Amnesty International that they believed the soldiers were imprisoned for some time in Gulu, but were released in early 2007.

Information received from local and international NGOs working with victims of sexual and gender-based violence indicate that part of the problem in ensuring the punishment of UPDF soldiers is the fact that the police are reluctant to investigate cases involving soldiers.²³

Civilians and in particular, women, who have to walk long distances to work in farms are not totally safe from attacks by LRA members despite the ceasefire. Women and girls have been raped in the last year by people they believed were LRA members or former LRA members who have reintegrated themselves back into the community.

However, most of the victims interviewed by Amnesty International had experienced violence at the hands of people close to them and whom they knew – their spouses, their relatives and neighbours.

²¹Amnesty International interview with Atieno Mildred, Amuru district, 22 August 2007.

²²Amnesty International interview with 4 victims, Kitgum district, 25 August 2007.

²³Amnesty International interviews with local and international NGOs, 20-29 August 2007.

A vast majority of cases of violence against women are not reported to the police or local authorities partly because most victims have lost hope of getting any kind of justice. Many victims narrated how stigmatisation plays a big role in discouraging them from reporting sexual and gender-based violence to the police. In interviews with local council officials in most of the areas visited, Amnesty International delegates were told of the perception widely held in the community that victims are in most cases to “blame for the violence they suffer.”²⁴ This assertion was confirmed by many female victims.²⁵ For instance, 12 year old Adongyoo Stella of Gulu district was gang raped by three neighbours in May this year. After Stella’s parents reported the incident to the local authorities and the police, she told Amnesty International that “she can no longer go to school because of abuses and disparaging remarks by her (mainly male) classmates about her as a result of the rape incident.”²⁶

Seventeen year old Ayaa Gloria of Kitgum district narrated to Amnesty International delegates that:

“The incident happened in 2005. I was 15 years old at the time...One evening on my way to the church a man who I knew very well forcefully grabbed and took me to his house nearby and raped me...I immediately reported the incident to my brothers who were at the time in church...They arrested the man and locked him up in our home for two days...A meeting of my uncles and brothers was called...Some suggested that the matter be reported to the police but my eldest uncle refused saying this would bring shame to the family...He suggested a meeting with the family of the perpetrator where some compensation would be paid especially because I was going to school at the time...I was not part of this second meeting. My parents had passed away and so I was represented by my uncles...I was told that my eldest uncle was paid 50,000 Ugandan Shillings (about US \$ 30) as compensation...My uncle later asked me if I could become the perpetrator’s wife and I refused...and he said that that was okay but the issue was now settled...After some months the perpetrator left the IDP camp to another camp. I don’t know where he is...If it were possible, I would like to see him arrested and punished for what he did to me...I am still suffering as a consequence of the rape incident. I had to stop my education because of the disparaging remarks from my friends and schoolmates...I did not receive any medical treatment and was not medically examined...”²⁷

Most women victims of domestic violence are left with nowhere to turn to as the traditional (informal) justice system is similarly weak when it comes to addressing violence against women, and is male dominated to the detriment of the rights of victims. Most of the victims

²⁴Amnesty International interview with local council officials, 20-29 August 2007.

²⁵Amnesty International interviews with victims, 20-29 August 2007.

²⁶Amnesty International interview with Stella Adongyoo, Gulu district, 22 August 2007.

²⁷Amnesty International interview with Ayaa Gloria, Kitgum district, 27 August 2007.

of domestic violence²⁸ interviewed had participated in some kind of informal family-based traditional process aimed at reconciling the victim and her spouse and offering other remedies.²⁹ Victims narrated how the domestic violence they suffered sometimes got worse after the informal family meetings. Such was the case of 32 year old Acang Beatrice of Amuru district:

“...In family meetings aimed at reconciling us following instances of violence, my husband would have up to five male relatives of his accompanying him to these meetings. During the meetings, he would apologise for the violence but would revert back to the beatings and rape only a few days after the apology...He eventually infected me with HIV and later chased me away from our matrimonial home where he is now living with another woman...I don't want to report this matter to the police because I am told it is very difficult to do so...”³⁰

The women who were interviewed revealed that in some of the informal family meetings, the male perpetrators would be ordered to pay “compensation” (*luk*) which they would not pay and instead continue the violence including marital rape. Most women victims of domestic violence stated that they would not report matters to the police especially because doing so would be to their detriment as they depended on the perpetrators for financial support. In some cases victims explained that it was the abusive spouse who depended on them and the domestic violence often entailed their husbands depriving them of their property and farm produce. In such cases, these women argued that they required legal remedies which offered them protection and not necessarily limited to the option of preferring criminal charges.

²⁸ Victims of domestic violence interviewed by Amnesty International delegates had suffered from spousal violence including marital rape, sexual abuse, assaults resulting in serious injuries, and selling off of their food rations and property by partners, among other forms of violence.

²⁹Regarding research on the dominance of informal traditional justice mechanisms in West Nile, another post-conflict region of northern Uganda, see Refugee Law Project (2007) *Partial Justice: Formal and Informal Justice Mechanisms in Post-Conflict West Nile*, Refugee Law Project Working Paper No. 2.

³⁰Amnesty International interview with Acang Beatrice, Amuru district, 21 August 2007.

5 Offering false hope: The lack of police and legal protection

5.1 Reporting to the police

5.1.1 The inadequacy of police services

Under Ugandan law, the police are charged with the investigation of crime and are the first point of contact in the criminal justice system.³¹ However, police services are near non-existent in most police posts in northern Uganda. Most of the existing IDP camps and new decongested (satellite) camps are situated in remote and isolated locations. In spite of this, a police post in one camp is expected to serve many other camps as well. Most of the camps host tens of thousands of inhabitants. Yet police posts are few and far between and are usually manned by a maximum of three police officers – mostly new inadequately trained special police constables³² or junior police officers – who lack legal authority to deal with the investigation of most cases of violence against women. In addition, victims have to walk considerable distances to access these police posts and will generally be referred to the main (headquarter) police stations which are all based in the town centres, miles away from most camps.³³

The main police stations are themselves grossly understaffed and ill equipped. In an interview with a police officer based at the Gulu police station, Amnesty International delegates were informed that the police station has only one running motor vehicle for administrative duties and for transporting all criminal suspects in Gulu and Amuru districts.³⁴ There are only two running police vehicles to serve the whole of Kitgum district, while in Pader district the only

³¹ Police Act, Chapter 303, Section 21.

³² Special police constables are police officers who have undergone crash training before they are deployed (usually not more than 2 months) under the government's Emergency Humanitarian Action plan (supported by UN and donor agencies) which aims at improving the delivery of government services in northern Uganda. By their own admission, the police expressed the view that special police constables are not adequately trained considering that they undergo less than two months' training while regular Ugandan police undergo up to nine months training before deployment, Amnesty International interviews with police officers, 20-29 August 2007.

³³ Gulu police station (serving Gulu and Amuru districts), Pader police station (Pader district); Kitgum police station (Kitgum district) and Lira police station (Lira district).

³⁴ Amnesty International interviews with senior police officers, Gulu district, 20 August 2007.

police vehicle broke down about a year ago.³⁵ Most police posts which are closer to the camps have no means of transport at all.

According to police interviewed in Gulu district, many times the monthly funding from the central government for fuel for the police vehicle is 100,000 Ugandan Shillings (about US \$ 60) for the two districts, which is grossly inadequate for their needs. According to one police officer in Gulu, other times “we receive only about 200 litres of fuel per month from the central government for transport of suspects and every day policing including the apprehension of criminal suspects, traffic policing and logistics.”

All the police stations and posts lack even basic material resources such as stationery and office equipment. In addition, there are limited human resources. For example, there are less than five police officers who can deal with criminal investigations in Gulu Police Station, let alone cases of violence against women.³⁶ In most police stations, none of the officers charged with handling cases of female victims of violence are women.

Most police officers stated that this situation has affected the effectiveness of the police and fundamentally limited the number of cases of violence against women reported to the police. Between January and August 2007, the Gulu Police Station recorded one or two cases of rape every month in Gulu and Amuru districts.³⁷ Both districts host about half of the over 1,500,000 IDPs in northern Uganda. During this seven month period, none of the reported rape cases has been referred for trial in court.

Amnesty International is extremely concerned that the lack of reporting of cases of violence against women, is in part due to inadequate police services and considers that the Ugandan government is failing in its obligation to take all due diligence to ensure that perpetrators of violence against women are brought to justice.

³⁵ Amnesty International interviews with NGO officials and police officers, Kitgum and Pader districts, 24-25 August 2007.

³⁶ Amnesty International interviews with police, Gulu, 20 August 2007.

³⁷ Amnesty International also established with concern that in the same period, the number of defilement cases reported was a low average of 40 cases each month.

5.1.2 “The police demand a fee to pursue your case”

Despite the inadequacy of police services, female victims of violence often face many other challenges. Most of the victims interviewed stated that it is standard practice for the police officers to demand money to arrest and transport suspects. This was widely confirmed in interviews with local and international NGOs providing victims of sexual and gender-based violence with support and legal advice. The amounts demanded by the police vary between 4,000 Ugandan Shillings (about US \$ 3) and 60,000 Ugandan Shillings (about US \$ 35). The failure to pay the amount demanded by the police usually results in the police not pursuing the investigation.

Acaye Joseph of Amuru district, whose five year old daughter had been raped by a neighbour, recounted:

“...The incident happened on 2 May this year...The perpetrator, aged about 27 years old lured my daughter telling her he was going to buy her bread and sugarcane...Instead he forcefully took her inside his hut...where he raped her...An old lady neighbour who was passing by heard the girl screaming and went to her rescue. She found the child lying on the bed bleeding profusely... The perpetrator decided to run away...The lady carried the child to my home and we reported the matter to the local council chairman. With the help of one of the NGOs we took the child for medical examination in a private health institution the next day...I made a report on the second day after the incident to the police post which is nearest to our camp and was within walking distance...They took down statements from the child...and later referred me to Gulu police station. The perpetrator had not been arrested although we knew where he was living and had informed the police...In Gulu, a police officer told me that this case would be referred to another police officer of a higher rank within the police station...I went to see this senior officer who told me that I would need a PF3 (medical examination form) ...He told me that for this, the examination by the private health institution where I'd taken my daughter would not suffice. I would need to see a government medical doctor to fill in the form...He told me he needed a total of 60,000 Ugandan Shillings (US \$ 35), half of the amount to be paid to the doctor and the other half for the police to follow-up on the case, including the arrest of the suspect...I told him that I did not have this money and he said that there is not much the police would do in this case. The police have not arrested the suspect to date. I feel that because I did not pay the money that the police asked for...justice would not be done in my daughter's case...I have been trying to pursue this case with the local police post for more than three months now and they keep on

referring me to Gulu police station. I am afraid that my efforts would not get me anywhere...”³⁸

Adongo Sofia of Gulu district told Amnesty International how the police demanded 10,000 Ugandan Shillings (US \$ 6) as “fees for arresting the suspect” so that they could take further action in the investigation of the rape of her seven year old daughter. This particular police officer demanded the money despite the officer’s own admission that they (the police) had some money to pay for the transport of the suspect in a public service transport vehicle.³⁹

According to Amnesty International’s information, in Pader district it is considered normal practice for the police to demand money from victims and their families for the transport of suspects because the police have no running vehicle in the main police station and only one or two bicycles in a few police posts.

Police officers interviewed in all the districts were unanimous that it was not official police policy to charge victims for the arrest and transport of suspects.⁴⁰ However, they all explained that the lack of transport was a huge challenge in carrying out their duty to investigate crime. One police officer explained that they “struggle to find other ways to ensure they discharged policing functions other than asking victims of crime for money.” Many police officers however admitted that they usually ask victims to pay the money, “not as a bribe and only when the victims are able to pay.” According to one officer in a police post in Lira district:

“We don’t have any means of transport...This is one of the major problems for us. We often use public means to transport suspects to the main police station in Lira...Many times the NGOs are only ready to offer transport to the victims to seek medical help and the police have to find their own ways of transporting suspects. At times we request victims to assist us in this process...The amount of money we request from victims varies but the cost is often roughly 20,000 Ugandan Shillings (US \$ 12)... half of this is paid as transport fee and the other as lunch for the police officer who accompanies the suspect...When complainants are not able to pay this money, we cannot send suspects for detention and further investigation in the main police station. We also fear keeping suspects in detention beyond the legally permissible limits...”⁴¹

³⁸Amnesty International interview with Acaye Joseph and Acang Catherine, Amuru district, 21 August 2007.

³⁹Amnesty International interview with Adongo Sofia, Gulu district, 23 August 2007.

⁴⁰Amnesty International interviews with police officers in Gulu, Kitgum, Pader and Lira districts, 20-28 August 2007.

⁴¹Amnesty International interview with police officer, Gulu district, 22 August 2007.

Another police officer at a police post in Pader district said:

“We always request the complainant to provide transport to Pader. It is 4000 Ugandan Shillings (US \$ 2.4) to Pader, unless the road is bad. The problem is we don’t have a police vehicle (in Pader district). When there was a vehicle, we could request it when we had many suspects...”⁴²

Amnesty International is concerned that victims often have to pay not only for the transport of suspects but also incur other costs such as providing lunch for police officers. Amon Peter of Kitgum district whose eight year old daughter had been raped by a neighbour said that:

“...At the police post in the camp I was asked to pay 20,000 Ugandan Shillings (US \$ 12) for transport of the suspect from the IDP camp to Kitgum police station. The police also told me that this amount was to cover the cost of lunch for the three police officers who were to effect the arrest and accompany the perpetrator to the main police station...The police later told me that the suspect had escaped from custody and I had to pay a further 10,000 Ugandan Shillings (US \$ 6) for his re-arrest. One of the first questions I was asked by the police was whether I had money so that they could re-arrest the suspect... I had to pay the money but when the police officers arrived to make the arrest they asked me whether I was giving them this money voluntarily or not. I said you asked me to pay, so I paid...”⁴³

5.2 Police incompetence, hostility and indifference

As already stated, most of the police posts close to the camps are manned by inadequately and newly trained special police constables or other junior officers with even less training. Amnesty International delegates noted in many interviews with police officers stationed in police posts that they usually record most sexual offences as indecent assault. This is irrespective of whether the cases reported were rape, defilement, or other sexual and gender-based offences. According to one police officer, “recording all cases as indecent assault covers all crimes of sexual and gender-based violence.”⁴⁴ Although many of these officers are usually required to refer the cases to senior police officers in the main police stations, it is their report entries that form the basis for further police investigation.

⁴²Amnesty International interview with police officer, Pader district, 28 August 2007.

⁴³Amnesty International interview with Amon Peter, Kitgum district, 27 August 2007.

⁴⁴Amnesty International interview with police officer, Pader district, 28 August 2007.

According to one judicial officer:

“The police we work with here are usually not knowledgeable even on the basic elements of sexual offences under the Penal Code. As a result, a very big percentage of cases lapse because of incompetent investigations.”

NGO officials working with victims of sexual and gender-based violence told Amnesty International that the police do not make proper records of victims’ testimonies and that the police rarely visit the scene of the crime.⁴⁵ The police rarely ensure that medical doctors examine suspects in rape and other cases of sexual violence for any corroborative information such as evidence of sexually transmitted diseases. Most police officers consider medical examination as relevant only for victims and not suspects. Some victims narrated how the police told them to wash themselves after the ordeal before being medically examined. In the process victims lose vital evidence.

Victims revealed other examples of police incompetence. In one case involving the rape of a seven year old girl in Amuru district, the mother of the child told Amnesty International of the agony of having to leave the interview room because according to the police officer who was interviewing the seven year old girl, “the law required that the police interviews the victim of the crime alone...and not in the presence of anybody else.”⁴⁶ Akumu Florence, a 13 year old rape victim from Amuru district, told Amnesty International how the police insisted that her father’s statement be taken as part of the investigation even though her father did not witness the rape incident and had been away from home at the time of the incident and when the mother made a report to police.⁴⁷ The police told her that “they would not investigate the case until the father’s statement had been taken.” According to Florence, she did not understand this since she had her mother with her at the police post.

Amnesty International is further concerned that the failure to extend care and assistance to victims in the process of police investigations exacerbates the trauma and shock that victims experience following the violence that they have suffered.

In most cases, police do not follow up cases or inform victims of progress made. Many victims of sexual and gender-based violence explained the widespread perception amongst victims that the police considered their role as limited to the arrest of the suspect only. The

⁴⁵ Amnesty International delegates were told that this was partly because of lack of transport and other facilities and partly because this has become the norm.

⁴⁶ Amnesty International interview with Atim Margaret, Amuru district, 21 August 2007.

⁴⁷ Amnesty International interview with Akumu Florence, Amuru district, 21 August 2007.

police would often tell victims that it was not the police's duty to provide updates or answers on progress of cases. Thirty five year old Janet Acaa, a rape victim from Gulu district said:

“...I knew the perpetrator very well because he was my neighbour. I reported the incident to my local council chairman who helped me make a report with the police at the Gulu police station which is not too far. The police arrested the perpetrator the next day and called me to write my statement which I did. I also underwent medical examination and was treated and given a medical examination form. The perpetrator was remanded in custody at the police station and the police told me that I would be called later to testify in court...For about three months, I did not hear anything from the police and approached the local council chairman who advised me to go to the police station myself...I went to the police station and was told to go back after a few weeks only to be told to go back again...I have been to the police three more times in the last year...I don't know if the perpetrator was charged with the rape...I suspect he has been released and so I have given up...”⁴⁸

In another case, police released a suspect because “he was mentally disturbed and violent.” Mildred Akello, the mother of the 10 year old girl who had been raped in this case told Amnesty International delegates:

“I had gone to the garden when the thing happened. It is my sister-in-law who came to the rescue of my daughter after hearing the child screaming loudly from the perpetrator's house... Later, the police arrested the perpetrator and took him to the police station, but he became violent, and the police said he is mentally retarded and that no police station would hold him, so they just released him...I feel that there is no help, no justice about this case. Police have not helped me at all. Instead my daughter faces stigma. A lot of people are saying ‘this is the kid that the madman rapes, this is the kid’, so she feels out of place some times. I don't know where to go, or where to complain ...”⁴⁹

Many victims narrated how they had seen perpetrators get released after some days, weeks or months in police custody and be spotted in another IDP camp without the police informing them of the status of the case. This was despite many of them requesting information on progress from the police.⁵⁰ According to Article 6 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power:⁵¹

⁴⁸Amnesty International interview with Janet Acaa, Gulu district, 22 August 2007.

⁴⁹ Amnesty International interview with Mildred Akello, Amuru district, 21 August 2007.

⁵⁰Amnesty International interview with victims, 20-29 August 2007.

⁵¹ Adopted by the UN General Assembly Resolution 40/34 of 29 November 1985, UN Doc. A/RES/40/34.

“The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by among others, (a) informing victims of their role and the scope, timing and progress of proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information.”

Amnesty International’s interviews with victims of domestic violence revealed that most police officers regard domestic violence, including marital rape “as a domestic matter.” Most victims spoke of the standard police response that “they (victims) should talk it out at home.” Such attitudes condone discriminatory attitudes against women and entrenches the culture of impunity.

The majority of the police officers and in particular all the police officers interviewed during the research are men. By their own admission, most of the police are not specifically trained on gender issues and how to handle cases of violence against women.⁵²

6 Gathering medical evidence

6.1 Obtaining the medical form

Upon making a report, female victims of violence must obtain a medical examination form - also known as a PF3 form - from the police in order to be medically examined by a doctor. The PF3 form is a document that is used by all victims of crime to document physical or other injury. The form is divided into two sections, to be filled in by the police – recording the reporting of the crime and the state of the victim and by the doctor to record any injuries.

Under Ugandan law, proof of any crime of violence, including sexual offences, does not exclusively depend on medical proof. This was admitted by a judicial officer in an interview.⁵³ According to the officer:

“Proof of rape and other sexual and gender-based crimes is not dependent on the availability of expert evidence. The court has discretion to consider all facts before it and determine whether the crime has been proved or not.”⁵⁴

⁵²Amnesty International interviews with police officers, 20-29 August 2007.

⁵³Amnesty Interview with judicial officer, 23 August 2007.

However, Amnesty International established that since the police investigations are usually ineffectual, the case then hinges on the medical examination and hence the PF3 form. Further, the practice is that the police would usually not pursue further investigation of cases without the PF3 form.

Sometimes the difficulties in procuring the PF3 form and getting a medical examination are insurmountable. In principle the forms should always be available at all police stations and police posts. However, the police rarely have enough PF3 forms and more often than not, the available forms run out. Many times, local police rely on UN agencies and NGOs to photocopy these forms. Rural police posts more often than not do not receive the forms sent to them. According to a police officer at one of these outpost stations:

“We have to write the form out on ordinary paper instead of the actual PF3 form because we never have the forms sent to us. It is not clear whether the use of handwritten forms in these instances would satisfy evidentiary requirements of proof in court.”

The PF3 form should be free of charge. Yet many victims informed Amnesty International that they have to pay the police to obtain the form. Local and international NGOs explained that the practice of police demanding a fee for the issuance of the form is widespread. On occasion police admitted that they charged for the PF3 forms. A police officer at a remote police post in Lira explained:

“The police are only given 50 PF3 forms for the whole of Lira district. In Lira town, a police officer has the chance to photocopy, whereas here you can not. Where you are stuck, you can say to the victim or the family, ‘let us join hands’, but facilitations may not always be available...”⁵⁵

A few local and international NGOs are assisting victims of sexual and gender-based violence to obtain the PF3 form. These NGOs also assist victims in seeking medical officers to conduct the medical examination and fill in the form. However, for the vast majority of victims who are not able to access the limited services of these NGOs, the process of obtaining the form usually entails many trips to a police post/station often a long distance from where the victims live. Many victims said that they would rather forget about accessing justice because of the difficulty and costs involved in acquiring the PF3 form.

⁵⁴According to the judicial officer, ‘other evidence such as physical evidence, victims’ and witness’ statements, psychological reports would suffice even in the absence of medical reports’.

⁵⁵Amnesty International interview with police officer, Lira district, 29 August 2007.

6.2 Who fills in the PF3 form?

The police generally require that the PF3 form must be filled in by government medical doctors. In total there are about eight government doctors in northern Uganda. These medical officers also have to cope with the huge need for health services in the region. The police do not accept that qualified medical personnel other than medical doctors may conduct the medical examination and sign the PF3 form.⁵⁶

Government doctors are rarely available and most victims have to wait for days, some times weeks, in order to be medically examined and have the medical examination (PF3) form filled in. One NGO official explained the situation in one district as follows:

“...The police here insist that only government doctors can fill in the form. In the whole district there are only three government doctors and of these three only one is generally available and accessible...We would often assist victims to be examined as soon as the incident has occurred. This means we may turn to private health providers and medical workers working for NGOs...However if the victim desires to pursue justice in court, she would have to be re-examined later by a government doctor days or weeks after the incident...Apart from the fact that crucial evidence would have been lost by then, this experience is traumatising for victims...Many of the victims have told us that the whole process is like double victimisation to them...As a result many victims decide to seek medical assistance and not pursue the punishment of the perpetrator...”⁵⁷

In April this year the Ministry of Health issued a *Manual on Clinical Management of Sexual and Gender Based Violence Survivors*.⁵⁸ The Manual provides guidelines to all health workers countrywide on how to deal with victims of sexual and gender-based violence. It seeks to encourage all health facilities to use other detailed forms (included in the Manual) in addition or as an alternative to PF3 forms and to ensure that a detailed examination of victims is done when a victim visits the health facility for the first time. The Manual also aims at encouraging the practice where the medical officer who conducts the medical examination fills in the PF3 form hence avoiding a situation where the victim must be examined twice (if the first

⁵⁶One government doctor told Amnesty International delegates, “there are other qualified medical personnel, such as clinical officers who could help in alleviating the problem of lack of doctors”, Amnesty International interview with government doctor, 28 August 2007. As a matter of law (rather than practice) where the examination is conducted by private medical doctors, the private doctor’s evidence would still be admissible in court. However this is unheard of because police demand that the medical examination for the PF3 form to be conducted by a government doctor.

⁵⁷Amnesty International interviews with NGO officials, Kitgum district, 27 August 2007.

⁵⁸Republic of Uganda, Ministry of Health *Manual on Clinical Management of Sexual and Gender Based Violence Survivors* (April 2007).

examination is done by a non-government doctor). However, NGOs working on sexual and gender-based violence explained that this Manual is yet to reach all health facilities and that the Manual was barely known to health workers in the region. Amnesty International's interviews with the police in all the districts of northern Uganda also revealed that the police are not aware of the existence of this Manual.

6.3 Challenges and trauma in getting the medical form filled

Even where there is a qualified government doctor available to fill in the PF3 form, victims still faced further constraints. Medical examination usually occurs many days after the incident. For victims of sexual and gender-based violence, this process can be traumatic. One victim's mother, Adong Millicent of Amuru District described her 10 year old daughter's ordeal:

“...After the rape incident, my daughter was in such a lot of pain, she could barely walk and was crying all the time...I was really desperate for her to get medical treatment so that she could get some relief and feel I was caring for her...However, the process was so delayed that it must have added to the child's pain and agony... I tried to report the matter to the police as quickly as possible. On reporting the incident the police told me not to bathe the girl until medical examination was done by a government doctor in Gulu town which was far away (about 20 miles)...After some help from an international NGO in transporting my daughter and assisting us obtain the PF3 form, she was only examined by a doctor on the third day after the incident...It must have been so painful for the little child...”

In some cases, the examination is done many months after the incident. Such was the case of Ajok Susan of Gulu district whose eight year old daughter had been raped by a close relative:

“...The incident occurred on 17 July this year...With the assistance of one of the NGOs working within the IDP camp we reported the incident to the local police on the same day. The next day we went to Gulu Hospital for a medical examination and to have the PF3 form filled. We did not find a doctor but were attended to by a student doctor who told us he was not authorised to conduct the medical examination...We came back home without having the medical examination done. We went back to the hospital twice in the space of a month but both times we were told the doctor was not available...It was only in October that the girl was examined and the medical form filled...I don't know how the form will help in my daughter's

case...The police have already told me that they have released the perpetrator because they say the law required them to do so ...”⁵⁹

According to information gathered by Amnesty International many health centres turn away victims who seek medical treatment on the basis that victims must first obtain the PF3 form from the police. Yet for most victims the process of obtaining the form is a nightmare. This leads to the failure by many victims to access timely medical attention including post-exposure prophylaxis to prevent HIV infection and emergency medical treatment.⁶⁰

In interviews with a prosecutor and a judicial officer, Amnesty International delegates were informed that evidence of semen deposits, bruises and any laceration are crucial for proof of rape and other sexual offences. The prosecution’s case becomes more difficult to prove in the absence of such evidence. The delay in conducting medical examination is not only traumatising for victims but also renders cases against perpetrators weak as crucial evidence is often lost because of the delays.

According to most victims, filling in the PF3 form requires payment of a “doctor’s fee.” In the case of Acaye Joseph whose five year old daughter had been raped,⁶¹ the police demanded money on behalf of the doctor who was to fill in the form. Most of the victims interviewed had paid between 5,000 Ugandan Shillings (US \$ 3.5) and 30,000 Ugandan Shillings (US \$ 21) through the police or directly to the examining doctor as “fee” for the medical examination and filling in of the forms. Most of the victims are too poor to afford these amounts. Although a few NGOs are assisting victims to meet these costs, the NGOs are only able to run such programmes in a few IDP camps. The vast majority of victims cannot access these limited services provided by NGOs.

Most of the doctors require victims to go for the medical examination in their private medical facilities rather than the government hospital. The reason for this is often that “doctors would be engaged with other hospital duties during work hours.” According to an NGO which offers medical and legal support to female victims of violence:

“In Lira district there is only one accredited medical doctor authorised to conduct medical examination for the police, he is based in the town centre and victims have to

⁵⁹Amnesty International interview with Ajok Susan, Gulu district, 23 August 2007.

⁶⁰Amnesty International Interviews with NGOs, 20-29 August 2007.

⁶¹Amnesty International interview with Acaye Joseph and Acang Catherine, Amuru district, 21 August 2007.

walk or travel many miles to get to his clinic. He charges 20,000 Ugandan Shillings (US \$ 12) for every victim he examines.”⁶²

Amnesty International is concerned that the practice of requiring victims to pay for the medical examination when most of them cannot afford to do so causes further victimisation.

Under Ugandan criminal procedure law the government doctor who fills in the medical form must present the medical evidence in court. Local and international NGOs working with victims of sexual and gender-based violence informed Amnesty International that the available government doctors are reluctant to examine victims and fill in the PF3 form because they consider the process of attending court as laborious and costly. According to one government doctor:

“...The whole process of conducting the examination and appearing in court to give evidence really takes a lot of time. Even worse is that in most cases we have to pay our own costs for transport, food and accommodation because in all cases we have to travel to testify in cases in courts away from our work stations. The situation is however that although doctors examine victims of sexual and gender-based violence, they are rarely called to give evidence, a fact linked to the reality that very few cases ever get to the stage of a trial in a court...”⁶³

7 Victims’ frustrations in taking a case through the court process

Due to the many constraints that victims face it is rare for sexual and gender-based violence cases to reach the trial stage in court. Local and international NGO staff interviewed, reported that in most instances victims do not attempt to access justice.

Only a few cases of sexual and gender-based violence in particular, rape and defilement cases are investigated by the police and the files forwarded for prosecution. Ugandan law provides that because rape and (aggravated) defilement are capital offences, they should be tried in the High court.⁶⁴ In all five districts of northern Uganda there is only one High Court based in

⁶²Amnesty International interviews with NGOs, Lira district, 29 August 2007.

⁶³Amnesty International interview with government doctor, 28 August 2007.

⁶⁴The Penal Code (Amendment) Act, 2007 (in force since August 2007) confers jurisdiction on Chief magistrate’s courts to try the offence of defilement (hitherto only tried by the High Court). However, at present, effectively there are only two Chief magistrate’s courts operating in the region. As a result, the

Gulu town and staffed with one resident judge with criminal and civil jurisdiction. The number of court sessions “is determined by the availability of funds.”⁶⁵ According to representatives of the prosecutor’s office, “some times the court goes for four years or more without hearing any rape or defilement cases.” The official reason for this situation is usually that funds are not available from government. Once or twice in a year, the High Court may hold special court sessions which involve two or more judges joining the resident judge to dispose of a backlog of cases. These include rape and defilement cases. The last such court session was held in the middle of this year. Amnesty International delegates were informed that this session contributed to the hearing and conclusion of about 90 criminal cases, including defilement cases. However after about one month, the sessions were halted “because the money allocated for the special session was not transferred to Gulu.”⁶⁶

The fact that the Gulu High Court rarely hears any rape or defilement case has led to a situation where the police some times arrest suspects and say they are conducting investigations but not account for the progress of cases and the whereabouts of suspects. Many victims whose cases had been taken up by the police told Amnesty International delegates that the only information they had about their cases was limited to their (victims’) medical examination and the arrest of suspects. They had not been called to testify in court months or years from the date of the violence.

In a few cases, alleged perpetrators would be seen back in the community without any explanation from the police. Such was the case of nine year old Ajwang Susan of Kitgum district who was raped by a neighbour. The parents expressed their “shock” at seeing the alleged perpetrator back in the community two months after the police had indicated to them that the case would be heard in the High Court in Gulu:

“...My wife and I insisted that the police must re-arrest the suspect. Although it cost me some money they eventually did this...However four months on, the police has not informed us of any progress in the court process...We are watching how the government will treat this case... We will not be happy if the suspect is released again without any kind of trial...”

intended aim of alleviating the High court of the high volume of defilement cases may not be achieved in northern Uganda.

⁶⁵Amnesty International interviews with representatives of State Attorney’s office and judicial officers, 23 August 2007

⁶⁶Amnesty International interviews with representatives of State Attorney’s office and judicial officers, 23 August 2007.

Amnesty International is concerned that the inordinate delays in bringing cases for trial in court affects the implementation of the existing Ugandan laws on sexual and gender based violence.

Article 23 (4) of the Constitution obliges the police to bring suspects before a court of law as soon as possible and not later than 48 hours from the time of arrest.⁶⁷ The Constitution also makes provision for the right of suspects to be released from remand custody after 360 days where a case triable before the High court (including rape and defilement) has not been committed for trial⁶⁸ Police officers told Amnesty International delegates that they routinely release alleged perpetrators of sexual and gender based violence in order to comply with the constitutional limits on pre-trial detention. According to one police officer:

“In the circumstances we are operating in – without proper facilities, including the basics, it is impossible for us to comply with the constitutional provision which requires suspects to be arraigned in court within 48 hours and the committal of cases such as rape to the High court within 360 days.”⁶⁹

8 The lack of legal, medical and psycho-social support and the role of NGOs

Most victims do not understand the applicable laws and the judicial process. Yet victims have no recourse to legal assistance. Only a few human rights NGOs with limited reach provide some level of legal aid and assistance.⁷⁰

Moreover, victims are not accorded medical and psycho-social support by the government. Many victims have to bear the brunt of physical and psychological trauma that comes with violence without any form of counselling.⁷¹

NGOs – both local and international - play a crucial role in assisting some victims with legal and medical support. A number of NGOs are engaged in public awareness raising programmes on the discrimination of women and specific educational programmes on how to

⁶⁷Uganda Constitution, 1995, Article 23(4) (b).

⁶⁸ Majority of victims of rape and defilement indicated to Amnesty International delegates how their cases had not been committed for trial in the High Court as the law requires.

⁶⁹Amnesty International interviews with police officers, 20-29 August 2007.

⁷⁰Such as the Gulu-based Human Rights Focus and the Legal Aid Project of the Uganda Law Society.

⁷¹Amnesty International interviews with victims, 20-29 August 2007.

reduce the high levels of violence against women. These NGOs also help victims to access medical treatment and psychological support, to make police reports and to access the medical PF3 form. Many of these NGOs have established programmes on sexual and gender-based violence and counselling centres within the IDP camps. The NGOs also collaborate with the government and UN agencies through the working groups on sexual and gender-based violence which meet regularly to identify issues of women's protection from violence, suggest solutions and share their experiences with the government. However, many victims of violence are not able to access the services of NGOs because of their limited reach.

9 Reparations and civil remedies

In interviews it emerged that most victims are not able to access any form of civil remedies or reparations.⁷² None of the victims interviewed was able to access any form of court awarded compensation or other court orders for their protection. Under Ugandan law, victims must initiate civil law suits so as to access any compensation and civil remedies. This process depends on the conclusion of the criminal procedure and the trial of cases relating to the violence they have suffered.⁷³ Most victims are unlikely to succeed based on the reality that their cases are rarely prosecuted because of the insurmountable challenges discussed in this report. Further most victims are unfamiliar with the legal process of pursuing civil remedies and compensation.⁷⁴ The victims are mostly indigent and therefore unable to afford the high monetary costs that pursuing this legal process entails.

Amnesty International has previously stated that gender-sensitive national or domestic criminal law on its own is not enough to protect women.⁷⁵ Women and girl victims of violence frequently need civil remedies, including compensation and orders such as those barring violent men from the home or orders requiring men not to undertake any form of contact with the women.⁷⁶

⁷²Amnesty International interviews with victims, 20-29 August 2007.

⁷³ The exceptions are cases of defilement and aggravated defilement where section 129B of the Penal Code, introduced by the August 2007 amendment to the Penal Code, empowers the trial court to grant compensation in addition to the sentence imposed against the offender.

⁷⁴Amnesty International interviews with victims, 20-29 August 2007.

⁷⁵Amnesty International (2004) *Making Rights a Reality: The duty of states to address violence against women* (ACT 77/049/2004) p25.

⁷⁶As above, citing UN Special Rapporteur on violence against women, Report to the UN Commission on Human Rights, UN Doc. E/CN.4/2003/75, 6 January 2003, paras 29-30.

10 Government's plan for northern Uganda

On 15 October 2007, the Ugandan government launched the *National Peace, Recovery and Development Plan for Northern Uganda* (PRDP). The PRDP is a three year comprehensive plan seeking to “consolidate peace and security and to lay foundation for recovery and development in northern Uganda.”⁷⁷ The plan focuses, among other issues, on the enhancement of police and judicial services. The government should ensure the expedited implementation of this plan, including, in relation to the administration of justice. There has been some progress in improving the general administration of justice in northern Uganda in the past year.⁷⁸ Amnesty International however considers that the justice system (comprising of the police, courts and the legal process) currently existing in northern Uganda is grossly inadequate particularly in ensuring the protection of women and girls from sexual and gender-based violence perpetrated on a day to day basis.

11 Conclusion

The Uganda government is failing in its international and domestic legal obligations relating to the protection of women and girls, and their right to access justice in northern Uganda. Amnesty International is strongly concerned that despite the cessation of hostilities in the conflict in northern Uganda, the incidence of violence against women and girls remains high. The organisation is further concerned that because of many insurmountable challenges and practices in the legal system, there is a culture of entrenched impunity for violence against women.

Amnesty International believes that it is the failure by the State to take action against violence against women which allows the violence to continue. The government must take immediate action to ensure that victims will have the confidence that cases of violence against women in northern Uganda will be appropriately and effectively investigated by the police and the perpetrators brought to justice before a court of law.

⁷⁷ The plan (PRDP) focuses on all the sub-regions of northern Uganda, including the Acholi and Lang'i sub-regions visited by Amnesty International delegates. The plan considers amongst 14 priority programmes, programmes on the facilitation of peace agreement initiatives; return and resettlement of IDPs; the enhancement of police; the enhancement of prisons; and the enhancement of judicial services. The estimated total cost of the plan, representing investments over a three-year period is US \$ 606, 519,297 of which 31% is required in the first year, 30% and 39%, respectively required in the second and third years.

⁷⁸ Amnesty International interviews with government officials, 20-29 August 2007, citing as examples, the reopening of many police posts, the deployment of police officers and some level of functioning of a few courts in all the districts.

12 Recommendations

Amnesty International calls on the government of Uganda to take the following urgent steps:

Legislative safeguards to protect women from violence

- Review existing laws which discriminate against women;⁷⁹
- Ensure that perpetrators of sexual and gender-based crimes are brought to justice in fair trials that comply with the provisions in the Uganda Constitution and international legal standards, excluding the death penalty;
- Introduce new legislation which prohibits all acts of violence against women, whether committed by state officials or private individuals, and to establish legal protection against such acts. The prohibited acts should include acts that take place within the community or within the family, including specifically, marital rape;
- Implement international and regional human rights treaties to which Uganda is party and which provide for women's rights, including the right to physical integrity;
- Ratify the Optional Protocol to the UN Convention on the Elimination of All Forms of Discrimination against Women and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and comply with its obligations under these Protocols.

⁷⁹The UN Committee on the Elimination of Discrimination against Women in its *Concluding Observations of the Committee on the Elimination of Discrimination against Women, Uganda*, UN Doc. A/57/38 (2002), para 153, noted that laws which discriminate against women continue to exist including customary laws and practices of inheritance, land ownership, widow inheritance, polygamy, forced marriage, bride price guardianship of children and adultery law that discriminate against women. Amnesty International welcomes the Constitutional Court's decision abolishing the crime of adultery which discriminated against women.

Comprehensive system of data collection and statistics on sexual and gender-based violence

- Establish an administrative system to systematically collect record and monitor all reported cases of sexual and gender-based violence in northern Uganda and other parts of the country. The data collected should include detailed information and figures disaggregated by gender, age, crime and other criteria with the overall aim of indicating trends of gender-based violence which should be regularly updated and widely disseminated.

Investigation and prosecution

- Investigate and act on police misconduct relating to the reporting and investigation of crimes, in particular, the complaints of victims of sexual and gender-based violence;
- Ensure the deployment of adequate competent police personnel, including trained and qualified female police officers, to deal with cases of sexual and gender based violence;
- Ensure that the police are provided with adequate human and financial resources, including police transport, basic office equipment and stationery to ensure they effectively discharge their mandate;
- Issue clear and immediate instructions to the police and other law enforcement officials to treat cases of sexual and gender-based violence seriously, and ensure that they take all necessary measures to ensure that allegations of sexual and gender-based violence are effectively and promptly investigated, and perpetrators are brought to justice. These instructions should include clear guidelines to law enforcement agencies stating that deterring women from reporting acts of violence will be punished and that charging for police services, transport of suspects or the medical examination form amounts to police misconduct and will be dealt with as such;
- Give clear and immediate instructions to the police to ensure that victims of sexual and gender-based violence are regularly informed of the progress of cases and the judicial process;

- Further build on the capacity of the police to handle cases of violence against women effectively and sensitively including the provision of training and establishment of mechanisms such as “rape desks” or “gender desks” and appropriate interviewing facilities in police stations and police posts.

Medical evidence

- Ensure that adequate numbers of medical examination (PF3) forms are available in all police stations and police posts within northern Uganda;
- Ensure the medical examination form is easily accessible and issued without any charges and without discrimination to all victims of sexual and gender-based violence;
- Ensure the dissemination to all police stations/posts and health facilities of the Ministry of Health’s *Manual on Clinical Management of sexual and gender-based violence survivors*;
- Ensure that adequate numbers of qualified health personnel are available to promptly conduct medical examination of victims and fill in the PF3 form and are accessible to victims of sexual and gender-based violence without costs/fees;
- Establish and ensure observance of a guideline that the PF3 form is issued promptly and not considered a condition precedent for victims to access medical treatment;
- Ensure that all victims, including those who report their allegations to the police and those who choose not to report are promptly medically examined. Such examination should conform to the rights of women victims to a respect of their privacy and physical and mental integrity;
- Ensure that hospitals and health facilities provide to women victims of sexual and gender-based appropriate and sensitive medical care and counselling, including, advice, post-exposure prophylactic care and counselling on HIV/AIDS, other sexually transmitted diseases and risk of pregnancy.

The court process

- Ensure that perpetrators of sexual and gender-based crimes are brought to justice in fair trials that comply with the provisions in the Uganda Constitution and international legal standards;
- Ensure that the judiciary in northern Uganda has adequate human and financial resources to discharge its duties, in particular, the hearing and conclusion of all cases of sexual and gender-based violence;
- Provide gender-specific training to all judges, magistrates and lawyers on the international human rights law relating to violence against women to enhance knowledge and ensure the effectiveness and sensitivity of the judicial officers in the prosecution of acts of violence against women;
- Establish effective programs for the participation of victims and witnesses called to give testimony during the judicial process and take effective measures to ensure that women are able to participate actively in the judicial process without shame, fear or retribution.

Adequate remedies and reparations

- Ensure that victims of violence against women and their dependants are informed of their right to and are able to obtain prompt reparations, including civil remedies such as court orders, compensation, medical care and rehabilitation;
- Provide victims with legal aid and paralegal services.

Inter-governmental coordination

- Foster coordination and harmonisation between the police, health facilities, the prosecutor and courts in their activities regarding access to justice by victims of sexual and gender-based violence.

Public education and awareness

- Develop measures aimed at public education and awareness, at all levels, involving the media and civil society to address issues of discrimination against women, how to prevent violence against women and promote women's safety in the home and the community. Such awareness should promote the equality between men and women;
- Undertake legal literacy and other educational campaigns to inform men and women of women's rights, including Article 33 of the Uganda Constitution on women's right to equality;
- Undertake public education on the right of victims of crime on access to justice, included the obligation on police to investigate crimes, transport suspects and continue to inform victims of the progress of criminal procedures;
- Strengthen and support the work of human rights and other NGOs, including women's groups, who offer medical support, counselling and legal advice to women victims of sexual and gender-based violence.

The international community, including the UN, key donors and the Justice Law and Order Sector (JLOS) donor group should:

- Support and ensure the expedited implementation of the government's *National Peace, Recovery and Development Plan for Northern Uganda 2007*, in particular, the immediate enhancement of police and judicial services;
- Insist that the perpetrators of sexual and gender-based violence are immediately brought to justice in line with the above recommendations to the government of Uganda;
- Strengthen and support the work of human rights and other NGOs, including women's groups, who offer medical support, counselling and legal advice to women victims of sexual and gender-based violence;
- Continue to support the prioritisation of northern Uganda and other post-conflict regions in the JLOS reform project.

