

**IN THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND
WELFARE OF THE CHILD**

In the matter between

Michelo Hansungule

1st Complainant

Prudence Acirokop

2nd Complainant

Tarisai Mutangi

3rd Complainant

AND

The Republic of Uganda

Respondent

**COMPLAINANTS' COMMUNICATION (BROUGHT IN TERMS OF
ARTICLE 44 OF THE AFRICAN CHARTER ON THE RIGHTS AND
WELFARE OF THE CHILD)**

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Jurisdiction and *locus standi*

[1] Article 44 of the African Charter on the Rights and Welfare of the Child (herein the Charter) provides that:

1. The Committee may receive communications from any person, group or non-governmental organisation recognised by the Organisation of African Unity, by a member state, or the United Nations relating to any matter covered by this Charter.
2. Every communication to the Committee shall contain the name and the address of the author, and shall be treated in confidence.

[2] In terms of Chapter 2 article 1(1) of the Guidelines for the Consideration of Communications Provided for in Article 44 of the African Charter on the Rights and Welfare of the Child (herein Communication Guidelines), complaints or correspondence denouncing acts that are prejudicial to the rights of the child as recognised under the Charter may be received from states, individuals, NGOs and groups.

[3] This Communication is brought by a group of individuals alleging violations of the Charter by the Government of Uganda, a state party to the Charter. It is, therefore, submitted that the Committee has jurisdiction to hear this case.

Admissibility

[4] According to the Communication Guidelines, a Communication is admissible if it satisfies the requirements as to authorship, form and content.

Authorship

[5] In terms of article 2(1)(2) of the Communication Guidelines, the author of the communication is to specify either that they are victims of a violation of the rights spelt out in the Charter or that they are acting on behalf of such victims or other eligible parties.

[6] The present Communication is brought on behalf of and for the benefit of all the children of Northern Uganda who have been denied protection and are victims of the war in one way or the other; it is not for the benefit of any specific individual.

Consent of the victims

[7] The Charter does not require the author of a Communication to obtain permission from the alleged victims. Article 1(2) (3) of the Communication Guidelines further dispenses with the requirement for consent of the victim where the author can prove that the action is taken in the supreme interest of the child. The author submits that this Communication is brought in the supreme interest of the children of Northern Uganda and therefore that it is not necessary to seek consent of the victims.

[8] The authors of this Communication have further relied on a well-entrenched international law rule of procedure, which stipulates that where there is evidence of serious, massive and systemic violations of rights, authors are accordingly absolved from the duty to seek permission from any victim as is the case in isolated instances of violation.

[9] It is also submitted that this requirement should be dispensed with in accordance with the internationally recognised norm of the best interests of the child, which requires that in any determination involving a child, the

best interest of the child should prevail. In light of this rule, procedural requirements should not interfere with the protection of the rights guaranteed in the Charter.

[10] We submit and it is our contention therefore that this communication satisfies the requirements as to authorship and is to that extent admissible for consideration by the Committee. The Committee also has inherent jurisdiction to entertain it under generally applicable principles and rules of law.

Form

[11] The Charter does not specify any other admissibility requirement other than the fact that the communication should contain the name and address of the author. However, Chapter 2, article 1(II)(1) of the Communication Guidelines requires that for a Communication to be admissible, it must disclose its author, be in written form and must concern a state party to the Charter. The name and address of the author of the present Communication is duly disclosed. The Communications concerns the violation of Children's rights in Northern Uganda by the Republic of Uganda, which is a state party to the Charter. The children whose rights have been violated were within the jurisdiction of the Republic of Uganda at all material times. The present Communication therefore satisfies the requirements as to form.

Content

[12] The Charter does not make any provisions as to the content of the Communication. In Chapter 2 of the Communication Guidelines, however, the Committee is bound to ensure that:

- 1) the Communication is compatible with the provisions of the Constitutive Act of the AU and the Charter,
- 2) it is not exclusively based on information circulated by media,
- 3) the issue has not been considered in another investigation, procedure or international regulation,
- 4) domestic remedies have been exhausted,
- 5) the communication is presented within a reasonable time of the exhaustion of such remedies, and
- 6) the wording of the communication is not offensive.

[13] The authors also recognise that the Communication Guidelines which are relied upon in this Communication draw inspiration from article 56 of the African Charter on Human and Peoples' Rights (herein the African Charter). Accordingly, this Communication relies on the jurisprudence of the African Commission on Human and Peoples' Rights (herein the African Commission) on the interpretation of the admissibility requirements under the African Charter.

Compatibility with the Charter and the Constitutive Act of the AU

[14] This communication is brought pursuant to article 44 of the Charter and in conformity with all the procedural and substantive requirements of the Charter relating to Communications.

[15] Consideration of this Communication is further in line with the objective of the AU to promote and protect human rights in accordance with the ACHPR. Respect for democratic principles, human rights and the rule of law is a core principle of the African Union as provided for in Article 4(m) of the AU Constitutive Act.

Sources of information

[16] The information relied upon in this Communication was obtained from, among other sources, reports prepared by well-founded, reliable and attested sources, including but not limited to Non Governmental Organisations (NGO's), churches and government departments based in Uganda, as well as credible organs outside the country. Furthermore, the authors conducted intensive interviews with people and organisations that are active on the ground in Northern Uganda. We, therefore, submit that the information relied on herein is not exclusively drawn from media sources. Some media sources have been used, however, they have not been exclusively relied on. The African Commission has emphasized the fact that media reports are permissible as long as they have not been exclusively relied on.¹ To that end, it is contended that this case should benefit from the exception.

Consideration before other fora

[17] The subject matter of this Communication has not been brought and is not currently before any other international body for investigation or settlement.

Exhaustion of local remedies

[18] It is acknowledged that the rule requiring the exhaustion of domestic remedies has been entrenched into a rule of customary international law. The rationale behind the rule that local remedies must be exhausted is that the state must be informed about the violations and given the opportunity to remedy them before being brought before an international body as was held by the Commission in *Malawi African Association and others v Mauritania*.²

[19] In compliance therewith, it is our contention that the rule on local remedies has been complied with. This is so because it is a settled principle that where the violations in question have been perpetrated on a large scale and were well documented over a long period of time in the international community, the state had been given sufficient opportunity to take action on the issue, which opportunity it did not utilise.³ This is buttressed by the principle that notorious violations are subject to judicial notice, which we respectfully invoke. The African Commission concluded that in cases where there are many victims, as in this case, it is neither practicable nor desirable for victims to pursue internal remedies because the process will be unduly prolonged.⁴

[20] In the case at hand there have been serious, massive and systematic violations of children's rights in northern Uganda. The war has been in progress since 1986 and during that time the violations dealt with in this communication have been well documented by international media.⁵ The government has therefore been given ample notification and opportunity to remedy the situation. The case also involves innumerable victims. It would therefore be impracticable to pursue local remedies, as the process would be unduly prolonged. For these reasons, it is submitted and it is our earnest contention that the requirement of exhausting local remedies falls in the cited exception and therefore, having relied on a well known and entrenched rule of procedural international law, it has been satisfied.

Articles under which communication is brought

[21] This Communication relates to the violation of article 5(2) (survival, protection and development), article 11(1) and 11(3) (education), article 22 (participation of children in armed conflict), article 27 (sexual

exploitation), article 29(a) (abduction), article 14(health), article 16 (protection against child abuse and torture).

MERITS

Introduction

The systematic presentation of this document is that there is a summary of facts at the beginning of every section dealing with allegations of violation. The next part contains the law and jurisprudence pertaining to that particular right allegedly violated. This is followed by submissions, in which the law is applied to detailed facts, which would have been summarised in the first part.

[22] As the Committee may be aware, Uganda has been ravaged by a civil war for over eighteen years involving the Lord's Resistance Army (LRA), a rebel group headed by Joseph Kony. His aspirations are virtually unknown besides that he wants to rule Uganda according to the Ten Commandments of the Bible.⁶ The war has led to an acute catastrophe in that thousands of people have been forcibly displaced to IDP camps. The UN as one of the world's worst humanitarian crisis has described this situation.

[23] Children's rights are the building blocks for securing human rights for future generation yet since the outbreak of the insurgency in 1986, thousands of children in northern Uganda have been killed, abducted or brutalised in one way or the other by various armed elements including the LRA and the Uganda People's Defence Forces (UPDF). The plight of the children is worsened by the fact that the government is not doing enough to secure their rights, including the right to survival, development health, education, and freedom from torture, sexual abuse and abduction.

Article 29: The right to be protected against abduction

Facts

[24] In the conflict in northern Uganda, children are the principle targets for murder, abduction, forced recruitment and sexual enslavement. It is sad to note that the current statistics reflect that the number of abductees has risen to between 40 000 and 50 000. Further, the rebels have often besieged IDP camps abducting, re-abducting children and committing atrocities and indiscriminate killings. The government has failed to protect children from abduction by rebels, especially from IDP camps manned by UPDF soldiers and it is in violation of the duty to protect.

Law

[25] Article 29: Sale, Trafficking and Abduction

States Parties to the present Charter shall take appropriate measures to prevent:

- a. The abduction... by any person including parents or legal guardians of the child

[26] It must be noted that in terms of article 46 of the Charter, this Committee is required to draw inspiration from, amongst others, the ACHPR, international law on human rights, instruments adopted by the United Nations and in particular the CRC (which Uganda has ratified). To that end, the jurisprudence of the Commission as well as various United Nations committees shall, where applicable, be persuasive authority.

[27] The state must protect the children from various conduct and vices cited that are detrimental to their welfare. This duty was interpreted in *The*

*Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria*⁷ (SERAC) in the following terms:

The State is required to ensure others also respect their rights. This is what is called the State's obligation to protect right-holders against other subjects by legislation and provision of effective remedies. This obligation entails on the State to take measures to protect beneficiaries of the protected rights against political, economic and social interferences. Protection generally entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realize their rights and freedoms.⁸

[28] In General Comment No 17, the United Nations Human Rights Committee (UNHRC), referring specifically to the state obligation to protect the child concluded thus;

Article 24 of the International Covenant on Civil and Political Rights recognizes the right of every child, without any discrimination, to receive from his family, society and the State the protection required by his status as a minor. Consequently, the implementation of this provision entails the adoption of special measures to protect children, in addition to the measures that States are required to take under article 2 to ensure that everyone enjoys the rights provided for in the Covenant.⁹

[29] In *Velasquez Rodriguez v Honduras (Velasquez)*,¹⁰ the Inter-American Court (IACHR) confirmed the responsibility of a state for its own acts and asserted state responsibility for the acts of third parties in the following elaborated fashion:

Thus, in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish or human rights violations, or all the cases person in which the State might be found responsible

for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.¹¹

Submissions

[30] In meeting its obligations to protect rights as per the norms cited above, the state is required by the exigencies of the situation to put in place specific measures to ensure that children enjoy those rights enshrined in the Charter. The rationale behind this duty of states is a settled rule of international law that enjoins states to protect children because of their status as children.¹² The very fact that the government has failed to protect children from abduction by rebels, especially from IDPs camps manned by UPDF soldiers is sufficient to find it in violation of the duty to protect as envisaged by article 29 of the Charter.

[31] The children have told the story of their capture and time served in rebel captivity. The rebels abduct children as young as eight or nine. The children are tied to one another, and forced to carry heavy loads of looted goods as they are marched off to the bush. Children who protest or resist are killed, those who cannot keep up or become tired or ill are killed, and those who attempt to escape are killed.¹³

[32] Their death is not quick, the rebels never kill children by bullets, but force the other abducted children to kill them usually with clubs or machetes. Any child who refuses to participate in this killing may also be beaten or killed. The LRA enforces discipline through a combination of violence and threats. Children who do not perform their assigned duties to

the satisfaction of the rebel leaders are beaten. Children who flout rebel orders are beaten or killed, often by other abducted children.¹⁴

[33] Failed escape attempts are punished by death, and successful escape attempts lead to retaliation: if one sibling escapes, the rebels often kill the other sibling, or return to the child's home village and slaughter any surviving relative. The children are slaves, their bodies and lives are at the disposal of their rebel captors.¹⁵

[34] Various civic organisations, especially those involved in relief agency, have reliably confirmed that at least forty thousand (40 000) children have been abducted by the LRA since the outbreak of the war.¹⁶ In 2002, 2 611 people were abducted from Kitgum and Pader, of which three-quarters (about 2000) were children. On New Years Eve of the same year, the rebels abducted thirty people from Pece in Gulu municipality. In some instances, reports are made to the nearby army barracks after a rebel attack, but the army would take no action.¹⁷ As a result, the number of abductions has steadily increased as by May 2003, 8400 children were added to the already registered 12 000 abductees. In mid May 2005, the LRA abducted between 40 and 50 children in Northern Uganda and it is sad to note that the current statistics reflect that the number of abductees has risen to between 40 000 and 50 000.¹⁸

[35] Further, the rebels have often besieged IDP camps abducting, re-abducting children and committing atrocities and indiscriminate killings. For instance, the rebels on Lukodi IDP camp mounted an attack in May 2004, some 12 kilometres from Gulu and left 125 people dead.¹⁹ Similarly on 30 April 2005, rebels attacked the Loc Goma camp where ten people who had gone to till their land were killed. Again this is a camp protected by UPDF soldiers.²⁰ These statistics serve to demonstrate how ineffective the UPDF army is in protecting civilians who reside in IDPs camps from

rebel raids. The only explanation, in our view is that the army lacks due diligence for reasons including insufficiency of soldiers, incompetence and lack of co-ordination in the army security. To that end, the government has overwhelmingly violated article 29 through gross negligence as children in the custody of the army are re-abducted by the rebels.

[36] In view of the above authorities, we anticipate and refute any allegations suggesting that the government is not responsible for violations of rights by third parties. We stress that whilst the Government has not abducted children, it has shown lack of due diligence to prevent abductions especially from IDPs camps. It is our firm contention that there is no better case in which the Government ought to be found in violation of article 29 of the Charter.

[37] The facts above have established that the state has failed, therefore, as is required by international human rights law, to put measures in place for the enjoyment of these rights. This is submitted without prejudice to the fact that the government has put in place a national policy on IDPs camps. Further, the security is insufficient or the army personnel is incompetent since raids resulting in further abductions and re-abductions are still being carried out in IDP camps by rebels. The army does not respond with the urgency required by the exigencies of the situation whenever a rebel raid is reported to them. These factors taken in conjunction, demonstrate lack of political will as opposed to arguments for lack of capacity. It is difficult to comprehend how a national army with warplanes and vehicles fails to subdue rebels who operate on foot.

Article 16 and 27: The right to protection against child abuse, torture and sexual exploitation

Facts

[38] The children abducted by the LRA are subjected to severe physical and psychological abuse. Newly abducted children are routinely beaten with tree branches, butts of guns, handles of machetes and other weapons by LRA soldiers in order to instil 'discipline' and 'strength' in preparation for joining the rebel army. Children are often severely beaten for disobeying orders as well as for minor infractions. Child soldiers, as well as those used as porters, are forced to endure long marches with heavy loads. If they become too tired to keep up or are injured, they are either beaten severely and left to die or killed outright. In addition the girls who are abducted are forced to become wives of the LRA commanders and are randomly raped by the rebels. UPDF soldiers have also been accused of raping girls. Though the prevalence of rape and torture is well known amongst authorities, adequate steps have not been taken to provide protection to these children.

Law

[39] Article 16 of the Charter provides that:

1. State parties to the present Charter shall take specific legislative and other measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of a parent, legal guardian or school authority or any other person who has the care of the child.

2. Protective measures under this article shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for the identification, reporting, referral, investigation, treatment, and follow-up of instances of child abuse and neglect.

[40] Article 27 states that:

States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:

- a. The inducement, coercion or encouragement of a child to engage in any sexual activity;
- b. The use of children in prostitution or other sexual practices;
- c. The use of children in pornographic activities, performances and materials

[41] In *SERAC* the Commission held that all rights entail a four-fold obligation for states, namely to respect, protect, promote and fulfill.²¹ The obligation to protect requires that governments protect their citizens from damaging acts that may be perpetrated by private parties.²² This is in line with the jurisprudence of other international human rights bodies. In *X and Y v Netherlands*²³ the European Court of Human Rights (ECHR) held that the government must ensure that private persons do not interfere with the enjoyment of rights. In *Velasquez*, the IACHR also held that the state has an obligation to exercise due diligence in ensuring that third parties do not violate the rights of their citizens.²⁴ The court further stated that the state is responsible for actions taken by state agents, which it does not investigate and prosecute.²⁵

Submissions

[42] As discussed above, children in northern Uganda are at a very high risk of being abducted by the LRA. Once abducted, they are subjected to severe physical and psychological abuse. Newly abducted children are routinely beaten with tree branches, butts of guns, handles of machetes and other weapons by LRA soldiers in order to instil 'discipline' and 'strength' in preparation for joining the rebel army. Children are often severely beaten for disobeying orders as well as for minor infractions.²⁶ Child soldiers, as well as those used as porters, are forced to endure long marches with heavy loads. If they become too tired to keep up or are injured, they are either beaten severely and left to die or killed outright.²⁷

[43] Abducted children suffer serious psychological damage. One boy who escaped from the LRA described to the Refugee Law Project of Makerere University an incident that he was involved in as follows:

Once there were about seven who tried to escape, including two girls. The commander decided not to kill the girls. He picked one boy to be killed. He placed his head on a piece of wood. He told one of the girls to come and chop this boy into small pieces. She started trying to cut his head off, but was not doing a good job. The other boys were told to help. When they had almost taken the head off, they had to chop the body into small pieces. Then they were told to play with the dead person's head. The boys had to throw it in the air four times, and the girls three times. The girls were bare-chested. After that, they commanded the girls to smear blood of the dead boy on their chest. After that, they put the head of the boy in a central place, put clubs all over it covering the head, and informed us that anyone who tries to escape will have the same thing.²⁸

[44] This horrific incident is but one of the well-documented incidents of brutality that children are forced to engage in. Children also have to participate in active combat, looting of villages, and killing of civilians and abduction of other children.²⁹ Such children suffer serious psychological

damage, which needs to be addressed once they have returned to society. However, the government does not provide any counselling or rehabilitation services to children who have escaped or been rescued from the LRA. The only services available are from NGO's, who are not given any funding by the government.³⁰

[45] Sexual exploitation of abducted girls is rife. The girls who are not forced to combat are forced into sexual slavery as the 'wives' of LRA soldiers or randomly raped by the rebels.³¹ Aside from abduction by the LRA, girls also face the risk of sexual assault when they become night commuters. Night commuters are children (and some adults) that travel from villages and IDP camps to nearby towns because they fear attacks and abductions by the LRA during the night. The phenomenon started around 2002 when parents began to send their children as commuters because of inadequate protection by the UPDF from LRA attacks.³²

[46] There are approximately 42 000 children across northern Uganda who commute every night.³³ In some towns, such as Gulu, district authorities have stepped in to co-ordinate relief efforts of NGO's and even provide designated shelters with UPDF soldiers as guards. However, in most districts there is no assistance from the authorities.³⁴ Children therefore have to find shelter wherever they can. Such children, particularly girls, are at risk of sexual harassment and assault. Girls mostly get attacked when they are on their way to their nighttime sleeping places, as there is no protection offered during the journey. The perpetrators are reportedly adolescent boys and men. However, UPDF soldiers have also been accused of raping female night commuters. Though the prevalence of rape is well known amongst authorities, adequate steps have not been taken to provide protection for night commuters.

[47] Local Acholi leaders say that increasing poverty coupled with the increased presence of the UPDF has also facilitated an increase in survival sex. Often it is the UPDF soldiers who engage in these transactions.³⁵ A nurse at Lacor Hospital stated that fourteen and fifteen year old girls taking shelter at the hospital at night are particularly susceptible to sexual exploitation. The UPDF, who are supposed to protect the people, use money to bribe the young girls. She further stated that UPDF soldiers take young girls to the rooms of UPDF soldiers getting treatment at the hospital.³⁶

[48] The government has failed to provide adequate protection against abductions, which lead to sexual abuse. They have also failed to provide protection to the night commuters against sexual attacks. By so doing, the government has breached its obligation to protect children from physical and psychological and sexual abuse, as provided in article 16(1) of the Charter, by failing to take adequate steps to prevent abuses by private parties. Article 16(2) of the Charter requires the state to put into place measures to provide support for children that are abused and treatment and follow up for instances of child abuse. The government has failed to provide any such services to traumatised children in northern Uganda and is therefore in breach of this obligation. The government is also directly responsible for the breaches committed by UPDF soldiers who have gone unpunished.

Article 22: The right not to take part in hostilities

Facts

[49] An estimated 40 000 children are held by the LRA rebels. This converts to a reasonable assumption that more than three quarters of active soldiers of the LRA are children. These children are forced to mount

attacks on IDPs camps, loot and kill villagers day in and day out. Many of the children who manage to escape from the LRA have been recruited into UPDF and are serving in the army on full time basis. The statistics are that at least 700 former abductees have been incorporated into the UPDF. The government is failing in its duty of ensuring that children do not take part in hostilities and that they are not recruited into military service under any circumstances.

Law

[50] Article 22 of the Charter demands of states to take all necessary measures in ascertaining that no child shall take direct part in armed conflict. Further, it categorically prohibits the recruitment of child soldiers into military combat by providing as follows:

- a. States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts, which affect the child.
- b. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child ...

[51] It ought to be noted that the recruitment of children and participation in hostilities, whether on the part of governments or armed militia groups, are all activities that ultimately jeopardize the mental and physical and integrity of children. The government is, therefore, not exonerated by the fact that such violations are attributed to third parties. In this regard, the IACHR confirmed the responsibility of a state for its own acts and asserted state responsibility for the acts of third parties in the state in the following elaborated fashion:

Thus, in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish for human rights violations, or all the cases person in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.³⁷

Submissions

[52] The involvement of children in armed conflict has become an international concern both in the developing and the developed world. We would hasten to state that it is a practice that shocks humanity despite being practised by states that are deemed to be democracies.

[53] By no means should the government in this matter be exonerated from its international obligation not to allow and practice recruitment of children to take part in hostilities. The government has failed to protect children from abduction and now they are being used to commit atrocities against their own families, neighbours and friends.

[54] This must be assessed in light of the fact that an estimated 42 000 children are held by the rebels. This converts to a reasonable assumption that more than three quarters of active soldiers are children.³⁸ These are the children who mount attacks on IDPs camps, loot and kill villagers day in and day out. The government has failed to ensure that these children do not take part in hostilities and that they are not recruited into military service, thereby violating article 22 (2) of the Charter, as the facts below will further establish.

[55] Many of the returnees (children who escape from the LRA) have been recruited by the UPDF and are serving in the army on full time basis. The statistics are that at least 700 former abductees have been incorporated into the UPDF.³⁹ The government of Uganda does not dispute the recruitment of under age soldiers. Instead, Colonel Shaban Bantariza, the UPDF spokesperson justifies this conduct by stating that the children have misrepresented their age in order to secure employment.⁴⁰ It further avers that the children have become social misfits in society by perpetrating atrocities hence they can only pay back by serving the nation in UPDF. With due respect to the Government, this comment is frivolous to say the least. By their very nature children are susceptible to manipulation by adults hence the need of protection. Therefore to regard them as social misfits is the last observation one can make. Our considered view is that they are victims of the concerted acts of rebels and their Government. The Minister of Defence Amana Mbabazi has, however, denied the allegations of child recruitment in parliament.⁴¹

[56] Despite the government's denials, in a telephone interview conducted by the authors it was confirmed that in deed many children are still serving in the UPDF despite resilient lobbying by the civil society for the demobilisation of the child soldiers.⁴² It is on the basis of these facts that the following legal arguments are based.

[57] The United Nations Committee on the Child (Children's Committee), established by the Convention on the Rights of the Child (CRC), has already expressed its discontent and profound concern with children in armed conflict in its Concluding Observations to the United Kingdom report.⁴³ It stressed the need to adopt legislation specifically ousting the practice of involving children in hostilities. In a blatant demonstration of lack of political will to seek assistance in eradicating this problem, the

government of Uganda did not make a mention of this challenge in its initial report to the Children's Committee cited in this paragraph. This was despite the fact that the war had been raging for over a decade.

[58] In a nutshell, the above authorities apparently canvass state responsibility in its entirety.⁴⁴ Firstly, the state is responsible for its own violations of international law by virtue of ratifying international human rights instruments, as the government did by ratifying the Charter. Secondly, the acts of state agents committed in the course of discharge of duties are imputed to the state on the basis of the agency relationship and or acquiescence. Therefore, the government is directly responsible for recruitment of child soldiers by UPDF personnel.

[59] Thirdly, and more emphatically, the acts of third parties who are subject to the jurisdiction of a state party are imputable upon the state especially for lack of diligence on the part of the state. It is submitted that the authors will be at pains in most parts of this communication to establish the reluctance and hence lack of political will by the state to remedy these violations. It may assist to note that the government does not need a budgetary allocation to desist from recruiting children into military service or to demobilise child soldiers. We submit and strongly content that the honourable Committee can only send a message across the continent by making an unconditional, specific and effective recommendation requiring demobilisation of child soldiers forthwith.⁴⁵

Article 14: The right to Health

Facts

[60] The health conditions of children living in the IDP camp is of serious concern. Due to lack of sufficient food, poor sanitation, overcrowding, lack

of access to safe drinking water and lack of access to health care facilities, the child mortality and morbidity rates in northern Uganda are significantly higher than in the rest of Uganda. The main diseases that affect the IDP children are malaria, measles, respiratory disease and diarrhoea. The spread of these diseases is facilitated by the unsanitary conditions of the camps. The government is failing in its obligation to fulfil the right to health to the vulnerable children.

Law

[61] Article 14 of the Charter provides, amongst others, that:

1. Every child has the right to enjoy the best attainable state of physical, mental and spiritual health.
2. States Parties to the present charter shall undertake to pursue the full implementation of this right and in particular shall take measures:
 - a) To reduce infant and child mortality rates;
 - b) To ensure the provision of necessary medical assistance and health care to all children with an emphasis on the development of primary health care;
 - c) To ensure the provision of adequate nutrition and safe drinking water;
 - d) To combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;
 - e) To ensure appropriate healthcare for expectant and nursing mothers;
 - f) To develop preventive health care and family life education and provision of service ...

[62] In General Comment 14, the Committee on Economic Social and Cultural Rights (CESCR) interpreted the right to the 'highest attainable standard of physical and mental health', as provided in article 12(1) of the

International Covenant on Economic Social and Cultural Rights (ICESCR), to which Uganda is also a state party, to mean the following:

'The Committee interprets the right to health, as defined in article 12(1), as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.'⁴⁶

[63] The Committee further stated that the right to health has four facets, namely, availability, accessibility, acceptability and quality. Availability means that there must be functioning public health care facilities including medical professionals. Accessibility entails that health facilities, goods and services must be physically (within safe physical reach) and economically accessible to all, especially vulnerable and marginalized groups in society, which include amongst others, children and adolescents. Acceptability requires that health care be culturally appropriate and gender sensitive. Quality entails that there must be skilled medical personnel, scientifically approved and unexpired drugs, medical equipment as well as sanitation and safe water.⁴⁷

[64] Article 16(2)(c) the Charter provides that states parties shall take measures to ensure the provision of adequate nutrition. This can be equated to the right to receive adequate food, which was interpreted in General Comment 12 of the CESCR as follows:

The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals... The accessibility of food in ways that are sustainable and that do not interfere with the enjoyment of other human rights... Availability refers to the possibility of feeding oneself directly from productive land or other resources... Accessibility encompasses both physical and economic accessibility.⁴⁸

[65] The CESCR further stated that the obligation to fulfil the right to adequate food includes the obligation to directly provide food to individuals or groups who are, due to circumstances beyond their control, unable to provide themselves with food through their own means.⁴⁹ A state that argues that resource constraints make this impossible must show that it has made every effort to use the resources at its disposal to fulfil this obligation as a matter of priority.⁵⁰

[66] The rights in the Charter are not subject to the qualification of progressive realization and as such are of immediate effect and application. A state that fails to provide these rights is therefore in violation of its obligations under the Charter. However, even if resource constraints are taken into consideration, the government has certain minimum core obligations with respect to the right to health.⁵¹ In General Comment 14 the CESCR stated that the minimum core obligations with respect to the right to health are:

- a. To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;
- b. To ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;
- c. To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;
- d. To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;
- e. To ensure equitable distribution of all health facilities, goods and services;
- f. To adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population; the strategy and plan of action shall be devised, and periodically reviewed, on the basis of a participatory and transparent process; they shall include methods, such as right to health indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy

and plan of action are devised, as well as their content, shall give particular attention to all vulnerable or marginalized groups.⁵²

[67] In *SERAC*, the Commission held that all rights entail a four-fold obligation for states, namely to respect, protect, promote and fulfill.⁵³ The Commission further held that the obligation to respect entails that the state must refrain from interfering in the ability to enjoy a particular right; the obligation to protect entails that the state must take measures to prevent interference from third parties in the enjoyment of rights; the obligation to promote entails that the state must take actions such as promoting awareness and building infrastructure; the obligation to fulfil requires positive action on the part of the state to actually provide the right, including direct provision of services.⁵⁴

Submissions

[68] The health conditions of people, especially children, living in the IDP camps is of serious concern. Due to lack of sufficient food, poor sanitation, overcrowding, lack of access to safe drinking water and lack of access to health care facilities, the child mortality and morbidity rates in northern Uganda are significantly higher than in the rest of Uganda.⁵⁵ The main diseases that affect the IDP children are malaria, measles, respiratory disease and diarrhoea. The spread of these diseases is facilitated by the unsanitary conditions of the camps.⁵⁶

[69] Children in the camps do not have access to adequate food. People living in the camps have been forced to abandon their farmland and with it their only independent means of sustenance. Global acute malnutrition of children aged 6-59 months ranges between 7% and 21%, whereas 10% malnutrition signifies a nutritional emergency.⁵⁷ The camps are supposed to be 'protected villages' however there are usually only a handful of UPDF

soldiers assigned to protect villages that might house as many as 20 000 people.⁵⁸ The soldiers are also stationed in the middle of the camps, leaving the outskirts unprotected.⁵⁹ As a result, no farming activity takes place in the camps due to poor security. Even though fertile areas surround the camps the people are afraid to farm because they fear attacks by the LRA.⁶⁰ The people are therefore completely dependant on food aid to survive which is not sufficient.

[70] The health situation is exacerbated by the fact that less than 50% of the population in Gulu, Kitgum and Pader have access to health care facilities within 5km walking distance of where they live. Most people struggle to travel these distances due to insecurity on the roads and lack of transport. The security situation has also led to many health care workers being unwilling to work in the area. As a result of this the ratio of healthcare workers to people is significantly lower than in other areas of the country. In Kitgum, for example, the doctor to population ratio is 1:33 000 whereas nationally the ratio is 1: 18 600. The nurse to population ratio is equally bad at 1:6 800. Only 50% of government health units are functioning and those that do function are understaffed.⁶¹

[71] The other serious issues that affect health conditions in the camps are access to water and sanitation as well as the spread of HIV/AIDS. Limited clean water and sanitation are provided in the camps through the efforts of UNICEF and its implementing partners; however, given the enormity of the task their efforts remain insufficient.⁶² Local government offices co-ordinate the provision of sanitation and water, however it is funded by donors.⁶³ The people living in the IDP camps do not receive any information on HIV/AIDS. They also do not have access ready access to testing or counselling facilities. HIV/AIDS is spreading at an alarming rate in the camps and the infection rate in the war affected areas is double that of the national average.⁶⁴ The factors that contribute to the spread of the

virus include 'survival sex' by women and girls who exchange sex for food, school fees and other necessities as well as the high number of incidences of rape, especially of young girls who form part of the night commuters, by civilians, LRA as well as UPDF soldiers.⁶⁵

[72] Sanitation, water and food in the IDP camps are grossly insufficient. The government is therefore in breach of its obligation to fulfil the right to health by directly providing water, sanitation and food to vulnerable groups who are unable to provide these things for themselves.

[73] The right to health is neither available nor accessible, as there are no health care facilities or workers situated in the camps and the nearest facilities are beyond the safe physical access of the people living in the camps. Health care is also not economically accessible, as people cannot afford to travel to health care facilities or pay for the services. Children are in a particularly vulnerable position as they rely completely on adults to provide them with healthcare. In circumstances where their parents cannot afford to provide them with healthcare it is the states obligation to do so.

[74] The obligation to respect the right to adequate nutrition is being breached because the government has forcibly removed people from their farmland and placed them in camps where they cannot provide themselves with food. The government has also failed to protect the right to adequate nutrition because it does not provide sufficient protection against LRA attacks to United Nations and other agencies that are providing food to the IDPs and also does not protect the perimeters of the camps sufficiently to allow people to grow their own food. As a result of the above, children do not have access to adequate nutrition and it is incumbent upon the state to ensure that such children are directly provided with adequate food as provided under article 16 of the Charter.

[75] The failure by the government to provide information on HIV/AIDS as well as testing and counselling is also a breach of the obligation to promote the achievement of the best attainable level of health. In an interview with a medical officer, several factors were identified as contributing to the spread of HIV/AIDS in the north, including, disruption of the cultural, education and social systems, closeness of people living in the IDP camps with nothing to do, mobile troops (UPDF) forcibly raping women and rampant poverty.⁶⁶

[76] The high risk of HIV infection is also related to the government's failure to fulfil its other obligations to provide food and education, which have led to survival sex as well as the failure to protect children from sexual abuse and assault. The government is therefore in breach of the obligations to respect, protect, promote and fulfil the right to health.

Article 17: The right to education

Facts

[77] The conflict has severely disrupted the educational system in the north; schools have been closed or displaced and the drop out rate is very high. There are no structures for the schools, the classes operate under trees, the pupil teacher ratio is about 200 to 1 and in most cases no learning is taking place. In addition to that, the LRA have killed teachers, children and abducted some directly from school, as a result most parents prefer to keep their children at home for fear of abductions and teachers are not willing to offer their services in such schools for similar reasons. The government of Uganda did a commendable job of introducing universal primary education in 1997 but as a result of government inaction, most children in northern Uganda cannot take advantage of it.

Law

[78] Article 11 provides that:

1. Every Child has a right to an education
2. States parties to the present Charter shall take all appropriate measures with the view to achieving the full realization of this right and shall in particular:
 - a. Provide free and compulsory basic education;
 - b. Take measures to encourage regular attendance at schools and the reduction of the dropout rates.

[79] Education has been recognised as the key economic resource and determinant for social and economic inequalities between individuals and nations. The right to education has achieved universal support through legal instruments.⁶⁷ Accordingly, the Ugandan government has a responsibility of providing children with access to education but in spite of all the commitments made by the government, thousands of children in northern Uganda remain deprived of educational opportunities as a result of poverty and the war.

[80] In General Comment 13, the CESCR put emphasis on the point that education in all its forms and at all levels shall exhibit the following interrelated and essential features:

Availability - functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will

also require facilities such as a library, computer facilities and information technology;

Accessibility - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions:

Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds.

Physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location.

Economic accessibility - education has to be affordable to all ... whereas primary education shall be available "free to all", States parties are required to progressively introduce free secondary and higher education⁶⁸

[81] In General Comment 11, the CESCR emphasized that primary education must be compulsory and free of charge, the two terms were defined to mean:

Compulsory. The element of compulsion serves to highlight the fact that neither parents, nor guardians, nor the State are entitled to treat as optional the decision as to whether the child should have access to primary education. Similarly, It should be emphasized, however, that the education offered must be adequate in quality, relevant to the child and must promote the realization of the child's other rights.⁶⁹

Free of charge. The nature of this requirement is unequivocal. The right is expressly formulated so as to ensure the availability of primary education without charge to the child, parents or guardians. Fees imposed by the Government, the local authorities or the school, and other direct costs, constitute disincentives to the enjoyment of the right and may jeopardize its realization.⁷⁰

[82] In General Comment 13, the CESCR also emphasized that the right to education, like all human rights, imposes three types or levels of

obligations on States parties: the obligations to respect protect and fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide. The CESCR defined the obligation as follows:

Protect. Obligation to protect requires states to take measures that prevent third parties from interfering with the enjoyment of the right to education.

Fulfil. The obligation to fulfil (facilitate) requires states to take positive measures that enable and assist individuals and communities to enjoy the right to education and that states have an obligation to fulfil (provide) the right to education.

Submissions

[83] The government of Uganda did a commendable job of introducing universal primary education in 1997 but as a result of government inaction, most children in northern Uganda cannot take advantage of it. The conflict in northern Uganda between the LRA and UPDF has severely disrupted the educational system in the north; schools have been closed or displaced and the drop out rate is very high.⁷¹

[84] The government has failed to live up to its international obligations and policies in respect of children in northern Uganda. There are no structures for the schools, the classes operate under trees, the pupil teacher ratio is about 200 to 1 and in most cases no learning is taking place.⁷² In General Comment 11, the CESCR emphasized that the education offered must be adequate in quality, relevant to the child and must promote the realization of the child's other rights. The government of Uganda has therefore failed in its obligation to provide education to the children.

[85] Further to that, additional costs for textbooks, uniforms, lunch fees and extra charges have been established locally to pay for school

maintenance which usually add up to at least UGS 50,000 (30 USD). The additional costs that come with primary education makes it difficult for the poverty stricken IDP children like those in northern Uganda to benefit. The choice is between eating and sending children to school,⁷³ which is actually no choice. There are no textbooks or supplies and in most cases no learning is taking place so the children just stay home. In General Comment 11, the CESCR defined free education, as availability of education to a child without charge on parents or guardians it further emphasized that universal primary education must be free of charge, which is unequivocal requirement. The CESCR advocated for the elimination of fees imposed by governments, the local authorities or schools, and other direct costs, which, constitute disincentives to the enjoyment of the right and may jeopardize its realization constituting a highly regressive in effect; the poverty stricken IDP children in northern Uganda, are feeling this effect.

[86] In General Comment 13, the CESCR interpreted the right to education to include physical accessibility to the pupils, that is to say that the education has to be within safe physical reach, for example, by attendance at some reasonably convenient geographic location. In northern Uganda, effects of physical insecurity bear primary responsibility for preventing children from completing or going to school. More than 200 schools have been displaced with many of them destroyed. This has forced about 76% of the children to drop out of school.⁷⁴ Although organisations such as World Vision constructed schools in sub counties,⁷⁵ they are not being used due to the ongoing conflict that makes the schools inaccessible for the children and the government has done nothing to remedy this situation.

[87] In addition to that, the LRA have killed teachers, children and abducted some directly from school,⁷⁶ as a result most parents prefer to keep their children at home for fear of abductions and teachers are not

willing to offer their services in such schools for similar reasons. In General Comment 11, the CESCR defined the element of compulsion to highlight the fact that neither parents, nor guardians, nor the State are entitled to treat as optional the decision as to whether the child should have access to primary education. In failing to make educational services safe for the children, the government of Uganda is failing to fulfil its obligations under the Charter. In addition, the CESCR in General Comment 13 defined access to education to include physical accessibility that is, education has to be within safe physical reach, this has not been done with respect to children in northern Uganda who have for reasons beyond their control been excluded from attaining an education.

[88] In relation to the above, even though the children are interested in going to school, it is really a tussle for them. They walk more than 5km everyday on barefoot and empty stomachs. The school environment itself is pathetic for a learning place⁷⁷ they are far from home, dangerous to get to and lack qualified teachers, classrooms, supplies and equipment. In addition, many schools have reduced their hours of instruction so that pupils can travel to school after 10:00am in the morning and return home before 3:00pm, times considered safe.⁷⁸ This attendance is not regular and is dependant on the security at a given time, which is simply not sufficient to receive an education.⁷⁹ Despite the barriers, many young people I talked to cling to education as a strong source of hope and stability and go to incredible lengths to preserve their right to Education,⁸⁰ and this, without any assistance from the government that pledged to provide them with access to education under article 11 of the Charter.

[89] The CESCR defined the obligation to protect as requiring states to take measures that prevent third parties from interfering with the enjoyment of the right to education. The government of Uganda has failed to meet this obligation in respect of children in northern Uganda.

[90] In relation to the obligation to protect the state is required to take measures that prevent third parties from interfering with the enjoyment of the right to education, the government has failed to do this. The LRA established a routine of attacking schools since 1990. Attacks on schools are an efficient way for the rebels to abduct many children at once. In October 1996, for instance, the rebels raided St Mary's college, a girl's boarding school in Aboke, Apac district. The rebels arrived in the middle of the night, abducted 139 girls aged mostly 15 to 17 years. The rebel tactic of raiding schools is typical, and has gravely disrupted the north's educational system.⁸¹

[91] Further more; between June and December 2002, the rebels attacked eighteen schools in Pader and Kitgum districts. Books were looted and supplies burnt, teachers were beaten, abducted and some killed during the attacks and the pupils were abducted. In August and September of 2002, children were abducted from schools in Lapole, Akwang and Lukolu sub counties.⁸²

[92] On 12 July 2002, the LRA raided Pa-minyai displaced primary school and abducted nine pupils and burnt down forty-five huts. On 10 December 2002, the LRA abducted forty-two students at schools in Palenga Gudu, Bobi Sub County, in Gulu district together with more than 50 other people. Again, on 27 February 2003, the LRA abducted thirty pupils from Abung Primary School in Koch Ongako, and another eleven secondary pupils from Oxford school in Kitgum town. On the same day, another LRA group attempted to abduct pupils at Wii-Awor Primary School near Lacor hospital in Gulu municipality. In early June 2003, the LRA abducted forty-one persons from a Catholic seminary school; on In May 2003, the LRA abducted 44 students from Sacred Heart Seminary in Gulu, and killed 4

students and in June abducted 56 students from Lwala Secondary School in Katakwi district.⁸³

[93] A UN assessment in March 2003 revealed that in Kalongo Trading centre alone, 55 percent of the children registered, as assessors were not attending school. Kalongo had two sites hosting students from 30 schools, all displaced as a result of the insecurity. Persons conducting the assessment believe that this could be the tip of the iceberg for Pader district, where there are at least 12 IDP camps.⁸⁴ The government of Uganda has failed in its duty to make the schools safe for the children and their teachers.

[94] The obligation to fulfil (facilitate) requires states to take positive measures that enable and assist individuals and communities to enjoy the right to education and states have an obligation to fulfil (provide) the right to education. Children abducted during their primary education and managed to escape have not been able pursue their education on return and the state has not taken measures to assist them.⁸⁵ For those who have missed several years of schooling, it is shameful to be in class with much younger children. Gender is traditionally a main variable determining school attendance. Girls are often excluded than boys. In north, the gender-gap has widen, chances for girls to attend school diminishes under unsafe conditions. With extreme conditions like poverty in the IDP camps, many girls are forced into early marriages.⁸⁶

[95] Similarly, around 30% of girl and young women returnees are now mothers and are unable to go to school themselves or send their own children. The stigma of poverty and their experiences of forced abduction from the village and rebel captivity mean that their own children are largely excluded from school. They live in constant fear of being re-abducted; they feel only helplessness as poverty bites them.⁸⁷

[96] The child-mother returnees want to go back to school, but the few organizations sponsoring child-mothers cannot take all of them; others have nowhere to live with their babies. Still others, who desperately need an education, can't return to school because day care facilities are needed to look after their pre-school aged children. Most of the girls suffer from trauma, or attention deficit, while others feel intimidated sitting in a classroom with much younger girls who have not gone through what they have.⁸⁸

[97] These children are victims of the most vicious circumstances - destitute orphans, victims of rape and defilement, night commuters, who have had any chance of education taken away from them as a result of their abduction and the government of Uganda has not made any attempts to remedy their situation and provide them with an education as it pledged under article 11 of the Charter.

[98] Children in northern Uganda have made extraordinary sacrifices to access education. Protecting children and their rights means making sure that education opportunities are available and, just as importantly, that education is responsive to the risks faced by children in their daily lives. The government of Uganda has failed to make schools and non-formal educational environments physically safe for children. The government of Uganda has further failed to take responsibility for protecting children's rights and well being and to increase the role of education in protecting children in the war torn northern Uganda.

Article 5(2): The right to Survival, Protection and Development

Facts

[99] In the conflict in northern Uganda, children are the principle targets for murder, abduction, forced recruitment and sexual enslavement. A combination of war, massive displacement, HIV/AIDS, lack of development and poverty has created a world of misery for the children. Each day, countless children in northern Uganda are exposed to dangers that hamper their growth and development. They suffer immensely as casualties of war and violence, they are displaced children, forced to abandon their homes and their roots, victims of neglect, cruelty and exploitation.

The government of Uganda is failing in its commitment to ensure the development, survival and the protection of the children; the children are suffering everyday as a result of government's inaction and unwillingness to meet its obligation under the Charter.

Law

[100] Article 5(2) of the Charters provides:

States parties to the present charter shall ensure, to the maximum extent possible, the survival, protection and development of a child.

[101] The right to survival, protection and development encompasses all the other rights of a child in the Charter. No definition of the rights to survival, protection and development of a child are given in the Charter. From the readings of the World Declaration on the Survival, Development and Protection of Children (Declaration), the terms can be defined as:

Survival: "survival includes the right to life, the attainable standard of health, nutrition and an adequate standard of living. It also includes the right to a name and nationality".

These rights seek to ensure that the children have nutritious food, potable drinking water, a secure home and access to health facilities.

Protection: This right includes freedom from all forms of exploitation, abuse and inhuman or degrading treatment. This includes the right to special protection in situations of emergency and armed conflict. The aim is simple, to protect vulnerable children from those who would take advantage of them and to safeguard their minds and bodies.

Development: The right includes the right to be educated, to receive support for development and care during early childhood and to social security. It also includes the right to leisure, to recreation and to cultural activities. This right seeks to ensure that children can study and play with whomever they want, practice their own religion and culture and accept their own uniqueness of other cultures and religion.

Submissions

[102] In the conflict in northern Uganda, children are the principle targets for murder, abduction, forced recruitment and sexual enslavement. A combination of war, massive displacement, HIV/AIDS, lack of development and poverty has created a world of misery for the children.⁸⁹ To borrow the from the Declaration:

The children of the world are innocent, vulnerable and dependent. They are also curious, active and full of hope. Their time should be one of joy and peace, of playing, learning and growing. Their future should be shaped in harmony and co-operation. Their lives should mature, as they broaden their perspectives and gain new experiences.⁹⁰

[103] For the many children in northern Uganda, the reality of childhood is altogether very different. Each day countless children in northern Uganda are exposed to dangers that hamper their growth and development. They suffer immensely as casualties of war and violence, they are displaced children, forced to abandon their homes and their roots, victims of neglect, cruelty and exploitation. In addition, these children suffer from the

scourges of poverty, from hunger and homelessness, from epidemics and illiteracy. Each day hundreds of children in the IDP camps die from malnutrition and disease, including HIV/AIDS, from the lack of clean water and inadequate sanitation or access to health facilities.

[104] The government of Uganda is failing in its commitment to ensure the development, survival and the protection of the children; the children are suffering everyday as a result of government's inaction and unwillingness to meet its obligation under the Charter. The children shoulder enormous responsibilities for themselves, their families and the community as a whole.

[105] Human Rights Watch documents a story of a 12-year-old boy who was abducted and trained to serve in the LRA during his time, he was expected to steal, fight and kill for the LRA and was regularly exposed to brutality. Like many other children, he was attacked and left for dead for failing to follow orders of the rebels. The story of other children who have suffered as a result of the conflict will never be heard: children who were bayoneted or beaten to death on a whim, children who died of diseases, from polluted water or hunger, children who were shot as they were driven forward to attack government forces. Fewer than half the children who were abducted have returned. Many are still in captivity, abused and manipulated and lucky to be alive.⁹¹

[106] The Ugandan government has not provided for these children. Uganda though a poor country, has received a considerable amount of assistance, for example the European Union Aid office (ECHO) on 9 October 2002 provided EUR 500,000 for vulnerable population groups in Uganda. The European Commission in their release stated that since 2000 ECHO has provided close to 2.5 million Euros to support vulnerable

populations in Uganda and more than half of Uganda's budget is provided for by donors.⁹²

[107] Even with all that aid, some of it targeted for northern Uganda, the government has fallen short of its duty to provide minimum government services for the children in northern Uganda. The night commuters illustrate these failings, the spread of poverty and associated survival sex, the spread of sexually transmitted diseases and sad state of education in the region.⁹³

[108] Thousands of children have been abducted by the LRA, from northern Uganda in the course of its brutal campaign against the government of Uganda.⁹⁴ The abducted children including primary school children have been recruited into rebel ranks, many have been forcibly married, raped and defiled, maimed or killed.⁹⁵ The children are traumatised and feel betrayed by their own government that has failed to protect and provide for them, violating article 5 (2) of the Charter.

[109] A large proportion of LRA fighters are abducted children who are regularly killed in combat.⁹⁶ In an interview with IRIN, Bantariza, the UPDF spokesman stated that:

It is not possible to differentiate between children and adults although they are minors, they are armed and shooting.⁹⁷

[110] The tragedy of the situation is that they are abducted children, being killed without discrimination. The government is continuously violating their rights under the Charter and failed to provide the minimum protection, survival and development as it pledged under article 5(2) of the Charter. The government of Uganda has clearly failed to protect the children from such abuses and is failing to ensure the maximum extent

possible, the survival, protection and development of children as it pledged to do under article 5(2) of the Charter.

[111] Beyond their physical wounds, the children struggle daily to cope with the psychological and social effects of the conflict. Those returning from captivity are frequently haunted by and feel deeply ashamed by their experiences, and while most communities are now committed to receiving the formerly abducted children, many still fear them, making their reintegration very difficult. Former abducted children endure constant fear of re-abduction and are almost certain of death as retribution for escape.⁹⁸ The government does not provide any services to reintegrate the children in the society failing to meet its minimum obligation as required by the Charter besides providing what it is called a Resettlement Package to rebels who renounced violence and benefited from the amnesty granted in terms of the Amnesty Act of 2000.

[112] The formerly abducted children often suffer post-traumatic disorders, including nightmares, sleeplessness, hallucinations, fainting, visual disorder, withdrawal, and a feeling of hostility and despair. Those who are no longer in the army fear the stigma of the past acts.⁹⁹ The government of Uganda has not taken any steps to support or protect these children. These children need an education, psychosocial care, and a means to a livelihood and community acceptance but the government of Uganda has not taken steps to provide for any of these. The children live in despair and believe some among them who become particularly addicted to violence after years of captivity will return to the bush and continue fighting.¹⁰⁰

[113] About half of the population in Gulu and Kitgum districts live in protected villages (IDP camps) in shocking and appalling conditions. In Pabo camp, one of the so-called largest protected villages; about 42,000

people live within a radius of two kilometres in crowded grass thatched huts. Rebels kill and rape indiscriminately and government soldiers have been responsible for the deaths of innocent civilians (many of whom are children) and forceful displacement of the people.¹⁰¹

[114] In February 2004, 200 people mostly children were massacred by the LRA at Barlonyo IDPs camp near Lira town. Fire has often ravaged these camps leaving the residents homeless. For instance, on January 21 and 23, 2005, fire ravaged the Agweng IDP in Lira district killing six and rendering 10, 000 homeless. The Abok camp in Apec district was also razed by fire killing three and leaving 20, 000 homeless.¹⁰² The right to survival has been defined to include the right to a secure home. Considering the living conditions in the camps, the children can never be said to have secure homes.

[115] Thousands of children are orphaned and heading households, and few, especially the girls are able to attend school or find sufficient means to support or protect themselves. Humanitarian assistance fall short of their needs, and they suffer ongoing abduction and increased domestic and sexual violence.¹⁰³ The children are struggling to survive against all odds with little support from the government that pledged under article 5(2) Charter to ensure their survival, development and protection.

[116] Another serious problem that has resulted from the state of affairs is the problem of night commuters. In northern Uganda today, tens of thousands of children trek into larger towns and hospitals every evening to sleep on the dirt for the night, at the bus parks, church grounds, verandas or in local warehouses and go back every morning to their villages without being fed, they do this because they are scared for their lives.¹⁰⁴ Children's fear of abduction was poignantly reflected by a survey of school children in Kitgum district conducted by Save the Children Norway on 31 March 2003.

When asked if they had ever been abducted by the LRA, 75 percent of those who had not, replied by saying "not yet."¹⁰⁵

[117] In 2003, 1,000 children were going into Gulu town nightly while at Lacor hospital, more than 2,500 people, mostly children, were seeking shelter. According to the hospital superintendent, these children have practically settled in the hospital grounds.¹⁰⁶ In Kitgum, thousands of children go to sleep at the catholic mission every night. Even during the day, approximately 500 children stay at the mission ground because they are afraid to return to their nearby villages. In the bus parks, church grounds or warehouses where the children take refuge, the children have no access to water and limited toilet facilities and no formal supervision is available for them.¹⁰⁷ A further 10 000 were pushed to the streets from villages this month of May 2005 as a result of renewed attacks on the villages after the collapse of dialogue between the government and the rebels.¹⁰⁸

[118] Despite these high numbers, no official government assistance is provided to the children and abuses on them, both while *en route* and at night, has taken place. These children are vulnerable to theft, physical and sexual abuse from other children as well as adults. The children may also be tempted to drinking, drugs and sexual abuse.

[119] The government is therefore failing to meet its duty to ensure the survival, protection and development of the children as required by article 5(2). The children are exposed to all forms of exploitation, abuse and inhuman or degrading treatment. The government has failed to protect and to safeguard their minds and bodies. The government has also failed to provide the children with food, health care and the necessary living conditions to ensure their survival. Finally the children have no prospects for proper development as they are denied access to basic education and

recreation but instead are forced to endure the constant trauma of living in a war torn society.

Prayers

[120] It is a well-settled rule of international law that any violation of an international obligation carries with it the corresponding duty to remedy with the necessary urgency. In the likely event that the sovereign Government of Uganda is found in violation of the Charter, the authors look forward to an expeditious settlement and restoration of these rights in line with the following unfaulted principle;

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.¹⁰⁹

[121] On ending, it is submitted that there is no better case than this in which the Committee should find a state party in violation of articles 5, 11(1) and (3) 14, 16, 22, 27 and 29 of the Charter and accordingly direct the government of Uganda:

1. To immediately put specific measures in place to set in motion the demobilisation of all child soldiers in active service in Local Defence Units.
2. To provide comprehensive health facilities, which include, but are not limited to adequate qualified medical staff and drugs, to all children in IDP camps in Northern Uganda.

3. To provide adequate and efficiently coordinate security personnel in all IDP camps so as to shield IDPs from rebel attacks.
4. To provide basic nutrition to children under the age of 18 years living in IDP camps as well as villages affected by the conflict.
5. To build adequate shelter and provide basic food and adult supervision to all children commuting to the cities for shelter.
6. To, within eight weeks of service of these recommendations upon it, diligently investigate and genuinely and effectively prosecute all UPDF soldiers and any other persons who have and are still sexually abusing girl children in the IDP camps and serve the Committee with a progress report.
7. To devise and implement a national policy within eight weeks of service of these recommendations, in respect of child-mothers to ensure that they access free education. A progress report should be lodged with the Committee on two months interval.
8. To declare that the recruitment of children into the UPDF amounts to a violation of the Charter for which the government of Uganda is responsible.
9. To declare that the abduction and involvement of children into the rebel militia (LRA) constitutes a violation of the Charter.
10. To adopt measures such as provision of psychosocial care facilities for the rehabilitation of all children affected by the war in Northern Uganda including returnees, former child soldiers and child victims of sexual and other forms of abuse.

[122] Pursuant to the provisions in article 45(1) the Committee may “use any appropriate method of investigating any matter falling within the ambit of the present Charter”. The Committee is therefore implored to

make use of its mandate to carry out a fact-finding mission to Uganda in order to come up with a lasting solution to the predicament of the children.

Michelo Hansungule _____

Prudence Acirokop _____

Tarisai Mutangi _____

Signed on this the 13th Day of June in the Year of Our Lord Two Thousand and Five (2005).

ENDNOTES

¹ *Jawara v the Gambia* (2000) AHRLR 107 (ACHPR 2000) para 24.

² (2000) AHRLR 149 (ACHPR 2000).

³ See n 1 above, para 81.

⁴ See n 1 above, para 85. See also *Free Legal Assistance Group and others v Zaire* (2000) AHRLR 74 (ACHPR 1995) para 37.

⁵ Human Rights Watch, Amnesty International, World Vision, the United States Department of State and the International Rescue Committee, national and regional credible organisations, to name but a few, have prepared detailed accounts of events in northern Uganda over the course of the conflict.

⁶ V Mayanja, 'Uganda battles with child soldiers in army' <<http://www.namibian.com.na/200/february/Africa>> (accessed 17 February 2005).

⁷ Communication 155/96.

⁸ N 7 above, para 47.

⁹ General Comment 17, para 1.

¹⁰ Inter American Court of Human Rights, Judgement of 29 July 1988 (Series C) No. 4.

¹¹ N 10 above, para 172.

¹² N 9 above, para 1.

- ¹³ Human Rights Watch, 'The Scars of Death: Children abducted by the LRA in northern Uganda' <<http://hrw.org/reports97/uganda>> (accessed 10 May 2005).
- ¹⁴ As above.
- ¹⁵ See n 13 above.
- ¹⁶ Amnesty International, "who will answer for the crisis," <<http://www.amnesty.org/sudan/newsupdate.html>> (accessed 17 February 2005).
- ¹⁷ Human Rights Watch, 'Abducted and abused, renewed conflict in northern Uganda' <<http://www.hrw.org/reports/2003/uganda0703/>> (accessed 14 March 2005).
- ¹⁸ S Hedlund 'Children used in war' <<http://graphic.pepperdine.edu/perspectives/2005/2005-3-31-Uganda.htm>> accessed 26 May 2005. For more on abduction from schools, see para 76 below.
- ¹⁹ 'Attacks on IDP camps kill more than 125 last month' <<http://wwwnotes.reliefweb.int/w/rwb.nsf/0/e139bc29ec35691885256eb0005f934f?OpenDocument> - 7k (accessed 10 April 2005).
- ²⁰ 'Uganda: LRA kills 10 IDPs in morning attack' <<http://wwwnotes.reliefweb.int/w/rwb.nsf/0/e139bc29ec35691885256eb0005f934f?OpenDocument> - 7k (accessed 26 May 2005).

- ²¹ See n 7 above, para 42.
- ²² See n 7 above, para 57.
- ²³ 91 ECHR (1985) Series A.
- ²⁴ See n 10 above, para 172.
- ²⁵ See n 10 above, para 176.
- ²⁶ Human Rights Watch 'Stolen Children: Abduction and recruitment in northern Uganda' March 2003 vol 15 No 7 (A) 8.
- ²⁷ Stolen children (n 26 above), 9.
- ²⁸ Refugee Law Project 'Working Paper No.11: Behind the Violence: Causes, Consequences and the search for solutions to the war in northern Uganda' 32.
www.refugeelawproject.org/papers/workingpapers/RLP.WP11.pdf
(accessed 4 May 2005).
- ²⁹ Stole children (n 26 above), 10.
- ³⁰ Telephone interview conducted by the authors with former co-ordinator of psychosocial programmes for CARITAS on 24 May 2005. Also confirmed in a telephone interview conducted by the authors with the project officer for peace building of the Justice and Peace Commission on 24 May 2005.

- ³¹ Francis M. Deng 'Report of the Representative of the Secretary-General on Internally displaced persons: Profiles in displacement: Mission to Uganda' 13
- ³² Women's Commission for Refugee Women and Children 'No Safe Place to Call Home: Child and Adolescent Night Commuters in Northern Uganda' 3.
- ³³ Justice and Peace Commission, Gulu ' Newsletter June 2005'.
- ³⁴ See n 31 above, 5-6.
- ³⁵ Interview conducted by the authors on 10 December 2004 at Lacor trading centre, Gulu district.
- ³⁶ Interview conducted by the authors on 5 December 2004, at Lacor Hospital in Gulu.
- ³⁷ N 10 above, para 172.
- ³⁸ See n 18 above.
- ³⁹ 'Uganda's military denies recruiting children' <<http://www.voanews.com/english/2005-02-16-Voa59.cfm>>.
- ⁴⁰ 'Army not recruiting child soldiers-Mbabazi' <<http://www.parliament.go.ug/details.hei?newsId=629>>.
- ⁴¹ N 39 above.

- ⁴² N 30 above.
- ⁴³ Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Britain & Northern Ireland, 4 October 2002, para 51.
- ⁴⁴ See para 38 above.
- ⁴⁵ See our prayers in the application for Provisional Measures attached hereto.
- ⁴⁶ General Comment 14, para 11.
- ⁴⁷ General Comment 14, para 12.
- ⁴⁸ General Comment 12, para 8-13.
- ⁴⁹ General Comment 12, para 15.
- ⁵⁰ General Comment 12, para 17.
- ⁵¹ The doctrine of minimum core obligations was developed by the CESCR in General Comment 3, para 10 and was also applied by the Commission in *SERAC*, see para 65 of the Commissions findings.
- ⁵² General Comment 14, para 43.
- ⁵³ See n 7 above, para 42.
- ⁵⁴ See n 7 above, para 45-4.

- ⁵⁵ IDP Project 'Health care in the majority of IDP camps has by and large collapsed' (December 2004) <<http://www.db.idpproject.org/Sites/IdpProjectDb/idpSurvey.nsf/wViewCountries/84F7C163EB1DB641C1256DF70034C1A5>> (accessed 4 March 2005).
- ⁵⁶ As above.
- ⁵⁷ World Vision 'Pawns of Politics' <[www.worldvision.org/worldvision/imagelib.nsf/main/pawns/\\$file/Pawns_Of_Politics](http://www.worldvision.org/worldvision/imagelib.nsf/main/pawns/$file/Pawns_Of_Politics)> (accessed 21 May 2005) 26.
- ⁵⁸ See n 31 above, 12.
- ⁵⁹ See n 31 above, 12. According to local NGO's, the practice of leaving camp perimeters unprotected still takes place and security is generally insufficient. (Telephone Interview conducted by the authors with the project officer for peace building of the Justice and Peace Commission).
- ⁶⁰ See n 31 above, 16.
- ⁶¹ See n 55 above.
- ⁶² See n 31 above, 13.
- ⁶³ Telephone interview conducted by the authors with the former co-ordinator of psycho-social programme for CARITAS on 24 May 2005.
- ⁶⁴ See n 31 above, 28 and 13-14.

- ⁶⁵ See n 31 above. See also Amnesty International 'Breaking the circle: protecting human rights in the northern war zone' <<http://web.amnesty.org/library/Index/ENGAFR590011999?open&of=ENG-UGA>> (accessed 4 March 2005).
- ⁶⁶ Interview conducted by authors on 5 December 2004, at Lacor Hospital in Gulu.
- ⁶⁷ Cohen, Erickson, Flekkoy, Hart 'An international Conference and an open file: Children's Right in Education' *Prospects*, vol. XXIX, no 2, June 1999.
- ⁶⁸ General Comment 13, para 6.
- ⁶⁹ As above.
- ⁷⁰ General Comment 13, para 7.
- ⁷¹ Jemera Rone on Northern Uganda, Human Rights Focus, <<http://www.irinnews.org/webspecials/northernuganda/default.asp>> (accessed 22 April 2005); IRIN news 'When the sun sets, we start to worry', <<http://www.irinnews.org/wedspecials/northernuganda/default.asp>> (accessed 10 April 2005).
- ⁷² Lexow & Lange, 'Mid-term Review of primary education in Gulu, Northern Uganda', MOE, Norway.
- ⁷³ Maggie Alerotek Aloyo, *The monitor* (Kampala) 11 February 2005; Abducted and abused (n 17 above).

- ⁷⁴ Norwegian Refugee Council 'Situation Report on Northern Uganda: The current humanitarian situation, the humanitarian response and future scenarios' <<http://www.nrc.nd/paperNRCUgandaOctober2004.pdf>> (accessed 14 May 2005); Maggie Alerotek Aloyo, The monitor (Kampala) 11 February 2005.
- ⁷⁵ As above.
- ⁷⁶ Maggie Alerotek Aloyo, The monitor (Kampala) 11 February 2005.
- ⁷⁷ Maggie Alerotek Aloyo, The monitor (Kampala) 11 February 2005; Abducted and abused (n 17 above).
- ⁷⁸ Interview conducted by the authors on the 12 December 2004, Lacor hospital, Gulu municipality; Abducted and abused (n 17 above).
- ⁷⁹ As above.
- ⁸⁰ Interview conducted by the authors on the 12 December 2004, Lacor hospital, Gulu municipality.
- ⁸¹ The Scars of Death (n 13 above).
- ⁸² The chronology of attacks on schools was accessed at www.acholipeace.org (accessed 19 February 2005).
- ⁸³ See US Department of State, 'Uganda – Country Report on Human Rights practices (2003)' <http://www.state.gov/5/drl/rls/hrrpt/2003/277758.htm> (accessed 14 April 2005). Abducted and abused (n 17 above), see also New Vision

'LRA abducts 30 pupils in Gulu', (Kampala), 28 February 2003; AFP 'Ugandan rebels kill boy, abduct 41 others in raid on seminary', Kampala, 11 May 2003; BBC News 'Uganda army seeks Catholic students', 12 May 2003
<[www://newsbbc.co.uk/2/hi/Africa/3019563.stm](http://newsbbc.co.uk/2/hi/Africa/3019563.stm) >(accessed 10 March 2005).

- ⁸⁴ UN OCHO, Humanitarian update – Uganda, Vol V, issue 3 (March 2003).
- ⁸⁵ See US Department of State report (n 83 above); Abducted and abused (n 17 above), see also LRA abducts 30 pupils in Gulu, New Vision (Kampala), 28 February 2003; Ugandan rebels kill boy, abduct 41 others in raid on seminary, AFP, Kampala, 11 May 2003; Uganda army seeks Catholic students, BBC News, 12 May 2003, <[www://newsbbc.co.uk/2/hi/Africa/3019563.stm](http://newsbbc.co.uk/2/hi/Africa/3019563.stm)> (accessed 10 March 2005).
- ⁸⁶ Pawns of Politics (n 57 above); Lexow & Lange (n 72 above); Humanitarian update (n 84 above). This was confirmed in a telephone interview conducted by the authors with the former co-ordinator of psycho-social programme for CARITAS (24 May 2005)
- ⁸⁷ Id21 Insights, Reintegrating girls from fighting forces in Africa; Pawns of Politics (n 57 above); US Department of State report (n 83 above).
- ⁸⁸ Id21 Insights, 'Reintegrating girls from fighting forces in Africa' <<http://www.id21.org/insights/insights-ed03/insights-issued03-art06.htm> I>(accessed 10 May 2005).

- ⁸⁹ US Department of State (n 83 above); Abducted and abused (n 17 above), see also New Vision 'LRA abducts 30 pupils in Gulu', (Kampala), 28 February 2003; World Vision, 'War's battle-scarred innocents', (October 2004).
- ⁹⁰ Paragraph 2 of the Declaration.
- ⁹¹ War's battle-scarred innocents (n 89 above).
- ⁹² See Abducted and abused (n 17above).
- ⁹³ See US Department report (n 83 above). See Abducted and abused, (n 17 above). Norwegian Refugee Council 'Situation Report on Northern Uganda: The current humanitarian situation, the humanitarian response and future scenarios' 18 October 2004, <<http://www.nrc.nd/paperNRCUgandaOctober2004.pdf>> (accessed 14 May 2005); Maggie Alerotek Aloyo, The monitor (Kampala) 11 February 2005; Lexow & Lange (n 72 above).
- ⁹⁴ UNICEF report (2003); UN Sub-Commission on the promotion and Protection of Human Rights fifty third session Agenda Item 2<http://www.webcom.com/hrin/parker/suborwsu.htm> (accessed 3 May 2005).
- ⁹⁵ As above.
- ⁹⁶ UN Office for Coordination of Humanitarian affairs 'Report on northern Uganda' (2003).
- ⁹⁷ IRIN news When the sun sets, we start to worry (n 71 above).

- ⁹⁸ The Scars of Death (n 13 above).
- ⁹⁹ Interview conducted by the authors with a member of staff of GUSCO a local NGO in Gulu on 22 December 2004.
- ¹⁰⁰ As above.
- ¹⁰¹ See When the sun sets, we start to worry (n 71 above); The Scars of Death (n 13 above); Abducted and abused (n 17 above).
- ¹⁰² P Jackson 'The march of the Lords Resistance Army: Greed or Grievance in Northern Uganda' (2000) *Small Wars and Insurgencies* 29-52.
- ¹⁰³ As above.
- ¹⁰⁴ Afrol News, 12 November 2004 quoting Jan Egeland, UN's Emergency Relief Coordinator.
- ¹⁰⁵ Abducted and Abused (n 17 above).
- ¹⁰⁶ Interview conducted by the authors on 10 December 2004, Lacor Hospital Gulu.
- ¹⁰⁷ See When the sun sets, we start to worry (n 71 above). See also Abducted and abused (n 17above).
- ¹⁰⁸ 'Uganda: More children sleeping on the streets in the north-UNICEF' <<http://www.alertnet.org/thenews/newsdesk/IRIN/2cad3630083d5c6ac71e4cf2c1d27da.htm>> (accessed 26 May 2005).

109 N 10 above, para 176.

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