CASE No. Com/001/2005

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

In the matter between:

Children Affected by Lord's Resistance Army (LRA)-related Conflict in Uganda **Complainants**

And

The Republic of Uganda **Respondent**

COMPLAINANTS' SUBMISSIONS ON THE MERITS

Submitted by Authors/Complainants' Counsel:

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I. Introduction

[1] By way of a letter dated 16 May 2011, the Secretariat advised the authors of the decision of the Committee to declare this Communication admissible. A copy of the Admissibility Decision was attached to the letter for authors' information and filing.

[2] On 25 October 2011, the Secretariat invited the authors to attend the Committee's 18thSession in Algiers, Algeria, in order to make submissions on the merits of this Communication. These are the submissions in support of the complainants' application for specific remedies, as are outlined at the end of this document.

[3] Please note that these submissions not only relate to the merits of this case, but also serve as a summarised updated version of the original Communication, taking into account the lapse of time from the date the original Communication was lodged. Inevitably the passage of time and change of situation has changed the complainants' needs; hence the need to update both the facts and the requested remedies. The authors have kept abreast with the situation of children in northern Uganda since the filing of the case and these submissions are further informed by a fact-finding exercise carried out in war affected areas of Northern Uganda in October 2011. Despite the update, the original Communication remains the main source setting out complainants' narrative on the background facts and provides the legal basis for alleged violations of the African Children's Charter. The submissions and original Communication should thus be read together.

II. Factual summary

[4] In 2005, when the main communication was filed, northern Uganda districts such as Gulu, Kitgum, Amuru, Pader, Lira, Soroti, Katakwi, Kaberamaido and Apac were facing a severe humanitarian crisis;

characterised by widespread human rights violations, including mutilation, torture, sexual violence, the abduction of civilians, mainly children to be used as child soldiers, domestic workers and sexual slaves and widespread displacement as a result of the LRA conflict.[1]

[5] The general security situation in northern Uganda changed from July 2006 when the government of Uganda and the LRA began a series of negotiations in Juba, South Sudan. The Juba Peace Talks, as it is commonly known, resulted in a ceasefire by September 2006 but ended without a comprehensive Peace Agreement in April 2008. The LRA, thereafter, resumed operations that include a brutal campaign against civilian populations and abduction of children though the operation is now in the tri-border area of DRC, South Sudan and Central African Republic.[2]

[6] Northern Uganda remained calm since September 2006 and by mid-2007, thousands of IDPs had moved into decongestion camps but the populace remained cautious of moving to their original homes until a definitive end of the insurgency. In 2008, the government of Uganda declared an end to the LRA insurgency in Uganda and IDPs were instructed to return to the original homes. In 2009, IDP camps were completely disbanded by the government, food distribution and other basic social services were accordingly phased out.[3]

[7] As much as there have been no LRA attacks and abductions in northern Uganda since 2006, the violations of children's rights, including the provision of mandatory social services such as education, health,

[1]International Criminal Court, Warrant of Arrest, Unsealed Against five LRA Commanders (14 October 2005).

[2]BBC News, (23 Oct 2008) 'Congo Terror after LRA Raids', available at, http://news.bbc.co.uk/2/hi/africa/7685235.stm (accessed 14 November 2009).

[3] Interview conducted with NGO workers and local government officials in Gulu, October 2011.

water and sanitation complained of in 2005 remains. Today, thousands of children are orphaned and heading households, several do not know where their original homes are; few, are able to attend school or find sufficient means to support and protect themselves; girls are forced into early marriages and prostitution as a result. There is little or no access to health care, many villages do not have health centres and even the available health centres do not have the necessary personal, equipment or drugs and many children do not have access to schools.[4]

Submissions

[8] The authors submit the following as their main arguments in this Communication:

a) Uganda violated Articles 22(3) and 29(a) of the African Children's Charter by failing to protect and care for children in situations of armed conflict, and from abduction.

b) Flowing from its failure to protect, Uganda failed to 'take all necessary measures to ensure that no child takes part in hostilities' thereby violating Article 22(2) of the African Children's Charter.

c) Further flowing from its failure to protect, Uganda violated Article 16(1) by failing to protect children from abuse, mental and physical injuries during the armed conflict.

d) Uganda violated Article 11(1) and (2) of the African Children's Charter related to the right to education, given that abducted children were kept out of school for prolonged periods of time and 'post-war' educational facilities fall short of international minimum standards.

[4] Interview with children, parents, NGO workers and Local government officials in Gulu, Pader and Amuru districts conducted in October 2011.

e) Uganda violated Article 14(1) of the African Children's Charter by failing to maintain a state of 'physical, mental and spiritual health' of the children affected by the armed conflict in Northern Uganda.

III. Submissions

a) Uganda violated Articles 22(3) and 29(a) by failing to protect children in situations of armed conflict and from abduction.

(See paragraphs 24-37 of the Communication for factual narrative and legal basis)

[9] It is common cause that since 1986, children are among people who have been systematically abducted by the Lord's Resistance Army (LRA), and that children are the main target group for abduction. The children were used as soldiers, porters, domestic workers and sexual slaves. They are tortured, maimed and several lost lives in battle. Some children who were abducted have since returned while some have not and no attempt has been made by the Government to account for these children.

[10] The question that follows and addressed here is, in view of the fact that children were abducted by the LRA, whether the Respondent State is responsible for the acts of the LRA - it being a rebel/belligerent group/organisation.

[11] It is submitted that a discussion on state responsibility cannot be fully addressed without reference to the general principles on the international responsibility of states for wrongful acts in breach of international law obligations. These principles are rooted in conventional public international law.

[12] For the avoidance of any doubt on the application of state responsibility to human rights, in *Baena-Ricardo et al* v *Panama*, the Inter-American Court of Human Rights (Inter-American Court) clearly endorsed the application of state responsibility to international human

rights law.[5] In other words, the African Committee is invited to rely (by 'drawing inspiration international law on human rights' in terms of Art 46 of the African Children's charter) on the above principles in the determination of the responsibility of the Respondent State for violation of rights alleged in this Communication.

[13] Furthermore, writing on the issue of the application of state responsibility to human rights, Shelton states that 'institutions applying human rights law return to the law of state responsibility to assess the nature and extent of remedies'.[6] We invite the Committee to be persuaded to 'return to' and apply the law on state responsibility in determining, and therefore, to find the Respondent State in violation of provisions of the African Children's Charter.

[14] In the human rights domain, states assume a four-legged typology of obligations upon ratifying an international human rights instrument. These are the obligation to protect, respect, fulfil and promote.[7] This part of the Communication is concerned with the obligation to protect, which entails that states should take all necessary measures to ensure that acts of non-state actors within their jurisdictions do not violate enjoyment of rights and freedoms enshrined in an instrument.

[15] The obligation to protect has its basis on the requirement that the authority with effective control over the territory assumes responsibility over that territory. In other words, a state has responsibility

'to protect all people residing under its jurisdiction … even if … going through a civil war, civilians in areas of strife are especially vulnerable and the state must

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5 *Baena-Ricardo et al* v *Panama* Inter-American Court of Human Rights (Competence) Judgment of 2 November, 2003.Series C No. 104, para 88. Available at: <http://www.corteidh.or.cr/casos.cfm>.

6 D Shelton, *Remedies in International Human Rights Law* (2005) 99.

7 *SERAC v Nigeria and Another* (2001) AHRLR 60 (ACHPR 2001), generally.

take all possible measures to ensure that they are treated in accordance with international humanitarian law'.[8]

[16] The law regarding the liability of a state for such acts of private parties (non-state actors) in situations of armed conflict is settled under the African human rights system. The jurisprudence of the African Commission has on numerous occasions concluded that acts of such groups or individuals may be imputed to the State.

[17] In a landmark case on state responsibility in armed conflict, the African Commission in **Commission Nationale des Droits de l'Homme et des Libertés v Chad**, explained the perspective of state responsibility vis-à-vis acts of non-state actors during armed conflict such as civil wars, as is the case with this Communication, by stating that, first, the African Charter

'…does not allow for state parties to derogate from their treaty obligations during emergency situations. Thus, even a civil war in Chad cannot be used as an excuse by the state violating or permitting violations of rights in the African Charter'.

[18] Second, and on the basis of the principle of non-derogation under the African Charter and Chad's failure to protect individuals from executions by non-state actors, the African Commission concluded as follows:

In the present case, Chad has failed to provide security and stability in the country, thereby allowing serious and massive violations of human rights. The national armed forces are participants in the civil war and there have been several instances in which the government has failed to intervene to prevent the assassination and killing of specific individuals. Even where it cannot be proved that violations were committed by government agents, the government

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8 *Amnesty International and Others v Sudan* (2000) AHRLR 296 (ACHPR 1999) para. 50.

had a responsibility to secure the safety and the liberty of its citizens, and to conduct investigations into murders. Chad therefore is responsible for the violations of the African Charter.

[19] The above sentiments were applied in the cases of **Malawi African Association and Others v Mauritania** (case partly concerning unprovoked attacks on villages by armed militia) which was regarded as 'denial of the right to live in peace and security',[9]and the ***Amnesty International*** case above.

[20] As to non-derogation of the African Children's Charter, we invite the Committee to adopt a similar approach of the African Commission's in its interpretation of the African Charter.

[21] Lack of diligence in protecting victims from the acts of private parties will lead to the responsibility of that state. In the **SERAC** case, the African Commission held as above relying on the jurisprudence of the European Court and also the Inter-American Court in **Rodriquez v Honduras**.[10] The African Commission held as follows:[11]

Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement, but also by protecting them from damaging acts that may be perpetrated by private parties (see [Commission Nationale des Droits de l'Homme et des Libertés v Chad (2000) AHRLR 66A (ACHPR 1995)]). This duty calls for positive action on the part of governments in fulfilling their obligation under human rights instruments. The practice before other tribunals also enhances this requirement as is evidenced in the case *Velàsquez Rodríguez v Honduras*. In this landmark judgment, the Inter-American Court of Human Rights held that when a state allows private persons or groups to act freely and with impunity to the detriment of the rights recognised, it would be in clear violation of its obligations to protect the human rights of its citizens. Similarly, this obligation of the state is further emphasised

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9 (2000) AHRLR 149 (ACHPR 2000) para. 140.

10 Velasquez Rodriguez Case, Judgment of July 29, 1988, Inter-American Court of Human Rights (Ser. C) No. 4 (1988).

11 *SERAC v Nigeria* (2001) AHRLR 60 (ACHPR 2001).

in the practice of the European Court of Human Rights, in *X and Y v Netherlands*. In that case, the Court pronounced that there was an obligation on authorities to take steps to make sure that the enjoyment of the rights is not interfered with by any other private person.

[22] It therefore follows that states must exercise 'due diligence' in terms of responding to acts of non-state actors that violate human rights. In **Zimbabwe NGO Forum v Zimbabwe**, the African Commission, relying on international jurisprudence, expanded on the content and application of the 'due diligence' principle to acts of non-state actors as follows:[12]

Thus an act by a private individual and therefore not directly imputed to a state can generate responsibility of state, not because of the act itself, but because of lack of due diligence to prevent the violation or for not taking the necessary steps to provide victims with reparation.

….under this obligation, states must prevent, investigate and punish acts which impair any of the rights recognised under international human rights law. Moreover, if possible, it must attempt to restore the right violated and provide appropriate compensation for resultant damage.

[23] As to the standard for due diligence, the overarching requirement is as to 'whether the state has acted with **sufficient effort and political will** to fulfil its human rights obligations'.[13] The 'test is whether the state undertakes its duties seriously. Such seriousness can be evaluated through the actions of both state agencies and private actors on case by-case basis'.[14]

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[12] Zimbabwe Human Rights NGO Forum v Zimbabwe (2006) AHRLR 128 (ACHPR 2006) paras. 142 - 164.

[13] Zimbabwe Human Rights NGO Forum v Zimbabwe (2006) AHRLR 128 (ACHPR 2006) para. 146.

[14] Zimbabwe Human Rights NGO Forum v Zimbabwe (2006) AHRLR 128 (ACHPR 2006) para. 158.

[24] Furthermore, expatiating on the essence and consequence of the doctrine of due diligence, it was held[15]

The doctrine of due diligence is therefore a way to describe the threshold of action and effort which a state must demonstrate to fulfil its responsibility to protect individuals from abuses of their rights. A failure to exercise due diligence to prevent or remedy violation, or failure to apprehend the individuals committing human rights violations gives rise to state responsibility even if committed by private individuals.

[25] Applying these principles to the facts of the case at hand: For over two decades, the LRA abused the rights of children in northern Uganda with impunity. The government's response was to order people out of their homes to Internal Displaced Persons camps (IDP Camps), a process that started in 1989.[16] One might have considered **creating safe zones** for children in times of serious threat to peace and security especially after realising that the putting people in IDP camps only made it easier for the LRA to abduct several persons at a time.[17] For instance, the Respondent State and its partners ought to have ensured that 'night commuters' did not return home once they came to the shelters for Refuge, shelter, food, medical services and education should have been provided for them from a safe place. Similarly, once people were in camps, it could have been much easier for the Respondent State to separate children of the age group targeted by the LRA and place them in

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[15] Zimbabwe Human Rights NGO Forum v Zimbabwe (2006) AHRLR 128 (ACHPR 2006) para.147.

[16] Accord, Uganda Chronology, available at http://www.c-r.org/our-work/accord/northern -uganda/chronology.php (accessed 21/01/2009); there were at least 59 IDP camps created in the Acholi sub region as of 2006.

[17] Human Rights Watch, Abducted and Abused: Renewed Conflict in Northern Uganda (July 2003) Vol. 15 No. 12A at page 36 -37; see also Humanitarian News, In-depth: Life in Northern Uganda, Uganda: Testimonies of Displaced Mother of Child Commuter (5 Jan 2004) available at http://www.irinnews.org/InDepthMain.aspx?InDepthID=23&ReportId=65813 (accessed 16 Nov 2011.

safe zones especially in urban areas where it was reported to have been generally safe.[18] The safe zone approach would have immensely protected children from abduction from villages and IDPs camps taking into account that children continued to be abducted and massacred right from these IDP camps. Therefore, the confinement of people without adequate protection made it easier for the LRA to carry out further massacres and follow-up abductions.[19] Some of the most notorious massacres that led to the death of several people and abduction of scores of children include the Patongo massacre in Pader district in November 2002; attacks in Pajong in Kitgum district in July 2002; attacks in Barlonyo in Lira district in February 2004, to mention but a few. A central feature in all these massacres is that the Ugandan military, the Uganda Peoples' Defence Forces (UPDF) arrived long after the LRA had gone.[20] The number of massacres and abductions perpetrated by the LRA in IDP camps over the years clearly shows lack of due diligence by the state to protect these obvious LRA targets due to the fact that children could be easily found in one place in large numbers as opposed to villages where the LRA had to adopt a door-to-door approach to abduction. What also recurred in the reports on abductions from IDP camps is that the security was almost

[18] From the interviews conducted by the authors, every respondent who was living in urban and semi-urban places such as Pader never has security issues. This situation also obtained in respect of IDP camps that were just outside of these urban and semi-urban centres, which were free from attacks by the LRA.

[19] Every respondent interviewed in October 2011 who has ever lived in a rural IDP camp reported that there were attacks by the LRA on these camps where either the soldiers were out-powered, ran away, or simply intervened too late. In cases of attacks people would run and hide in the bush until the LRA had abducted children and taken what they wanted and departed. One could then conclude that such soldiers were either insufficient numerically or ill-equipped to launch an offensive or defensive assault on the LRA.

[20] Carlos Rodriguez Soto, Tall Grass: Stories of Suffering and Peace in Northern Uganda, Fountain Publishers, Kampala (2009) at 33. This is consistent with information we received from people in northern Uganda in October 2011.

always inadequate to repel incoming attacks by the LRA – **there was need for adequate security personnel in IDP camps**.[21] While these details might appear trivial today, they, at that time determined whether or not children would be safe or prone to violence at that time. It appears that the choice of locating IDP camps was mainly for the convenience of people in terms of relocation distance as opposed to proofing the policy from insecurity. By and large, this goes to show that military presence was insufficient in IDP camps was clearly insufficient. Therefore, this Committee should not accept any explanation that no diligent action could have prevented abductions from IDP camps specifically established to offer protection to scores of helpless civilians.

[26] As to the second leg of the due diligence test, the Respondent State has failed to provide sufficient reparations to the victims of the violations hence the need to file this Communication. The state has failed to account for the abducted children or ensure effective reintegration of the formerly abducted in the community. NGOs operating reception centres including GUSCO, World Vision, CARITAS and Concerned Parents Association indicated to the authors that effective follow-up is never done after the children return to the camps or villages. In addition, according to Save the Children in Uganda, none of the 300 children reintegrated in 2004 and 2005, were found to be residing in the community in which they were supposed to be reintegrated by 2006.Today, at least 70% of juvenile offenders in Gulu prison are former abductees, which indicate that they have not been properly rehabilitated.

[27] In addition, the state is yet to effectively investigate, prosecute and punish perpetrators of violators of children's rights. Though there is indication that some UPDF soldiers who abused children's rights have been court marshalled, the victims do not take part in these proceedings therefore not given the opportunity to see justice being done. The must

[21] Interviews with NGOs working in northern Uganda conducted in October 2011.

be commended for the creation of the International Crimes Division of the High Court of Uganda in 2008, but this Division is already marred with contradiction over the question of amnesty.[22]The ICC inductees whose warrants of arrest were unsealed in July 2005 remain at large to date. All these deny the possibility of justice and redress to the children whose rights were abused in the conflict.

[28] Despite passage of time and change of circumstances (that now children are no longer being abducted and conscripted into combat), we invite the Committee to follow the jurisprudence of the African Commission under the principle of continuity of state responsibility. It provides that the change of circumstances, no how matter substantial, does not relieve a state from responsibility at the time violations took place. As was held in **Organisation Mondiale Contre La Torture v. Rwanda,** the important time is the when a complaint is lodged, and in this case it was 2005.[23] Such significant change of facts does not render the complaint moot as the state remains responsible. Violation of rights without reparation **will never** be 'overtaken by events'. If it was so States would simply violate or abate violations, wait for a number of years and then deny responsibility citing passage of time. What only need to acclimatise to the current situation are the appropriate remedy a tribunal should render in order to change the circumstances of the victims in a practical manner.

[29] On the basis of the above, we submit that the Respondent State violated its international law obligations under the African Children's Charter by failing to protect children from both abduction and from the

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[22] See Constitutional Petition No 36/11 (Reference) (Arising out of High Court-00-ICD-Case No 02/10, Thomas Kwoyelo Alias Latoni V. Uganda, Judgment ordering release of suspect rendered on 22 Sept 2011.

[23] African Commission on Human and Peoples' Rights, Comm. Nos. 27/89, 46/91, 49/91, 99/93 (1996) para. 35.

effects of the armed conflict as contemplated by Articles 22(3) and 29(a) of the African Children's Charter.

b) Uganda failed to 'take all necessary measures to ensure that no child takes part in hostilities' thereby violating Article 22(2) of the African Children's Charter.

(See paragraphs 24-37 of the main Communication for full factual narrative)

[30] Due to their vulnerability, it is inappropriate that children witness or take part in hostilities. The undisputed facts are that the majority of the abducted children served as soldiers in LRA ranks. This group of abductees directly participated in battles as well as execution of innocent civilians most of whom were personally known to them and in many other cases their own relatives as a way of indoctrination. The younger boys and girls were used as porters meaning that they also witnessed extra-judicial executions when rebels raided villages. They were there in order to carry the loot into the bush.According to a Survey of War Affected Youth (SWAY)[24]at least 78% of formerly abducted children witnessed a killing, 68% were tied or locked up; 63% received a severe beating; 58% forced to steal or destroy property; 23% forced to attack and/or kill a stranger or family member or a friend. As a result, several of the children suffer from psychological, sociological and mental problems. Many of them are easily given to violence; some suffer from night mares while others cannot stand noisy environments.[25]

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[24] Research Brief 1: The Abduction and Return Experiences of Youth, Survey of War Affected Youth: Research & Programs for Youth in Armed Conflict in Uganda, April 2006.

[25] Interview with children who belong to the War Affected Youth Association (WAYA) based in Gulu town, conducted in October 2011. The mental impact of the experiences of children was also emphasised by several NGO workers working with organisations such as GUSCO;CCF; SOS and Save the Children in Uganda.

[31] In addition, children were recruited and used by the Uganda People's Defence Force (UPDF) and auxiliary Local Defence Units (LDU) and formerly abducted children were used by the UPDF to gather intelligence on the LRA and to identify LRA positions and weapons caches.[26] However, NGOs working in northern Uganda indicate that the practice of recruiting child soldiers has not been witnessed since 2007 though children captured from the LRA are still held for longer than 48 hour limit specified by the UPDF regulations.

[32] While the Respondent State at some point in the conflict had been in the habit of recruiting children into its military ranks (at the time of filing this Communication), there is no more evidence to suggest that this practice is still being implemented. The Respondent should be accordingly commended for taking such decisive action to end recruitment of children into the Uganda Peoples' Defence Force (UPDF). However, its responsibility at the time still remains despite passage of time as argued above.

[33] The issue of imputation of responsibility for acts of non-state actors (LRA) on the state (Uganda) has already been dealt with. For the reason that the Respondent State failed to protect children from abductions and effects of armed conflict, this became a *sine qua non* to their eventual participation and witnessing of hostilities. Had the Respondent State protected them from abduction, children would not have participated in hostilities.

[34] We therefore submit that the Respondent State violated Article 22(2) of the African Children's Charter and an effective remedy ought to be given.

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[26] Child Soldiers Global Report 2008 – Uganda, Coalition to Stop the Use of Child Soldiers available at http://www.unhcr.org/refworld/docid/486cb13ac.html

c) Uganda violated Article 16(1) and 27(1) by failing to protect children from abuse, mental and physical injuries during the armed conflict.

(See paragraphs 38 – 48 of the Communication for a full factual narrative and more legal basis on this issue)

[35] Consistent with the Committee's 'consequential violations' principles,[27]the indivisibility of rights is such that this violation is an upshot of the Respondent State's failure to protect children from abduction and enforced participation in hostilities. The mental, physical and sexual abuse of abducted children only became possible once children were abducted. All abductees were subjected to horrendous propaganda of war in order to fully manipulate their minds to fight for the LRA.

[36] 'Night commuters', meaning children who fled villages to take refuge in urban and semi-urban areas, took the initiative to protect themselves once the Government had clearly demonstrated either unwillingness or inability to protect them. The children were exposed to sexual and other forms of abuse while at the night time sleeping places yet the state failed to adequately respond to this problem.

[37] Effects of the night commuter phenomena are still being felt in northern Uganda today with an increase in the number of street children after the shelters constructed by NGOs were disbanded. The Respondent State has failed to put in effective measures to keep children off the streets. We again submit that failure to protect children from the effects of armed conflict resulted in their exposure to abuse therefore a violation of Articles 16(1) and 27(1) of the African Children's Charter.

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[27] Institute for Human Rights and Development in Africa and Open Society Justice Initiative (On behalf of children of Nubian descent in Kenya) v Kenya Communication No. 002/2009, para. 58.

d) Respondent State violated Article 14(1) of the African Children's Charter by failing to maintain a state of 'physical, mental and spiritual health' of the children affected by the armed conflict in Northern Uganda.

(See Paragraphs 60 – 76 of the Communication)

[38] During the conflict, many children were tortured and/or maimed; many witnessed torture, killings and other horrendous crimes; many are victims of sexual violence and early pregnancies; and many lost parents and are heading households. All these impact not only on the physical but the mental and spiritual health of children. Other than formerly abducted children who passed through return centres ran by NGOs, many of the children in northern Uganda have not benefited from the essential psychosocial care that they need and suffer from post traumatic illnesses.

[39] In addition the vast majority of children do not have access to basic health care including immunisation and treatment of identifiable diseases. The government of Uganda recognised that health facilities were destroyed in the war, and undertook to the construction of health facilities in the affected areas but these are too few and far between to adequately carter for the health needs of all the children in the villages. In addition, many of the newly reconstructed health centres do not have medical personnel or the essential equipment and drugs. Road infrastructure are very poor or non-existent, cutting off several communities from life saving or basic health services.

[40] We have already fully canvassed the elements of the right to health in the main Communication.[28] However, it is important to address this right in an armed conflict setting.

[41] As a vulnerable and marginalised group, the Committee on Economic, Social and Cultural Rights emphasises that 'children and

[28] See paragraphs 60 – 76 of the Communication.

adolescents have the right to the enjoyment of the highest standard of health and access to facilities for the treatment of illness.'[29]

[42] The CESCR continues that no State can attribute failure to meet its minimum core obligation to a lack of available resources unless it can 'demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum core obligations.'[30]

[43] In respect to right to health therefore, the Respondent State is bound to comply with these requirements and ensure that vulnerable people without any discrimination receive*:*

'essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs[31] and have equal access to ' health facilities, goods and services on an equal footage with everybody.'[32]

[44] Government interventions have failed to address the 'accessibility, availability, acceptability and quality' of the health service they are providing. Health facilities are clearly non-functional as well as physically inaccessible. The quality is so poor compounded by lack of medicines and medical personnel. This is not consistent with Respondent State's obligations under the African Children's Charter.

e) Respondent State violated Article 11(1) & (2) of the African Children's Charter with respect to the right to education.

(See paragraph 80 of the Communication)

[45] An entire generation of children and young adults in northern Uganda have not had an opportunity to receive basic education. This was due to the conflict that led to the destruction of school buildings, teachers

29 General Comment No 14 43 (a)

30 As above.

31 General Comment No 14 para 43 (e)

32 CESCR General Comment No 14, para 43 (a).

and pupils were forced to move and insecurity in the region that made school attendance a risk for children. This was also compounded by abductions that ensured that many children 'grew up' in the bush without access to education. Many children who returned from the bush were not interested in formal education, were not given the opportunity or were afraid to return to school due to the fear of stigma for participating in armed activities or just being older than most children in class.

[46] Very few of the children and young adults who missed out on the chance to start school at the right age have benefitted from accelerated non-formal programmes or vocational training to acquire marketable skills. The only fully sponsored government school targeting 'returnees' providing vocational training is Laroo School in Gulu. The vocational section of this school however suffers from lack of funding to provide the most basic materials; students therefore do not gain any marketable skills. At the time of writing, there were only 10 vocational students at the school, others had quit and view the programme as a waste of time.

[47] There has been relative calm in northern Uganda since 2006 and the Respondent State and its development partners have ensured that several of the formerly displaced schools have returned to their original sites and that several other schools have been constructed in villages and parishes that did not have schools before the war. This effort however falls far short of the demand. Many children have to walk long distances (about 3 to 5 kilometres) to get to the nearest school. Some children have dropped out of school altogether while others have resorted to living in huts in former camp settings or nearby towns to access education. These children do not have adult supervision, usually have to take care of the younger siblings, don't have time to study and are vulnerable to attacks. In addition, several community schools have sprang up where unqualified teachers attempt to give children basic education in unfinished buildings or under trees. These community schools function with the hope that the government will construct buildings and provide teachers and

scholastic materials so that their children benefit from an education and they remain hopeful.

[48] The Respondent state took the initiative to ensure free primary and secondary education to all children in Uganda but many children in northern Uganda have not benefited from this opportunity. Parents are required to provide books and other scholastic materials, food, uniforms and a small fee as school running costs. The fee levied is minimal and ranges from 1000 to 20,000 Uganda shillings (a quarter to ten USD) but is enough to keep the vast majority of children out of school. The school administrators find this fee essential as government contribution is never on time and is not sufficient to keep the schools running.

[55] Extreme poverty, compounded by two decades of displacement and dependence on aid ensures that most families in northern Uganda do not the economic power to provide for their children and struggle to meet the most basic needs such as food, health and housing. Basic education therefore becomes secondary. School enrolment is high in the early primaries but very many children drop out as they go higher in the education system. In several schools visited, enrolment in the lower primary is about 200 pupils and about 20 pupils in higher primary. Parents and teachers informed the authors that children are taken out of school as they get older to work in farms and do other odd jobs to contribute to the family income and several others drop out as a result of early marriages and pregnancies.

[49] For majority of children who go through primary school, education seems to be mere attendance of school as several pupils in the higher primary can barely read, write or express themselves in the English language which is the language of instruction in schools. Overall school performance of schools in northern Uganda is very poor and of great concern to parents, pupils and the community at large. Of the 4000 pupils

who sat for the Primary Leaving Examinations last year, only 24 got first grade, recalling attention to the quality of education being received.

[50] Although the right to education is a socio-economic right as is right to health, there is nothing in the African Children's Charter suggesting that rights contained therein should be subjected to progressive realisation principle. These rights are of immediate realisation because they pertain to one of the most vulnerable groups of people – children.

[51] All the above systematic deficiencies and shortcomings in Government programmes especially to deal with emergency situation of returnees, unavailability of vocational training centres, purported Universal Primary Education (UPE) marred with hidden costs, inadequate teachers and schools in newly settled areas, all these run foul to the principles of availability, accessibility enunciated in the Committee on Economic, Social and Cultural Rights General Comment No. 3.

[52] Accordingly, we submit that the Respondent State has violated Article 14(1) of the African Children's Charter.

IV. Remedies

[53] It is now settled that a breach of an international obligation should be remedied by reparations. This was immortalised in the *Chorzow Factory* case, where the Permanent Court of International Justice (PCIJ), now the International Court of Justice (ICJ), held that:[33]

Reparation must, as far as possible, wipe-out all the consequences of the illegal act and re-establishes the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it-such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.

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[33] *Germany v Poland* 1928 PCIJ, Ser.A No. 17.

[54] The European Court of Human Rights (European Court) has also on several occasions held that 'remedies must as far as possible restore the situation existing before breach'.[34]

[55] We submit that the standard which any remedial measures adopted by a state in redressing violation of rights is to **wipe-out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.**

[56] In particular, this Committee should assess whether the measures taken, if any, by the Respondent State to react to the alleged violations and providing reparations were of such a nature that they went as far as possible in restoring the *status quo* before the violations took place. We submit that any measures failing that test were insufficient hence the Respondent State should be deemed to have not taken any measures to redress violation of rights.

[57] Although international law jurisprudence has accepted that 'the judgment of an international tribunal which attributes responsibility to the state for a human rights violation is *per se* a form of…' reparation,[35] we will invite the Committee to adopt a wide-range of recommendations (remedies), as it did in **Institute for Human Rights and Development in Africa and Open Society Justice Initiative (On behalf of children of Nubian descent in Kenya) v Kenya**(the **Nubian** case).

[58] Furthermore, there is growing international practice, which this Committee confirmed in the **Nubian** case,[36]whereby an international judicial or quasi-judicial body takes active participation in monitoring the

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[34] *Lustig-Prean v the United Kingdom* Application Nos. 31417/96, 32377/96 European Court of Human Rights Judgment (Just Satisfaction), July 25 2000, page 22.

[35] JM Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights* (2003) 270.

[36] Nubian Case, para. 69(5).

implementation of its decisions or recommendations by the concerned member state.[37]

[59] Therefore, the authors submit that the situation of children prior to the conflict in this Communication can only be re-established, as far as possible, by recommending as follows:

We accordingly invite the Committee to:

a) Declare that Uganda violated Articles5(1), 22(3) and 29(a)of the African Children's Charter by failing to by ensure the security of children who were abducted and killed by the LRA.

- Recommend to the Ugandan government to establish a reliable and accessible public register of the names and particulars of every child abducted by the LRA, returned and those not returned.

- Recommend that the Ugandan government should put in place measures to ensure that formerly abducted children are able to receive counselling and other psycho-social services in order to reintegrate them back into their communities.

b) The Committee should declare that Uganda violated Article 22(2) of the African Children's Charter by failing to protect children from witnessing and taking part in hostilities.

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[37] The African Commission now almost always include a paragraph in the operative part of its recommendations that requires the state to advise it on the progress made in implementing the recommendations (follow-up) although the practice needs to be developed to effectiveness. Commission's 2010 Rules of Procedure, Rule 112 formalized this procedure; the rapporteur of the case or another Commissioner 'shall monitor the measures taken by the State Party to give effect to the Commission's recommendations' (Rule 112(4)). Otherwise the pacesetter in the practice is the Inter-American Court of Human Rights that has in fact included a rule in its Rules of Procedure to the effect that it will monitor compliance with its decisions as well as inserting a paragraph to that effect in the operative part of all its decisions.

c) The Committee should:

- Declare that Uganda violated Article 11 & 5(2)of the African Children's Charter because children were kept out of school for prolonged periods of time, and post-war education facilities fall foul of the minimum core content required by international law.

- Recommend that the Ugandan government take all necessary measures to ensure availability of well-funded vocational training centres for children affected by the LRA conflict who cannot return to formal education due to age.

- Recommend that the Ugandan government take all necessary measures, with international co-operation, to ensure the physical availability of education in existing and new settlements, equipped with learning facilities and the appropriate teacher to pupil ratio.

- Recommend that Uganda take all necessary measures, with international co-operation, to ensure the physical availability of health services in existing and new settlements, equipped with basic medical facilities.

- Recommend that children are given the opportunity to meaningfully participate in all transitional justice measures that will pursued in Uganda

d) The Committee should publish and disseminate, as widely as possible, the report of a fact-finding mission to Uganda conducted in 2005 to assess the effects of the conflict on children's rights.

e) The Committee should establish a joint monitoring mechanism made up of one of its members to work with representative(s) from Government, Uganda-based civil society groups, child representatives and other stakeholders in order to monitor implementation of these recommendations and

periodically report to the Committee at each of its forthcoming Sessions until they have been fully implemented.

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