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UGANDAN: AGREEMENT AND ANNEX ON ACCOUNTABILITY AND RECONCILIATION FALL SHORT OF A COMPREHENSIVE PLAN TO END IMPUNITY

INTRODUCTION

On 19 February 2008, the Lord's Resistance Army (LRA) and the government of Uganda as part of their bilateral peace negotiations signed an Annexure (Annex) (Appendix II) to the Agreement on Accountability and Reconciliation (Agreement) (Appendix I). The original Agreement, which was signed on 29 June 2007, documents a compromise reached between the LRA and the government of Uganda to address "serious crimes, human rights violations and adverse socio-economic and political impacts" of the more than 20-year conflict in northern Uganda.¹ The new Annex sets out a framework for implementing the Agreement."²

Amnesty International has researched and documented human rights violations throughout the conflict in Uganda. Killings, rapes, sexual slavery, abductions of children and other horrific crimes which have been committed on a massive scale against civilians and others by members of the LRA, government security forces, government armed forces and their civilian superiors are so serious as to amount to crimes under international law, including crimes against humanity, war crimes, torture, extrajudicial executions and enforced disappearances.³ For these crimes, the

¹ Following the signing of the Agreement, Amnesty International reviewed the text and raised serious concerns that many aspects were vaguely defined or provisions implied that they would not be fully implemented. See: Amnesty International's Public Statement following the signing of the Agreement on Accountability and Reconciliation: *Uganda: Proposed national framework to address impunity does not remove government's obligation to arrest and surrender LRA leaders to the International Criminal Court* (AI Index: AFR 59/002/2007)

² Annex, clause 1

³ Amnesty International endeavored to bring international attention to what has been termed the "forgotten conflict" through its public reports and campaigning by its membership, see for example: *Uganda: Amnesty International calls for investigation into increasing reports of killings and torture in Uganda* (AI Index: AFR 59/004/1989); *Uganda: Army violates human rights, government evades responsibility* (AI Index: AFR 54/024/1991); *Uganda: Time for action to safeguard human rights* (AI Index:

organization has repeatedly called for the government of Uganda to fulfill its obligations under international law to investigate and prosecute all of the crimes before competent, impartial and independent courts in fair trials without recourse to the death penalty, to ensure that the truth about the crimes is told and to provide full and effective reparations to the victims to address their suffering and to help them rebuild their lives.⁴

Disturbingly, in the last 20 years, the government has done little to ensure justice, truth and reparations for the crimes committed by all sides to the conflict, including crimes committed by members of government security forces, Uganda's armed forces and their civilian superiors. Accountability has, therefore, become a major focus of the current peace negotiations between the LRA and the government. Although the peace negotiations have an important role to play in ending the conflict and stopping the crimes, Amnesty International has raised serious concerns that a political process seeking to reach a compromise acceptable to the parties who committed the crimes is inappropriate and will not result in a comprehensive plan of action to ensure justice, truth and reparations for the victims.

In Part I of this paper, Amnesty International analyses the two documents that are the outcome of these political negotiations on accountability - the Agreement and the new Annex. The organization notes that there are a number of positive elements in both documents, in particular, proposed measures for justice, truth and reparations, commitments to investigate crimes committed against women and children⁵ and to ensure the protection and participation of victims in all processes.⁶ However, there are also concerns that the proposed accountability systems set out in the Agreement and the Annex only provide for very limited justice, truth and reparations and will, therefore, not end impunity. Moreover, as discussed below in Part I.1B, a recent statement by the President of Uganda casts serious doubt on whether the government intends to implement provisions in the Agreement and the Annex for the investigation and prosecution of the LRA leaders named in the arrest warrants issued by the International Criminal Court.⁷ In particular, Amnesty International is concerned that:

AFR 59/006/1992); *Uganda: Amnesty International condemns "callous and calculated" killings by Uganda's rebels* (AI Index: AFR 59/002/1996); *Uganda: "Breaking God's commands": the destruction of childhood by the Lord's Resistance Army* (AI Index: AFR 59/001/1997); *Uganda: Breaking the circle: protecting human rights in the northern zone* (AI Index: AFR 59/001/1999); *Uganda: Government should address attacks on civilians urgently* (AI Index: AFR 59/003/2004); *Uganda: Doubly Traumatized: The lack of access to justice by women victims of sexual and gender-based violence in northern Uganda* (AFR 59/005/2007).

⁴ In addition to Amnesty International's reports listed in note 2, see : *Uganda: First steps to investigate crimes must be part of comprehensive plan to address impunity* (AI Index: AFR 59/001/2004); *Uganda: Amnesty International calls for an effective alternative to impunity* (AI Index: 59/004/2006); *Uganda: Proposed national framework to address impunity does not remove government's obligation to arrest and surrender LRA leaders to the International Criminal Court* (AI Index: AFR 59/002/2007).

⁵ Agreement, clauses 10, 11 and 12; Annex, clause 13 (c).

⁶ Agreement, clauses 3.4 and 8.2; Annex, clauses 4 (e) and 8;

⁷ Andrian Croft, *Uganda offers "blood settlement" to LRA rebels*, Reuters, 12 March 2008.

1. The Agreement and the Annex seek to avoid Uganda's legal obligation to arrest and surrender the LRA leaders to the International Criminal Court.
2. The Agreement and the Annex fail to overcome serious weaknesses in the existing national justice system.
3. The Agreement and the Annex propose a restrictive approach to the investigation and prosecution of crimes under international law before a special division of the High Court.
4. The Agreement and the Annex propose establishing traditional mechanisms and other mechanisms as alternatives to criminal justice.
5. The Agreement and the Annex fail to prohibit amnesties for crimes under international law and appear to leave in place the amnesties granted by the 2000 Amnesty Act.
6. The Agreement and the Annex fail to set out a victims focused reparations program.

In Part II, Amnesty International calls on the government of Uganda to commit itself to establishing a comprehensive plan of action to ensure justice, truth and reparations, which addresses the weaknesses of the Agreement and the Annex. The organization makes detailed recommendations on:

- Full and immediate cooperation with the International Criminal Court;
- Investigating and prosecuting crimes under international law in fair proceedings that are not a sham before competent, independent and impartial civilian national courts without the death penalty;
- Establishing an effective truth commission;
- Use of traditional and other mechanisms as alternatives to justice; and
- Establishing an effective reparations program.

PART I: ANALYSIS OF THE AGREEMENT ON ACCOUNTABILITY AND RECONCILIATION AND ITS ANNEX

1. THE AGREEMENT AND THE ANNEX SEEK TO AVOID UGANDA'S LEGAL OBLIGATION TO ARREST AND SURRENDER THE LRA LEADERS TO THE INTERNATIONAL CRIMINAL COURT

Amnesty International is seriously concerned by reports that the negotiations leading to the Agreement and the Annex focused largely on ensuring that the LRA leaders charged by the International Criminal Court in July 2005 would not be arrested and surrendered to the Court. Indeed, the credibility of the Agreement and the Annex to ensure accountability is immediately diminished by the efforts of its drafters to exclude the International Criminal Court as a mechanism to ensure accountability. The International Criminal Court is an independent institution and its Statute requires that it must apply the highest standards of international justice, including ensuring that accused persons receive the most comprehensive international fair trial guarantees.

A. UGANDA HAS A LEGAL OBLIGATION TO ARREST AND SURRENDER THE LRA LEADERS

Under Article 59 of the Rome Statute of the International Criminal Court (Rome Statute), Uganda has an unequivocal obligation to take steps to arrest any person who is the subject of an arrest warrant “immediately” when that person enters its territory and to surrender that person to the International Criminal Court “as soon as possible.”⁸ The obligation is absolute regardless of whether any political negotiations or national proceedings are taking place. Indeed, the purpose of the Rome Statute is to ensure that there can be no impunity, which has historically been granted all too often through such negotiations.⁹ If the government refuses to arrest and surrender the LRA leaders charged by the International Criminal Court, the Pre-Trial Chamber on

⁸ According to Article 87 (7) of the Rome Statute:
Where a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties . . .

⁹ The Preamble to the Rome Statute states:
Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhanced international cooperation.

its own initiative, or on the request of the Prosecutor, could determine that Uganda is failing to comply with the request to implement the arrest warrants and refer the matter immediately to the Assembly of States Parties of the International Criminal Court.¹⁰

B. THE LEGAL OBLIGATION TO ARREST AND SURRENDER THE LRA LEADERS IS NOT AFFECTED BY POSSIBLE FUTURE CHALLENGES TO THE ADMISSIBILITY OF THE INTERNATIONAL CRIMINAL COURT'S CASE

It has been widely reported in the media that the LRA suspects or the government will make a future challenge to the admissibility of the International Criminal Court's case on the basis that the national system set out in the Agreement and the Annex will investigate and prosecute the cases before national courts. The Rome Statute is clear that any such challenge must be made to the Pre-Trial Chamber of the International Criminal Court.¹¹ Pursuant to Article 17 of the Rome Statute, that Chamber would then decide, whether the suspects or the Ugandan government have met their burden of proof by demonstrating that the Director of Public Prosecutions and the proposed new special division of the High Court of Uganda are actually investigating or prosecuting the LRA leaders now and that they are able and willing genuinely to do so in proceedings that are fair and not designed to shield these suspects from justice.¹² However, the suspects or the Uganda government will face an insurmountable burden if the reported statement by President Museveni in an interview with reporters on 12 March is correct that the LRA suspects will not be tried before the new special division of the High Court at all, but instead will submit to a traditional alternative procedure. President Museveni is reported to have explained:

¹⁰ After learning of the Annex, the Pre-Trial Chamber issued a request to Uganda for information about how it was implementing its obligation under Article 59 of the Rome Statute to arrest and surrender the LRA leaders named in the arrest warrants. In that request, the Pre-Trial Chamber noted "articles 86, 87 and 93 of the Rome Statute of the Court (the 'Statute'), setting forth the obligation of States Parties to cooperate fully with the Court in any matter related to the investigation and prosecution of crimes within its jurisdiction and the modalities for such cooperation", and, "in particular, article 87(7) of the Statute, according to which, where a State Party fails to comply with a request to cooperate, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties" and requested "the Republic of Uganda to provide the Chamber, at the earliest convenience, preferably no later than 28 March 2008, with detailed information on the implications of the Annexure on the execution of the Warrants", in particular, The impact of the establishment of the special division of the High Court of Uganda and of recourse to traditional justice mechanisms or other alternative justice mechanisms on the execution of the Warrants and on the cooperation provided by the Republic of Uganda to the Court for their execution". *Prosecutor v. Kony*, Pre-Trial Chamber noted Request for Information from the Republic of Uganda on the Status of Execution of the Warrants of Arrest, No.: ICC-02/04-01/05 (Pre-Trial Chamber, 29 Feb. 2008) (<http://www.icc-cpi.int/library/cases/ICC-02-04-01-05-274-ENG.pdf>).

¹¹ Article 19 (6) states:

Prior to the confirmation of charges, challenges to the admissibility of a case or a challenge to jurisdiction shall be referred to the Pre-Trial Chamber.

¹² This has been confirmed by the Prosecutor of the International Criminal Court in his statement refusing to meet with representatives of the LRA leaders, see: Statement of the Office of the Prosecutor on Uganda, 4 March 2008. Article 17 (1) states:

The Court shall determine that a case is inadmissible where: the case is being investigated and prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable to genuinely carry out the investigation or prosecution.

[w]hat we have said in the agreement is that instead of using this formal Western type of justice we are going to use the traditional justice, a traditional blood settlement mechanism . . .¹³

The President added that, under this system, someone who has “committed a mistake” asks for forgiveness and pays some compensation and “[t]hat settles their accountability.”¹⁴ Furthermore, he is said to have declared that if those charged by the International Criminal Court opted for this traditional alternative settlement, they would avoid prison.¹⁵

However, any such challenge to the admissibility of the case has no effect on Uganda’s or any state party’s absolute obligation under Article 59 of the Rome Statute to arrest the LRA suspects immediately they enter their territory and to surrender them promptly to the International Criminal Court.¹⁶ Indeed, Article 19 (9) of the Rome Statute was drafted to prevent states from delaying enforcement of arrest warrants pending a determination of an admissibility challenge:

The making of a challenge shall not affect the validity of any act performed by the Prosecutor or any order or warrant issued by the Court prior to the making of the challenge.”¹⁷

As the Prosecutor of the International Criminal Court made clear:

The arrest warrants issued by the Court against the LRA Commanders remain in effect and have to be executed. A challenge to the admissibility of the case before the Court remains hypothetical and in any event, would be a matter for the judges of the Court to decide upon. The Office is very confident that the case for which warrants have been granted remains admissible.¹⁸

¹³ Andrian Croft, *Uganda offers “blood settlement” to LRA rebels*, *supra* n.7.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Article 19 (7) of the Rome Statute provides that only the Prosecutor’s investigation is suspended by an admissibility challenge made by a state. Of course, that provision is now irrelevant since the investigation was completed more than two and a half years ago.

¹⁷ The leading commentary on the Rome Statute expressly states: Since the making of a challenge has no effect on the validity of any order or warrant issued before a challenge, that means that an order or warrant issued before the challenge, including a warrant based on a sealed application, can still be executed after the challenge, thus preventing uncooperative States - which could be non-States Parties - from disrupting the investigation in a manner which could obstruct international justice.

Christopher Keith Hall, *Article 19 (Challenges to the jurisdiction of the Court or the admissibility of a case)*, in Otto Triffterer, ed., *Commentary on the Rome Statute of the International Criminal Court: Observers’ Notes, Article by Article* (forthcoming May 2008).

¹⁸ *OTP statement in relation to events in Uganda*, The Hague, 3 March 2008.

C. *SERIOUS FLAWS IN THE EXISTING CRIMINAL JUSTICE SYSTEM AND WITH THE PROPOSED JUSTICE SYSTEM SET OUT IN THE AGREEMENT AND THE ANNEX WOULD LIKELY MAKE ANY CHALLENGE TO THE ADMISSIBILITY OF THE INTERNATIONAL CRIMINAL COURT'S CASE UNSUCCESSFUL*

In determining any challenge to the admissibility of the cases against the LRA leaders, the International Criminal Court would need to examine the proposed new special division of the High Court, taking into account how the national justice system operates, to ensure that any investigations and prosecutions in those cases would be genuine. Furthermore, the International Criminal Court may not defer to national courts unless it is satisfied that the proceedings are consistent with an intention to bring those responsible to justice, the suspect will receive a fair trial and that the suspect will not be subjected to torture or other cruel, inhuman or degrading treatment. In making this assessment, it would necessarily need to take into account how Uganda's criminal courts have operated with respect to serious crimes and, in particular, crimes under international law. In section 3 below, Amnesty International sets out further serious flaws contained in the proposed accountability system defined in the Agreement and the Annex to prosecute cases before a special division of the High Court.

2. THE AGREEMENT AND THE ANNEX FAIL TO OVERCOME SERIOUS WEAKNESSES IN THE EXISTING NATIONAL JUSTICE SYSTEM

Impunity has been pervasive in Uganda in two decades of the armed conflict for the numerous cases of crimes against humanity and war crimes, as well as torture, extrajudicial executions and enforced disappearances.¹⁹ Approximately 12,000 members of the LRA have benefited from an amnesty applicable to any crime committed during the armed conflict.²⁰ Only a handful of investigations and prosecutions of members of the armed forces for crimes against civilians have been conducted, in most cases before a deeply flawed military justice system which

¹⁹ *Concluding observations of the Human Rights Committee: Uganda*, U.N. Doc. CCPR/CO/80/GA, 4 May 2004, paragraph 21 (noting "a widespread sense of impunity"); *Conclusions and recommendations of the Committee against Torture: Uganda*, U.N. Doc. CAT/C/CR/34/UGA, 21 June 2005, paragraph. 6 (c) (expressing concern about allegations of widespread torture and ill-treatment and "the apparent impunity enjoyed by its perpetrators"), par. 6 (d) (expressing concern about "[t]he disproportion between the high number of reports of torture and ill-treatment and the very small number of convictions for such offences, as well as the unjustifiable delays in the investigation of cases of torture, both of which contribute to the impunity prevailing in this area."); *US Department of State Country Reports on Human Rights Practices (Uganda) (2006)* (identifying only a relatively low number of investigations and a smaller number of prosecutions for crimes by members of security forces and armed forces); Human Rights Watch, *Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda* ("No effective accountability structure exists in the camps; reports of UPDF abuses rarely result in any investigation or prosecution of UPDF personnel.") and *Get the Gun!: Human Rights Violations by Uganda's National Army in Law Enforcement Operations in Karamoja Region*, (September 2007) ("[I]t does not appear that the Ugandan government has acted to provide meaningful accountability for human rights violations by its forces.").

²⁰ *US Department of State Country Reports on Human Rights Practices (Uganda) (2006)* "In July the Amnesty Commission reported that 21,435 persons benefited from the amnesty law since its implementation in 2000. Of this number, 11,981 were from the LRA, 4,265 from the West Nile Bank Front, 3,111 from the Uganda National Rescue Front II, 1,795 from the ADF, and 766 from other rebel groups."

violated the right of the accused to a fair trial and in a number of cases imposed the death penalty.²¹ Below, Amnesty International sets out serious concerns about the existing national justice system which are not addressed in the Agreement and the Annex.

A. *THE FAILURE TO COMMIT TO DEFINING ALL CRIMES UNDER INTERNATIONAL LAW IN UGANDAN NATIONAL LAW*

Uganda has inadequate national laws to investigate and prosecute crimes under international law. Since ratifying the Rome Statute on 14 June 2002, the government has failed to fulfill its obligations under the Rome Statute to define genocide, crimes against humanity and war crimes as crimes under national law. Uganda has drafted a bill to implement its complementarity obligations under the Rome Statute, but that bill, which contains a number of major flaws (yet to be addressed), has never been enacted into law.²² Uganda has also failed to fulfill its obligations under the

²¹ Amnesty International and OHCHR has noted individual instances of flawed military justice some involving soldiers who operated in the context of the LRA/government conflict. For example, see: Amnesty International, *Annual Report 1994* (“two nra soldiers were tried on charges arising from the deaths of 69 detainees at Mukura in Kumi District in July 1989 (see *Amnesty International Report 1990*). The soldiers, who had been arrested in May 1992 after a long period of official inaction, were detained without charge until April when 47 counts of murder were brought against them in the General Court-Martial. In November they were acquitted of murder, but one, Captain George Oduch, was sentenced to five years’ imprisonment for “failure to execute his duties”. The trial, which revealed significant inadequacies in the army’s systems for carrying out investigations, implicated at least one other officer in the murder of the detainees.”); Amnesty International, *Uganda: Soldiers executed after an unfair trial* (AI Index: 59/004/2003) (describing the execution of three Uganda People’s Defence Force (UPDF) soldiers for killing civilians “[a]ccording to reports, two of the men, Privates Kambacho Ssenyonjo and Alfred Okech, were sentenced after a court martial lasting just two days during which they did not have access to legal representation. Reports suggest the execution was carried out about an hour after the sentences were passed.”); Amnesty International, *Urgent Action, Joel Lubangakene, soldier* (AI Index: AFR 59/001/2006) (“Private Joel Lubangakene was sentenced to death by hanging by a military court on 2 January, for reportedly shooting dead an 18-year-old student on 26 December in northern Uganda.”); Amnesty International, *Annual Report 2007* (“In February the Chief of Defence Forces stated that 26 UPDF soldiers had been sentenced to death and executed between 2003 and 2005 for killing civilians while on duty in northern Uganda.”) See also: *US Department of State Country Reports on Human Rights Practices (Uganda) (2006)* (“The military court system often did not assure the right to a fair trial. Although the accused has the right to legal counsel, some military defense attorneys were untrained and could be assigned by the military command, which also appoints the prosecutor and the adjudicating officer. The law establishes a court martial appeals process; however, a sentence passed by a military court, including the death penalty, could be appealed only to the senior leadership of the UPDF. Under circumstances deemed exigent, a field court martial could be convened at the scene of the crime. The law does not permit appeal of a conviction under a field court martial. The military general court martial can try civilians charged with crimes listed under the UPDF Act.”); *Report of the High Commissioner for Human Rights on the activities of her office in Uganda*, U.N. Doc. A/HRC/4/49/Add.2, 12 February 2007, paragraph 43 (“OHCHR is, however, concerned that proceedings before military courts still fall short of international standards. Defendants, even those facing capital charges, are often not afforded defence counsel or are assigned unskilled defence counsels. For example, in January 2006, as referred to above, an LDU soldier was sentenced to death by court martial for the killing of a primary school pupil at Lalogi IDP camp in December 2005, in proceedings which lasted less than six hours and in the absence of defence counsel.”)

²² In its commentary *Concerns about the International Criminal Court Bill 2004*, Amnesty International sets out a number of concerns about the definitions of crimes and incorporation of principles of criminal responsibility. To the best of the organization’s knowledge these concerns have not been addressed.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) to define acts of torture as a crime under national law. The Committee against Torture expressed its concern that Uganda had not included a comprehensive and absolute definition of torture in national law.²³ The Agreement and the Annex do not recognize this barrier to justice. Indeed, the scope of crimes listed in the Annex is more restrictive than those contained in the Rome Statute (see section 3 (C)).

B. THE FAILURE TO TAKE EFFECTIVE MEASURES TO ADDRESS UGANDA'S INABILITY AND UNWILLINGNESS TO AFFORD FAIR TRIALS BY NATIONAL COURTS

Despite assurances in the Agreement that the right to a fair trial will be respected,²⁴ Amnesty International is concerned that in the past decades, Ugandan civil and military courts have not afforded suspects and accused the right to fair trial. Independent observers have documented widespread torture of detainees,²⁵ prolonged

²³ *Committee against Torture, Conclusions and recommendations (2005), supra*, n.19, paragraph 5. The Committee stated:

The Committee notes with concern that the State party has neither incorporated the Convention into its legislation nor introduced corresponding provisions to implement several articles, in particular:

(a) The lack of a comprehensive definition of torture in the domestic law as set out in article 1 of the Convention; [and]

(b) The lack of an absolute prohibition of torture in accordance with article 2 of the Convention.

The Committee recommended that

the State party take all necessary legislative, administrative and judicial measures to prevent acts of torture and ill-treatment in its territory, and in particular that it:

(a) Adopt a definition of torture that covers all the elements contained in article 1 of the Convention, and amend domestic penal law accordingly . . .

²⁴ Agreement, clause 3.3 states:

...in the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.

²⁵ *Human Rights Committee concluding observations (2004), supra*, n.19, paragraph 17 (expressing its concern about “the widespread practice of torture and ill-treatment of persons detained by the military as well as by other law enforcement officials”); *US Department of State Country Reports on Human Rights Practices (Uganda) (2006)* (“there were credible reports that security forces tortured and beat suspects” and “Detainees died as a result of torture.”); *Committee against Torture, Conclusions and recommendations (2005), supra*, n.19, paragraph 6 (c) (expressing concern at “[t]he continued allegations of widespread torture and ill-treatment by the State’s security forces and agencies . . .”) and paragraph 7 expressing concern about “the widespread practice of torture and ill-treatment of persons detained by the military as well as by other law enforcement officials”); Amnesty International, *Annual Report 2006*: (“There were reports of torture of detainees by police forces and the state security services, who reportedly used “safe houses” where suspects were detained and tortured for days at a time.”); Amnesty International, *Uganda: Detainees tortured during incommunicado detention* (AI Index: AFR 59/006/2007) (“Amnesty International today condemned acts of torture committed by members of the Rapid Response Unit (RRU) of the Uganda police force on some of the 41 individuals who were held in incommunicado detention from 13-17 August.”) Amnesty International, *Urgent Action: Geoffrey Oyuru (m), Denis Coto (m), Patrick Opono (m), Joshua Ocen (m), Tom Ekwang (m), Alfred Ebong (m), Geoffrey Ebong (m), Emmanuel Abak (m), At least 14 others* (AI Index: 59/010/2007) (“Police arrested about 30 people on 29 October and tortured at least 22 of them, including the eight named above, in Apac District in the north-east of the country.

pretrial detention,²⁶ attacks on the independence of the judiciary by the executive and by soldiers laying siege to courts to prevent the release of persons ordered released by the court on bail,²⁷ use of military courts to try civilians,²⁸ denial of the right to appeal to a higher court²⁹ and prison conditions which fall seriously short of international standards.³⁰ Neither the Agreement nor the Annex seeks to address these concerns about the national justice system.

C. THE FAILURE TO EXCLUDE THE DEATH PENALTY

Ugandan courts continue to impose the death penalty, including after grossly unfair trials.³¹ The death penalty violates the right to life and it is the ultimate cruel, inhuman and degrading punishment. More than half of the countries of the world, including many in Africa, have abolished the death penalty in law and practice and the United Nations General Assembly has called for a moratorium on its use.³² Both the Agreement and the Annex fail to prohibit the punishment.³³

²⁶ *Human Rights Committee concluding observations (2004)*, *supra* n.19, paragraph 21 (expressing its concern about “shortcomings in the administration of justice, such as delays in the proceedings and in pre-trial detention”); *Committee against Torture, Conclusions and recommendations*, *supra*, n.19, paragraph 6 (a) (expressing concern about “[t]he length of pre-trial detention, including detention beyond 48 hours as stipulated by article 23, clause 4, of the Constitution and the possibility of detaining treason and terrorism suspects for 360 days without bail.”); *US Department of State Country Reports on Human Rights Practices (Uganda) (2006)* (same concerns).

²⁷ Amnesty International, *Uganda: Attack on the Independence of Courts* (AI Index: AFR 59/017/2005) (“Intervention by heavily armed security agents on the premises of the High Court in Kampala on 16 November 2005, led to the return to jail of 14 suspects of an armed group despite the ruling by the High Court Judge to grant bail. This was an attack on the rule of law and international human rights standards...”); Human Rights Watch, *Uganda: Government Gunmen Storm High Court Again*, 5 March 2007 (describing the siege of the High Court by security forces to intimidate the judges and prevent release on bail of accused as a “blatant interference into the independence of the judiciary”).

²⁸ *US Department of State Country Reports on Human Rights Practices (Uganda) (2006)* (“The VCCU referred 139 civilian suspects found in possession of military property to military courts for trial.”).

²⁹ *US Department of State Country Reports on Human Rights Practices (Uganda) (2006)* (“The law establishes a court martial appeals process; however, a sentence passed by a military court, including the death penalty, could be appealed only to the senior leadership of the UPDF. Under circumstances deemed exigent, a field court martial could be convened at the scene of the crime. The law does not permit appeal of a conviction under a field court martial.”)

³⁰ *Report on the work of the Office of the High Commissioner for Human Rights in Uganda*, *supra* n.21, paragraph 35 (“Detention facilities are overcrowded. For example, Gulu prison, initially built to accommodate 200 detainees, housed 469 detainees in December 2006. Pretrial and convicted prisoners, as well as adults and juveniles, are detained together, due to insufficient detention facilities.”); International Committee of the Red Cross, *Report on Uganda* (2006) (“The poor state of Uganda’s prisons combined with overcrowding, continued to adversely affect detainee’s well-being.”) *US Department of State Country Reports on Human Rights Practices (Uganda) (2006)*, (“Prison conditions remained harsh and frequently life threatening, primarily as a result of the government’s inadequate funding of prison facilities.”)

³¹ For examples of such cases, see footnote 19.

³² UN G.A. Res. 149 (2007).

³³ Amnesty International takes note of statements by Minister of Internal Affairs, Dr Ruhukana Rugunda, in September 2007, that the LRA leaders charge by the International Criminal Court would not

3. THE AGREEMENT AND THE ANNEX PROPOSE A RESTRICTIVE APPROACH TO THE INVESTIGATION AND PROSECUTION OF CRIMES UNDER INTERNATIONAL LAW BEFORE A SPECIAL DIVISION OF THE HIGH COURT

Clause 7 of the Annex provides:

A special division of the High Court of Uganda shall be established to try individuals who are alleged to have committed serious crimes during the conflict.

Amnesty International is concerned that no reason is given in the Agreement or the Annex for establishing a special division of the High Court rather than using the existing national criminal justice system. Principle 5 of the United Nations Basic Principles on the Independence of the Judiciary contains specific rules relating to the creation of special national tribunals:

Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established legal procedures shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

Without any explanation in the Agreement or the Annex of how the special division will be constituted or what substantive law or rules of procedure and evidence will be applied, it is not clear how they will differ from other national criminal courts. Principle 9 of the Annex indicates that supplementary documents and legislation will address these issues.³⁴ The definition of crimes, defences and principles of criminal responsibility must be in accordance with international law. Furthermore, all legal procedures to be applied by the special division must also fully satisfy Uganda's obligations under international law, including guaranteeing the right to a fair trial.³⁵

be subject to the death penalty if they were tried in Ugandan courts (see: *Uganda: Kony Won't Be Hanged - Govt*, New Vision, 30 September 2007) However, the Minister's statement does not amount to a legal exclusion of the death penalty as a punishment.

³⁴ Clause 9 of the Annex states that [f]or the proper functioning of the special division of the court in accordance with the agreed principles of accountability and reconciliation, legislation may provide for:

- (a) The constitution of the court;
- (b) The substantive law to be applied;
- (c) Appeals against the decisions of the court;
- (d) Rules of procedure;
- (e) The recognition of traditional and community justice processes in proceedings.

³⁵ Legal procedures must be consistent with Articles 9 and 14 of the *International Covenant on Civil and Political Rights (ICCPR)* and the *African Charter on Human and Peoples' Rights*, and international standards for a fair trial, Fair trial standards include Articles 9, 10 and 11 of the *Universal Declaration of Human Rights*, the *UN Standard Minimum Rules for the Treatment of Prisoners*, the *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Articles 7 and 15 of the *UN Convention against Torture*, the *UN Basic Principles on the Independence of the Judiciary*, the *UN Basic Principles on the Role of Lawyers* and the *UN Guidelines on the Role of*

Below Amnesty International sets out a number of practical concerns about establishing a special division of the High Court and concerns about specific aspects of the special division set out in the Agreement and the Annex.

A. THE ESTABLISHMENT OF A SPECIAL DIVISION OF THE HIGH COURT MAY HAVE LITTLE IMPACT IN ADDRESSING THE LACK OF ACCESS TO JUSTICE IN NORTHERN UGANDA

Amnesty International is concerned that the proposal in the Agreement and the Annex to establish a special division of the High Court will do little to address the systemic problems with the justice system in northern Uganda which have contributed to impunity and the failure of the rule of law in the region. The Office of the High Commissioner reports:

Administration of justice structures and institutions are weak and virtually non-existent in the rural areas. They are often not perceived as impartial and their accessibility is limited, for both logistical and economic reasons. The process of taking cases to the formal justice system is cumbersome and expensive, not least because of the significant lack of judicial personnel in northern and north-eastern Uganda. Corrupt practices reportedly discourage victims from seeking legal remedy. There is a general lack of confidence within the justice system due to delays in judicial proceedings, disregard for victims' rights, a high number of dismissals in court and a lack of free legal assistance.³⁶

Addressing these serious concerns will be vital to ensure that justice is available to the people of northern Uganda and that a rebuilt justice system will act as an effective deterrent to the commission of future crimes. The Agreement and the Annex do not define where the special division of the High Court will be located and how it will operate. It is, therefore, unclear whether the proposed special division will play a role in rebuilding the justice system in the region.

B. THE PROPOSED SPECIAL DIVISION OF THE HIGH COURT WOULD HAVE A LIMITED CAPACITY AND TAKE CONSIDERABLE TIME TO ESTABLISH

Prosecutors. These UN standards are supplemented and reinforced by important standards adopted by the African Commission on Human and Peoples' Rights, including: *Resolution on the Right to Recourse and Fair Trial*, adopted at its 11th Ordinary Session in Tunis, Tunisia in 1992; *Resolution on the Respect and Strengthening of the Independence of the Judiciary*, adopted at its 19th Ordinary Session in Ouagadougou, Burkina Faso in 1996; *Resolution on the Right to Fair Trial and Legal Assistance in Africa*, adopted at its 26th Ordinary Session in Rwanda in 1999; and the *Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa*, adopted in 2001. For a comprehensive discussion of international law and standards concerning the right to a fair trial, see Amnesty International, *Fair Trials Manual* (AI Index: POL 30/02/98), December 1998 <http://www.amnesty.org/en/library/info/POL30/002/1998/eng>

³⁶ *Report on the work of the Office of the High Commissioner for Human Rights in Uganda*, supra n. 21, paragraph 31. See also: Amnesty International, *Uganda: Doubly Traumatized: The lack of access to justice by women victims of sexual and gender-based violence in northern Uganda*, supra n.3 expressing concerns about the lack of access to justice for female victims of sexual and gender-based violence in northern Uganda.

Amnesty International is concerned that establishing a special division would lead to real practical problems which would undermine justice.

Firstly, by establishing a special division instead of engaging the whole of the national criminal justice system in addressing the crimes, the Annex severely restricts the justice system's capacity to prosecute the crimes. Only a limited number of Uganda's judges, court rooms, court staff and other judicial resources would be available to deal with the large volume of cases that would be necessary to deal effectively with the massive amount of serious crimes committed during the conflict. Amnesty International is concerned that as a result only a small number of cases will be prosecuted or serious delays will occur in the justice process.

Secondly, the establishment of a single new special division will take considerable time. It will require drafting legislation, establishing procedures, recruiting staff and finding facilities. These lengthy processes will likely lead to extensive delays in justice for victims, as well as the deterioration of evidence.³⁷ Such impediments are inconsistent with the fundamental principle that justice delayed is justice denied.

C. THE ANNEX CONTAINS VERY RESTRICTIVE DEFINITIONS OF CRIMES THAT WOULD BE INVESTIGATED AND PROSECUTED BY THE SPECIAL DIVISION OF THE HIGH COURT

Clause 7 of the Annex states that “[a] special division of the High Court of Uganda shall be established to try individuals who are alleged to have committed serious crimes during the conflict.” The Clause does not define “serious crimes.” However, Clause 13 (a) limits investigations to “individuals who are alleged to have planned or carried out widespread, systematic, or serious attacks directed against civilians or who are alleged to have committed grave breaches of the Geneva Conventions.” The scope of crimes would include some crimes against humanity. However, the threshold set out in the Annex is significantly higher than the definition of the crime in Article 7 of the Rome Statute. Article 7 is not limited to individuals who commit widespread or systematic attacks against civilians but also covers those who commit crimes which are not in themselves widespread or systematic but which forms part of a widespread or systematic attack.³⁸ Also, the definition in the Annex only covers some war crimes involving “serious attacks directed against civilians”. Grave breaches of the Geneva Convention would clearly be inapplicable to a non-international armed conflict.

³⁷ For example, the 2004 International Criminal Court Bill which criminalizes crimes against humanity and war crimes, for which the LRA leaders have been charged, has still not been enacted over three years later. Serious flaws in the draft legislation identified by Amnesty International have not been addressed. See: Amnesty International, *Concerns about the International Criminal Court Bill 2004* (AI Index: AFR 59/005/2004)

³⁸ The chapeau to Article 7 of the Rome Statute states:
[C]rimes against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack...

Amnesty International is furthermore concerned that individual criminal responsibility is limited to those who “planned or carried out” the crimes. The wording appears to exclude other forms of individual criminal responsibility for crimes under international law, including those who ordered, solicited, induced, aided, abetted or otherwise assisted the crimes. It also fails to set out whether commanders or superiors will be held responsible if they knew or should have known that forces under their control were committing or were about to commit the crimes and did nothing to prevent or repress the crimes or to submit the matter to competent authorities for investigation and prosecution.

Amnesty International is concerned that these provisions of the Annex could be interpreted very narrowly to cover only a small group of persons and exclude thousands of persons who committed acts of murder, rape, abductions, torture and other serious crimes over the past two decades. International law requires that all such crimes, which have been committed as part of a widespread or systematic attack against a civilian population, or amount to war crimes, torture, extrajudicial executions or enforced disappearances, are prosecuted before competent, independent and impartial national criminal courts affording all the guarantees of the right to a fair trial.

D. THE AGREEMENT AND THE ANNEX CREATE A SEPARATE SYSTEM FOR PROSECUTING CRIMES COMMITTED BY THE LRA MEMBERS AND CRIMES COMMITTED BY UGANDA'S SECURITY FORCES, ARMED FORCES AND THEIR CIVILIAN COMMANDERS

Clause 7 provides that the special division of the High Court will “try individuals who are alleged to have committed serious crimes during the conflict.” The provision indicates that all persons who are accused of crimes will be prosecuted by the special division. However, Clause 4.1 of the Agreement appears to exclude all crimes committed by members of Uganda’s security forces, armed forces or their civilian commanders from the jurisdiction of the special division:

Formal criminal and civil justice measures shall be applied to any individual who is alleged to have committed serious crimes or human rights violations in the course of the conflict. Provided that, state actors shall be subjected to existing criminal justice processes and not to special justice processes under this Agreement.

Furthermore, Clause 4.1 of the Agreement also appears to override Clause 23 of the Annex, which excludes prosecutions by military courts.³⁹ Crimes committed by members of Uganda’s armed forces or civilian commanders may therefore be investigated and prosecuted in separate processes, including by military courts, which are non-transparent, fail to respect the right to a fair trial and impose the death penalty.

³⁹ Clause 1 of the Annex makes clear that in case of any conflict, the provisions of the Agreement prevail over those in the Annex.

Amnesty International is opposed to such an approach which would inappropriately submit crimes under international law committed by Uganda's armed forces to military courts⁴⁰ and apply very different processes and standards of justice to crimes committed by the parties to the conflict. Extensive crimes have been committed by members of the security forces and by members of the armed forces and their civilian superiors, including war crimes and crimes against humanity such as murders, rapes, torture, recruitment and use of child soldiers in combat operations and forced displacements. Regrettably, despite calls by Amnesty International, these crimes have not been investigated and prosecuted by the International Criminal Court.⁴¹ Therefore, must be investigated at the national level and, where there is sufficient admissible evidence, those suspected should be prosecuted by competent, impartial and independent courts.

E. THE FAILURE TO PROVIDE FOR APPROPRIATE PUNISHMENT

Uganda has not defined crimes under international law, including crimes against humanity, war crimes, torture, extrajudicial executions and enforced disappearances as crimes under national law. It is, therefore, not possible to determine what penalties will be applied to conduct amounting to such crimes. Whatever penalties apply, they must, as Article 4 (2) of the Convention against Torture provides with regard to acts of torture, be "appropriate penalties which take into account their grave nature." Amnesty International is particularly concerned that instead of committing to apply appropriate penalties, the Agreement expressly provides for "alternative penalties and sanctions" if persons are convicted without defining these alternative penalties.⁴²

F. NO PROVISION FOR APPEALS

The Annex does not address the right to appeal of the accused against his or her conviction. The right of appeal is an essential fair trial guarantee.⁴³ Any person

⁴⁰ See: *Updated Set of Principles for the protection and promotion of human rights through action to combat impunity*, U.N. Doc. E/CN.4/2005/102/Add.1, 8 February 2005, Principle 29:

The jurisdiction of military tribunals must be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations which shall come under the jurisdiction of ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalized criminal court.

⁴¹ See: Amnesty International, *Uganda: First ever arrest warrants by the International Criminal Court - a first step towards addressing impunity* (AFR 59 /008/2005) ("The ICC in addition to prosecuting the accused, has a major role to play in working together with the government of Uganda and other governments to ensure that national courts investigate and, where there is sufficient admissible evidence, prosecute all persons suspected of such crimes including members of Ugandan government forces and their civilian superiors.")

⁴² Paragraph 6.3 of the Agreement states: "Legislation shall introduce a regime of alternative penalties and sanctions which shall apply, and replace existing penalties, with respect to serious crimes and human rights violations committed by non-state actors in the course of the conflict."

⁴³ Article 14 (5) of the *ICCPR* ("Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law"); Article 7 (a) of the *African Charter on Human and Peoples' Rights* ("Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his

convicted by the proposed special division should have the same right to appeal as anyone else convicted by another division of the High Court.

G. UNCERTAINTY ABOUT THE RELATIONSHIP BETWEEN THE SPECIAL DIVISION, TRADITIONAL MECHANISMS AND OTHER MECHANISMS

Clause 9 states that the legislation establishing the special division may provide for “[t]he recognition of traditional and community justice processes in proceedings”. This provision leaves unclear whether such mechanisms would supplement or replace prosecutions in regularly constituted courts. As set out in section 3 below, although such mechanisms may play a supplementary role, they should not replace criminal proceedings before a competent, independent and impartial court affording all the guarantees of the right to fair trial in international law and standards.

4. THE AGREEMENT AND THE ANNEX PROPOSE ESTABLISHING TRADITIONAL MECHANISMS AND OTHER MECHANISMS AS ALTERNATIVES TO CRIMINAL JUSTICE

Clause 23 of the Annex requires the government to “ensure that serious crimes committed during the conflict are addressed by the special Division of the High Court, traditional mechanisms; and any other alternative justice mechanism established under the principal agreement but not the military courts”.⁴⁴ Amnesty International is concerned that the plain reading of the clause provides that if a person is suspected of a crime under international law that does not meet the restrictive “serious crimes” threshold set out Clause 7 and 13 (a),⁴⁵ that person will not be prosecuted in an ordinary court, but submitted to a traditional mechanism or some other unspecified mechanism.⁴⁶

Traditional mechanisms which fully respect the human rights of those accused and the victims can play an important role in national efforts to respond to human rights violations and promote reconciliation. In particular, they can play an important part in facilitating truth telling and the reintegration of abducted persons, including children, back into the community.⁴⁷ However, such mechanisms should supplement,

fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force”); see also: Amnesty International, *Fair Trials Manual*, *supra* n.35, Chapter 26.

⁴⁴ As set out in section 3D above, it appears that crimes by Uganda’s armed forces or their civilian commanders are excluded from this provision.

⁴⁵ See the analysis of the crimes listed in the Annex in section 3C of this paper.

⁴⁶ The Agreement fails to provide any clear information about “alternative justice mechanism.” Clause 5.2 states:

Alternative justice mechanisms shall promote reconciliation and shall include traditional justice mechanisms, alternative sentences, reparations, and any other formal institutions or mechanisms.

⁴⁷ *Report on the work of the Office of the High Commissioner for Human Rights in Uganda*, *supra* n.21, paragraph 37.

In parallel to the formal justice system, traditional and cultural chiefs and elders continue to play a significant role in resolving disputes, notwithstanding the erosion of their authority during the conflict...Traditional justice in Acholi is restorative in nature

but not replace, the criminal justice process. Unfortunately, the Agreement and Annex appear to propose traditional mechanisms as an alternative to national criminal justice.⁴⁸ As the Office of High Commissioner for Human Rights has stated:

Relying solely on traditional justice mechanisms, including for the most serious crimes, would set a dangerous precedent for impunity.⁴⁹

Article 14 (1) of the International Covenant on Civil and Political Rights (ICCPR), to which Uganda is a party requires that the prosecution of serious crimes, including murder, rape, sexual slavery, torture and abductions amounting to crimes under international law must only be dealt with by competent, independent and impartial criminal courts able to afford all the guarantees of the right to a fair trial under international law and standards, including, in particular, the rights spelled out in Articles 9 and 14 of the ICCPR.⁵⁰

5. THE AGREEMENT AND THE ANNEX FAIL TO PROHIBIT AMNESTIES FOR CRIMES UNDER INTERNATIONAL LAW AND APPEAR TO LEAVE IN PLACE THE AMNESTIES GRANTED BY THE 2000 AMNESTY ACT

National amnesties for crimes under international law are prohibited by international law.⁵¹ Regrettably, neither the Agreement nor the Annex precludes amnesties. In particular, it is unclear whether the body of inquiry to be established by clauses 4-6 of the Annex will include the power to recommend or award amnesties for crimes under international law. Amnesty International strongly supports the establishment of bodies of inquiry, including truth commissions to ensure the truth is established about serious human rights violations. The organization calls on countries establishing such mechanisms to implement the recommendations set out in Amnesty International's

and includes aspects of trust, the voluntary nature of the process, truth telling, compensation and restoration. The revival of *Ker Kwaro* in the 1995 Ugandan Constitution together with the efforts of its leadership has strengthened this institution. It has modified cleansing rituals for returnees, which has had positive effects on the sensitization of the population and relief for returnees, as well as in bringing about unity and confidence building.

⁴⁸ Paragraph 19 of the Annex states: "Traditional justice shall form a central part of the alternative justice and reconciliation framework identified in the Principal Agreement."

⁴⁹ *Report on the work of the Office of the High Commissioner for Human Rights in Uganda*, *supra*, n.21, paragraph 62. Other independent observers have expressed concern that such traditional mechanisms do not meet these requirements. Human Rights Watch, *Uganda: UN Should Stress Peace, Justice Go Hand in Hand*, 16 November 2006 ("Traditional justice measures may have an important role to play in broader accountability efforts, but they are unlikely to provide prosecution accompanied by fair-trial guarantees as required under international law for serious crimes.").

⁵⁰ Article 14(1) states:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...

⁵¹ Amnesty International, *Sierra Leone: Special Court for Sierra Leone: denial of right to appeal and prohibition of amnesties for crimes under international law* (AI Index: AFR/012/2003), 31 October 2003.

*Checklist for the establishment of an effective truth commission, including prohibiting amnesties and ensuring that the body will be independent.*⁵²

Furthermore, although the Agreement and the Annex both fail to mention the Amnesty Act enacted in 2000,⁵³ Clause 3.10 of the Agreement severely undermines the commitment to accountability by exempting the more than 20,000 persons who have been granted amnesty from the accountability mechanisms set out in the Agreement and the Annex:

Where a person has already been subjected to proceedings or exempted from liability for any crime or civil acts or omissions, or has been subjected to accountability or reconciliation proceedings for any conduct in the course of the conflict, that person shall not be subjected to any other proceedings with respect to that conduct.

The plain reading of the provision even appears to extend beyond those granted amnesty under the act and could extend to a broad range of other proceedings, including traditional mechanisms.

Amnesty International considers that the Amnesty Act of 2000 is a serious barrier to accountability and justice to tens of thousands of victims of Uganda's conflict. As the Office of the High Commissioner on Human Rights notes:

The failure to combat impunity opens the door to new violations by the same perpetrators and incites others to commit violations. It is therefore imperative that any peace agreement for northern Uganda is guided by a comprehensive understanding of the principles in force to combat impunity, including the duty of States to punish serious crimes under international law, which prohibits any amnesty for such crimes.⁵⁴

⁵² AI Index: POL 30/020/2007. Amnesty International is concerned that although clauses 4-6 although provide for the competence and integrity of the members of the investigative body, the Annex does not include any guarantee that the body will be independent from the government and other political parties.

⁵³ Section 3 of the Amnesty Act states:

An Amnesty is declared in respect of any Ugandan who has at any time since the 26th day of January 1986 engaged in or is engaging in war or armed rebellion against the government of the Republic of Uganda by...(c) committing any other crime in the furtherance of the war or armed rebellion.

Despite the fact that amnesties are prohibited for crimes under international law, the Act contains no exceptions precluding persons who have committed such crimes from receiving amnesty. Amnesty is simply available to any person who reports to the authorities, renounces and abandons involvement in the war or armed rebellion and surrenders weapons in their possession to authorities (Amnesty Act, section 4). Amnesty is currently available until 19 July 2008, however this could be extended (Amnesty (Amendment) Act, 2006, section 3). More than 20,000 persons have already obtained an amnesty under the Amnesty Act (see footnote 18). Since the Act does not require those seeking amnesty to accept responsibility for crimes they have committed, it is not known how many of those granted amnesty have committed crimes under international law.

⁵⁴ *Report on the work of the Office of the High Commissioner for Human Rights in Uganda, supra* n.21, paragraph 8.

Amnesty International has repeatedly called on Uganda to repeal the Act and revoke all amnesties granted to ensure justice, truth and reparations for all crimes under international law committed during the conflict.⁵⁵

6. THE AGREEMENT AND THE ANNEX FAIL TO SET OUT A VICTIMS FOCUSED REPARATIONS PROGRAM

All victims of crimes against humanity, war crimes, torture, extrajudicial executions, enforced disappearances and other human rights violations have a right to full and effective reparations.⁵⁶ Amnesty International, therefore, welcomes the proposal in the Agreement and the Annex to establish a reparations program. However, the organization is concerned that the proposed system does not take a victims focused approach towards developing and implementing the program. The importance of such an approach cannot be underestimated, as the United Nations Basic Principles on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law recognize:

in adopting a victim-oriented perspective, the international community affirms its human solidarity with victims of violations of international law... as well as with humanity at large...⁵⁷

Reparations programs should focus on addressing the suffering of the victims and taking measures to help them rebuild their lives. There are a broad range of recognized measures which can be taken to achieve this, which fall under five categories: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁵⁸ Any government seeking to fulfill its legal obligations by establishing a reparations program should engage with victims and involve them in planning and implementing the program.

Although the Annex provides for the body of inquiry to make recommendations on the “most appropriate modalities for implementing a regime of reparations”⁵⁹ there are no provisions for building a reparations program which engages with victims and takes into account their views.

⁵⁵ See Amnesty International’s documents listed in footnote 4.

⁵⁶ *U.N. Basic Principles on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, General Assembly Resolution 147 (2005), Principle 3

The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to:

... (d) Provide effective remedies to victims, including reparation,

⁵⁷ *Ibid.*

⁵⁸ The five forms are recognized in clause 9.1 of the Agreement.

⁵⁹ Annex, clause 4(j)

In addition to engaging victims in the process of developing a reparations program, a victims' focused approach requires that victims should be able to challenge decisions about the program through judicial review before a competent, independent and impartial court. Furthermore, to the extent that the program does not provide full and effective reparations, victims should be able to seek other reparations measures before national courts. Legal aid and other necessary assistance should be provided to all victims seeking to implement their right to reparations before national courts. The Agreement and the Annex fail to provide for such challenges or litigation. It is, therefore, not clear whether victims could seek to enforce their right to full and effective reparations before national courts.

Finally, the Agreement and the Annex do not ensure the complete independence of the reparations program. Indeed, the proposal is undermined by the following provision of the Annex:

Prior to establishing arrangements for reparations, the government shall review the financial and institutional requirements for reparations, in order to ensure the adoption of the most effective mechanisms for reparations.⁶⁰

The provision raises concern that the development of the reparation program will not be driven primarily by the needs of victims, but by the government's decisions on how many resources to allocate to it.⁶¹

Amnesty International is concerned that, unless a victims focused approach is taken in devising and implementing the reparations program, the proposed system may fall well short of ensuring victims' rights to full and effective reparations required under international law.

PART II: THE NEED FOR A COMPREHENSIVE PLAN OF ACTION TO ENSURE JUSTICE, TRUTH AND REPARATIONS FOR ALL CRIMES UNDER INTERNATIONAL COMMITTED DURING THE CONFLICT

⁶⁰ Annex, clause 17.

⁶¹ Principle 15 of the *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, *supra* n.56, states:

Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.

To achieve the objective of accountability, the government of Uganda must establish a long-term, comprehensive plan of action, in consultation with civil society to renew its criminal and civil justice system and establish other mechanisms to end impunity for all crimes against humanity, war crimes, torture, extrajudicial executions and enforced disappearances committed during the conflict.⁶²

In Part I, Amnesty International demonstrated that the proposed systems in the Agreement and the Annex fail to establish a comprehensive and wide reaching effort to end impunity. Instead, the political compromises reflected in the documents provide for a restrictive approach to justice, truth and reparations and leave loopholes that could undermine the limited accountability to which the parties have committed themselves.

Amnesty International calls on the government to take the following steps towards implementing a comprehensive plan of action to ensure justice, truth and reparations for all crimes under international law committed during the conflict. Such a system should be developed in an inclusive process of consultation with civil society.

FULL AND IMMEDIATE COOPERATION WITH THE INTERNATIONAL CRIMINAL COURT

1. LRA leaders named in the arrest warrants issued by the International Criminal Court must be immediately arrested and surrendered to the Court without further delay even if the suspects or Uganda make a challenge to the admissibility of the case and that challenge is pending.
2. The government should enact legislation, without further delay, providing for full cooperation with the International Criminal Court, incorporating Amnesty International's recommendations.⁶³

INVESTIGATING AND PROSECUTING CRIMES UNDER INTERNATIONAL LAW IN FAIR TRIALS PROCEEDINGS BEFORE COMPETENT, INDEPENDENT AND IMPARTIAL CIVILIAN NATIONAL COURTS WITHOUT THE DEATH PENALTY

3. National criminal law must be revised to criminalize all crimes under the jurisdiction of the International Criminal Court - genocide, crimes against humanity

⁶² This view is supported in the *Report on the work of the Office of the High Commissioner for Human Rights in Uganda*, *supra* n.21, paragraph 68:

Any peace agreement for northern Uganda must be guided by a comprehensive understanding of the principles in force to combat impunity, including the duty of States to punish serious crimes under international law, which prohibits amnesty for such crimes, and by the rights of victims and their families to remedy, to redress and to truth

⁶³ Amnesty International has provided comments on the draft legislation providing for cooperation in *Concerns about the International Criminal Court Bill 2004* (AI Index: AFR 59/005/2004), however, to its knowledge these concerns have not been addressed and the Bill has not been enacted.

and war crimes - and other crimes under international law - torture, extrajudicial executions and enforced disappearances.

4. National criminal law should also be amended to incorporate principles of criminal responsibility that meet the strictest requirements of international law, including: the prohibition of amnesties, immunities and statutes of limitations for these crimes; the responsibility of commanders and superiors and permissible defences to the crimes.

5. The government must abrogate any amnesty applicable to crimes under international law and commit itself not to seek to establish amnesties, immunities, statutes of limitations and pardons for the crimes.

6. The government must establish a regional program to address the serious weaknesses in the justice system in northern Uganda. Sufficient resources should be allocated to rebuilding the justice system so that it can investigate and prosecute crimes under international law committed in the conflict, including investing in staff, facilities and programs for legal aid, training of court staff, victim and witness protection etc.

7. The government should give the Director of Public Prosecutions a clear mandate to investigate and prosecute all other crimes amounting to crimes against humanity, war crimes, torture, extrajudicial executions and enforced disappearances committed during the conflict, including crimes committed by members of the armed forces and their civilian superiors.

8.. Effective measures should be taken to ensure that national courts deal with those recruited as children by the LRA and the Uganda People's Defence Forces (UPDF) who served as child soldiers in a manner which fully respects international law and standards concerning juvenile justice, taking into account mitigating factors such as abduction and duress, and ensuring reparations, as part of a broader program of rehabilitation and reintegration of child soldiers.

9. Effective national mechanisms should be established to ensure the protection and support of victims and witnesses participating in national trials of crimes under international law.

10. Rules, procedures and practices applied by the International Criminal Court on the investigation and prosecution of crimes of sexual violence and other gender based violence should be incorporated into all national processes. In particular, the court system must include experts in all parts concerning crimes of sexual violence and crimes against or by children and a special victim and witness unit should be established.

11. If a special division of the High Court is established to investigate and prosecute crimes in the conflict, it must not preclude cases before other national courts. It must be mandated to address all crimes under international (not the limited crimes listed in the Annex) in accordance with international fair trial standards and without the imposition of the death penalty. The special division should be established in full consultation with civil society. It should be adequately resourced.

ESTABLISHING AN EFFECTIVE TRUTH COMMISSION

12. The process to establish a body of inquiry must be open and transparent. It should follow the detailed recommendations set out in Amnesty International's *Checklist for the establishment of an effective truth commission*.⁶⁴ In particular, the body of inquiry must be independent from the government and other political parties

USE OF TRADITIONAL AND OTHER MECHANISMS AS ALTERNATIVES TO JUSTICE

13. Traditional mechanisms and other mechanisms must be established independently of the criminal justice system and operate supplementary to criminal justice not as alternatives.

14. Traditional mechanisms and other mechanisms must fully respect the human rights of all involved in the process, including the right to a fair trial of accused persons and the right to protection and support for victims.

ESTABLISHING AN EFFECTIVE REPARATIONS PROGRAM

15. A victims focused reparations program should be established which engages with victims, their representatives and civil society in developing and implementing the program.

16. The reparations program should provide for the five recognized forms of reparations: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

17. The reparations program should be developed and resourced to provide full and effective reparations to victims. The program must not be undermined by arbitrary government decisions on how much resources it wants to allocate to the process. Sufficient government funding should be made available to fully implement the reparations program.

18. Victims should not be precluded from challenging decisions about the reparations program through judicial review before a competent, independent and impartial court. To the extent that full and effective reparations are not granted by the program, national law should be amended allowing them to seek reparations before national courts. Victims seeking to implement their right to reparations before national courts should have access to legal aid and other necessary support.

⁶⁴ AI Index: POL 30/020/2007

**APPENDIX I:
AGREEMENT ON ACCOUNTABILITY AND RECONCILIATION, 29 JUNE 2007**

This agreement, between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement (LRA/M) (herein referred to as the Parties), witnesseth that:

Preamble

Whereas the parties:

Having been engaged in protracted negotiations in Juba, Southern Sudan, in order to find just, peaceful and lasting solutions to the long-running conflict, and to promote reconciliation and restore harmony and tranquillity within the affected communities and in Uganda generally;

Conscious of the serious crimes, human rights violations and adverse socio-economic and political impacts of the conflict, and the need to honour the suffering of victims by promoting lasting peace with justice;

Committed to preventing impunity and promoting redress in accordance with the Constitution and international obligations and recalling, in this connection, the requirements of the Rome Statute of the International Criminal Court (ICC) and in particular the principle of complementarity;

Driven by the need for adopting appropriate justice mechanisms, including customary processes of accountability, that would resolve the conflict while promoting reconciliation and convinced that this Agreement is a sound basis for achieving that purpose;

Guided by the objective principle of the Constitution, which directs that there shall be established and nurtured institutions and procedures for the resolution of conflicts fairly and peacefully; and further recalling the Constitutional duty on the courts of Uganda to promote reconciliation.

Now therefore the parties agree as follows:

Definitions: Unless the context suggests otherwise, the following words and phrases shall have the meaning assigned thereto:

“**Ailuc**” refers to the traditional rituals performed by the Iteso to reconcile parties formerly in conflict, after full accountability.

“**Alternative justice mechanisms**” refers to justice mechanisms not currently administered in the formal courts established under the Constitution.

“**Constitution**” means the Constitution of the Republic of Uganda.

“**Culo Kwor**” refers to the compensation to atone for homicide, as practiced in Acholi and Lango cultures, and to any other forms of reparation, after full accountability.

“**Gender**” refers to the two sexes, men and women, within the context of society.

“**Kayo Cuk**” refers to the traditional rituals performed by the Langi to reconcile parties formerly in conflict, after full accountability.

“**Mato Oput**” refers to the traditional rituals performed by the Acholi to reconcile parties formerly in conflict, after full accountability.

“**Reconciliation**” refers to the process of restoring broken relationships and re-establishing harmony.

“**The Conflict**” means the conflict between the Parties in Northern and North-eastern Uganda, including its impacts in the neighbouring countries.

“**Tonu ci Koka**” refers to the traditional rituals performed by the Madi to reconcile parties formerly in conflict, after full accountability;

“**Victims**” means persons who individually or collectively have adversely suffered harm as a consequence of crimes and human rights violations committed during the conflict.

Commitment to accountability and reconciliation

2.1. The Parties shall promote national legal arrangements, consisting of formal and non formal institutions and measures for ensuring justice and reconciliation with respect to the conflict.

2.2. The accountability processes stipulated in this Agreement shall relate to the period of the conflict. However, this clause shall not prevent the consideration and analysis of any relevant matter before this period, or the promotion of reconciliation with respect to events that occurred before this period.

2.3. The Parties believe that a comprehensive, independent and impartial analysis of the history and manifestations of the conflict, especially the human rights violations and crimes committed during the course of the conflict, is an essential ingredient for attaining reconciliation at all levels.

2.4. The Parties agree that at all stages of the development and implementation of the principles and mechanisms of this Agreement, the widest possible consultations shall be promoted and undertaken in order to receive the views and concerns of all stakeholders, and to ensure the widest national ownership of the accountability and reconciliation processes. Consultations shall extend to state institutions, civil society, academia, community leaders, traditional and religious leaders, and victims.

2.5. The Parties undertake to honour and respect, at all times, all the terms of this Agreement which shall be implemented in the utmost good faith and shall adopt effective measures for monitoring and verifying the obligations assumed by the Parties under this Agreement.

Principles of general application

3.1. Traditional justice mechanisms, such as Culo Kwor, Mato Oput, Kayo Cuk, Ailuc and Tonu ci Koka and others as practiced in the communities affected by the conflict, shall be promoted, with necessary modifications, as a central part of the framework for accountability and reconciliation.

Conduct of proceedings

3.2. The Parties recognise that any meaningful accountability proceedings should, in the context of recovery from the conflict, promote reconciliation and encourage individuals to take personal responsibility for their conduct.

3.3. With respect to any proceedings under this Agreement, the right of the individual to a fair hearing and due process, as guaranteed by the Constitution, shall at all times be protected. In particular, in the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.

3.4. In the conduct of accountability and reconciliation processes, measures shall be taken to ensure the safety and privacy of witnesses.

Witnesses shall be protected from intimidation or persecution on account of their testimony. Child witnesses and victims of sexual crimes shall be given particular protection during proceedings.

Cooperation within proceedings

3.5. The Parties shall promote procedures and approaches to enable individuals to cooperate with formal criminal or civil investigations, processes and proceedings.

Cooperation may include the making of confessions, disclosures and provision of information on relevant matters. The application of any cooperation procedures shall not prejudice the rights of cooperating individuals.

3.6. Provisions may be made for the recognition of confessions or other forms of cooperation to be recognised for purposes of sentencing or sanctions.

Legal representation

3.7. Any person appearing before a formal proceeding shall be entitled to appear in person or to be represented at that person's expense by a lawyer of his or her choice. Victims participating in proceedings shall be entitled to be legally represented.

3.8. Provision shall be made for individuals facing serious criminal charges or allegations of serious human rights violations and for victims participating in such proceedings, who cannot afford representation, to be afforded legal representation at the expense of the State.

Finality and effect of proceedings

3.9. In order to achieve finality of legal processes, accountability and reconciliation procedures shall address the full extent of the offending conduct attributed to an individual. Legislation may stipulate the time within which accountability and reconciliation mechanisms should be undertaken.

3.10. Where a person has already been subjected to proceedings or exempted from liability for any crime or civil acts or omissions, or has been subjected to accountability or reconciliation proceedings for any conduct in the course of the conflict, that person shall not be subjected to any other proceedings with respect to that conduct.

Accountability

4.1. Formal criminal and civil justice measures shall be applied to any individual who is alleged to have committed serious crimes or human rights violations in the course of the conflict. Provided that, state actors shall be subjected to existing criminal justice processes and not to special justice processes under this Agreement.

4.2. Prosecutions and other formal accountability proceedings shall be based upon systematic, independent and impartial investigations.

4.3. The choice of forum for the adjudication of any particular case shall depend, amongst other considerations, on the nature and gravity of the offending conduct and the role of the alleged perpetrator in that conduct.

4.4. For purposes of this Agreement, accountability mechanisms shall be implemented through the adapted legal framework in Uganda.

Legal and institutional framework

5.1. The Parties affirm that Uganda has institutions and mechanisms, customs and usages as provided for and recognised under national laws, capable of addressing the crimes and human rights violations committed during the conflict. The Parties also recognise that modifications may be required within the national legal system to ensure a more effective and integrated justice and accountability response.

5.2. The Parties therefore acknowledge the need for an overarching justice framework that will provide for the exercise of formal criminal jurisdiction, and for the adoption and recognition of complementary alternative justice mechanisms.

5.3. Alternative justice mechanisms shall promote reconciliation and shall include traditional justice processes, alternative sentences, reparations, and any other formal institutions or mechanisms.

5.4. Insofar as practicable, accountability and reconciliation processes shall be promoted through existing national institutions and mechanisms, with necessary modifications. The Parties shall consult on the need to introduce any additional institutions or mechanisms for the implementation of this Agreement.

5.5. The Parties consider that the Uganda Human Rights Commission and the Uganda Amnesty Commission are capable of implementing relevant aspects of this Agreement.

Legislative and policy changes

5.6. The Government will introduce any necessary legislation, policies and procedures to establish the framework for addressing accountability and reconciliation and shall introduce amendments to any existing law in order to promote the principles in this Agreement.

Formal justice processes

6.1. Formal courts provided for under the Constitution shall exercise jurisdiction over individuals who are alleged to bear particular responsibility for the most serious crimes, especially crimes amounting to international crimes, during the course of the conflict.

6.2. Formal courts and tribunals established by law shall adjudicate allegations of gross human rights violations arising from the conflict.

Sentences and Sanctions

6.3. Legislation shall introduce a regime of alternative penalties and sanctions which shall apply, and replace existing penalties, with respect to serious crimes and human rights violations committed by non-state actors in the course of the conflict.

6.4. Alternative penalties and sanctions shall, as relevant: reflect the gravity of the crimes or violations; promote reconciliation between individuals and within communities; promote the rehabilitation of offenders; take into account an individual's admissions or other cooperation with proceedings; and, require perpetrators to make reparations to victims.

Reconciliation

7.1. The Parties shall promote appropriate reconciliation mechanisms to address issues arising from within or outside Uganda with respect to the conflict.

7.2. The Parties shall promote collective as well as individual acts and processes of reconciliation shall be promoted at all levels.

7.3. Truth-seeking and truth-telling processes and mechanisms shall be promoted.

Victims

8.1. The Parties agree that it is essential to acknowledge and address the suffering of victims, paying attention to the most vulnerable groups, and to promote and facilitate their right to contribute to society.

8.2. The Government shall promote the effective and meaningful participation of victims in accountability and reconciliation proceedings, consistently with the rights of the other parties in the proceedings. Victims shall be informed of the processes and any decisions affecting their interests.

8.3. Victims have the right of access to relevant information about their experiences and to remember and commemorate past events affecting them.

8.4. In the implementation of accountability and reconciliation mechanisms, the dignity, privacy and security of victims shall be respected and protected.

Reparations

9.1. Reparations may include a range of measures such as: rehabilitation; restitution; compensation; guarantees of non-recurrence and other symbolic measures such as apologies, memorials and commemorations. Priority shall be given to members of vulnerable groups.

9.2. The Parties agree that collective as well as individual reparations should be made to victims through mechanisms to be adopted by the Parties upon further consultation.

9.3. Reparations, which may be ordered to be paid to a victim as part of penalties and sanctions in accountability proceedings, may be paid out of resources identified for that purpose.

Gender

10. In the implementation of this Agreement, a gender-sensitive approach shall be promoted and in particular, implementers of this Agreement shall strive to prevent and eliminate any gender inequalities that may arise.

Women and girls

11. In the implementation of this Agreement it is agreed to:

- (i) Recognise and address the special needs of women and girls.
- (ii) Ensure that the experiences, views and concerns of women and girls are recognised and taken into account.
- (iii) Protect the dignity, privacy and security of women and girls.
- (iv) Encourage and facilitate the participation of women and girls in the processes for implementing this agreement.

Children

12. In the implementation of this Agreement it is agreed to:

- (i) Recognise and address the special needs of children and adopt child-sensitive approaches.
- (ii) Recognise and consider the experiences, views and concerns of children.
- (iii) Protect the dignity, privacy and security of children in any accountability and reconciliation proceedings.

- (iv) Ensure that children are not subjected to criminal justice proceedings, but may participate, as appropriate, in reconciliation processes.
- (v) Promote appropriate reparations for children.
- (vi) Encourage and facilitate the participation of children in the processes for implementing this Agreement.

Resources

13. The Government will avail and solicit resources for the effective implementation of this Agreement.

Obligations and undertakings of the parties

The Parties:

14.1. Expeditiously consult upon and develop proposals for mechanisms for implementing these principles.

14.2. Ensure that any accountability and reconciliation issues arising in any other agreement between themselves are consistent and integrated with the provisions of this Agreement.

The Government:

14.3. Adopt an appropriate policy framework for implementing the terms of this Agreement.

14.4. Introduce any amendments to the Amnesty Act or the Uganda Human Rights Act in order to bring it into conformity with the principles of this Agreement.

14.5. Undertake any necessary representations or legal proceedings nationally or internationally, to implement the principles of this Agreement.

14.6. Address conscientiously the question of the ICC arrest warrants relating to the leaders of the LRA/M.

14.7. Remove the LRA/M from the list of Terrorist Organisations under the Anti-Terrorism Act of Uganda upon the LRA/M abandoning rebellion, ceasing fire, and submitting its members to the process of Disarmament, Demobilisation, and Reintegration.

14.8. Make representations to any state or institution which has proscribed the LRA/M to take steps to remove the LRA/M or its members from such list.

The LRA/M:

14.9. The LRA/M shall assume obligations and enjoy rights pursuant to this Agreement.

14.10. The LRA/M shall actively promote the principles of this Agreement.

Adoption of mechanisms for implementing this agreement

15.1. The Parties shall negotiate and adopt an annexure to this Agreement which shall set out elaborated principles and mechanisms for the implementation of this Agreement. The annexure shall form a part of this Agreement.

15.2. The Parties may agree and the Mediator will provide additional guidance on the matters for the Parties to consider and consult upon in the interim period, in developing proposals for mechanisms for implementing this agreement.

Commencement

This agreement shall take effect upon signature.

**APPENDIX II:
ANNEXURE TO THE AGREEMENT ON ACCOUNTABILITY AND RECONCILIATION,
19 FEBRUARY 2008**

THE Annexure to the Agreement on Accountability and Reconciliation signed between the Government of the Republic of Uganda (the Government) and the Lord's Resistance Army/Movement (LRA/M) (the Parties) on 29th June 2007 (the Principal Agreement) provides as follows:

The parties

Having signed the Principal Agreement by which the parties committed themselves to implementing accountability and reconciliation with respect to the conflict;

Pursuant to the terms of the principal agreement calling for the adoption of mechanisms for implementing accountability and reconciliation;

Having carried out broad consultations within and outside Uganda, and in particular, with communities that have suffered most as a result of the conflict;

Having established through consultations under Clause 2.4 of the principal agreement, that there is national consensus in Uganda that adequate mechanisms exist or can be expeditiously established to try the offences committed during the conflict;

Recalling their commitment to preventing impunity and promoting redress in accordance with the Constitution and international obligations, and recalling, in this connection, the requirements of the Rome Statute of the International Criminal Court (ICC) and in particular the principle of complementarity;

Confident that the Principal Agreement embodies the necessary principles by which the conflict can be resolved with justice and reconciliation and consistent with national and international aspirations and standards;

Now therefore agree as follows:

Primacy of the Principal Agreement

1. This Annexure sets out a framework by which accountability and reconciliation are to be implemented pursuant to the principal agreement, provided that this annexure shall not in any way limit the application of that agreement, whose provisions are to be implemented in full.
2. The government shall expeditiously prepare and develop the necessary legislation and modalities for implementing the principal agreement and this annexure ('the agreement').
3. The government, under clause 2 above, shall take into account any representations from the parties on findings arising from the consultations undertaken by the parties and any input by the public during the legislative process.

Inquiry into the past and related matters (Principal Agreement: clauses 2.2 & 2.3)

4. The government shall by law establish a body to be conferred with all the necessary powers and immunities, whose functions shall include:
 - (a) to consider and analyse any relevant matters including the history of the conflict;
 - (b) to inquire into the manifestations of the conflict;
 - (c) to inquire into human rights violations committed during the conflict, giving particular attention to the experiences of women and children;
 - (d) to hold hearings and sessions in public and private;
 - (e) to make provision for witness protection, especially for children and women;

- (f) to make special provision for cases involving gender based violence;
- any (g) to promote truth-telling in communities and in this respect to liaise with traditional or other community reconciliation interlocutors;
- and (h) to promote and encourage the preservation of the memory of the events victims of the conflict through memorials, archives, commemorations and other forms of preservation;
- (i) to gather and analyse information on those who have disappeared during the conflict;
- (j) to make recommendations for the most appropriate modalities for implementing a regime of reparations, taking into account the principles set out in the principal agreement;
- (k) to make recommendations for preventing any future outbreak of conflict;
- (l) to publish its findings as a public document;
- (m) to undertake any other functions relevant to the principles set out in this agreement.

5. In the fulfilment of its functions, the body shall give precedence to any investigations or formal proceedings instituted pursuant to the terms of this agreement. Detailed guidelines and working practices shall be established to regulate the relationship between the body and any other adjudicatory body seized of a case relating to this agreement.

6. The body shall be made up of individuals of high moral character and proven integrity and the necessary expertise for carrying out its functions. In particular, its composition shall reflect a gender balance and the national character.

Legal and Institutional Framework (Principal Agreement: Part 5)

7. A special division of the High Court of Uganda shall be established to try individuals who are alleged to have committed serious crimes during the conflict.

8. The special division of the High Court shall have a registry dedicated to the work of the division and in particular, shall make arrangements to facilitate the protection and participation of witnesses, victims, women and children.

9. For the proper functioning of the special division of the court in accordance with the agreed principles of accountability and reconciliation, legislation may provide for:

- (a) The constitution of the court;
- (b) The substantive law to be applied;
- (c) Appeals against the decisions of the court;

(d) Rules of procedure;

(e) The recognition of traditional and community justice processes in proceedings.

Investigations and Prosecutions (Principal Agreement: Part 4)

10. The government shall establish a unit for carrying out investigations and prosecutions in support of trials and other formal proceedings as envisaged by the principal agreement.

11. The unit shall have a multi-disciplinary character.

12. The Director of Public Prosecutions shall have overall control of the criminal investigations of the unit and of the prosecutions before the special division.

13. Investigations shall:

(a) Seek to identify individuals who are alleged to have planned or carried out widespread, systematic, or serious attacks directed against civilians;

(b) Reflect the broad pattern of serious crimes and violations committed during the conflict;

(c) Give particular attention to crimes and violations against women and children committed during the conflict.

14. Prosecutions shall focus on individuals alleged to have planned or carried out widespread, systematic, or serious attacks directed against civilians or who are alleged to have committed grave breaches of the Geneva Conventions.

Cooperation with Investigations and Proceedings (Principal Agreement: Clauses 3.5 & 3.6)

15. Rules and procedures shall regulate the manner in which an individual may cooperate with any investigations and proceedings arising from this Agreement, by disclosure of all relevant information relating to:

(a) His or her own conduct during the conflict;

(b) Details which may assist in establishing the fate of persons missing during the conflict;

(c) The location of land mines or unexploded ordnances or other munitions; and,

(d) Any other relevant information.

Provided that a person shall not be compelled to disclose any matter which might incriminate him or her.

Reparations (Principal Agreement: Clauses 6.4 & 9))

16. The government shall establish the necessary arrangements for making reparations to victims of the conflict in accordance with the terms of the principal agreement.

17. Prior to establishing arrangements for reparations, the government shall review the financial and institutional requirements for reparations, in order to ensure the adoption of the most effective mechanisms for reparations.

18. In reviewing the question of reparations, consideration shall be given to clarifying and determining the procedures for reparations.

Traditional Justice (Principal Agreement: Clause 3.1)

19. Traditional justice shall form a central part of the alternative justice and reconciliation framework identified in the principal agreement.

20. The government shall, in consultation with relevant interlocutors, examine the practices of traditional justice mechanisms in affected areas, with a view to identifying the most appropriate roles for such mechanisms. In particular, it shall consider the role and impact of the processes on women and children.

21. The Traditional Justice Mechanisms referred to include:

i. Mato Oput in Acholi, Kayo Cuk in Lango, Ailuc in Teso, Tonu ci Koka in Madi and Okukaraba in Ankole; and

ii. Communal dispute settlement institutions such as family and clan courts.

22. A person shall not be compelled to undergo any traditional ritual.

Provisions of General Application

23. Subject to clause 4.1 of the principal agreement, the Government shall ensure that serious crimes committed during the conflict are addressed by the special Division of the High Court; traditional justice mechanisms; and any other alternative justice mechanism established under the principal agreement, but not the military courts.

24. All bodies implementing the agreement shall establish internal procedures and arrangements for protecting and ensuring the participation of victims, traumatised individuals, women, children, persons with disabilities and victims of sexual violence in proceedings.

25. In the appointment of members and staff of institutions envisaged by the Agreement, overriding consideration shall be given to the competences and skills required for the office, and gender balance shall be ensured.

26. The mediator shall from time to time receive or make requests for reports on the progress of the implementation of the agreement.