THIRD NATIONAL JLOS FORUM

THEME: DEVELOPING AND MANAGING AN EFFECTIVE TRANSITIONAL JUSTICE SYSTEM FOR UGANDA

JULY 31 – AUGUST 1, 2008

KEY POLICY ISSUES

Commitment to Transitional Justice

1. Government has expressed commitment to a transitional justice system that incorporates both restorative and retributive justice that is also sensitive to the rights of women and children, for a lasting peace

2. It is a matter of urgency that the sector prepares adequately to deliver on this commitment as soon as the Peace Agreement is signed.

3. The JLOS will continue to play a central role in spearheading the processes and drawing on existing synergies.

Traditional Justice

4. There is recognition of the crucial role of the traditional justice mechanisms in an effective transitional justice system as it promotes truth telling, reconciliation and reintegration.

5. The select cultural leaders recognised the need for fusion of their traditional justice mechanism with the formal criminal system for war crimes. In this regard, together with the JLOS, they need to explore how they can make the cultural processes relevant within the current legal framework.

6. The similarities across the different cultures were notes as: Truth telling; mechanisms for appeal; processes of cleansing and purification; community participation and involvement; compensatory mechanisms; reliance on invisible powers. In this regard, the JLOS will continue to engage the cultural leaders and other stakeholders with a view of exploring ways of documenting the processes of the different traditional justice mechanisms.

Formal Criminal Jurisdiction for War Crimes

7. The Ministry of Justice and Constitutional Affairs and the Law Reform Commission to lead the process of developing and proposing a consolidated and comprehensive legal framework to address the following the emerging issues: the jurisdiction of war crimes court; the types of crimes; admissibility of evidence; the definition of victims given that some perpetrators are victims themselves; sentencing which should not be merely punitive; recognition of minimum standards for a fair and speedy trial; the principle of retroactivity,

8. Effective investigation, prosecution, and adjudication calls for specialised units and specifically trained personnel who would be attached to the war crimes court.

9. Established processes, systems and laws should meet the internationally accepted standards in order for the system to be perceived as an effective local remedy. The JLOS will explore ways of addressing the challenge of complying with international standards on suspects of war crimes within the existing inadequacies in detention facilities.

10. The Ministry of Justice and Constitutional Affairs will have to reconcile the provision on express prohibition of the death penalty for war crimes with the provision for it in the Constitution of Uganda, in order to address the issue of selective application.

Truth telling and Reconciliation

11. There is recognition that truth telling is a critical component of comparative relevance to the victims in so far as it provides a more flexible option in which the victims can tell their stories in less limiting circumstances than in the formal justice system.

12. There is a commitment from the Forum to respond to the wishes of the majority of affected communities as expressed in all previous consultations by government and other stakeholders. In this regard, The JLOS will work with stakeholders to propose a legitimate system that is tailor-made for the Ugandan context, which would be diagnostic of the underlying causes of the conflicts and whose end result would be reconciliation and lasting peace.

13. The truth telling processes should include reparations in terms of compensation, restitution and rehabilitation for victims for it to be credible and effective.

14. An effective national reconciliation programme has to take into account the different levels at which reconciliation should take place: family, clan, community, regional, inter-regional and national. In view of this, the ongoing discussions and meetings on reconciliation at the regional level in northern Uganda were noted.

Integrated System for Formal Criminal Jurisdiction and Complementary Alternative Justice Systems

15. There is general consensus on the need for both criminal jurisdiction and complementary alternative justice systems for an effective transitional justice system

16. Whatever form the integrated system would take, it must be victim-centred, guarantee their protection, and reparations for them. In this respect, it should incorporate principles of the traditional system to ensure finality of the matter.

17. The roles of the different existing institutions for justice delivery were noted. In that regard, developing an integrated system should take into account the principle of non-duplication while at the same time guaranteeing that victims' options on where to access justice are not restricted to the new mechanisms in the integrated system.

18. The JLOS will dialogue further, the proposal to fuse the traditional justice system at the exit point of the formal justice process particularly for those with command responsibility.

19. Drawing from the international legal obligations, the Ministry of Gender will advise on the benchmarks on how to incorporate gender and vulnerable groups in the transitional justice system

20. The transitional justice institutions that will be set based on the Juba Agreement should be legitimate and credible enough to effectively operate beyond the scope of the agreement.

21. Given the gravity of war crimes, the Defence Counsel as well as the other institutions referred to in paragraph 8 require adequate capacity and accreditation to effectively administer transitional justice.

Identifying Sustainable Funding Option for an Effective Transitional Justice System

22. All options for funding will be explored by the JLOS including sector budget support, off budget support and technical assistance drawing from a comprehensive framework and budget of the transitional justice system.

23. The JLOS should work out the budgetary proposals for presentation by November.