



Justice, Law and Order Sector Strategic Investment Plan

Mid-term Evaluation 2001/2 -2005/6

VOLUME TWO

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UGANDA

VOLUME TWO

UGANDA'S LEGAL OBLIGATIONS: A CHECKLIST FOR J/LOS PLANNING AND EVALUATION¹

The objectives of the JLOS Strategic Investment Plan: Reform through a sector-wide approach

“The success of the Justice and/ Law and Order Sector reform Programme depends on the full support and participation of stakeholders. This means that all of us need to commit ourselves to being **change agents** in the manner in which JLOS services are delivered by:

- Fostering a **Human Rights** culture across JLOS institutions
- Promoting **Rule of Law** and **Due Process**
- Securing **access to justice** for all people
- Ensuring a significant reduction in the **Incidence of crime**
- Promoting principles of **Crime Prevention**, as well as **Enforcement of Contracts**
- Encouraging **Grass Root Voices** and community development²

International minimum standards for justice, law and order sector

Naturally, the SIP policy objectives are specifically drawn from the checklist of Uganda's international legal commitments. The eight objectives use short-hand to refer to well-established legal concepts which are the internationally recognised minimum standards for a justice, law and order system. That legal framework provides highly developed guidance to all states engaged in J/LOS reform, and for Uganda in particular based on its specific treaty obligations.

These minimum standards cover all aspects of an effective, efficient, accessible, independent, fair, and corruption-free system of justice for both criminal and civil matters. Compliance means not only that the Constitution, national laws, budgets, programmes, policies and practices are not only consistent with these standards on paper - but also that systems are in place to ensure these standards are effectively enjoyed in practice.

To give effect to the SIP policy objectives, there is a need to ensure real familiarity of all J/LOS actors and stakeholders with the content of these minimum standards for the justice, law and order sector (institutions, Ministries, donors, NGOs, technical advisors etc).

Therefore, as part of the on-going learning process of which this MTE is intended to form a part, Volume Two elaborates on some of the content of these standards as an aid to future discussion.

It sets out the constituent elements of the Justice system to which Uganda is committed, in the form of a checklist for J/LOS to examine whether national implementing law, procedures, practices, programmes, budgets and systems achieve these standards in practice. The checklist:

¹ This Map of Uganda's Minimum Standards is adapted from *International Human Rights Network Justice Sector Checklist of Standards, 2003*, <http://www.ihrnetwork.org>

² J/LOS Brochure designed to explain its role to the public.

- Provides standards of assessment that have legitimacy that is both deep and wide: they are owned by GoU as it adopted these legal obligations as standards for its people by becoming party to the main human rights treaties; and these are the same treaty standards that development partners have ratified;
- Clarifies that human rights standards underpin all of J/LOS activity - from combating corruption to rehabilitating offenders and demonstrates how integrated they are. It thus unites in their natural framework the various standards to be achieved by both criminal and civil justice (including commercial matters); as well as the standards for both 'Law and Order' and 'Justice';
- Emphasises cost-free solutions to human rights problems by drawing attention to items which simply require GoU decision (e.g. the treaty obligation to immediately release of those who have served unreasonable periods on remand);
- Places in context the initial choices made by J/LOS and helps identify missing areas as well as checking whether sectoral monitoring and evaluation (M&E) is asking the pertinent questions; and
- Indicates how inter-dependent these standards are and thus the need for a holistic, rather than fragmented, approach to J/LOS.

To help provide clarity as to the content of the SIP objectives, the checklist sets out the standards relating to the justice, law and order is provided under these broad headings:

- Public awareness of human rights relating to the sector (the 'demand' side)
- The right of the public to participate in the process of identifying needs, priorities etc
- Prevention of torture as well as all forms of inhuman or degrading treatment or punishment
- Prevention of crime
- Administration of Justice (both civil and criminal)
 - a) Pre-trial
 - b) During trial
 - c) After-trial
- Specific standards in the context of death penalty

How can the checklist be used in practice? It is intended to support and stimulate discussion as part of the SIP II planning process during 2005 among, and within, the J/LOS institutions with their external stakeholders. In addition, the tool should support programming at stages such as the following.

- **Needs assessment:** Which elements are required for an effective justice system - and therefore which elements need to be assessed in planning SIP II (e.g. to establish a holistic baseline)
- **Design:** Exclude the elements known to function well, which can be confirmed as areas where future support is not needed. Among the elements which remain challenges after the completion of SIP (I), **prioritise low-cost** steps. Examples include the international legal obligation to release those who have been detained pending trial beyond a 'reasonable' time. These are policy decisions which can be prioritised,

without significant financial implications. Use the Map to **focus J/LOS support** to actors and interventions which are central to achieving the SIP policy objectives.

- **M&E:** Identify which constituent elements of an effective justice system are currently being monitored by JLOS with existing sectoral indicators - and which are not. Plan holistic monitoring to provide evidence to demonstrate impact to GoU, institutions and other stakeholders.

Use of the checklist is necessary to strengthen the focus on **impact in day to day J/LOS activities** such as:

- Baselines, indicators and targets (i.e. to ensure that indicators used actually indicate whether the desired change is occurring)
- The planned synchronized JLOS Management Information System (i.e. to ensure that key questions will be answered by designing it with the Map in hand)
- User surveys (to ensure questions are framed appropriately; and that key people are being addressed such as victims of crime, accused on remand, convicted prisoners, prison/police/judicial staff, juveniles in the justice system; women in the justice system; defence/prosecution lawyers, community representatives, etc)
- Terms of Reference for studies, reviews, impact assessments etc.

It is also noted that the checklist should assist J/LOS in strengthening its **inter-sectoral relationships** as discussed in Chapter 4 of Volume One, and areas such as the following as the report outlines in Chapter 4:

1. Institutional scope: Security Sector reform and legal accountability
2. Geographical scope : Conflict affected areas : Peace efforts
3. The right to Education (prevention of crime, rehabilitation of offenders...)
4. The right to Health (conditions of detention - food, water, sanitation, medical care, prevention of AIDs etc)
5. Freedom of Expression, Association and Assembly (as input to JLOS planning, monitoring etc. trades unions representation of staff of J/LOS institutions, professional associations of staff and public officials in the JLOS sector; access to information for NGOs, victims groups etc.)

Note: Technical Sources of law used are listed at the end of the checklist below.

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
<i>1. INFORMED DEMAND FOR HUMAN RIGHTS IN THE JUSTICE SECTOR</i>				
<p>Increased % of people with awareness of what their human rights are meant to be in specific contexts (e.g. on being detained by police)</p> <p>Increased % of people with knowledge of the Constitution and its strengths and weaknesses in protecting their human rights</p> <p>Increased % aware of functions of specific political institutions and aware of the strength and weakness of each in protecting human rights</p>				
<p>Confidence: Increased % people expressing confidence that organs of the state respect human rights (e.g. police, magistrates, local authorities)</p>				
<i>2. PROCESS: EFFECTIVE PARTICIPATION IN J/LOS</i>				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
Increase in # of formal and informal JLOS consultation processes/fora for human rights based CSOs to input into policy formation processes (by issue; by relevant public institution; by local, regional, national level, by stage of decision-making process and, most importantly, by formal recognition of decision-making influence)				
3. CRIME PREVENTION				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
<p>Overall principles : The well-being of young persons from their early childhood should be the focus of any crime prevention programme</p> <ul style="list-style-type: none"> - avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others (can cause self-fulfilling pattern) - provide especially educational opportunities to meet varying needs of young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection - focus on community-based services and use formal agencies of social control as last resort 				
<p>General prevention : Specialized philosophy and approach for juvenile delinquency prevention (on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions) and plan at all levels of GoU Guidance for plan follows (a) to(i) below :</p>				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
(a) In-depth analyses of the problem and inventories of programmes, services, facilities and resources available, including opportunities to support family, schools and communities in crime prevention				
(b) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts				
(c) Mechanisms for the appropriate co-ordination of prevention efforts between governmental and non-governmental agencies				
(d) Policies, programmes and strategies based on prognostic studies continuously monitored & evaluated in the course of implementation				
(e) Methods for effectively reducing the opportunity to commit delinquent acts				
(f) Community involvement through a wide range of services and programmes e.g supporting family, schools, community				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
(g) Close interdisciplinary co-operation between national, District and local governments, with the involvement of the private sector, representatives of the community to be served, and labour, health education, social, J/LOS agencies in taking concerted action to prevent juvenile delinquency and youth crime				
(h) Youth participation in delinquency prevention policies and processes (e.g community resources, youth self-help, and victim compensation and assistance programmes)				
(i) Specialized personnel at all levels.				
<p>Research: Base programmes to prevent crime on reliable, scientific research findings, and periodically monitor, evaluate and adjust accordingly.</p> <p>Generally, participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation.</p>				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
4. PREVENTION OF TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT				
<p>Overall: Every person deprived of their liberty is treated with humanity and with respect for the inherent dignity of the human person</p>		<p>No. There is no data in the Criminal baseline survey regarding torture, conditions of detention or treatment. <u>This is a matter of serious concern.</u> Direct surveys of prison population should be introduced with careful design to minimize risk of reprisals. Former detainees should also be a target group for this reason. Data to be disaggregated by all vulnerable groups.</p>	<p>This does not depend entirely on resources. This is illustrated by the finding by UHRC that worst conditions/treatment existed in the newly refurbished Masaka prison. Conditions of detention must not be discriminatory e.g gender, sexual orientation, political opinion, economic status. Members of vulnerable tribal, political or other groups may be disproportionately subjected to torture and other forms of ill-treatment. Such difference may contribute to the process of the dehumanization of the victim (often a necessary condition for torture and ill-treatment to take place).</p>	
<p><u>PROHIBITION OF TORTURE</u> The crime of torture is accurately defined in Ugandan law, providing appropriate penalties (e.g mental as well as physical torture)³</p>				

³ No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
The legal system effectively guarantees the immediate termination of all acts of torture or inhuman or degrading treatment or punishment		No baseline established for the prosecution of such crimes by general courts (of Judicature) or the system of Military justice. <u>This is a n example of a matter of concern.</u>		
Ugandan law criminalises detention incommunicado, with appropriate penalties for those who commit, or are complicit in it.			Any indicator of this needs to be combined with indicators of effectiveness of this prohibition in practice	
Education and information regarding the prohibition of torture fully intrgrated in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment (including pupils and patients in educational and medical institutions etc).				
Prompt and regular access is given to doctors and lawyers and (under appropriate supervision when the investigation so requires) to family members.				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
All detainees held in places that are publicly recognized				
A central register is available to persons concerned, such as relatives (containing names and places of detention; names of persons responsible for their detention)				
Confessions or other evidence obtained through torture or other prohibited treatment are inadmissible in court.				
Time and place of all interrogations is recorded, with names of those present (and info made available for judicial or administrative proceedings)				
All places of detention are free from any equipment liable to be used for inflicting torture or ill-treatment				
Investigation & remedy There is an effective legal right to complain alleging torture or other ill-treatment. Complaints are investigated promptly and impartially by competent authorities so as to make the remedy effective.				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
Steps are taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.				
Uganda ensures that every victim of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, are his dependants entitled to compensation.				
Gender Gender-based violence is prohibited (directed against a person because of their gender or that affects people of their gender disproportionately) ⁴				
Racism Racist propaganda is prohibited, as well as all organizations based on 'superiority' of one race or group of persons of one colour or ethnic origin				

⁴ It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
It is an offence punishable by law to disseminate ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including financing.				
Positive measures taken to eradicate all incitement to, or acts of, such discrimination				
This prohibition of torture or other ill-treatment is incorporated in the instructions/duties issued to any such person (above).				
Corporal punishment, or being placed in a dark cell, and other cruel, inhuman or degrading punishments are completely prohibited as punishments for disciplinary offences.				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
The following are kept under systematic review in order to prevent torture: interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment				
The aim of imprisonment after sentence is to establish the will to lead law-abiding and self-supporting lives after release and to prepare the convicted to do so (so far as the length of the sentence permits). ⁵				
Uganda ensures that it does not return a person ('refouler') to a state where there are substantial grounds for believing they might be subjected to torture				

⁵ Examples: religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
<p>Juveniles Every child deprived of liberty is treated in a manner which takes into account the needs of persons of his or her age e.g separated from adults (unless it is considered in the child's best interest not to do so) and maintaining contact with family through correspondence and visits</p>				
<p>Juveniles receive care, protection and assistance-social, educational, vocational, psychological, medical and physical support-that they may require in view of their age, sex and personality.</p>				
<p>The carrying or use of firearms is prohibited in any facility where juveniles are detained or educated</p>				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
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Instruments of restraint and force are only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. ⁶				
All appropriate legislative, administrative, social and educational measures are taken to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.				
All appropriate measures to promote physical and psychological recovery and social reintegration of a child victim are taken (of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts). Recovery and reintegration is in an environment which fosters the health, self-respect and dignity of the child				

⁶ Is it ensured that they do not cause humiliation or degradation, that they are used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent a juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

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Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
All appropriate measures are taken to ensure school discipline is consistent with the child's human dignity.				Inter-sectoral issue regarding the Right to Education
5. ADMINISTRATION OF JUSTICE (CIVIL & CRIMINAL)				
A. PRE-TRIAL: The right to liberty and prohibition of arbitrary arrest or detention (civil and criminal)				
Detention in Criminal contexts: Arrest, detention or imprisonment strictly in accordance with law and by persons authorized for that purpose.				
Arresting authorities keep detainee or investigate only with powers granted by law.				
Exercise of these powers is subject to recourse to a judicial or other authority.				
Conviction only by competent <i>judicial</i> body, operating independent of Executive and the parties.				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
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No detention without being brought before a court or without intention of bringing them to trial.				
Detention in non-criminal contexts: There is effective control by a court of the legality of the detention, for all persons detained (e.g educational purposes, vagrancy, mental illness, immigration control) ⁷ No				Detention in non-criminal context not examined. Military Justice system not examined.
'Preventive detention' ⁸ for reasons of public security is not arbitrary, but based on grounds and procedures established by law. Reasons are given with court control of the detention and compensation in case of a breach. If, in addition, criminal charges are brought, there is full protection of right to pre-trial review/release, as well as fair trial.				
Segregation of accused from convicted persons				

⁷ Confined patients also have rights in terms of participating in the decision to confine them, being told of the grounds on which they are confined etc.

⁸ Uganda may detain for the purpose of bringing someone before a competent legal authority on reasonable suspicion of having committed an offence, when it is reasonably considered necessary to prevent his committing an offence, or to prevent their flight. The term '*reasonable*' gives flexibility in determining the standard.

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Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
Effective remedy for claims of arbitrary arrest/deprivation of liberty in violation of human rights No				
The right to know the reasons for arrest (both civil and criminal) Individuals are informed promptly, in a language he understands, of the reasons for arrest and any charges against him (whether detention in criminal or civil context).				
The right to a prompt appearance before a judge to challenge the lawfulness of arrest and Detention (civil and criminal)				
Criminal :all persons arrested or detained are brought “promptly” before a judge or other officer authorised by law to exercise judicial power - within 48 hours in Uganda				
Individual deprived of liberty through arrest or detention has effective right to challenge in court the lawfulness and necessity of such deprivation.				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
Challenge is heard speedily, and the individual released if the court decides that a given detention is unlawful.				
Detainees have chance to challenge the legality of their detention regularly and at short intervals, e.g a delay of x days may be too long to wait for an initial review of a detention decision (intervals for review in psychiatric detention may be longer, a couple of months)				
Detainees and their counsel, if any, receive prompt and full communication of any order of detention, together with the reasons therefor				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
There is equality of arms in habeas corpus proceedings: e.g. adversarial procedure; accused has access to files of investigators in their review of decision to detain the accused on remand, the right to defend himself or to be assisted by counsel as prescribed by law.				
Pre-trial detention is an exception and as short as possible: trials held within a reasonable time <i>or the accused released</i>	Partly-speedier trials sought, but no release if reasonable time exceeded; criteria for bail decisions not addressed	Base only for speedier trials, not for release		A major issue which is <u>not</u> mainly determined by resources. If addressed, would assist J/LOS in starting from a more manageable backlog to face into reforms. Must be accompanied by planned communication to public as to the HR reasons for large-scale releases. ⁹
The right to compensation if detained in contravention of human rights All victims of unlawful arrest or detention has effective, enforceable right to compensation				
B. RIGHTS DURING TRIAL/HEARING				
Equal access to and equality before the courts (civil and criminal)				

⁹ Process must ensure presumption of innocence for those released; plan to minimise possible demoralising effect on J/LOS institutions; and public understanding.

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
Equal access to courts without discrimination (of purpose or effect) of any kind. Examples: race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status		Partly, information could be disaggregated by race, language, religion, political opinion, disability, sexual orientation. Not fully disaggregated. Legal aid survey maps coverage by providers (supply-side), but does not fully map demand-side for effective access to courts e.g what issues of law, what aggregated groups (is indigent defined to ensure all those unable to afford effective access to courts are covered?), in what geographical areas, to what courts most needed e.g LC courts	Not fully disaggregated	
Legal protection of the rights of women on an equal basis with men. Competent national tribunals and other public institutions ensure effective protection of women against any act of discrimination				
No interference by the legislature with the administration of justice designed to influence a judicial decision. (Principles of the rule of law and of fair trial)				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
No over-complex administrative proceedings to determine a civil right (right of access to court)				
Right to a fair trial/hearing (civil and criminal)				
Courts exercise due diligence to ensure equality of arms is enjoyed in an effective manner.				
Equality of arms: Both parties have: equal opportunity to present their case and neither enjoy any substantial advantage over opponent; entitlement to information about the facts and arguments of the opposing party and equal opportunity to reply to the other.				
Defendants present and entitled to take part in any proceedings (in most circumstances).				
Final judgements are implemented by administrative authorities without undue delay.				
Principle of legal certainty is applied (e.g no review of judgements which already entered in force).				
Right to a public hearing (civil and criminal) To help ensure confidence in the administration of justice				

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Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
Any phase of a proceeding that affects the “determination” of the matter is made public				
All judgments pronounced publicly.				
All hearings open to the public in general, including press				
Trials/hearings conducted by a competent, independent and impartial tribunal that is established by law (civil and criminal)				
Constitutional and legislative texts provide for courts and ensure they are independent, impartial and competent.				
Qualifications, selection and training: persons selected for judicial office have integrity and ability with appropriate training or qualifications in law.				
Methods of selection safeguard against judicial appointments for improper motives. No discrimination against a candidate (purpose or effect). ¹⁰				

¹⁰ A requirement that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

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<p>Conditions of service and tenure adequately secured by law (independence, security, adequate remuneration, pensions and the age of retirement)</p> <p>Judes (whether appointed or elected) have guaranteed tenure until a mandatory retirement age (or the expiry of their term of office, where such exists).</p> <p>Promotion based on objective factors, in particular ability, integrity and experience.</p> <p>Assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.</p>				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
<p>Professional secrecy and immunity: The judiciary bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings. They are not compelled to testify on such matters.</p> <p>Judges enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.¹¹</p>				

¹¹ Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law.

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
<p>Discipline, suspension and removal: A charge or complaint made against a judge in his/her judicial and professional capacity is processed expeditiously and fairly under an appropriate procedure. The judge has right to a fair hearing. The examination of the matter at its initial stage is kept confidential unless otherwise requested by the judge.</p> <p>Judges are subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.</p> <p>Decisions in disciplinary, suspension or removal proceedings subject to an independent review.¹²</p>				

¹²This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

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<p>Separation of powers: There is adequate resources to enable the judiciary to properly perform its functions.</p> <p>Courts empowered to determine the outcome of cases.</p> <p>The State does not arbitrarily transfer jurisdiction between courts and administrative tribunals.</p> <p>Judges are not bound by the interpretation of the law made by members of the executive branch.</p>				
<p>Impartiality : Judges preserve subjective independence, but also the appearance of <i>objective</i> impartiality and independence i.e. courts inspire confidence, including in cases with a marked political background</p> <p>Trial judges are not also the judges who previously ruled on the detention on remand of the accused (could prejudice the objectivity of the trial).</p>				

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Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
<p>Right to be presumed innocent until proven guilty according to law (criminal) The burden of proof of the charge on the prosecution and the accused has the benefit of the doubt.</p>				
<p>Judicial authorities or other public officials do not comment on the guilt of an individual prior to a final determination of that guilt beyond reasonable doubt</p>				
<p>Those presumed innocent treated accordingly (e.g accused persons segregated from convicted ones)</p>				
<p>Right to be informed promptly and in detail of the nature and cause of any charges in a language which he or she understands (criminal) The accused is informed of the charge as soon as it is first made by a competent authority (orally or in writing, indicating both the law and the alleged facts on which charge is based).</p>				
<p>Arrangements are in made for minority/other languages in the police and courts.</p>				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
<p>Right to adequate time and facilities for the preparation of a defence (criminal) "Adequate time" (depends on the circumstances of each case). Must include access to documents and other evidence as well as the opportunity to engage and communicate with counsel.</p>				
<p>"Facilities": e.g opportunity to acquaint self with the results of investigations carried out throughout the proceedings (or through counsel); to confer with own legal counsel; have access to counsel during the pre-trial phase. Lawyers able to advise & represent clients in accordance with established professional standards and judgment without any restrictions, influences, pressures or undue interference.</p>				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
<p>Right to communicate directly and in private with lawyer of own choosing (criminal) If the accused wishes, he has effective recourse to a lawyer e.g confidential communication; lawyer able to advise and represent client in accordance with their established professional standards and judgement without any restrictions, influences, pressures or undue interference (see previous)</p>				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
<p>Right to defend yourself in person or through legal assistance of your own choosing; including the right to have access to a lawyer in the pre-trial stage (criminal) e.g:</p> <ul style="list-style-type: none"> - effective right to legal assistance for free when the interests of justice so require - counsel present in court - defence counsel and defendant able to communicate freely and with full respect for the confidentiality of their communications, whether written or oral (within hours of arrest or detention). - if state legal assistance is provided, the appointed counsel must act in the clients interest. Legal assistance must be effective (the right is to assistance, not just nomination) - non-discrimination in access to legal aid <p><u>See above also right to a fair trial (equality of arms principle)</u></p>				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
<p>Right to be assigned legal assistance, in any case where the interests of justice so require and for such assistance to be without payment if you do not have sufficient means to pay (criminal)</p> <p>Detainees are informed of right by the competent authority promptly after arrest and provided with reasonable facilities for exercising it.</p> <p>Where detainee has no legal counsel of own choice, he is entitled to have a legal counsel assigned to him by a judicial or other authority a) in all cases where the interests of justice so require and b) without payment by him if he does not have sufficient means to pay. (e.g complex proceedings, defendant not literate). Refusal of legal aid is reviewed.</p>				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
<p>Right to examine the witnesses against you, and to examine the witness on your behalf under the same conditions (criminal) The accused has the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.</p> <p>Trial courts follow the same pattern of interrogation in examining its own expert witnesses and those called by the defence. Convictions are <u>not</u> based on the testimony of anonymous witnesses unavailable for questioning by the defence (save where the anonymous witnesses are police).</p>				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
<p>Right to have the free assistance of an interpreter if you cannot understand or speak the language used in court (criminal) Interpretation or translation is provided (at Uganda's expense) of: the charge, the reasons for arrest, the hearing and all documents or statements which the defendant needs to understand in order to have a fair trial. For rest, defence counsel competent in the mother tongue of the accused is sufficient. This right does not depend on the outcome of the proceedings. Applies to aliens as well as to Ugandan nationals.</p>				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
<p>Right not to be compelled to testify against yourself or to confess guilt (criminal) The law provides that evidence obtained from the accused through methods that are contrary to human rights, or any other form of compulsion, is wholly unacceptable.</p>				
<p>Right to be tried without undue delay (criminal) All stages take place “without undue delay”: trial commences, ends, judgment rendered. There is procedure to make this right effective, to ensure that the trial will proceed “without undue delay”, both in first instance and on appeal.¹³ Note: Inadequate staffing or general administrative inconvenience is no excuse for failing to meet “reasonable time” standard.</p>				<p>This is an example of a low-cost immediate action priority required of Uganda as a state party to the International Covenant on Civil and Political Rights. The Chief Justice was considering this during the MTE. Having found grave violations, the Human Rights Committee established under this treaty asked Uganda to report back on such compliance steps as this, in May 2005.</p>

¹³ The “reasonable time” standard is a subjective one depending on: complexity of case, the way the authorities handled the matter, whether applicant’s own conduct contributed to delays.

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
<p>Right to be tried in his or her own presence The accused or his lawyer entitled to act diligently and fearlessly in pursuing all available defences and to challenge the conduct of the case if unfair. If exceptionally (for justified reasons) trials <i>in absentia</i> are held, strict observance of the rights of the defence is all the more respected.</p> <p>See also <u>right to a fair trial - equality of arms principle</u></p>				
<p>The rule against double jeopardy is respected</p>				
<p>Is there punishment without law (national or international) at the time offence committed. The State publicises and makes accessible laws (including development of rules of criminal liability through judicial interpretation)</p>				
<p>Are penalties heavier than at the time of the offence and offender benefits if penalty is later made lighter</p>				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
No-one imprisoned merely for inability to fulfil contract				
<u>C. POST-TRIAL RIGHTS</u> Right of appeal (against conviction and sentence) to higher tribunal according to law (criminal) Includes less serious offences. Access to and the powers of reviewing tribunals are adequate, they take account of the fair and public hearing requirements ¹⁴				
<u>Effective enforcement of judgements (civil and criminal)</u>				
Compensation provided according to law in certain cases of a miscarriage of justice Compensation provided according to law in certain cases of a miscarriage of justice ¹⁵				

¹⁴ There is no guaranteed right to appeal in civil cases.

¹⁵ If final conviction is subsequently reversed, or a pardon granted on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of the conviction is to be compensated according to law or the practice of the state concerned. Exception: if proven that the non-disclosure of the unknown fact in time is wholly or partially attributable to the person convicted

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
<p>Non-discrimination, equality before law (civil and criminal) All detainees treated with humanity and with respect for their dignity and without discrimination.¹⁶ <u>This is a minimum, which is not dependent on the material resources available.</u></p>				
<p>Contd. All law enforcement officials who exercise police powers (especially the powers of detention or arrest) are properly selected, trained and supervised in accordance with these standards</p>				
<p>Contd. Any differential treatment of individuals in similar situations must be justified on objective and reasonable grounds (any difference in treatment between the sexes or between different races will be particularly difficult to justify). Internally displaced persons may not be discriminated against merely because they are displaced.</p>				

¹⁶Without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (ICCPR).

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
Contd. Measures are applied under the law designed solely to protect the rights and special status of women (especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons). The need for, and the application of, such measures is subject to review by a judicial or other authority.				
Effective domestic remedy for violations				
Anyone with an <i>arguable claim</i> that his human rights have been violated (such as in this Table) has a remedy before a Ugandan authority in order both to have his claim decided and, if appropriate, to obtain redress. For example, anyone who has been the victim of unlawful arrest or detention has an enforceable right to compensation.				
The remedy is <i>effective</i> (payment of compensation where appropriate; a thorough and effective investigation capable of leading to the effective identification and punishment of those responsible; effective access for the complainant to the investigatory procedure).				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
<p>A detainee or his counsel is entitled to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities. When necessary also to appropriate authorities vested with reviewing or remedial powers.</p> <p>If neither the detainee nor his counsel has the possibility to exercise these rights, a member of the detainee's family or any other person with knowledge of the case can do so, Confidentiality maintained if requested by the complainant.</p>				
<u>D. SPECIAL PROTECTION FOR JUVENILES</u>				
<p>Juvenile justice is conceived as an integral part of the national development process, within a comprehensive framework of social justice for all juveniles, in the context of economic, social and cultural conditions.</p>				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
Juvenile justice services are systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.				
Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority are guaranteed at all stages of proceedings. Juveniles enjoy at least the same guarantees and protection as are accorded to adults regarding fair trial.				
Uganda's minimum age at which a juvenile may be charged with a criminal offence is xx; maximum age at which a person is still considered to be a juvenile is xx. There are special courts and procedures, and specific laws for juvenile justice.				

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
<p>Cases concerning juveniles take account of their age and the desirability of promoting their rehabilitation. Imprisonment is used as a last resort for the minimum necessary period, and limited to exceptional cases. Special arrangements promote rehabilitation such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care which are proportionate to circumstances and offence. The juvenile's right to privacy respected at all stages in order to avoid harm being caused by undue publicity (a justified restriction on the right to publicize a civil/criminal judgement).</p>				
<p>Accused juveniles are separated from adults (absolute requirement) and entitled to be brought as speedily as possible for adjudication.</p>				

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Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
Children are protected from institutional violence (including through legislation and administrative measures) in public or private institutions (schools, institutions for disabled adolescents, juvenile reformatories, etc.). There adequate training and monitoring of personnel in charge of institutionalized children or who otherwise have contact with children through their work, including the police. Juveniles who are not fluent in the language spoken by the personnel of the detention facility have an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings				
There an office of ombudsman or similar independent organ, which ensures that the status, rights and interests of young persons are upheld and that proper referral to available services is made. ¹⁷				

¹⁷ The ombudsman or other organ designated would also supervise the implementation of the Riyadh Guidelines, the Beijing Rules and the Rules for the Protection of Juveniles Deprived of their Liberty. Does the ombudsman or other organ, at regular intervals, publish a report on the progress made and on the difficulties encountered in the implementation of the instrument. Are child advocacy services established.

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
6. SPECIFIC STANDARDS IN CONTEXT OF DEATH PENALTY				
Uganda restricts death penalty: - only for the most serious crimes (e.g intentional crimes with lethal or other extremely grave consequences)				
-not for protected groups (minors at time of crime, the insane, pregnant women or new mothers) ¹⁸				
-only pursuant to a final judgement rendered by a competent court after a fair trial ¹⁹ . Including special protection for children.				
-Only where a lighter penalty has not become law since the crime.				
-Only for crimes for which the death penalty was prescribed at the time of its commission.				

¹⁸ There may be topics (e.g children on death row etc) where JLOS needs to find/assess info available officially from Ministries etc and to add new research where there are gaps in that information.

¹⁹ At least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, public hearing etc.

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Fair trial standards of particular importance in death penalty cases (see above), and: - % increase in trials open to the public and reported by journalists.				

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<p>Death row conditions and carrying out sentence (see above regarding prevention of torture ; inhuman or degrading treatment of punishment)</p>		No.	<p>No. Recommend as examples of appropriate indicators: e.g increase in regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority; increase in death row prisoners visited daily by a medical officer; increase in proportion of prisoners with 24-hour access to clean water and toilet facilities; reduction in population beyond capacity; increase in availability of information about the administrative complaint process and access to materials necessary to file complaints....)</p>	<p>Further detail for sample indicators from the UN Standard Minimum Rules for the Treatment of Prisoners, see web sources at end for more detail (minimum standards of space, bedding, exercise, temperature etc). Sources of verification should include systematic, unannounced inspections of all places of detention need to be streamlined for effectiveness and use of resources e.g independent prison visitors, Uganda Human Rights Commission reporting publicly. Others may have access, such as members of Uganda Law Society; Public Defenders Association meeting clients, humanitarian aid organizations etc. Visits by international protection mechanisms (such as UN Special Rapporteur on Torture, Summary, Arbitrary or Extra-Judicial Executions etc). CSOs may access information from people who have been released recently, families of detainees, former prison officers, etc</p>

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
Those sentenced to death have an effective right of appeal and an effective right to seek pardon or commutation of sentence				
Uganda applies death sentence only in a manner so as to inflict the minimum possible suffering ; and only in non-degrading manner, including not in public ²⁰				
In addition to the right of appeal on the national level, Uganda has agreed to the right of individual petition under the ICCPR.It is committed to facilitate access to the procedure by complainants.				
Uganda is committed to respect the ICCPR complaint procedure by awaiting its outcome, and implementing its decision. Target is 100% over long term.				

²⁰ For example, Recommendations regarding implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the UN Economic and Social Council in its resolution 1989/64 of 24 May 1989.

J/LOS CHECKLIST: FOR PLANNING AND EVALUATION				
Constituent elements of sector	In SIP	J/LOS Baseline	J/LOS Indicators	Planning for SIP II and strengthening M&E
<p>Non-Discrimination in application of death penalty, conditions of detention and fair trial (no distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, sexual orientation, national or social origin, property, birth or other status).</p>			<p>No.</p> <p>Examples</p> <ul style="list-style-type: none"> - reduced disparity among groups regarding frequency with which DPP seeks death penalty such as on grounds of economic status; regarding success on appeal, commutation of sentence, pardons, and regarding frequency of carrying out death penalty once it is imposed -reduced disparity among groups regarding conditions of detention (seeabove regarding Torture etc) - reduced disparity among groups regarding fair trial e.g access to lawyer, delay, presumption of innocence etc 	

Technical Sources:

The following sources of law are consolidated and streamlined into the Table below.

A. Treaty Standards undertaken by Uganda

- International Covenant on Civil and Political Rights
- Convention against Torture
- Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Rights of the Child
- Convention Relating to the Status of Refugees
- Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, dated 11 February 1998 (codifying existing treaty standards)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (in force from 1 July 2003)

B. Authoritative Interpretation of those treaty standards

To interpret the standards in more detail than the treaty text provides, key sources are used in the table above. There is a hierarchy among such sources as a matter of law. For simplicity here, two main types are used. The 'A' type are *authoritative* interpretations of what the state must do to comply with its obligations e.g. **Recommendations, conclusions and General Comments of treaty bodies** set up under the 'big six' international HR treaties. These committees of independent experts review Uganda's performance in practice and provide guidance for its compliance. To comply with treaty body interpretations may not be strictly legally binding on states parties but for Uganda to respect the spirit of the treaty - it should do so.

Type 'B' sources are used to *persuade* Uganda as to how its treaty commitments should be interpreted, even though these sources are not strictly binding e.g. **Resolutions or Declarations by states** (such as in the General Assembly). Generally these are not legally binding, but they can be persuasive as to states' understanding of their obligations.²¹ Examples:

- Universal Declaration of Human Rights
- HRC General Comment 8, Right to liberty and security of persons (Article 9):. 30/06/82.
- HRC General Comment 13, Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14): . 13/04/84.
- UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), adopted and proclaimed by GA resolution 45/112 of 14 December 1990
- UN Rules for the Protection of Juveniles Deprived of their Liberty, adopted by GA resolution 45/113 of 14 December 1990

Sample web-based sources of up-dates which might be added to those currently used by J/LOS are included at the end of the Map.

Sources of verification to include existing national and international data

Sample sources regarding compliance with international standards of fair trial:

- Uganda State reports to and comments by the Human Rights Committee (Uganda as a party to ICCPR)

²¹ This is particularly so where Uganda voted for the resolution, or where a high number of states agreed to it, or where it has been repeated over time, etc.

<http://www.unhchr.ch/html/menu2/6/hrc.htm> as well as to the Committee Against Torture, the Committee on the Rights of the Child, the Committee for the Elimination of all forms of Racial Discrimination etc, especially the Concluding Observations addressed to Uganda by the Committee in May 2004.

- OHCHR <http://www.unhchr.ch/html/menu2/issadj.htm>
- UNODC http://www.unodc.org/unodc/crime_prevention.html
- UN Crime and Justice Information Network <http://www.uncjin.org/>
- Committee Against Torture <http://www.unhchr.ch/html/menu2/6/cat/index.html>
- Special Rapporteur of the Commission on Human Rights on Torture <http://www.unhchr.ch/html/menu2/7/b/torture/index.html>
- Special Rapportur on Summary, Arbitrary or Extra-Judicial Executions
- Reports and visits by UN Special Rapporteur on the Independence of the Judiciary; as well as the UN Special Rapporteur on Torture etc.
- International Rehabilitation Council for Torture Victims <http://www.irct.org/usr/irct/home.nsf>
- Centre for Victims of Torture
- Credible international NGOs which focus on justice systems e.g: Human Rights Frst (Lawyers Committee for Human Rights); Amnesty International Human Rights Watch, etc.