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Strengthening Victim Participation in Transitional Justice Processes in Uganda

REPORT SUMMARY

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Ending torture, seeking justice for survivors



EXECUTIVE SUMMARY



Photo by ESA/REDRESS. Following the loss of her family during the conflict, Elizabeth Adongo was raped by an LRA rebel commander and became pregnant. In search for justice, she formed a survivors' support group and, against cultural dictates, dug graves in the Obalanga massacre sites.

This report examines victim participation in transitional justice (TJ) processes in Uganda, a country whose complex cycle of conflicts at different stages of its development has created untold suffering for its citizens. The report analyses some of the challenges in translating the promise of victim-centred processes from rhetoric into reality.

In Uganda, TJ falls under a comprehensive government-initiated National TJ Policy (NTJP or the Policy). The Policy encapsulates the four pillars of TJ – accountability, truth seeking, reparations and guarantees of non-recurrence – in one package. One of the Policy's core themes is the centrality and inclusion of victims. However, more time (10 years) has been spent designing the Policy than implementing the mechanisms, and despite the focus on a 'vic-

tim-centred' approach, victims' opportunities to shape and influence the process have been limited.

Victims have paid a high price in the protracted conflicts in Uganda and continue to suffer daily from the effects of the violations committed against them. Although a significant proportion of the millions of victims in Uganda originate from the sub-regions of Acholi, Lango, Teso and West Nile in the North, other victims of previous conflicts which pre-dated the civil war between the Joseph Kony-led rebel group, the Lord's Resistance Army (LRA), and the Ugandan government, also suffered significantly and have received no redress. The NTJP seeks to address the needs of all conflict-related victims in Uganda, which seems an ambitious goal from the outset.

The United Nations (UN) has stressed the importance of a victim-centred approach to TJ in both design and implementation. As former UN Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, noted, “None of the proclaimed goals of [transitional justice] can happen effectively with victims as the key without their meaningful participation.”¹ Victim participation in transitional justice is both a driver of change and a measure of its success. It promotes ownership for those whose rights have been grossly violated and can lend credence to a process that is often protracted, elitist and abstract.

Despite promises of inclusive and victim-centric TJ policies and processes, the reality in practice often falls short of the promise on paper. Whether this is the case in Uganda is the focus of this report.

The centrality of victims’ participation

We examined victim participation in the Ugandan TJ context based primarily on the experience of victims in northern Uganda.² We questioned whether victims’ participation in developing the NTJP was limited to consultations or whether they have real decision-making power in the process. We also examined victim engagement with and perceptions of TJ measures including accountability processes, truth-telling and reparations.

Our findings confirm that despite provisions promising victim-centrality and inclusiveness on paper, victims have had little opportunity to directly and substantively influence and impact the process of designing and shaping the NTJP. The engagement with victims by the Justice Law and Order Sector (JLOS), the technical body of the government responsible for the design and administration of the national NTJP,³ has primarily been via information sharing

or consultations in collaboration with civil society organisations and some grassroots organisations representing victims.

Many victims who live in remote rural villages (the areas most affected during the war in the North of Uganda) have had little information about and understanding of what the NTJP entails. Misunderstanding and misinformation are fuelled by communication gaps between policy-makers and victims concerning the NTJP, the mechanisms for accountability and reconciliation, and timelines for the implementation of priority issues such as reparations.

The prolonged drafting phase of the NTJP and the likely delay in the passage of the pending TJ Bill to give effect to the Policy provisions have created a vacuum which must be filled with accurate and timely information. Victims perceive the government’s silence and the unfulfilled promises made for reparations as two of the most frustrating aspects of the TJ process. That has caused victims to question the integrity of the process and the sincerity of those involved in it.

There is an urgent need for the government to design and implement effective participation mechanisms so that diverse groups of victims, including vulnerable groups such as women, children and persons with disabilities, have a voice in every phase of the process, including the design and passage of the pending TJ Bill. These mechanisms should be adequate and accessible to all groups of victims and should be vetted by victims’ groups and civil society.

The African Union (AU) TJ policy proposes, in relation to women and youth, that provision should be made for ensuring *active* participation of women and youth through *affirmative action* measures in designing and implementing transitional processes.⁴ In Uganda, these could for example include gender-specific victim forums, recommen-

¹ UNGA, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/21/46* (9 August 2012), para. 68.

² This document is informed mainly by the views of victims’ groups in Lira, Teso, West Nile and Acholi regions.

³ The Justice Law and Order Sector is a sector wide approach adopted by the Government of Uganda which brings together 18 institutions including the Ministry of Justice, Ministry of Internal Affairs, Judiciary, Prison Service, the Uganda Human Rights Commission among others with closely linked mandates of administering justice and maintaining law and order as well as the promotion and protection of human rights.

The Sector focuses on a holistic approach to improving access to and administration of justice through a sector wide approach to planning, budgeting, programme implementation, monitoring and evaluation. See JLOS, *Our History*, at <https://www.jlos.go.ug/index.php/about-jlos> (last accessed 08/05/2020).

⁴ AU, *Transitional Justice Policy*, February 2019, para. 39.

dations from which are included in the implementation of the TJ Bill.⁵ Given the dire situation of children born of war who are struggling with social exclusion and stigma, their active involvement in the TJ process is also critical.⁶

There is genuine concern among victims and civil society that the process of passing the TJ Bill will be as protracted as the drafting of the Policy, with very little space for their involvement. Despite civil society requests for information, the process appears to be more closed than ever, with no clear channels made for engagement and involvement.

The use of the victim-centrality rhetoric without opportunities for effective and sustained participation rings hollow. If the views and needs of victims are not taken into account, the TJ Bill will be ineffective to redress the past and avoid the repetition of violations. It is critical that victims are supported to ensure their active involvement in critical decision-making processes around the NTJP.

Participation in Accountability Processes

Given Uganda's history of multiple conflicts and the numerous gross human rights violations that have been committed, the prosecution of only two former LRA commanders and the glaring lack of accountability for crimes committed by the government forces – the Uganda Peoples Defence Forces (UPDF) – point to an extant accountability gap which needs to be addressed.

The cases of Thomas Kwoyelo before the International Crimes Division (ICD) of the Uganda High Court and Dominic Ongwen at the International Criminal Court (ICC), both former LRA senior commanders, are important markers on Uganda's long road to accountability for grave human rights violations. Both accused are former abducted children who later turned into LRA commanders.

⁵ Drawing from experiences in Colombia and Timor Leste, measures should be put in place to accommodate the needs of women and ensure their effective participation (i.e. consider the time they need to take off from their jobs and families).

⁶ AU, *Transitional Justice Policy*, February 2019, para. 55.

We found that while victims in both cases are afforded participatory rights, there is a marked distinction between the more developed ICC victim participation scheme and the similar but under-resourced and less developed system at the ICD.

Before the ICC, the participation of victims has been limited due to procedural constraints and the nature of proceedings, which allows participation only of those victims connected with the charges against Dominic Ongwen. Yet, some 4,065 victims have been granted the right to participate in the proceedings, which provided some level of healing and allowed for their suffering to be part of the official case record. A larger group of victims have benefited from psychosocial support offered by the ICC's Trust Fund for Victims, through its assistance mandate. Court-ordered reparations are expected if Ongwen is found guilty, yet those will benefit a smaller group of victims linked to the specific charges and responsibility of the accused.

In contrast, the system of victim participation at the ICD is simply not working. The Court has little resonance with increasingly fatigued victims because of the protracted trial process (ongoing for 10 years), restricted participation, limited outreach and communication with the victims to ensure that they are able to follow and engage in proceedings. The legal representatives have made very limited interventions in the trial because of the reluctance of the Trial Judges to allow participation at the trial phase and the absence of any guidelines in place for determining the criteria for participation. Additionally, representatives have conducted few visits to communicate directly with victims due to lack of resources. Thus, victims remain on the fringes of the proceedings and there is little resolve by either the bench or the counsel to challenge their absence from the courtroom.

While civil society organisations have played an important role in supporting efforts to actualise victim participation, the primary responsibility rests with the State to make participation effective in practice. Thus, legal representatives must be included in the Court's budget and outreach activities should be resourced and carried out. Monitor-

ing mechanisms should be put in place to ensure that these are spent efficiently and that they enhance victim participation in practice.

Truth-Telling

The failure to initiate a process of truth-telling to the affected communities lies at the core of the stasis in the transitional justice process in Uganda.

Our research affirms that victims and affected communities want to hear the truth about the conflicts that destroyed their lives and communities, and which have almost obliterated the prospect of a future for their children. For them, truth-telling provides a way to heal and come to terms with the atrocities of the past.⁷ Victims strongly favour a national process which includes leadership at the highest level, from victims, perpetrators and rebel leaders.

Despite its recognition of the importance of truth-telling, the NTJP neatly sidesteps the terms of reference for a truth-seeking body set out in its predecessor document, the Agreement on Accountability and Reconciliation. This is a missed opportunity by the government to genuinely commit to a national truth-telling process as part of national efforts to address the atrocities of the past.

Reparations

While reparations are a priority for Ugandan victims, more than 90% of those consulted indicate that they have not received any form of reparations from the government. The NTJP focuses on the need to formalise the process through a clear legislative framework. While this is important, for reasons of certainty, sustainability and the need to insulate such programmes from the vicissitudes of politics, the provision of interim reparations to address the urgent needs of victims, some of which have been suf-

fering for decades with treatable medical conditions, is a pressing priority.

Victims should play an integral role in the design and implementation of a national reparations programme in Uganda.

A process of mapping to determine potentially eligible victims is important and this should include the determination of realistic eligibility criteria. This process should not be so onerous that potentially eligible victims who have suffered harm but are unable to meet eligibility criteria and proof are excluded. CSOs and local victims' groups should be involved to prevent a purely top-down bureaucratic exercise. Further, the government should consider using data that is already available to begin a staggered process of implementing reparations, since the mapping process could be extensive and protracted given the broad scope of the NTJP. Even if CSOs could facilitate the process given their knowledge and connections on the ground, the mapping exercise should be resourced by the government through a non-partisan process.

Reparations programmes need to specifically address the systemic gaps in education and livelihood support that victims of the conflict have faced as a direct consequence of the conflict. In addition, reparations should be transformative in nature and address the underlying structural issues which lead to or facilitate continued victimisation.

Moving transitional justice forward

The NTJP includes several ambitious goals for achieving transitional justice in Uganda. Implementation is to be shared among diverse government departments and there will be inter and intra-linkages, (i.e. coordinating bodies within departments and between different government ministries). However, the framework for implementation set out in the draft Policy lacks detail, does not elaborate how it will work in practice or how victims will be able to participate at this phase.

⁷ ICTJ Uganda, (2012), *“Confronting the Past: Truth Telling and Reconciliation in Uganda”*, p. 5, noting that communities affected by conflict preferred a “community based truth telling” process led by institutions at the local level to address the intercommunity and inter-tribal conflicts that have taken place across the country.

The sustainability of TJ in Uganda will depend on three key factors: political will; the active engagement of victim's movements and civil society participation; and donor support. In relation to donor support and political will, there are already worrying indications of a shift away from a focus on TJ.

In our view, while it is important for the TJ Act to be passed as soon as possible, the government should pro-

ceed with urgent measures, especially interim reparations. Establishing an interim framework to move these processes forward should become a priority which is fully supported by donors and civil society organisations. Truly ensuring victim participation in TJ processes also includes respecting their need for truth and reparations and taking steps to meaningfully and effectively address them.

RECOMMENDATIONS

To the Government of Uganda

- Take the appropriate measures to ensure that victims are effectively at the center of the government's TJ efforts, and that their needs, views and expectations are included in the design and implementation of present and future policies.
- Commit to moving the transitional justice process forward, and to ensure the enactment of the TJ Act within the next Parliamentary Year.
- Ensure that the TJ Act is included in the national consolidated budget in order to ensure its sustainability.
- Pending passage of the TJ Act, develop a Gender Action Plan (GAP) with a clear strategy for providing interim reparations to sexual and gender-based violence (SGBV) victims. This plan of action should be consistent with Goal 5 of the Sustainable Development Goals and the gender provisions of the NTJP. The interim reparation measures proposed under this GAP should be gender-sensitive, transformative in nature and not reinforce existing gender or patriarchal stereotypes. This should ideally be spearheaded and implemented by the Ministry of Gender, Labour and Social Development (MoGLSD).

- Commit to passing the Witness Protection Act and the Legal Aid Policy Act as a matter of priority.
- Undertake reform in the justice and security sectors to strengthen the rule of law in Uganda and avoid the repetition of past atrocities.
- Commit to amending Section 34 of the Registration of Persons Act (2015) to eliminate the provisions that discriminate against the registration of children born of war who can not meet the requirements currently set in the legislation.
- The Ministry of Education and Sports (MoE) and the MoGLSD should work together to develop a public information and outreach campaign to address and bring an end to the high levels of stigma and discrimination currently being experienced by children born of war.

To the Justice Law and Order Sector

- Set up a plan and concrete measures to ensure the effective participation of victims in the design and implementation of the NTJP in every one of its phases. Impact indicators should be included to measure progress in this regard.
- Urgently convene a national consultative dialogue to update victims, civil society and other stakeholders on the

implementation phase of the NTJP process. The dialogue should be broadcasted in the media, particularly through local radio stations relevant to the affected communities.

- Ensure that victims in situations of vulnerability, such as the youth, children born of war, victims with disabilities and SGBV victims feature more prominently in the TJ discourse and processes going forward, including during the implementation stage.
- Strengthen the enabling space for victims' networks, including by providing financial assistance to help them gain access to and participate in the TJ process.
- Ensure that the reparations program addresses systemic gaps in education and livelihood support that victims face as a direct consequence of the conflict. The reparations programme should be transformative in nature and address the underlying structural issues which lead to or facilitate continued victimisation.
- Take active steps to increase victims' awareness of legal processes and rights to redress and reparation. Provide training and information to the victims concerning their rights.
- Ensure that legal representatives are included in the budget and outreach activities are resourced and carried out. Monitoring mechanisms should be put in place to ensure that funds are spent efficiently and that they enhance victim participation in practice.
- Set up a mechanism that ensures victims realise their right to truth.

To Victims' Counsel

- Use strategic litigation techniques as tools to assert the right of victims to participate in the Kwoyelo case and the broader issues that the failure to allow victims a space in the formal justice process implies. This shall include future formal criminal and civil procedures.
- In addition to filing formal applications before the Chamber concerning victims' right to participation, pursue other legal avenues for enforcing this right, including before international bodies once the appropriate local legal channels have been exhausted.

- There should be sharing of expertise and exchange of ideas and information between counsel in the Dominic Ongwen and Kwoyelo cases to enable the latter to learn techniques and skills on how victim participation works in practice. Training and mentoring could be provided by victim's counsel from other jurisdictions on challenges and strategies around representing victims in national justice processes.

To Civil Society Organisations

- Drive the process of change in relation to how victims engage in TJ processes by privileging victims' agency. Genuine empowerment should go beyond representation and speaking on behalf of the community, to enable space for the victims and community members to speak for themselves.
- Support victims and victims' groups to access political platforms and spaces and to initiate action with real political leverage.
- If victims are consulted and information obtained from them to contribute to any aspect of the TJ process, ensure that feedback is provided about how their stories are used and the progress of the process.
- Continue advocating and lobbying the government to ensure victims play a central role in the TJ Process.
- Constantly monitor the ongoing TJ process, denounce failures and gaps and make relevant recommendations to key stakeholders.
- Keep the international community and external relevant stakeholders, including donors, informed of the progress and challenges with TJ in Uganda.

To Donors

- Diplomatic missions in Uganda should continue to financially support victim-led groups and CSOs and advocate for the timely implementation of the NTJP provisions, in particular for justice, reparations and truth-telling.

- Create peer pressure through diplomacy and political dialogue with the Ugandan government and by publicly pushing for the TJ Act to be passed and TJ implementation to be a priority.
- Ensure that funding agreements and support for the government’s development policies such as Vision

2040 include language on transitional justice and support specific aspects of the process such as reparations, gender transformation, reconciliation and accountability. Set up appropriate tools for monitoring the efficient use of funds and ensuring support results in measurable impact.



Photo by ESA/REDRESS. In 2019, survivors of the conflict came together to launch the Uganda Victims and Survivors Network (UVSN), a national platform that will advocate on their behalf before policymakers.



Watch the UVSN’s story on YouTube:
<https://youtu.be/bYAShvipeEI?>

Photo cover credit:

Photo by ESA/REDRESS. Survivors of the Abia massacre of 2004 sit in a school surrounded by paintings that depict life in their community before and after the massacre in memory of their war experiences.

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