



NOT WITHOUT US

Strengthening Victim Participation in Transitional Justice Processes in Uganda

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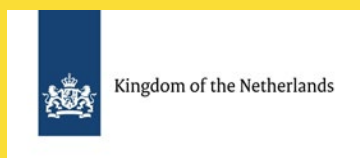
Ending torture, seeking justice for survivors



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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Acronyms

ASF	Avocats Sans Frontiers
AU	African Union
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
CSO	Civil Society Organisation
ESA	Emerging Solutions Africa
FGD	Focus Group Discussion
GAP	Gender Action Plan
KII	Key Informant Interview
ICC	International Criminal Court
ICD	International Crimes Division
ICTJ	International Centre for Transitional Justice
IDP	Internally Displaced Persons
JLOS	Justice Law and Order Sector
JRP	Justice and Reconciliation Project
LRA	Lord's Resistance Army
MoGLSD	Ministry of Gender, Labour and Social Development
NGO	Non-Governmental Organisation
NRA	National Resistance Army
NRM	National Resistant Movement
NTJP	National Transitional Justice Policy
OHCHR	UN Office of the High Commissioner for Human Rights
RLP	Refugee Law Project
SGBV	Sexual and Gender Based Violence
TJ	Transitional Justice
TJM	Traditional Justice Mechanism
TJWG	Transitional Justice Working Group
UHRC	Uganda Human Rights Commission
UN	United Nations
UNRF	Uganda National Rescue Front
UPDF	Uganda People Defense Forces
UVF	Uganda Victims Foundation
UVSN	Uganda Victims and Survivors Network

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 north-eastern 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.

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-

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.

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.

1. BACKGROUND AND METHODOLOGY

1.1 About REDRESS

REDRESS is an international human rights organisation that represents victims of torture to obtain justice and reparations. We bring legal cases on behalf of individual survivors, and advocate for better laws to provide effective reparations. Our cases respond to torture as an individual crime in domestic and international law, as a civil wrong with individual responsibility, and as a human rights violation with state responsibility. Through our victim-centred approach to strategic litigation we can have an impact beyond the individual case to address the root causes of torture and to challenge impunity. We apply our expertise in the law of torture, reparations, and the rights of victims, to conduct research and advocacy to identify the necessary changes in law, policy, and practice. A central tenet of our work in national contexts is collaborative engagement with local organisations and grassroots victims' groups to promote local ownership and effective implementation of relevant projects.

1.2 About the Project and our Partners

This report is based on research and activities carried out by REDRESS and Ugandan civil society partners, Emerging Solutions Africa (ESA) and the Uganda Victims Foundation (UVF), between November 2017 and March 2020, under the project: *Strengthening Victim Participation in the Fight against Impunity for International Crimes*. The project aimed to support victims of international crimes and the local organisations assisting them to participate meaningfully in local, national, and international transitional justice processes.⁸

⁸ This project, funded by the Netherlands Ministry of Foreign Affairs, was designed to comparatively assess victim participation in TJ processes in Uganda and Guatemala. REDRESS implemented the project in Uganda together with local Ugandan organisations. The project was implemented in Guatemala by Impunity Watch.

ESA is a non-governmental organisation based in Uganda that focuses on enabling access to substantive justice, sustainable livelihood initiatives and public health. ESA has worked and partnered with different entities to create remedies to legal and social issues that include empowering marginalised persons against human rights abuse, violation of land rights and human trafficking, among others.

UVF is an independent, national not-for-profit organisation, registered in April 2008. With a vision of a Uganda free of violence and violations of human rights, UVF aims to foster the end of impunity and promote remedies and reparations for victims of crime. UVF engages in raising voices of victims of international crimes perpetrated in Uganda; enhancing access to information on victims' rights and victims' organisations; providing capacity development for its members in respect of the victims' thematic areas of treatment, access to justice, reparations, etc.; and promoting accountable actions amongst State and non-State actors.

1.3 Methodology and Acknowledgements

The report draws primarily on the views of victims, leaders of grassroots organisations, CSOs and mid-level policymakers obtained through activities and research carried out by REDRESS and our Ugandan partners between November 2017 and March 2020. The perspective of victims was shared during victims' forums and policy dialogues organised in Kampala, Teso, Lango, West Nile and Acholi.

Victims' forums were organised in the North and North-western regions of Uganda in the areas which had suffered several armed insurgencies, including by the LRA, Uganda National Rescue Front (UNRF) I, West Nile Bank Front (WNBF) and the UNRF II. These regions also experienced the greatest

Event and Date	Number of victim participants	Locations
Victims' forum, August 2018	42 (16 women, 26 men)	In Gulu with participants from Pabbo, Omoro, Awach, Iceme, Nwoya, Moyo and Agago.
Victims' forum and Policy Dialogue, October 22, 2018	51 (34 men, 17 women)	In Yumbe, West Nile and surrounding districts of Arua, Adjumani, Koboko, Maracha, Terego, Nebbi, Moyo and Zombo.
Victims' SGBV Forum, December 2018	43 (38 women, 4 men)	In Gulu and surrounding sub-counties of Kanyagoga, Omoro, Atiak, Anaka, Amuru and Layiya.
Victims' forum, March 2019	55 (34 men, 21 women)	Barlonyo Massacre site, Lango, and surrounding sub-counties including Oyam, Abok, Aleptong, Alito, Apala, Aleka, Abia and Iceme.
Victims' forum, Policy Dialogue, May 2019	70 (44 men, 36 women)	Obalanga Massacre site, victims from Teso sub-region and surrounding sub-counties including Morungatuny, Sototi, Ngora, Kumi, Kapelebyong and Kaberamaido.

influx of displaced people from northern Uganda, Southern Sudan and the Democratic Republic of the Congo.

Further, a team led by Denis Ojok Ayaki from the UVF conducted Key Informant Interviews (KIIs) and Focused Group Discussions (FGD) with victims in 80 villages throughout the four sub-regions of Acholi, Lango, Teso and West Nile.⁹ Relevant field survey protocols were implemented to ensure consistency and reliability of the sources. The data collection process was guided by the principles of participation, confidentiality, flexibility, diversity, adaptability and consultation. The data analysis was carried out by Opio Hilton.

Additional information was obtained through desk-based research, consultations with relevant stakeholders and participation in policy-related meetings. In relation to the Kwoyelo

case, information was obtained from the legal representatives of victims in the case.

This report was written by Lorraine Smith van Lin, international legal consultant and former Legal Adviser at REDRESS. It was reviewed by Alejandra Vicente, Head of Law at REDRESS and Rupert Skilbeck, Director of REDRESS, Judge Elizabeth Nahamya, Executive Director at ESA, and Alice Etam, Legal Officer at ESA. REDRESS thanks Dr. Luke Moffett, Senior Lecturer, School of Law, Queen's University of Belfast, for his external review of the report.

REDRESS would like to thank the many victims who spared the time to speak with us, who attended the community dialogues and victims' forums and participated in the surveys. We thank, in particular, the leadership of the Uganda Victims and Survivors Network for their collaboration.

⁹ The Survey Team interviewed 628 victims of various human right violations. The sample comprised an average of 25% interviewed in each of the regions of Acholi, Lango, Teso and West Nile. The interviews came from 31 Focus Group Discussions and 111 Key informants, all of them victims of the armed conflict in northern

Uganda. The average age of the informants and discussants was 48 years old, the youngest being 23 years old and the oldest 81 years old. Over 60% of the respondents were between 36-60 years old. Female key informants accounted for only 28% of the overall sample.

2. INTRODUCTION

The centrality of victims in TJ processes is often espoused on paper but not implemented in practice. The TJ process in Uganda is no different and this report explores why. Despite decades of conflict with unimaginable levels of gross human rights violations, victims are still waiting for reparations, accountability, truth and non-repetition measures. The report delves deeply into the NTJP, a government-spearheaded policy document and process which proposes a centralised approach to TJ. The Policy drafting process has been protracted and there is no timetable for implementation despite its approval by Cabinet in June 2019. The TJ Bill to give effect to the NTJP is yet to be passed and no interim reparative measures are in place for victims.

The core focus of our analysis is whether space has been created for meaningful victim engagement. The substantive discussion and analysis are contained in Chapters 3-9.

- **Chapter 3** describes the international, regional and national legal and policy framework for implementing TJ and ensuring the centrality of victims in that process.
- **Chapter 4** provides a brief overview of the conflict in Northern Uganda (while acknowledging the existence of previous conflicts) and how this has led to the transitional justice process which is now the focus of the NTJP.
- **Chapter 5** examines the centrality of victims to the TJ process in Uganda.
- **Chapter 6** analyses the obstacles that victims face to achieve accountability and to participate in criminal and traditional justice processes.

- **Chapter 7** explores the issue of truth-telling and whether victims' right to truth has been realized.
- **Chapter 8** examines reparations, the urgent need for interim measures, and whether the proposed national reparations programme will ensure timely and meaningful redress for victims.
- **Chapter 9** explores key elements to move the NTJP forward putting victims at the center.
- **Chapter 10:** Conclusions are set in this chapter.

The term "victim" will be used throughout this report to refer to those who have suffered harm regardless of whether they participate in a formal or informal justice process. This recognises that the presumption of victimhood is crucial for the recognition of victims' rights in the same way that the presumption of innocence is key to the protection of the rights of the accused.¹⁰

Finally, we use the word "victim" rather than "survivor" despite the fact that the term survivor is in many respects more empowering for individuals. The term victim acknowledges that not all victims of crime survive and "[m]any who survive in a literal sense continue to be victimized physically, psychologically, financially and socially".¹¹ It is also consistent with the human rights framework, recognising that those who suffered grave human rights violations and serious breaches of international humanitarian law are entitled to an effective remedy and reparations.

¹⁰ REDRESS and Institute for Security Studies, *Victim Participation in Criminal Law Proceedings. Survey of Domestic Practice for Application to International Crimes Proceedings*, September 2015, p. 4.

¹¹ Uma, Saumya, 'Integrating Victims' Rights in the Indian Legal Framework', in V Nair and S Uma (eds) *Pursuing Elusive Justice: Mass crimes in India and the relevance of international standards*, OUP (2013), 245-286, p. 248.

3. RELEVANT LEGAL AND POLICY FRAMEWORK



Photo by ESA/REDRESS. Oyella Night lost five of her children during the conflict and was left with wounds that have limited her ability to provide for her surviving children. But she has not received any government support or reparations more than 14 years later.



Watch Oyella Night's story on YouTube:
<https://youtu.be/qoiB3NgBZoU>

The right of victims to participate in TJ processes is a firmly established obligation on States under international law.¹² Former UN Special Rapporteur on the promotion of truth,

¹² UNGA, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, A/HRC/34/62, 27 December 2016, paras. 31-35; see also Universal Declaration of Human Rights (art. 21); International Covenant on Civil and Political Rights (art. 25); International Convention on the Rights of All Migrant Workers and Members of Their Families (arts. 41 and 4 (2)); African Charter on Human and Peoples' Rights (art.13 (1)); American Convention on Human Rights (art. 23 (1) (a)); Inter-American Democratic Charter (art. 2); Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (art. 3); On the right of women to be heard and to participate in processes impacting them, see the Convention on the Elimination of All Forms of Discrimination against Women (arts. 7, 8, 13 (c) and 14 (2)); and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (art. 9). The Convention on the Rights of Persons with Disabilities (arts. 3 (c), 4 (3), 9, 29 and 30) addresses the right to inclusion and access for persons with disabilities. See also Committee on the Rights of the Child, General Comment No. 12 (2009) on the right of the child to be heard and the Convention on the Rights of the Child (arts. 12 and 31).

justice, reparations and guarantees of non-recurrence, Pablo De Grieff, noted that each of the four-pillars of TJ can only be successful with the active engagement and participation of victims at different levels.¹³

For truth-seeking processes to be successful and truth commissions to be embraced as a justice measure, individuals must actively participate and civil society and victims' organisations must be adequately represented in the composition of the truth commissions.¹⁴ Accountability mechanisms including prosecutions and traditional justice

¹³ UNGA, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, A/HRC/21/46, 9 August 2012, para. 54.

¹⁴ Ibid.

processes must include the active participation of victims and their families. The success of reparations schemes depends on the full involvement of victims and civil society in the design of the schemes, “so the measures are commensurate to the harm inflicted and contribute to the recognition of the victim[s] as rights holders”.¹⁵

The Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity emphasise the meaningful role of victims and other sectors of civil society in TJ processes. The Updated Principles also stress the importance of broad public consultations in decisions related to the establishment and composition of truth commissions, the design, implementation and assessment of reparation programmes, as well as in the establishment of institutional reforms aimed at preventing a recurrence of violations.¹⁶

Victims’ participatory rights in TJ processes are part of a broader suite of rights to which victims are entitled including the right to truth, the right to access justice and the right to an effective remedy.¹⁷ Under the UN Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violation of International Humanitarian Law (UN Basic Principles), for example, victims are entitled to equal and effective access to justice, the right to adequate, effective and prompt reparation for harm suffered, and access to relevant information concerning the violations and reparation mechanisms.¹⁸

3.1 Early Engagement of Victims

At international and regional levels, policy declarations have reaffirmed the important participatory role that victims play in ensuring successful transitional justice processes.¹⁹ These policy documents provide that TJ must be nationally-owned, participative, and inclusive. Each underscores the crucial importance of outreach including public consultation, media engagement and the dissemination of information to inform the public about the purpose and design of TJ mechanisms.

The UN Guidance Note on TJ Toolkit provides that national consultations reveal the needs of communities affected by conflict or repressive rule, allowing States to craft appropriate context-specific transitional justice programmes. Moreover, the consultative process helps victims and other members of civil society to develop local ownership of the resulting programme,²⁰ ensuring its impact and sustainability.²¹

Outreach should be tailored to avoid or correct misinterpretations and to manage expectations.²² Such outreach activities should not be limited to major cities but include all affected communities. The EU encourages States to adopt a victim-centered approach to TJ and supports measures ensuring their active participation, security and reintegration.²³

The EU provides that a victim-centered approach requires the *early* involvement and *active* participation of victims

¹⁵ Ibid.

¹⁶ UN Economic and Social Council, *Report of the independent expert to update the Set of principles to combat impunity and Addendum, the Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, E/CN.4/2005/102/Add.1, 8 February 2005, (Updated Set of Principles), Principles 6, 32 and 35. See also Special Rapporteur’s Report 2012, para. 34.

¹⁷ The UN has published a suite of soft and treaty law instruments which establish the participatory rights of victims. These include the UN *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Resolution adopted by the General Assembly on 16 December 2005, A/RES/60/147, 21 March 2006; UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, adopted by General Assembly resolution 40/34 of 29 November 1985; and the *Human Rights Council Resolution on Human Rights and Transitional Justice*, E/CN.4/RES/2005/70.

¹⁸ UN, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.

¹⁹ See, for example, United Nations, *Guidance Note of the Secretary-General- United Nations Approach to Transitional Justice*, (UN Guidance Note TJ Toolkit) March 2010; African Union, *Transitional Justice Policy*, (AU TJ Policy), adopted February 2019. The AU TJ Policy is designed as a continental guideline for AU Member States to develop their own context-specific comprehensive policies, strategies and programmes towards democratic and socio-economic transformation, and achieving sustainable peace, justice, reconciliation, social cohesion and healing. The *European Union (EU) Policy Framework on Support to Transitional Justice* forms part of the implementation of the EU Action Plan on Human Rights and Democracy –2015-2019, which outlines in action 22 (b) the commitment to develop and implement an EU policy on transitional justice.

²⁰ UN Guidance Note TJ Toolkit, p. 9.

²¹ Ibid; see also the UN OHCHR *Rule-of-Law Toolkits for Post-Conflict States: National consultations on transitional justice*, HR/PUB/09/2, 2009, which provides that in order for TJ efforts to be effective, they must be human-rights based, with programmes and policies designed in a context of in-depth consultation with affected communities.

²² The EU’s Policy Framework on Support to Transitional Justice, Part IV, para. 1.

²³ Ibid, para 6.

and affected communities, including diverse ethnic, racial, religious and other groups or minorities.²⁴ The UN also emphasises the importance of ensuring this centrality.²⁵

3.2 Integrating Gender and Including Vulnerable Groups

The AU policy identifies the importance of the principle of inclusiveness, equality and non-discrimination in addressing exclusion and the inequitable distribution of power and wealth, which have traditionally been amongst the root causes of conflict. TJ processes should therefore promote the participation and address the needs of marginalized and vulnerable groups such as women and girls, the elderly, disabled and youth (especially child soldiers).²⁶

The AU notes that TJ processes should not only address SGBV but should go further to deal with the root causes including patterns of gender inequality in the society that enable gender-based violence.²⁷ The policy advocates the use of affirmative action measures to facilitate the active participation of women and youth in designing and implementing TJ processes.²⁸

The EU also stresses that gender must be mainstreamed throughout TJ mechanisms and processes, from their design through to implementation of recommendations.²⁹

Based on the above, States should take into account that those victims with specific vulnerabilities may not be able to attend normally facilitated consultation opportunities due to stigma, disability or poverty. Effective participation mechanisms should prevent TJ processes from being seen as urban, elitist, or male dominated.

3.3 Uganda's Human Rights Obligations

Uganda has ratified all of the core international human rights treaties, with the exception of the International Convention on the Protection of all Persons from Enforced Disappearances, as well as other significant treaties like the Optional Protocol to the Convention on the Rights of the Child on the use of Children in Armed Conflict.³⁰ Uganda is also a party to the Genocide Convention as well as the four Geneva Conventions and its additional Protocols.³¹ In June 2002, Uganda ratified the Rome Statute establishing the ICC and has also supported and signed important international instruments including the Paris Principles and Commitments of 2007 on the role of children in armed forces or groups.³² Uganda has ratified important regional treaties that impose certain human rights obligations such as the constitutive acts of the African Union and the East African Community, the International Great Lakes Conference Protocols and, most significantly, the African Charter on Human and Peoples' Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) and the African Charter on the Rights and Welfare of the Child and its corresponding Protocol.

The Constitution of the Republic of Uganda (1995) as amended is based on the principles of unity, peace, equality, democracy, freedom, social justice and progress under which the State commits itself to the protection of and respect for human rights and freedoms, gender balance and fair representation of marginalised groups.³³ When the State fails to take reasonable steps to fulfill the foregoing obligation it is required to provide an effective remedy to the aggrieved party. Any person whose fundamental rights or freedoms have been infringed or threatened may apply to a competent court for redress which may include compensation.³⁴

²⁴ Ibid.

²⁵ UN Guidance Note TJ Toolkit, p. 6, para. 6.

²⁶ AU, *Transitional Justice Policy*, February 2019, para. 33.

²⁷ Ibid. para. 104.

²⁸ Ibid. para. 39.

²⁹ The EU's Policy Framework on Support to Transitional Justice, Part IV, para. 7.

³⁰ UN OHCHR, *UN Treaty Bodies Database*, (last accessed 11/05/2020).

³¹ ICRC, *Treaty Databases*, (last accessed 11/05/2020).

³² The Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups and the Paris principles and guidelines on children associated with armed forces or armed groups were adopted at the international conference 'Free children from war' in Paris, February 2007 - 100 member states have endorsed the commitments, including Uganda.

³³ Article 20, Constitution of Uganda.

³⁴ Article 50(1), Constitution of Uganda.

The Constitution also created the Uganda Human Rights Commission (UHRC), a permanent body established to “promote and protect human rights and freedoms in the country in recognition of Uganda’s violent and turbulent history”.³⁵ The functions and powers of the UHRC were

operationalised under the Uganda Human Rights Act of 1997. The UHRC has the mandate to order compensation and any other legal remedy or redress in cases where an infringement of a fundamental right or freedom has been proved.

³⁵ Article 51, Constitution of Uganda; see the Uganda Human Rights Commission, [UHRC Mandate](#).

4. FROM CONFLICT TO TRANSITION



Photo by ESA/REDRESS. Memorial site remembering the hundreds of civilians that were executed by the LRA in the town of Atiak in 1995. During the same attack, boys and girls were forcibly conscripted to serve as soldiers and sex slaves.

4.1 The Conflicts

Since 1884, Uganda has experienced cycles of mainly political conflicts that have led to its current socio-political challenges.³⁶ The era of British colonialism has been described as “a conflict in its own right, as well as the root cause of post-Independence conflicts.”³⁷ The colonial division of Uganda into north and south was widely seen, particularly by those in northern Uganda, as “the most destructive and pervasive of the colonial legacies, having perpetrated mistrust and conflict, and undermined national unity.”³⁸ Nowadays, Uganda still faces an authoritarian government, where certain rights and liberties are curtailed, leading to violence and conflicts in parts of the country.³⁹

The post-independence period has been characterised by egregious human rights abuses. Successive regimes of rulers mainly from the North committed unspeakable atrocities.⁴⁰ Gross human rights violations were committed under the regimes of Milton Obote, Idi Amin Dada, and Tito Okello which have largely gone unpunished.⁴¹ The colonial pattern of a northern-dominated army continued for nearly a quarter of a century after Uganda gained its political independence in 1962.⁴² This changed following the ascension to power of the current president, Yoweri Kaguta Museveni, and his National Resistance Movement (NRM) and Northern Resistance Army (NRA) in January 1986, after a five-year “bush war” that defeated the predominantly northern army. Museveni fought against Acholi leader Alice Lakwena who created the Holy Spirit Movement to fight the NRA’s abuses against northerners. When she was defeated, Joseph Kony formed the LRA, incorporating her followers as well as remnants of the defeated government army.

³⁶ Oola, Stephen, ‘Reparations in Uganda’, Draft Paper prepared for the Queens University Belfast Transitional Justice Project, (Reparations in Uganda), (copy on file with author), p. 1.

³⁷ Refugee Law Project, School of Law Makerere University, ‘Compendium of Conflicts in Uganda: Findings of the National Reconciliation and Transitional Justice Audit’, 2014, (*Compendium of Conflicts in Uganda*), p. 13.

³⁸ *Ibid.*, p. 17. The northern region consists of five sub-regions, namely Acholi, Lango, West Nile, Teso, and Karamoja.

³⁹ The Ugandan government continues to violently suppress political protest, dissidence and activism. In November 2016, a military assault in Kasese resulted in the killing of over 100 people, including children. See HRW, *Civilians Killed in Military Raid in Uganda*.

⁴⁰ *Compendium of Conflicts in Uganda*, p. 17.

⁴¹ Otim, Michael and Kasande, Sarah Kihika, *On the Path to Vindicate Victims Rights in Uganda: Reflections on the Transitional Justice Process since Juba*, ICTJ Briefing, June 2015, p. 1.

⁴² *Ibid.*

The war between the LRA and the Ugandan government forces – subsequently known as the Uganda People’s Defence Forces (UPDF) – in the North has been the longest and most brutal of the conflicts and atrocities in Uganda.⁴³ In response to their growing strength and constant attacks against government troops, the government adopted a ruthless counter-insurgency campaign against the LRA known as Operation Iron Fist. Civilians suspected of allying with the rebels were routinely arrested, brutally tortured, murdered or disappeared. The LRA also unleashed a terror campaign characterised by maiming civilians’ hands or mouths, looting of property, indiscriminate killings as well as abduction of tens of thousands of children and adults to become rebel soldiers, porters and sex slaves. In a campaign to deny the rebel forces access to food and information from the civilian population, the government forced the entire civilian population into “protected villages” or internal displacement camps, with thousands living in squalor and resulting in more deaths than the violence that was inflicted.⁴⁴

4.2 Impact on the Civilian Population

Civilians have borne the brunt of the impact of Uganda’s conflicts. In northern Uganda, the scale of the violations perpetrated against the civilian population prompted the former UN under-Secretary General for Humanitarian Affairs and Emergency Relief, Jan Engeland, to remark in 2004 that the situation was the “biggest neglected humanitarian emergency in the world”.⁴⁵ As a result of the conflicts, possibly two million people were displaced.⁴⁶ Tens of thousands of Ugandans were killed and abducted.⁴⁷ The Office of the United Nations High Commissioner for Human Rights (OHCHR) classified the violations as

⁴³ Sarkin, Jeremy, *Providing reparations in Uganda: Substantive recommendations for implementing reparations in the aftermath of the conflicts that occurred over the last few decades*, (Providing reparations in Uganda) (2014) 14 AHRLJ 526-552, p. 531. Of the 120-conflict episodes documented by Refugee Law Project (RLP) in 2014, sixty (60) occurred in northern Uganda and fourteen in the last 30 year of the NRM reign under President Museveni. See Oola, Stephen, *Reparations in Uganda*, p. 1.

⁴⁴ Oola, Stephen, *Reparations in Uganda*, p. 7.

⁴⁵ The Guardian, World News: ‘North Uganda, ‘world’s biggest neglected crisis’, 22 October 2004.

⁴⁶ Sarkin, *Providing reparations in Uganda*.

⁴⁷ Human Rights Watch, *Uprooted and Forgotten, Impunity and Human Rights Abuses in Northern Uganda*, (Uprooted and Forgotten), September 2005 Vol. 17, No. 12(A) p. 4.

ranging from killing, torture or cruel, inhuman or degrading treatment, abduction, slavery, forced marriage, forced recruitment, mutilation, sexual violence included sexual slavery, serious psychological harm, forced displacement, and pillaging, looting and destruction of property.⁴⁸

It is estimated that between 1986 and 2006, the LRA abducted approximately 54,000 to 75,000 people, including 25,000 to 38,000 children, primarily between 10-18 years.⁴⁹ In Acholiland alone, there were an estimated 66,000 abductees.⁵⁰ The LRA were primarily responsible for the abductions, use of children as child soldiers, use of females as forced wives, torture and mutilation. However, the UPDF also reportedly raped males and females, at times publicly, as a way of punishing those believed to be allied to the LRA or for disobeying their orders, committed torture, destruction of property and murder.⁵¹ Several of those abducted have never returned and no formal support has been provided to their families.

No official government record of the actual number of disappeared persons has been published. In addition to the abductions by the LRA, the government is alleged to have been responsible for disappearances of persons suspected of being allies of or collaborators with the LRA,⁵² as well as others speaking out or investigating government violations.

Women and girls were disproportionately affected by the conflict. About a quarter of abducted females were given to LRA fighters and commanders as forced wives, with some commanders having five or more.⁵³ The resulting psychological trauma and medical problems in-

cluding gynaecological complications and contraction of HIV/AIDS, remain an unaddressed and chronic problem for these victims. Half of those abducted were forcefully impregnated and as a result, thousands of so-called 'bush children' or 'children born of war' who returned with their mothers struggle with social re-integration, rejection by their mother's family and clan, identity issues, stigma, lack of economic and psychosocial support.⁵⁴ Male victims of sexual violence often prefer to suffer in silence due to shame and stigma about their experience.⁵⁵ The conflicts have devastated entire families and communities and left a generational legacy of deprivation, physical and psychological trauma, and economic displacement.

4.3 The Path to Transition

In 2000, the Parliament of Uganda passed a law offering amnesty to those who had been involved in insurgency against the government from 1986, in response to calls by cultural and religious leaders for reconciliation, peace and an end to the atrocities. The Act stipulated that individuals who fell within the scope of the amnesty should not be prosecuted or subjected to any form of punishment for the participation in the war or rebellion for any crime committed in the cause of the war or armed rebellion.⁵⁶

Many victims and others from the conflict-affected areas lauded the amnesty's role in encouraging defection from the LRA and creating an opening for peaceful negotiations. By May 2012, a total of 26,288 rebels from 29 different rebel groups had received amnesty. Of these, 12,971 were former combatants from the LRA.⁵⁷

However, the Amnesty Law remains a thorny issue in Uganda's efforts to move beyond a transient solution

⁴⁸ OHCHR, "The Dust has not yet settled: Victims Views on the Right to Remedy and Reparation. A Report from the greater North of Uganda," (The Dust has not yet settled), p. xii.

⁴⁹ Annan, Jennie, and Christopher Blattman, Khristopher Carlson, and Dyan Mazurana, "The State of Female Youth in Northern Uganda: Findings from the Survey of War-Affected Youth (SWAY) Phase II. Boston: Survey of War-Affected Youth", April 2008, p. 31.

⁵⁰ Ibid.

⁵¹ See, for example, Human Rights Watch, *Uprooted and Forgotten, Impunity and Human Rights Abuses in Northern Uganda*, September 2005 Vol. 17, No. 12(A); OHCHR, *The Dust has not yet settled; Human Rights Watch, Abducted and Abused: Renewed Conflict in Northern Uganda*, July 2003, Vol. 15, No. 12(A).

⁵² JRP, *The Beasts at Burcoro: Recounting Atrocities by the NRA's 22nd Battalion in Burcoro Village in April 1991*, JRP Field Note XVII, July 2013.

⁵³ Survey of War Affected Youth, *A Way Forward for Assisting Women and Girls in Northern Uganda*, Special Report on Women and Girls for the Juba Peace Process, February 2008, p. 15.

⁵⁴ Ibid.

⁵⁵ Justice and Reconciliation Project, *Gender Equality For All: Towards A More Comprehensive Approach to Prevention and Response to Sexual and Gender-based Violence*, Consultative Dialogue Report, March 2017.

⁵⁶ Amnesty Act 2000, ss. 3(1) and 3(2).

⁵⁷ Enough Project, *The end of Amnesty in Uganda: Implications for LRA Defections*, August 2012, p. 1.

to decades of war.⁵⁸ The grant of amnesty was a largely political process used as a negotiating tool to help bring an end to hostilities and to engender peace, but many were critical because of the provision of blanket amnesty for those that had committed serious international crimes.⁵⁹

When the top commanders of the LRA refused to participate in the amnesty, President Museveni referred the LRA to the ICC in 2003. In 2004, the then-ICC Prosecutor commenced investigations. On 13 October 2005, Pre-Trial Chamber II unsealed warrants of arrest for five senior leaders of the LRA, namely Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen and Raska Lukwiya for crimes against humanity and war crimes committed in Uganda since July 2002.⁶⁰ Despite strong allegations of crimes committed by the UPDF, to date no State actors have been prosecuted by the ICC, creating a feeling that the ICC engagement was partisan.⁶¹

4.4 The Juba Peace Talks

In 2006, a series of negotiations commenced in Juba, South Sudan, between the government and the LRA over the terms of a ceasefire and possible peace agreement. The talks resulted in the cessation of hostilities. However, after a long negotiation process, and with virtually all the agenda items agreed and signed by the parties, the talks collapsed when the LRA failed to sign the final peace agreement and withdrew from the Juba Peace Talks. This was allegedly because of the failure by the ICC to suspend its arrest warrants issued in 2005 for the five top LRA leaders.⁶²

Nevertheless, during the Juba Peace Process which lasted from 2006–2008, a range of accountability and reconcilia-

tion measures were agreed including some key principles for reparations to the conflict-affected communities. The Principal Agreements and Implementation Protocols on Comprehensive Solutions to the Conflict, and on Accountability and Reconciliation set forth the framework upon which future reparations programmes and policy were to be developed and implemented in post-conflict Uganda.⁶³

As a result of the Agreement, the Special Division of the High Court (International Crimes Division-ICD) in Uganda was established to deal with those most responsible for serious crimes. The Agreement also called for the establishment of a truth-seeking body to inquire and recommend measures to address past violations; for traditional justice processes for reintegration and reconciliation; and for a range of legal and institutional reforms to ensure accountability, serve justice and promote reconciliation, with particular attention to upholding victims' rights, participation and witness protection.⁶⁴

To fulfil its obligations under the Agreement, the government established the Transitional Justice Working Group (TJWG) under the Justice Law and Order Sector. The Working Group was charged with overseeing the implementation of the transitional justice processes provided for under the Juba agreement on accountability and reconciliation.⁶⁵ The TJWG is made up of five thematic sub-committees: (1) war crimes prosecutions; (2) truth and reconciliation; (3) traditional justice; (4) finance; and (5) integrated systems. Following a series of consultations the TJWG prepared the first draft of the National Transitional Justice Policy.

JLOS organised consultations with civil society organisations and some grassroots and community-based organisations on the transitional justice processes and the draft Policy.⁶⁶ In January 2009, civil society organisations Justice and Reconciliation Project (JRP) and the International

⁵⁸ Sikkink, Kathryn, 'The Age of Accountability: The Global Rise of Individual Criminal Accountability', in *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives*, (Francesca Lessa & Leigh A. Payne, eds.) 2012, p. 19; The Ugandan Parliament passed the Amnesty Act in 2000 after sustained advocacy by religious and traditional leaders from northern Uganda.

⁵⁹ JLOS, *The Amnesty Law Issues Paper, Review by the Transitional Justice Working Group*, April 2012.

⁶⁰ ICC Press Release, *Warrant of Arrest unsealed against five LRA Commanders*, ICC-CPI-20051014-110, 14 October 2005.

⁶¹ Kersten, Mark, *Yeah, Right... ICC Officials Say There's No Evidence Against Ugandan Military*, Justice in Conflict Blog, posted 5 May 2016.

⁶² Oola, Stephen, *Reparations in Uganda*, p. 7.

⁶³ See *Agreement on Accountability and Reconciliation (AAR)*, signed 29 June 2007 (The Juba Agreement); The Implementation Protocol on Comprehensive Solution to the Conflict, 28 February 2008; and Annexure to the Agreement on Accountability and Reconciliation February 19, 2008.

⁶⁴ Oola, Stephen, *Reparations in Uganda*, p. 13.

⁶⁵ International Centre for Transitional Justice, *Uganda: Background*.

⁶⁶ UVF, ICTJ and JRP, *One-Day Civil Society Dialogue with JLOS on TJ in Uganda: Meeting Summary*, 20 May 2011, p. 5.

Centre for Transitional Justice (ICTJ), formed the Northern Uganda Transitional Justice Working Group (NUTJWG) to work in partnership with JLOS and other TJ actors to “coordinate and advocate for Transitional Justice (TJ) strategies and interventions responsive to the needs of communities affected by the conflict.”⁶⁷

4.5 The National Transitional Justice Policy

The NTJP is a comprehensive policy framework “designed to address justice, accountability and reconciliation needs of post-conflict Uganda.”⁶⁸ The NTJP is derived from the Juba Peace Process and its main objective is to “enhance legal and political accountability, foster social reintegration and contribute to peace and security.”⁶⁹ As such the NTJP proposes to establish a body which can devote itself full-time to the implementation of the TJ processes referred to in the Policy.

The Policy is guided by twelve key values and principles including: victim-centredness, gender, equality, recognition of the most vulnerable, best interests of the child, transparency, confidentiality, public participation, accountability, inclusiveness, confidentiality and neutrality.⁷⁰ A victim under the Policy is broadly defined as “a person(s) who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or impairment of their fundamental rights, through acts or omissions that constitute gross violations/abuses of human rights and may include a member of the immediate family or dependent of the victim or other person(s).”⁷¹

The Policy’s emphasis on a victim-centred and gendered approach reflects standards at the international and regional level, including the AU TJ.

The Policy applies an integrated approach where multiple TJ measures representing the “four pillars” of TJ are included in one policy framework. It also refers to a system of complementarity to ensure synergy between formal and traditional justice processes. Under the Policy, five priority mechanisms will be the focus of the TJ framework: formal justice processes, traditional justice mechanisms, nation-building and reconciliation, amnesty and reparations.⁷²

The ICTJ notes that while a comprehensive model appears to be “conceptually compelling” it has little relevance “on the ground” if it is not consonant with the political and social context, available human and material resources and more specific concerns of victims.⁷³ Absent these factors, the implementation process and measures are “mechanical” or “template-like” or there are years of delay to create the multiple and complex policies required. This ultimately leads to “limited meaningful participation by victims or civil society, paltry responses to victims, limited impact on fighting impunity or building trust [and] great frustration.”⁷⁴

A 2013 Northern Uganda Conflict Analysis report found that the designing of the TJ framework was largely centralised within JLOS with limited contributions from other stakeholders including critical line ministries such as Health, Gender and Education, civil society and local communities. The result has been “the prioritisation of formal punitive justice processes – which to date have had limited impact on promoting peace and reconciliation amongst communities in the North.”⁷⁵

⁶⁷ JRP, *Justice and Reconciliation Project Gulu NGO Forum Annual Report 2009*, p. 8.

⁶⁸ JLOS, *The National Transitional Justice Policy, An Overview, June 2019*, p. 2. The first draft of the Policy was published in 2009 with multiple subsequent revisions until it was finally approved by Parliament in June 2019.

⁶⁹ JLOS, *The National Transitional Justice Policy (NTJP)*, June 2019, p. iv.

⁷⁰ *Ibid.*, p. 16-17.

⁷¹ *Ibid.*, p. ix.

⁷² *Ibid.*, p. v.

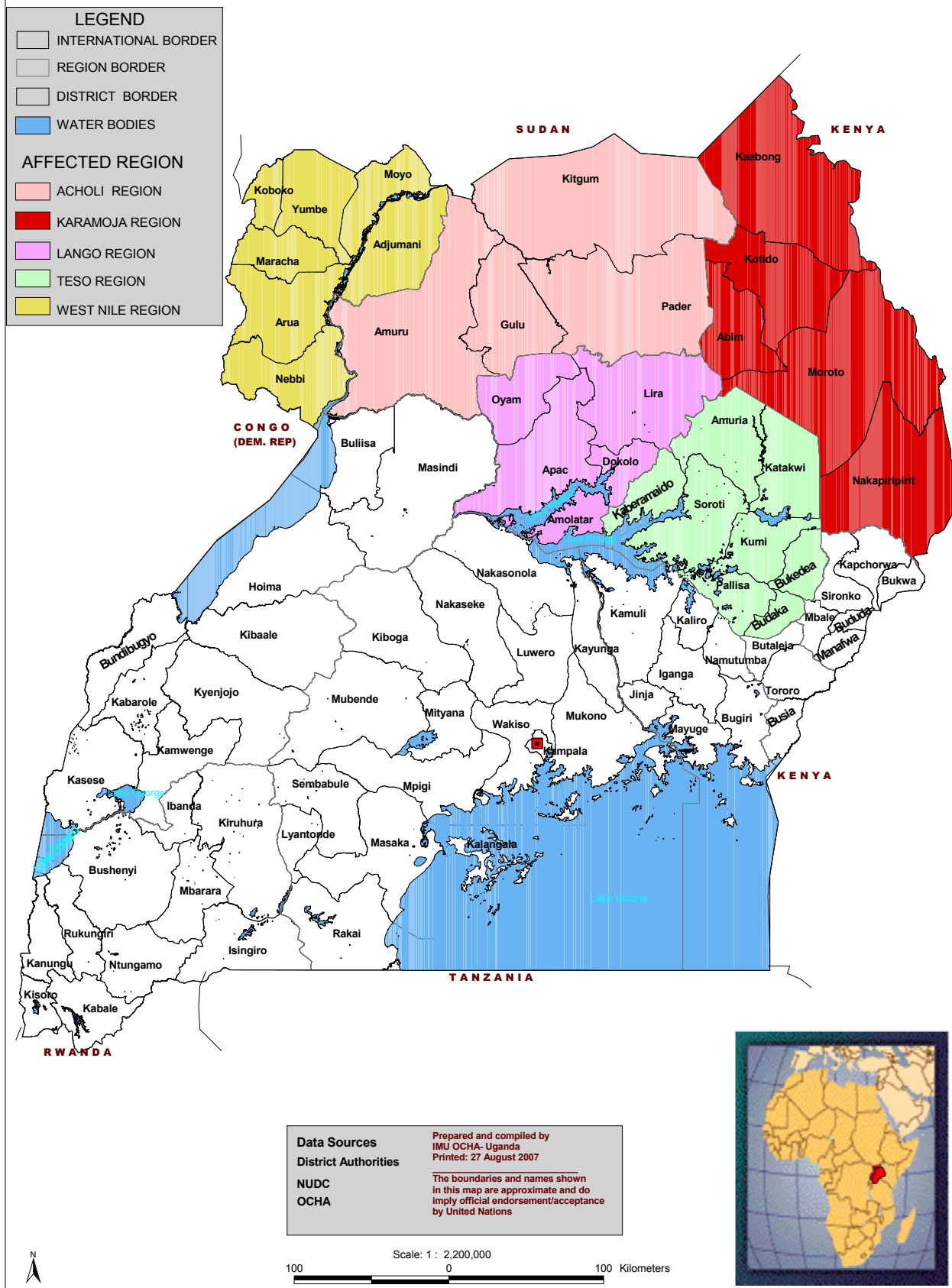
⁷³ ICTJ, *Victims Fighting Impunity Transitional Justice in the African Great Lakes Region*, (2017), p. 2.

⁷⁴ *Ibid.*

⁷⁵ ACCS, *Northern Uganda Conflict Analysis*, September 2013, p. 32.

MAP OF UGANDA

Showing Conflict Affected Areas August 2007



5. PLACING VICTIMS AT THE CENTRE



Photo by ESA/REDRESS. Victims of the conflict in Uganda, including survivors of the Obalanga massacre, discuss issues affecting victims.

Victim-centredness is listed among the foundational principles of the NTJP and is defined as “participation in the design, implementation and oversight of transitional justice which will ensure that interventions are timely, meaningful and have impact.”⁷⁶ The Policy also includes victim-specific outcomes such as enhanced victim participation and witness protection, socio-economic empowerment of war victims and communities and enhanced rehabilitation and reintegration of affected persons.⁷⁷

However, the promises of victim participation on paper are not matched by the experience of victims in practice.

The majority of victims consulted by REDRESS reported feeling excluded from the ongoing TJ processes, most notably from the decision-making discussions concerning the NTJP. Based on feedback from victims’ legal representatives in the Kwoyelo case before the ICD, victims in that case also feel excluded because of limited outreach, the extensive delay in the progress of the case and difficulty attending court and accessing the proceedings, which are often cancelled and take place in Kampala or in a small courtroom in Gulu that cannot accommodate victims.⁷⁸

⁷⁶ JLOS, *The National Transitional Justice Policy*, June 2019, p. 16.

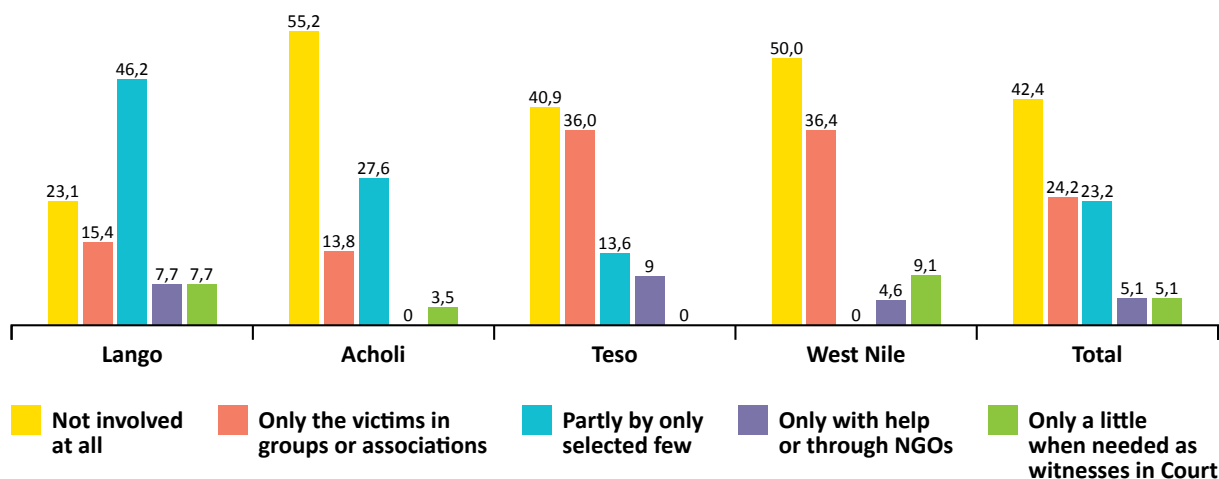
⁷⁷ *Ibid.*, p. 18.

⁷⁸ Moffett, Luke, Complementarity’s Monopoly on Justice in Uganda: The International Criminal Court, Victims and Thomas Kwoyelo, *International Criminal Law Review*, 2016, pp. 503-524.

The data collectors in the REDRESS-commissioned survey sought responses from key informants on whether victims were directly involved in the TJ process and their level of satisfaction with their involvement. In their responses, close to half of the informants (42%) indicated that they had had no engagement with the NTJP development process. Based on the feedback, victims in the

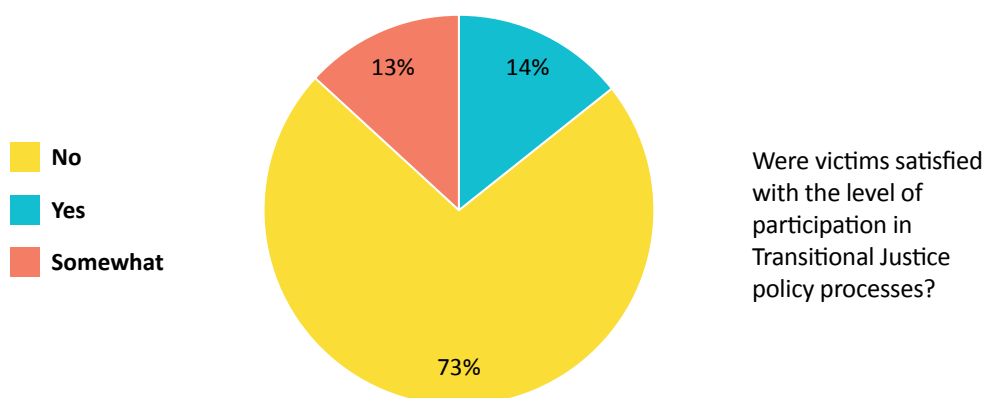
Acholi and West Nile region reported the highest levels of lack of engagement (55% and 50% respectively). 46.2% of victims in Lango sub-region had been partially involved in the process. Those who participated in the TJ process did it through victims' groups or associations or were among the few selected victims who were able to do it directly.

How were victims involved in the TJ policy process? (% responses)



The majority of victims consulted by REDRESS reported that they were dissatisfied with the level of consultations and engagement.

Victims satisfaction with their involvement in the Transitional Justice policy process



Some victims in the West Nile area, for example, reported feeling excluded from the entire process as the primary focus has been on victims of the conflict in the North. Survivors of the Uganda National Liberation Army (UNLA)

war of 1979, the UNRF1 and UNRF2 and the West Nile Bank Front war of 1997, reported that peace negotiations and amnesties had favoured the perpetrators, and victims had been excluded. These victims felt that perpetrators

had been ‘paid’ and reintegrated into communities without any psychosocial support being provided to victims to help them to positively co-exist with the perpetrators.

During consultations, victims noted that they wanted to be included in the process by which decisions were being made on their behalf. They decried the silence of government concerning their demands and the lack of feedback on TJ processes. Although they valued the supportive role played by civil society organisations, they wished to also speak for themselves. They wanted assurance that their stories were not being exploited. It was important for them to know that what they said resonated with those with decision-making powers and influenced their decisions.

5.1 Participation of the Most Vulnerable

Victims noted that all groups should have equal opportunities to participate, regardless of gender, age, ethnicity, religion, disability, literacy, socio-economic status, political affiliation or experience of conflict. Increasingly, children born of war, many of whom are now young adults, have demonstrated a desire to share their perspectives on the issues that impact them. During a victims’ forum in Soroti in 2018, a young former child soldier who was elected as the youth representative for the governing body of the victims network asked the question, “where are the youth in discussions on transitional justice? We are the future and we should be involved so we can share our views about what has happened and what will happen.”⁷⁹

The AU stresses that affirmative action policies should be put in place to ensure the participation of particularly marginalised or vulnerable groups.⁸⁰

In the case of women, for example, these affirmative action measures are a first step in overcoming traditional patriarchal stereotypes which limit women to certain gen-

der roles and which limit their participation in practice. In many communities, consultations with women victims have to be organised to ensure their meaningful participation without domination by male local leaders. During a victims’ forum in Barlonyo, REDRESS and the other organisers facilitating the elections of the victims’ network, requested the participants to elect at least two female representatives from that area. Due to social traditions, only men were initially nominated as representatives. Including women as network representatives has facilitated increased focus and articulation of the specific needs and challenges of SGBV victims in subsequent meetings.

Affirmative action approaches to participation could take the form of gender-specific victim forums, measures to ensure women participate effectively (i.e. provision of childcare during forums), or quotas reflecting diversity in victim participation by various groups. 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 critical.

5.2 Overly Bureaucratic and Top-Down Process

Civil society organisations were also excluded from the initial drafting stage of the NTJP. According to ICTJ, “[c]ivil society was largely excluded [...] despite earlier (unrealised) promises that a select group would be involved as part of the drafting committee. Civil society representatives were only invited at the end of the process to attend the validation meeting and to submit comments on the third draft of the transitional justice policy.”⁸¹

In a 2015 briefing paper, the ICTJ noted that the process through which the State engaged with relevant actors including the victims’ communities was “highly state-centric and dominated by a few senior bureaucrats at the technical level, with limited involvement of civil society organisations and stakeholders at the grassroots level to obtain

⁷⁹ Statement of youth network representative, Uganda Victims and Survivors Network, Soroti Victims’ Forum.

⁸⁰ AU Transitional Justice Policy, para. 109.

⁸¹ Otim, Michael and Kasande, Sarah Kihika, *On the Path to Vindicate Victims Rights in Uganda: Reflections on the Transitional Justice Process since Juba*, ICTJ Briefing, June 2015, p. 4, note 29.

their input and galvanize public support.”⁸² They pointed out that although local government officials were aware of the draft NTJP, most were unaware of its contents because JLOS had not involved them in its development. This, in their view, failed to recognise the important role that local government structures could play in conflict-affected areas. In response, JLOS suggested that it would engage local government actors more regularly during the implementation phase once the Policy was approved.

This approach by JLOS is problematic for several reasons. First, it misses the important role which local government actors will need to play in the TJ process, their knowledge of the local context and connection with affected communities. Secondly, the engagement of victims and affected communities is important at both stages— design and implementation – to ensure local ownership and a process that reflects and respects their needs.

This approach has also meant that resources have been poured into designing the ‘system’ for TJ with very little emphasis placed on interim measures to address victims’ urgent needs. The integrated approach has led to the “institutionalisation of transitional justice processes” with a supra-state body which has centralised the entire TJ process, and prioritised formal justice processes, such as the establishment of the ICD, over other mechanisms that victims prioritise, such as reparations.⁸³

JLOS’ priority since the approval of the NTJP in June 2019, has been the drafting of the TJ Bill in order to secure Cabinet approval as quickly as possible. JLOS has offered little public information concerning the plans and process at this stage, once again excluding victims and grassroots community leaders who will be most affected. No input from victims has been solicited into the content and format that the Bill should take. Instead, there is an over-reliance on CSOs to conduct outreach and share public

information, a responsibility which should not be totally delegated to them by the State.

JLOS has also indicated that its priority will be to sensitise the different government ministries about TJ and the provisions of the Policy given that implementation will be multi-sectoral.⁸⁴ Sensitisation of the government Ministries is necessary as it is still unclear how implementation will take place and how different Ministries will mainstream TJ into their programmes and policies. However, if JLOS’ focus is purely internal without engaging with the affected communities, a critical phase of the TJ processes will again be carried out absent input from those for whom it has been designed.

5.3 From Consultation to Decision-Making

Victim participation in TJ processes includes diverse levels of empowerment for victims and communities.⁸⁵ Full empowerment or transformative participation is classified as the highest level of participation in which victims and affected communities engage at each stage of the TJ process from conception to design and implementation, as equal decision-makers.⁸⁶

In Uganda, victims in many conflict-affected areas live in communities and villages that are far from institutions in the main towns such as Gulu or Kampala where meetings, forums and formal justice processes are held, and it is difficult for them to access these spaces. Typically, unless

⁸² Otim, Michael and Kasande, Sarah Kihika, *On the Path to Vindicate Victims Rights in Uganda: Reflections on the Transitional Justice Process since Juba*, ICTJ Briefing, June 2015, p. 8.

⁸³ Robins, Simon, *Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations*, Human Rights and International Legal Discourse, (2017) Human Rights and International Legal Discourse (University of York) 41-58, p. 45.

⁸⁴ Remarks by JLOS’ technical adviser during Stakeholder Dialogue on Transitional Justice organised by ASF, ICTJ and RLP.

⁸⁵ Kadem, Impunity Watch and CAHR, *To participate, is to have hope ... Victim participation in Tunisia’s transitional justice process*, (Tunisia Participation Report), October 2015, p.12. According to this report, the typology of participation in transitional justice ranges from:

- “Notification: A passive form of participation, in which victims are informed of a TJ process in general or of a particular case or file;
- Collaboration – indirect participation during implementation: Indirect participation in a process, such as through a lawyer in a trial, or through a victims’ representative in other processes;
- Incidental Expression: The provision of indirect input to a process, such as through a victim statement.
- Providing Information: The provision of information by a victim on the terms of an authority requesting it;
- Collaboration – direct participation during implementation: Active participation by victims such as during a consultation process;
- Full Empowerment – participation as decision-makers: Victims participating in every stage of a TJ process, and having control over it.”

⁸⁶ Ibid.

they are mobilised and transportation and refreshment costs are reimbursed, victims are unable to attend and participate in key meetings and events.

Yet, victims are increasingly finding innovative ways to create more empowering spaces for themselves, including through the establishment of networks, through which they share experiences and strategise and plan advocacy. These spaces are not always physical locations; those victims who can afford the cost of ‘airtime’ (internet service) have created WhatsApp groups where they can connect with each other and with the civil society organisations that support them.

During a forum organised by REDRESS and partners in West Nile, victims expressed a desire to form a network to articulate their concerns and views on the ongoing TJ process. Hajji Sebbi Longa (now deceased), a victim from the West Nile region, lamented during a community dialogue held in Yumbe, that the TJ process in Uganda appeared to only be for the elites (civil society organisations, donors, government) to the exclusion of the poor and the under-privileged, including women and children who have suffered the most in the violence that preceded the TJ process. This concern which appeared to be shared by several other victims, led to the formation of the Uganda Victims and Survivors Network (UVSN), a collaborative platform to facilitate collective advocacy and participation by victims in TJ processes.

Victims’ network are not unknown in Uganda, but they are a potentially powerful force for collaborative engagement among victims and collective advocacy on transitional justice processes. New networks such as the UVSN are keen to be registered and formally recognized in the hope that they will be able to access platforms that allow them to make their voices heard. Power dynamics within the community itself and underlying tensions between different victim groups or victims from different regions are often present in some networks. The network’s capacity has to be built to do advocacy to specific audiences, such as policymakers, allowing the victims to retain the power to express them-

selves and articulate their own concerns, while suggesting affirmative action policies to ensure the inclusion of youth and women’s voices. The formation of the UVSN catalysed victims in other locations such as Lango to form and register their own advocacy and support network.

As victims’ networks are victim-led initiatives, there are several challenges including the lack of resources to ensure sustainability, to remain connected and to participate in key transitional justice dialogues in order to provide input and shape the discussions.

5.4 Moving Forward

Going forward, our research points to a clear need for the State to take steps to ensure meaningful and effective participation of victims in every stage of the TJ process.

More targeted outreach to victims and affected communities is needed to inform them about their rights in the TJ process. As ICTJ noted, “most [victims] think that having an opportunity to participate is a benevolent gesture on the part of the state, rather than a right.”⁸⁷ It is crucial that “[o]utreach is a two-way process that involves engaging with victims and their representatives and seeks to build trust and confidence among victims, particularly victims of [SGBV] who are highly stigmatised.”⁸⁸ It is important that any outreach that is conducted is responsive to the context-specific situation of the victims which may include “high levels of illiteracy, poverty, poor access to transportation and deep social fractures (gender, ethnic, language, class or sub-regional differences).”⁸⁹

While outreach and consultations are important, concrete steps should be taken by JLOS to ensure the centrality of victims. Both the process and events organised around the NTJP should operate to move Ugandan victims to a transformative model of participation where their

⁸⁷ Otim, Michael and Kasande, Sarah Kihika, *On the Path to Vindicate Victims Rights in Uganda: Reflections on the Transitional Justice Process since Juba*, ICTJ Briefing, June 2015, p. 8.

⁸⁸ Feinstein International Justice Center, *Making Gender-Just Remedy and Reparations Possible: Upholding the Rights of Women and Girls in Uganda’s Greater North*, Briefing Paper, June 2014, p. 2.

⁸⁹ Ibid.

voices are heard, they can access platforms and contribute to decisions that have real impact on the processes. Victims should be given direct access to policymakers and opportunities to provide input concerning the TJ Bill and the implementation process. This approach should be supported by the government and donors for it to be

successful. They also need to equip civil society organisations and victims' groups with the tools to develop and maintain consultative spaces and networks, and to ensure that these groups are formally acknowledged and actively engaged in all stages of the TJ process.

6. VICTIM PARTICIPATION IN ACCOUNTABILITY MECHANISMS



Photo by the Justice and Reconciliation Project. Thomas Kwoyelo, a former colonel in the LRA, is facing trial before the International Crimes Division for 93 counts of war crimes, crimes against humanity and other charges.

6.1 The Accountability Gap

As in many societies emerging from mass violence and repression, conceptualising justice and accountability in Uganda and ensuring meaningful access to it are enduring challenges.⁹⁰ For many Ugandan victims, accountability goes beyond retributive justice and the prosecution of perpetrators; it includes “confession, acknowledgement, acceptance of responsibility, apology, repentance, asking for forgiveness, truth, fulfilment of promises and reparations.”⁹¹ In the TJ context in Uganda, accountability in the form of criminal proceedings against the LRA leaders before the ICC and ICD, has been prioritised over other mechanisms such as truth-telling and reparations.

However, an accountability gap remains. Despite the numerous conflicts in Uganda, the majority of perpetrators have not been held to account. Only a handful of persons from one side of the conflict have been prosecuted so far, while victims continue to suffer. Senior LRA commanders have been indicted by the ICC, but to date no charges have been brought either by the ICC or the national justice system against any member of the government forces, the UPDF.⁹² This structural impunity breaches victims’ right to justice and has created an accountability gap which has contributed to “grave feelings of bitterness and instances of mob justice.”⁹³

The Juba Peace Agreement on which the NTJP is premised stipulates different accountability mechanisms for

⁹⁰ Maregere, Tendaiwo Peter, *Justice in Transition and the Complexities of Access*, African Centre for the Constructive Resolution of Disputes (ACCORD), 21 July 2017.

⁹¹ *Compendium of Conflicts in Uganda*, p. 233.

⁹² Kersten, Mark, *Yeah, Right... ICC Officials Say There's No Evidence Against Ugandan Military*, Justice in Conflict Blog, Posted 5 May 2016.

⁹³ *Compendium of Conflicts in Uganda*, p. 235.

different perpetrators. The LRA is to be prosecuted before 'special justice processes', such as the ICD and traditional ceremonies, whereas government forces will be held to account through existing criminal justice processes.⁹⁴

There is also limited political incentive and will for the government to hold State actors accountable for violations.⁹⁵ According to the ICTJ, "Individuals who are alleged to have perpetrated heinous crimes continue to hold positions of authority and influence... In interviews conducted by ICTJ, several respondents expressed the view that the government cannot be trusted to implement a credible transitional justice process because it would highlight egregious violations of human rights committed by state actors who remain unpunished."⁹⁶

Interestingly, while the UPDF is yet to be held accountable within Uganda for gross violations of human rights in northern Uganda, there is some measure of accountability in respect of similar crimes committed by the UPDF in neighbouring Democratic Republic of the Congo (DRC). Uganda is currently negotiating a settlement with the DRC concerning a reparations award of billions of dollars made in respect of atrocities committed by the UPDF during the military occupation of Ituri, DRC, by Ugandan and Rwandan forces between 1998-1999.⁹⁷ The International Court of Justice found that Uganda's responsibility is engaged for acts of its military that violated its international obligations and for any lack of vigilance in preventing violations of human rights and international humanitarian law by other actors present in Ituri.⁹⁸

⁹⁴ UN Security Council, Letter dated 16 July 2007 from the Permanent Representative of Uganda to the United Nations addressed to the President of the Security Council, Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba Sudan, S/2007/435, para. 4.1; Moffett, Luke, Complementarity's Monopoly on Justice in Uganda: The International Criminal Court, Victims and Thomas Kwoyelo, Queen's University Belfast Research Paper, 2015, p. 11.

⁹⁵ Otim, Michael and Kasande, Sarah Kihika, *On the Path to Vindicate Victims Rights in Uganda: Reflections on the Transitional Justice Process since Juba*, ICTJ Briefing, June 2015, p. 4.

⁹⁶ Ibid.

⁹⁷ The East African News, *DRC vs. Uganda \$10b award case reopened*, 2 February 2019.

⁹⁸ International Court of Justice, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Press Release, No. 2005/26, 19 December 2005. The Court found "credible evidence sufficient to conclude that the Ugandan armed forces, in the course of their military intervention, committed acts of killing, torture and other forms of inhumane treatment of the civilian population, destroyed villages and civilian buildings, failed to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants, incited ethnic conflict and took no steps to put an end to such conflicts, was involved in the training of child soldiers, and failed to take measures to ensure the respect for human rights and international humanitarian law in Ituri."

A related issue is how this reparations award will impact the government's commitment to financing and sustaining a national reparations programme.

In general, accessing justice is difficult for victims in Uganda. In conflict-affected areas such as northern Uganda, the judicial infrastructure has been so devastated by the many years of conflict that only a few cases reach the court.⁹⁹ Insufficient government funding of the police and judiciary means that in many cases victims must pay their own way (or be supported by NGOs).¹⁰⁰ There is also widespread corruption and State interference in the justice sector. Due to poverty, many victims cannot afford to pay for legal representation, or even to travel to court. Consequently, there is a gap between the Ugandan victims whose cases are before the ICC and the thousands of other northern Ugandan victims who must rely on national courts where they are unlikely to get redress.¹⁰¹

Furthermore, important legislation such as the Witness Protection Bill of 2015, which seeks to establish a Witness Protection Agency and a national Witness Protection Programme, has been pending for years in Parliament and is currently stalled.¹⁰² A National Legal Aid Policy, developed in 2011 to address some of the gaps in legal aid provision, is still awaiting finalisation.¹⁰³

Male and female SGBV victims in particular face exceptional difficulties in obtaining justice. In addition to the high levels of stigma attached to SGBV crimes, the "fear of repercussion from perpetrators, high illiteracy rates which deter people from seeking support within a complicated legal framework and the financial and logistical implications of accessing limited and under-resourced legal institutions," deter most victims from pursuing justice or even seeking medical assistance.¹⁰⁴

⁹⁹ Moffett, Luke, *Justice for Victims before the International Criminal Court* (Routledge, 2014), p. 227.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Parliament of the Republic of Uganda, *News: Expedite Witness Protection Law*, 30 April 2018. To fill this gap in protection mechanisms, the Directorate of Public Prosecutions has launched Victims' Rights and Empowerment Guidelines and Witness Protection Guidelines to help prosecutors determine the witness protection parameters and possibilities for their cases. See NewVision, *Govt. UNHRC launch new witness protection guidelines*, 7 June 2019.

¹⁰³ JLOS, *Uganda: Draft National Legal Aid Policy*, November 2011.

¹⁰⁴ Opinia, Sylvia and Bubenzer, Friederike, *Gender Justice and Reconciliation in Northern Uganda*, JRP-IJR Policy Brief no. 4, p. 5.

6.2 Amnesty

While the amnesty process in Uganda has been seen as successfully contributing to the end of the war, it is considered by some to be one of the contributors to the accountability gap because of its initial condoning of blanket amnesties which are prohibited under international law.

The amnesty process was more perpetrator-focused than victim-centric as the Amnesty Commission failed to include and consult with victims to determine the impact of the reintegration process on them and on the wider community.¹⁰⁵ Insufficient support for the reintegration process by the Amnesty Commission exacerbated tensions and undermined meaningful, community-supported reintegration.¹⁰⁶

The Amnesty Act also negatively impacted the rights and welfare of women due to the lack of gender-sensitive reintegration assistance and support to female returnees and total impunity for SGBV crimes that women suffered during the conflict.¹⁰⁷ Moreover, including formerly abducted youth, women and girls, many of whom did not participate actively in combat, in the amnesty process rather than supporting rehabilitation was problematic and caused deep fissures.

In Teso, some victims “noted that the strong focus on perpetrators had left victims with ‘physical and psychological wounds, unable to heal.’”¹⁰⁸ Community leaders reportedly “complained that perpetrators did not need to tell the truth before receiving their amnesty certificate, having to recount only basic information about their role in the conflict including which rebel group they belonged to and what types of activities they were involved in.”¹⁰⁹ In addition, the return of ex-combatants to their former homes is contributing to land disputes in Lango as communities

struggle to facilitate their integration without adequate government support.¹¹⁰ Some community leaders in the North explicitly criticised the amnesty implementation process for “failing to promote truth-telling, healing and reconciliation of communities by reducing such a complex process to the handing over of a certificate.”¹¹¹

The Amnesty Law was also not evenly applied, an issue which arose in the case of Thomas Kwoyelo. Kwoyelo, a former LRA commander currently on trial at the ICD, was wounded in battle and taken into custody by the Uganda authorities. In 2010 while in custody, he applied for amnesty under the Amnesty Act of 2000 but his request was denied by the Directorate of Public Prosecutions. He appealed to the Constitutional Court, which ruled that his right to equal treatment had been violated because other rebel leaders had benefited from amnesty. That decision was stayed by the Supreme Court which ordered that the trial before the ICD should proceed. Kwoyelo filed a case before the African Commission on Human and People’s Rights. The Commission ruled in 2019 that the Ugandan government had indeed violated Kwoyelo’s right to equal treatment in respect of the amnesty as well as his right to be tried within a reasonable time and ordered the government to pay him damages.¹¹²

Aware of the potentially far-reaching effect of its decision, the Commission appended an obiter dictum (explanatory opinion which does not impact the legal findings in the decision) to its main findings making it clear that the decision in Kwoyelo’s favour should not be seen as condoning a blanket amnesty.¹¹³ The Commission noted that blanket or unconditional amnesties that prevent investigations of the most serious crimes are not consistent with the provisions of the African Charter and international law.¹¹⁴

The NTJP has articulated a policy of no blanket amnesty and those who have been amnestied already will be en-

¹⁰⁵ JLOS, *Amnesty Law (2000) Issues Paper*, April 2012, p. 7.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ ACCS, *Northern Uganda Conflict Analysis*, September 2013, p. 34.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² ACHPR, *Kwoyelo v Uganda* (2018), Communication 431/12.

¹¹³ *Ibid.*, paras. 283-293.

¹¹⁴ *Ibid.* para. 293.

“People lost lives and property. Women were raped and the refugee situation was very terrible at that time. During the West Nile Bank Front, my wives were raped and my 13-year-old daughter was defiled as I watched. During the Uganda Liberation Front-2 Peace agreement, there was no consideration for Victims. We formed a Victims’ association in West Nile. The Victims still see Amnesty as the root cause of their dissatisfaction. How can perpetrators tell the truth? How can there be reconciliation if the perpetrators cannot say sorry? The UPDF massacred 76 youths and Government does not want to uncover the truth. The government must come and apologize to us for the atrocities committed by their agents.”

Victim participant – Yumbe Victims’ Forum, October 22, 2018.

couraged to participate in traditional justice processes for the purpose of promoting meaningful reintegration and reconciliation. Those who have not previously benefitted from amnesty will only be eligible if they make full disclosure of all relevant facts and human rights violations and if they have not committed international crimes. It is not yet clear how this commitment will contribute to closing the existing impunity gap in Uganda.

The position on amnesties is still divided and is far from settled. Some victims favour the amnesty provided that the reintegration process includes them and that it is part of a truth-telling effort.¹¹⁵ Others feel that the amnesty process still causes suffering and has contributed to a lack of accountability.

The amnesty issue demonstrates the continuing tension between efforts to end the war and promote reconciliation and the need to ensure accountability.

¹¹⁵ A poll conducted between March and May 2020 by TRAC FM in Northern Uganda asked respondents what the government should prioritise in determining the future of amnesty. **More than half of the 11,000+ respondents indicated that amnesty should be awarded in exchange for truth and apology and that victims and affected communities should be consulted before amnesty is awarded.** Only a few respondents suggested abolishing amnesty because it undermines the rights of victims. TRAC FM, *Common Matters Poll*, 2020.

6.3 Complementary Justice Processes

Under the Juba Agreement on Accountability and Reconciliation, individuals who had committed serious crimes or human rights violations in the course of the conflict were to be dealt with through formal criminal and civil proceedings.¹¹⁶ The Annexure to the Agreement provides for the establishment of a special division of the High Court “to try individuals who are alleged to have committed serious crimes during the conflict.”¹¹⁷ Informal or alternative justice processes were to complement the formal processes. Through this dual approach, serious crimes committed by the LRA are prosecuted nationally before the ICD under the ICC Act (2010), the Geneva Conventions Act and the Penal Code Act, while those deemed ‘most responsible’ are subject to prosecution before the ICC.

Thomas Kwoyelo and Dominic Ongwen, both former child soldiers turned commanders in the LRA, are currently on trial at the ICD and ICC respectively. Both cases address important aspects of the complexity and limitations of retributive justice in Uganda in addressing the

¹¹⁶ Agreement on Accountability and Reconciliation, clause 6.

¹¹⁷ Annexure to the Agreement on Accountability and Reconciliation, para. 7.

human rights violations committed during the conflict, the victim/perpetrator dilemma and structural limitations to effective participation by victims.

6.3.1 *The Ongwen case*

Dominic Ongwen, alleged Brigadier General of the LRA, is charged with 70 counts of crimes against humanity and war crimes including murder, torture, enslavement, and pillaging by the ICC. The ICC issued an arrest warrant for Ongwen in 2005, although nearly a decade passed before he was in custody and transferred to the ICC in January 2015. Ongwen was initially charged for crimes committed in the Lukodi internally displaced persons (IDP) camp; but following a visit to the affected communities by the ICC Prosecutor, the charges were expanded to include other IDP camps, namely Pajule, Odek, and Abok. In addition to child soldier related charges, 19 of the 70 charges faced by Ongwen are for crimes of sexual violence including rape, sexual slavery, and forced marriage of abducted women and girls.¹¹⁸ He is the first person to be charged at the ICC for forced marriage.¹¹⁹

The participation of victims has positively contributed to the case, by bringing information and perspectives directly from the field to the ICC and raising awareness about the plight of victims in the Ugandan conflict. The application by the legal representatives to present evidence concerning SGBV crimes against men and boys, served to shed light on an under-addressed aspect of the conflict, and what appears to be a gap in the Prosecutor's charges. Despite the judges' rejection of the application, the decision to raise an issue that was unaddressed by the Prosecutions' case, underscores the important role that victims can play as independent participants and not solely as prosecution witnesses.¹²⁰

However, the victim participation process was far from perfect. Driven by cost efficiency considerations, the court appointed in-house counsel as the common legal representative of victims, despite the decision by victims to appoint their own external lawyers, calling into question victims' free choice of external counsel.¹²¹ As Human Rights Watch documented, "choosing not to resource external counsel could have had a potentially adverse impact on the court's legitimacy, particularly among victims and affected communities. Most victims who choose lawyers to represent them in the ICC system cannot pay those lawyers. For the right of victims to choose counsel to be effective, it presumes that lawyers will either act pro bono, or they will be paid by the court."¹²²

The external lawyers felt that the Court was effectively "punishing victims for exercising their statutory choice [to appoint] two people who[m] they had a previous engagement with and whom they trusted to represent their interests, raising serious questions about whether the ICC will continue to allow for the appointment of external counsel or whether all victims will be represented by the OPCV in future cases."¹²³

Ultimately, a total number of 4.065 victims were granted the right to participate in the proceedings. From those, 2.564 are represented by two appointed external counsel of their choice as Legal Representatives of Victims (LRVs). A second group of 1.501 victims who did not choose a specific counsel, are represented by the Office of Public Counsel for Victims of the ICC.¹²⁴

Victims represented by the LRVs were consulted regularly by counsel and informed of the procedural developments

¹¹⁸ The Prosecutor v. Dominic Ongwen, *Questions and Answers*, ICC-PIDS-Q&A-UGA-02-01/16_Eng, November 2016.

¹¹⁹ De Vos, Dienneke, *A day to remember. Ongwen's trial starts 6 December*, European University Institute, 5 December 2016.

¹²⁰ The Prosecutor v. Dominic Ongwen, *Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and related requests*, para. 57. For a detailed commentary see Ogora, Lino, *Sexual Violence against Men and Boys and its Relevance to the Trial of Dominic Ongwen*, International Justice Monitor, April 24, 2018.

¹²¹ Some victims in the Ongwen case were represented by a team of locally selected lawyers and others by the ICC's Office of Public Counsel for Victims (OPCV) who had previously represented victims when the matter was first referred to the Court. Victims chose external counsel to represent them who they knew previously, but the selection process did not meet the Registry's standards and the judges decided to appoint the OPCV as common legal representative thus depriving the external counsel of the possibility of accessing legal aid under the ICC Rules (Rule 90(5)). The Registry ultimately applied its discretion and granted the external counsel legal aid in late November 2016.

¹²² Human Rights Watch, *Who will stand for us*, p. 66.

¹²³ FIDH, *Victims at the Center of Justice. From 1998 to 2018: Reflections on the Promises and the Reality of Victim Participation at the ICC*, December 2018 (Victims at the Center of Justice), p. 49.

¹²⁴ The Prosecutor v. Dominic Ongwen, *Case Information Sheet*, ICC-02/04-01/15.

in the case. Smaller group meetings also took place to allow victims to convey their personal experiences, expectations and views.¹²⁵

Participation of victims in the courtroom has been limited. LRVs were not allowed by the ICC Trial Chamber to question witnesses in court about the personal responsibility of Ongwen. Further, while LRVs were allowed to present the victims' case, only three victims and one expert were ultimately called by the Trial Chamber to provide testimony in court.¹²⁶

Even with these limitations, victims were able to express their views and concerns and their suffering and victimisation has been made part of the case record. The LRVs have noted that some victims experienced some level of healing through the process.¹²⁷

At the same time, a broader group of victims consulted about the Ongwen trial expressed mixed views about the case. During consultations led by the Refugee Law Project (RLP), several victims felt that the Court should drop all charges against Ongwen, arguing that he was a victim turned perpetrator.¹²⁸ For some, the case represents a chance to finally have justice, with justice mainly understood in terms of reparation by the Court. For others, the case is a step towards establishing the legal truth concerning crimes committed during the conflict, which should be followed by community-level truth processes in order to trigger social healing.¹²⁹

A pressing issue which will arise depending on the outcome of the case is whether, if convicted, reparations proceedings in the case will disrupt the fragile peace that currently prevails in the affected communities in the North. Despite an indictment of 70 counts, the ICC process was nevertheless limited and did not, or could not, include all affected communities given its temporal scope and other procedural limitations. The tensions between the differ-

entiated approaches to reparations in Ongwen and the local trial of Thomas Kwoyelo (which lacks a clear legal framework for reparations upon conviction) may also be an important factor to consider.

The Ongwen case prompts examination of the more complex question of the ICC's presence in Uganda and how long the Court is expected to remain. The ICC Prosecutor has alluded to the importance of developing an exit strategy for specific situations and where appropriate, working together with local justice authorities to investigate and prosecute cases to close the impunity gap.¹³⁰

The ICC's Trust Fund for Victims (TFVs) has been operational in Uganda for more than ten years, working with local partners to provide support in the form of physical and psychological rehabilitations for victims through its assistance mandate.¹³¹ The TFVs has not focused on addressing the material damage experienced by the victims.¹³² The Trust Fund's finite resources means that it will soon shift its focus from assistance-related projects to implementing court-ordered reparations, if Ongwen is convicted, which may be more limited in scope. Court-ordered reparations are linked to the charges for which the accused has been found guilty, which could result in a reduction or increase in the number of potentially eligible victims. As part of its exit strategy, the TFVs coordinates with national implementing bodies, such as the Ministry of Health, to continue the vital reparative projects that it has started. The question remains, is Uganda ready under the framework of its transitional justice process, to address accountability and reparations when the ICC scales down its presence in the country?

6.3.2 *The Kwoyelo case*

Thomas Kwoyelo a.k.a Latoni, a former colonel in the LRA, is charged before the ICD with 93 counts of war crimes,

¹²⁵ FIDH, Victims at the Center of Justice, pp. 50-51.

¹²⁶ Ibid, p. 51.

¹²⁷ Ibid, pp. 52-53.

¹²⁸ Refugee Law Project, *Ongwen's Justice Dilemma Part II*, p. 11.

¹²⁹ Ibid, p. 12.

¹³⁰ ICC OTP, *Strategic Plan 2019-2021*, para. 23. In relation to the investigations in Uganda, the only outstanding arrest warrant is for Joseph Kony.

¹³¹ The TFVs has been active in 22 districts in Northern Uganda and has assisted more than 200,000 victims in the last ten years. See *TFV*.

¹³² FIDH, Victims at the Center of Justice, p. 53.

“Victims have never been interested in finding a scapegoat. The victims have been principally interested in the process that seeks to establish the truth. For the victims, the process of truth-telling was and remains essential to their understanding of what amounts to justice in this context.”

Joseph Manoba – Legal representative of victims, Closing statements in the case of Dominic Ongwen.

crimes against humanity and charges in the alternative under the Ugandan Penal Code and the Geneva Conventions Act. The case is the first to be tried under the principle of complementarity, which places the primary obligation on States Parties to the ICC to try international crimes before their national courts. The case highlights the challenge of implementing a system of victim participation based on the Rome Statute into a national common law legal system in which the participation of victims is limited to that of a prosecution witness. Like the ICC, the ICD requires political commitment to its actualisation including through funding for outreach to the victim population and sustained support for victims' counsel.¹³³

The case tests the ability of the ICD to translate victims' participation from a promise on paper to an effective and meaningful right in practice. A legal framework exists at the ICD, which is similar in many respects to that of the ICC but some procedural aspects are less comprehensive and/or are imprecise.¹³⁴ Judges and practitioners are therefore unclear about how and when victims can par-

ticipate, the criteria for determining victims' eligibility for participation and the nature of the application process.¹³⁵ The absence of procedural guidelines on victim participation has resulted in the Court adopting “ad hoc and unpredictable measures” as the proceedings have moved forward. Resources are also a serious challenge at the ICD. Since the independent participation of victims is a novelty in the Ugandan judicial system, the Court's budget did not include legal representatives of victims, and there is still insufficient understanding of the nature and extent of the responsibilities of victims' counsels.

Victims' counsel consulted by REDRESS noted that in the absence of a clear policy or legislative framework providing for victim participation at all stages of court proceedings, there is marked reluctance by the judges at the trial phase to facilitate direct participation of the victims. Avocats Sans Frontiers (ASF), who have been monitoring the process since its inception, also reported that despite being allowed to participate at the pre-trial phase, victims' counsel have been subsequently barred from expressing their clients' views during the trial phase. ASF opines that, “the Court has so far taken a reactive approach which has made it difficult for the victims' lawyers to make participation meaningful.”¹³⁶

Additionally, when the proceedings started in April 2016 the Court appointed two Victim Counsel to represent vic-

¹³³ In meetings organised by REDRESS, the technical adviser to JLOS noted that the budgetary allocation for the ICD included resources for victims' counsel. However, this was contested by counsel. REDRESS understands that the resource allocation was insufficient to address everything that needed to be done at the ICD.

¹³⁴ The legal framework for victim participation includes the High Court (International Crimes Division) Practice Directions, Legal Notice No. 10 (2011), Statutory Instruments 2016, No. 40, The Judicature (High Court) (International Crimes Division) Rules, 2016 (the ICD RPE), and the Draft Registry Guidelines. Victim participation was also included in the Juba Peace Agreement. The ICD RPE provides for example in Rule 51 that the Registrar is to carry out specific functions in relation to victims including providing notification to victims or their counsel; assisting victims to obtain legal advice and organise their legal representation; assisting victims to participate in different phases of the proceedings; and taking gender-sensitive measures to facilitate the participation of victims of sexual violence at all stages of the proceedings. Rule 48 which deals with reparations also provides a role for the participation of victims. However, the Rules do not outline the process for applying to participate in the case or guidelines for determining eligibility and processing of applications.

¹³⁵ ASF, *Policy Brief: Reflections on Victim Participation before the International Crimes Division in Uganda*, September 2019, p. 2.

¹³⁶ ASF, “Policy Brief: Reflections on Victim's Participation before the International Crimes Division in Uganda,” blog post on 16 September 2019.

tims. Victims were not involved in the process of selecting their lawyers. These counsel had no previous experience with the representation of victims of an international nature, and were not provided with the means to fulfill their mandate.¹³⁷

93 victims applied to formally participate in proceedings throughout the pre-trial phase. The Trial Panel determined in 2018 that from those only 25 applications were eligible and requested information on an additional 38. The court's decision did not provide reasoning for the rejection of victim's applications.¹³⁸

Another major challenge at the ICD is the absence of a proper outreach strategy. Outreach and consultations conducted in August 2019 by legal representatives of victims revealed the impact of a protracted trial process for victims, the growing disinterest in participation and the challenges being faced by those still interested.¹³⁹ Counsel for victims noted that victims knew very little about the Court and developments concerning the trial including the stage the proceedings had reached. Counsel surmised that this was largely because the ICD had not provided the communities with case information packages, or made any concrete attempt to involve victims in the trial either through physical participation, by arranging to transport them to the hearings, or through radio broadcasts or video links, like the ICC has done with the trial of Dominic Ongwen.¹⁴⁰

In general, the legal representatives of victims found that victims were losing interest in the case due to frustration about the pace of the trial. Over the many years that it

had taken for the trial to begin, many victims had become ill due to a combination of factors including age, stress, poverty, lack of proper nutrition, and medical complications, and some had since passed away.¹⁴¹

Disregard to victims' participation is illustrated by the opening of the Kwoyelo trial in the Gulu High Court. Though it was located close to the area where the crimes were committed, on the opening day the courtroom was filled with lawyers, journalists, donors, academics and others, while most victims were left standing by the doorway or outside. As noted by one academic, "this is perhaps a metaphor for victims in the ICD, left on the fringes or side-lines looking in, but not part of the process."¹⁴²

While the ICD has captured the attention of donors and the international community, victims have seen very little come out of this.¹⁴³

The legal provisions on participation at the ICD give victims a justiciable right to challenge the ineffectiveness of the system of participation before the Court. The legal representatives at the ICD should boldly and formally file motions before the Court to challenge victims' exclusion from participation and, where decisions are not made in their favour, to request leave to appeal to higher judicial bodies. Judges have an overarching duty to enforce the law which includes upholding the participatory rights of victims and their right to protection.

The legal representatives of victims should also consider using strategic litigation, including in civil proceedings and at regional and international fora, as a tool to bring attention to the absence of judicial and political will to ensure that victims have access to an effective remedy and are able to participate.

¹³⁷ ASF, *Policy Brief: Reflections on Victim Participation before the International Crimes Division in Uganda*, September 2019, p. 2.

¹³⁸ Ibid. p. 3. In October 2018, a joint civil society initiative, loosely referred to as the Kwoyelo Initiative, including REDRESS, ASF, ICTJ, ESA, RLP, FJDI among others organised a workshop with the ICD's principals and legal staff from the Directorate of Public Prosecutions, legal representatives of victims and defence counsel in the Kwoyelo case to discuss the challenges in relation to victim participation at the trial phase of the case. One of the key outcome documents was a Guidance Note with proposed criteria for review of the victim application forms in the Kwoyelo case. Following the meeting, the judges were able to finalise the outstanding review of the victims' applications for participation. The Guidance note is not publicly available but has been shared with the Court's principals and a copy is on file with the organisations that participated in the drafting process.

¹³⁹ Report of Legal Representatives of Victims on outreach and consultations in Amuru District in the Kwoyelo case, on file with REDRESS.

¹⁴⁰ Ibid.

¹⁴¹ Report of Legal Representatives of Victims on outreach and consultations in Amuru District in the Kwoyelo case, on file with REDRESS.

¹⁴² Moffett, Luke, Complementarity's Monopoly on Justice in Uganda: The International Criminal Court, Victims and Thomas Kwoyelo, *International Criminal Law Review*, 2016, p. 523. The RLP has since then set up an overflow facility to enable victims and the general public to attend and observe the court sessions. See RLP, Facebook, August 16, 2016.

¹⁴³ Oola, Stephen, and Moffett, Luke, "Cul Pi Bal" - Reparations for the Northern Ugandan Conflict. Reparations, Responsibility & Victimhood in Transitional Societies. June 2020, p. 39.

Ultimately, the protracted and technical justice processes coupled with limited meaningful participation in both the Kwoyelo and Ongwen cases demonstrate the limitation of formal justice processes as the exclusive tool for addressing justice and reconciliation issues in Uganda. The initial arrest warrant for Ongwen was issued in 2005 and he was arrested almost 10 years later, in 2015. Closing arguments in the trial were made in early 2020 and the judges are still to decide on a verdict. Even if convicted, the appeal process could mean a further delay of up to 3 years before reparations can be ordered. Very little progress has been made in the Kwoyelo case for the last ten years and legal representatives of victims are yet to file motions concerning the participatory rights of victims based on the affidavits collected during consultations. For many victims, formal justice processes must be complemented by other mechanisms in order for them to truly obtain justice and redress for the harms suffered.

6.4 Traditional Justice

The NTJP proposes strengthening traditional justice measures (TJMs) to complement formal justice mechanisms. TJMs will be recognised as a “tool for conflict resolution and safeguards will be implemented that will recognise and protect [the] right of parties that need redress.”¹⁴⁴ To achieve this, the government has pledged to develop legislation setting out the guiding principles and jurisdiction of TJMs, checks and balances in implementation and steps to ensure complementarity with other existing justice mechanisms. Under this proposed legislation, the TJMs will be the first point of contact for certain issues of concern and there will be extensive community sensitisation and capacity building for leaders and elders on the administration of TJMs.

Several victims favoured TJMs over the formal justice systems because of the resonance with cultural values, low likelihood of corruption and its capacity to promote reconciliation.¹⁴⁵ A participant in the REDRESS/ESA survey noted that: “In the traditional justice system the elders were used to addressing a problem in a way that would reconcile the

conflicting parties. This was followed by a celebration of bull or goat roasting where the victim and the perpetrator would be reconciled in the process.”¹⁴⁶ Many traditional justice practises exist primarily for the purpose of resolving conflicts within and between communities. As they are designed “not to simply punish an individual perpetrator, but to restore severed social ties, their continued existence, in whatever form, provides an important process for helping mend damaged communities.”¹⁴⁷

In northern Uganda, traditional ceremonies such as *mato oput* or *nyouo tong gweno* had been pivotal in reintegrating formerly abducted persons back into their communities.¹⁴⁸ More than 15,000 former LRA rebels have been reintegrated into their local communities through traditional justice processes, including some senior commanders.¹⁴⁹ Formal recognition of such processes would further enhance their legitimacy in the eyes of the general population.

Victim participants also point to the cost-effectiveness and relevance of TJMs.¹⁵⁰ One local councillor noted that traditional systems were frequently used because they were seen as simple and easy to understand, and the use of the local language means that the process is better understood by the community.¹⁵¹ The inclusive nature of TJMs was also important for victims because they allowed the community to participate, and decisions are made after discussions and consultations have taken place and the truth is established.¹⁵²

There are, however, several disadvantages to the traditional justice system. Some persons consulted by the

¹⁴⁴ JLOS, The National Transitional Justice Policy, June 2019, p. 18.

¹⁴⁵ Compendium of Conflicts in Uganda, p. 255.

¹⁴⁶ Interview with Woman Councillor, Lukodi village, Gulu District, 17 February 2020.
¹⁴⁷ Atim, Teddy, and Proctor, Keith. Modern Challenges to Traditional Justice: The Struggle to Deliver Remedy and Reparation in War-Affected Lango. Feinstein International Center, Tufts University, June 2013, p. 4.

¹⁴⁸ Quinn, Joanna, What of Reconciliation? Traditional Mechanisms of Acknowledgment in Uganda, in J. Quinn (ed.), Reconciliation(s): Transitional Justice in Postconflict Societies, McGill-Queen's University Press (2009), 174-206, p. 188.

¹⁴⁹ Vickery, Matthew. Uganda traditional justice mechanisms must triumph over western interventionism. Open Democracy, 2012; Aljazeera, [Bitter Root](#): two former Lord's Resistance Army commanders seek tribal justice in order to be granted atonement for their crimes, 28 June 2012; BBC News, [Traditional drink unites Ugandans](#), 29 September 2006.

¹⁵⁰ Interview with the Local Council 3 Chairperson, Iceme Village, Iceme Sub-County, 18 December 2019.

¹⁵¹ Ibid.

¹⁵² Interview with the Prime Minister, Alur Kingdom, Arua Municipality, 21 December 2019.

REDRESS team in the Greater North appeared to be concerned about corruption since clan leaders or the elders can decide to favour one party over another and deliver a biased decision.¹⁵³ A survey carried out by the Feinstein Institute in the Lango sub-region in 2013 revealed that many respondents did not fully understand the role of traditional justice mechanisms in addressing serious crimes and violations as envisioned in the Juba Peace Agreement.¹⁵⁴ Some respondents also pointed out that most traditional leaders do not have the competence, skills, capacity and resources to handle cases of serious crimes committed during the conflict and their resulting harms.

The Feinstein survey also found that the informal system had failed to provide any remedy or reparation for victims, with an even more complicated situation for female victims of SGBV.¹⁵⁵ In a more recent poll carried out by the radio station TRAC FM in March 2020 in northern Uganda on ways to improve the effectiveness of traditional justice, 34% of the women from the 10,000+ respondents indicated that involving more women in decision-making would help to strengthen the TJMs. 26% of the women and 22% of the men also advocated for including the youth in these processes.¹⁵⁶

Other inhibiting factors include lack of human and financial resources which make it difficult for the most vulnerable community members to access the services they need. Further, TJMs have an ad hoc nature due to the absence of proper procedural rules, which potentially impacts both the process and the outcomes.

Finally, there is very little evidence of the impact of TJMs in providing the truth around the commission of human rights violations, or in fostering a culture of respect and lasting peace within the affected communities.

¹⁵³ Field consultations in the Greater North for key respondents in Lango, Teso, West Nile and Acholi sub-regions on 16-20 December 2019, 13-17 January 2020, 20-24 January 2020 and 16-20 February 2010, respectively.

¹⁵⁴ Atim, Teddy, and Proctor, Keith. *Modern Challenges to Traditional Justice: The Struggle to Deliver Remedy and Reparation in War-Affected Lango*. Feinstein International Center, Tufts University, June 2013, p. 2.

¹⁵⁵ Ibid.

¹⁵⁶ TRAC FM Poll, What should be done to make traditional justice more effective in your community, March 2020.

6.5 Strengthening Participation in Accountability Processes

Strengthening victim participation in justice processes goes beyond the Kwoyelo and Ongwen cases. There is need to address more systematically the gaps in accountability and victims' access to justice, and concrete steps should be taken to raise awareness amongst victims and affected communities about their rights in formal justice processes.

Participation of victims in both the ICC and ICD contexts could be strengthened by ongoing expertise-sharing between ICC staff in the Victim Participation and Reparations Section, the OPCV, the legal representatives in the Ongwen case, and the relevant staff and counsel at the ICD. Under the principle of positive complementarity this allows the national court to benefit from the best practice and experience of the ICC, while helping ICC staff to develop more intimate knowledge of the local context from local Court staff.

A Poll conducted by TRAC FM in northern Uganda under its Common Matters Programme asked the question: "What should be done to improve access to formal justice among people affected by conflicts?" 26% of the 9,816 respondents indicated that steps should be taken to raise awareness of victims' rights; 24% said that legal services should be brought closer to affected communities; 20% wanted special procedures followed to handle victims' court cases and 30% wanted free legal services for affected persons.¹⁵⁷ The results suggest that the respondents from these conflict-affected communities placed importance on the need for more awareness of victims' rights and the provision of free legal services.

The government must take steps to address the systemic and structural failings in the justice system such as corruption in the justice sector and the delay in the passage of key legislation such as the Witness Protection Act and the Legal Aid Policy which deny victims their rights. This should be coupled with comprehensive awareness cam-

¹⁵⁷ TRAC FM Poll, What should be done to improve access to formal justice among people affected by conflicts, March 2020.

paings to inform victims about the scope of their rights to access justice, truth and reparations.

TJMs can fill many of the gaps in the formal justice processes and ensure the provision of truth and accountability for some of the violations. Although there is broad support among victims for TJMs, some of the measures reinforce patriarchal systems which are inherently biased against women. Additionally, the impact of TJMs in fostering lasting peace within the affected communities is yet unknown. To be effective, resources need to be invested in strengthening these systems to ensure full complementarity with formal justice processes.

More broadly, ensuring accountability includes taking steps to address the root causes of the violations including an analysis of the factors that contributed to past atrocities, as well as the reform of institutions, such as those in the justice and security sectors, to prevent the repetition of past crimes. The draft Policy does not specifically address reform of the security sector (police and military), which has contributed to several of the human rights violations that the country now faces. To address the glaring accountability gap and prevent recurrence of violations, State institutions that contributed to gross violations of human rights must be properly reformed.

7. TRUTH-TELLING



Photo by ESA/REDRESS. Victims of the conflict in Uganda, including survivors of the Barlonyo massacre, get together to discuss issues affecting victims.

While there should be no hierarchy of mechanisms in the TJ process, truth-telling is one of the most important measures for redressing the legacies of abuse and responding to human rights violations that have taken place in Uganda.

Every person has *the right to the truth* about past events concerning the perpetration of heinous crimes, the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes.¹⁵⁸ Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations. In addition to the broader right to truth, victims and their families have *the right to know*, irrespective of any criminal proceedings, the truth about the circumstances

in which violations took place and, in the event of death or disappearance, the victims' fate.¹⁵⁹ The right to truth and the right to know place a positive obligation on the State to provide information to victims, affected communities and the wider public about the violations and abuses that took place during conflict.

7.1 Victims Want the Truth

Victims and affected communities want to hear the truth about the conflict that destroyed their lives and communities, and which has almost obliterated the prospect of a future for their children. In civil society-led consultations, victims have expressed their need to know what happened to their loved ones, to have answers to their ques-

¹⁵⁸ UN Economic and Social Council, Updated Set of Principles, Principle 2.

¹⁵⁹ UN Economic and Social Council, Updated Set of Principles, Principle 4.

“Every county in northern Uganda holds a story of atrocity, a story with no official record, no acknowledgement by perpetrators, and no support for its victims. In researching just three areas where massacres had occurred, researchers were unable to obtain definitive numbers and names of the dead or missing, where records have been improperly recorded, lost, or exist in memory only. What does exist is the testimony of survivors, partial, informal records of NGOs, elders and government officials, and the bones of the dead. Given proper attention and time, these could provide important evidence in providing a detailed account of what happened in northern Uganda during the course of the conflict. Most importantly, the survivors of these atrocities want to be involved in establishing the truth themselves, and see this process as vital to moving beyond the conflict. More than 90% of the population surveyed stated they wanted some form of truth-telling process. In particular, people want to know why this war happened, who is to be held accountable and what has happened to their loved ones who are missing.”

****The Cooling of Hearts: Community Truth-Telling in Northern Uganda.***

tions about the war and the violations that took place.¹⁶⁰ They want to understand the root causes of the conflict in order to prevent future atrocities.¹⁶¹ For many victims in northern Uganda, “the truth-telling process should span from 1986 until the present day as there has not yet been a truth-telling forum in northern Uganda.”¹⁶²

The need to know the fate of the missing and to have closure are among the most pressing concerns of some victims in the North. According to a 2007 research survey carried out in northern Uganda, the relatives of persons who have gone missing continuously search for their whereabouts or seek to learn of their fate.¹⁶³ More than 13 years later, victims

who spoke with the REDRESS team echo the same desperate need to know the whereabouts of their missing family members. Victims also point to the truth-telling process as a way to obtain both symbolic and material reparations. There was an expectation and desire to be compensated for the deaths of family members, both symbolically (through memorials and shrines, for example) and materially (*culu kwor*, compensation payment for death), as redress for the loss of life. Monetary assistance was also needed to search for missing children and other abductees.¹⁶⁴ For many victims and affected communities, truth-telling is key to true forgiveness, healing and reconciliation.

Victims want a truth-telling process that is gender-balanced and inclusive, and which includes leadership at the highest level, victims, perpetrators and rebel leaders.¹⁶⁵

¹⁶⁰ Avocats sans Frontières and Justice and Reconciliation Project, *Victims' Views on the Draft Transitional Justice Policy for Uganda: Acholi Sub-Region*, Victim Consultation, 5 June 2013, p. 11.

¹⁶¹ Anyeko, K., Baines, E., Komakech, E., Ojok B., Owor Ogora, L., Victor, L., *The Cooling of Hearts: Community Truth-Telling in Northern Uganda*, Human Rights Review 1 (13), 2012, (Cooling of Hearts), p. 114.

¹⁶² Ibid.

¹⁶³ Cooling of Hearts, p. 113.

¹⁶⁴ Ibid.

¹⁶⁵ Compendium of Conflicts in Uganda, p. 251.

The overarching desire of most victims is for a non-politicised process in which there will be no negative backlash for what is said, and the protection of witnesses is guaranteed. In fact, many victims favoured regional or community grassroots truth-telling meetings to allow community members to freely express themselves.¹⁶⁶ A community-based process was considered essential for engaging the next generation in learning about what happened, and to help them become advocates for peace in the future.¹⁶⁷

Victims also suggested that community documentation projects need to be pursued alongside commemoration ceremonies and mediation and reconciliation processes currently being conducted by some community structures like the District Reconciliation Peace Teams. They would like these efforts linked to a national truth-telling process so their suffering would be acknowledged at the national level.¹⁶⁸ A few civil society organisations including RLP, JRP and Acholi Religious Leaders Peace Initiative among others, have initiated memorialisation projects which include collecting and documenting testimonies of victims, archiving them and exhibiting them to the public.¹⁶⁹

7.2 Truth Commission or Another Mechanism?

Uganda has had two Truth Commissions or Commissions of Inquiry, neither of which have had any significant impact.¹⁷⁰ Each of these commissions focused on violations perpetrated by the previous regimes and not their own. In 1974, President Idi Amin Dada established the first commission “to investigate accusations of disappearances at the hands of the military forces during the period 1971–1974. The commission heard 545 witnesses and held public hearings.”¹⁷¹ However political interference and intimidation

prevented the implementation of the recommendations contained in the commission’s report.

The second Commission of Inquiry was established in 1986 by President Yoweri Museveni to investigate the human rights violations from 1962 to 1986 to forge a path to national healing. This commission issued a report in 1994, but it was not widely distributed.¹⁷² Most of the perpetrators have never been held accountable for the alleged crimes, and many victims have never been recognised nor received justice.¹⁷³ One positive outcome of the Museveni Commission was the establishment of the Uganda Constitutional Commission and the promulgation of the new Constitution in 1995.

The Juba Agreement and its Annexure as well as the NTJP refer to the establishment of a “body” whose mandate includes “considering and analysing any relevant matters including the history of the conflict and inquiring into the manifestations of the conflict.”¹⁷⁴ The Annexure to the Principal Agreement on Accountability and Reconciliation clearly set out the terms of reference (TOR) of such a truth-seeking body which include considering and analysing relevant matters including the history of the conflict; inquiring into human rights violations committed during the conflict, giving particular attention to the experiences of women and children; promoting truth-telling in communities and in this respect liaising with any traditional or other community reconciliation interlocutors; and making recommendations for the most appropriate modalities for implementing a regime of reparations.¹⁷⁵

The NTJP avoids reference to the detailed TOR of the Annexure to the Principal Agreement, but acknowledges that “truth-seeking processes are one of those justice processes that needs both communal and political acceptance due to its sensitive nature.”¹⁷⁶ The policy document admits that despite the existence of conflicts since 1986 there had been no truth-seeking process since that time.

¹⁶⁶ Cooling of Hearts, p.113.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Oola, Stephen, Reparations in Uganda, p. 27. According to the author, the RLP’s National Memory and Peace Documentation Centre is conceived of as a “history clinic.” Based in Kitgum, the facility is a repository of victims’ testimonies and conflict-related artifacts.

¹⁷⁰ Truth Commissions are official, nonjudicial bodies of a limited duration established to determine the facts, causes, and consequences of past human rights violations, ICTJ, *Truth Seeking: Elements of Creating an Effective Truth Commission*, 18 March 2013, p. 9.

¹⁷¹ Huskamp Peterson, Trudy, *Final Acts, A Guide to Preserving the Records of Truth Commissions*, 2005, p. 79.

¹⁷² Ibid.

¹⁷³ ICTJ Uganda, *Confronting the Past: Truth Telling and Reconciliation in Uganda*, ICTJ Briefing, September 2012, p. 4.

¹⁷⁴ Annexure to the Agreement on Accountability and Reconciliation, clause 4. Principal Agreement on Accountability and Reconciliation, clauses 2.2 and 2.3.

¹⁷⁵ Annexure to the Agreement on Accountability and Reconciliation, clause 4.

¹⁷⁶ JLOS, *The National Transitional Justice Policy*, June 2019, p. 12.

Most CSOs in Uganda fully support the establishment of a truth-seeking body but also have different views concerning the form it should take. A civil society initiative spearheaded by the RLP as part of its Beyond Juba project proposed the establishment of a “National Reconciliation Forum” that would coordinate bodies charged with implementing comprehensive solutions and accountability and reconciliation in Uganda.¹⁷⁷ The UVF supported the idea in principle but were concerned that the designation of the truth-seeking body as a forum was not authoritative enough, and proposed that the name should be changed to the Uganda National Truth and Reconciliation Commission.¹⁷⁸

The ICTJ has proposed a mixed-model approach, namely a multilayered truth-telling process comprised of both community and national processes that are mutually reinforcing rather than mutually exclusive. In their view, “Uganda should not necessarily seek to follow any of the models that have been adopted in other countries.”¹⁷⁹ Given the strong views from victim groups about a community truth-telling process, REDRESS considers that a mixed model approach provides an effective compromise. However, the community process should be part of a comprehensive, transparent and inclusive national process.

7.3 Moving Forward

While there does not appear to be political interest, the need for a national truth and reconciliation body in Uganda which is legally empowered to uncover, examine and document patterns of human rights violations that victims, primarily in the North, have experienced, is still urgent.¹⁸⁰

The scope of the mechanism’s mandate needs to be determined, specifically whether it will “only [cover] post-1986 episodes of massive and systematic violations or continue the work of previous truth commissions to address episodes of human rights abuse that predate 1986.”¹⁸¹ A truth-telling

mechanism and a reparations programme will need to take into account diverse conflict periods, the diversity of victims, and the legacy of unredressed violations.¹⁸²

The type of body—truth commission or forum—may be subject to debate, but its mandate, terms of reference and legal status should clearly outline the scope of its operational responsibilities. The mechanism should provide a safe and supportive environment for victims to testify about the violations they have suffered and gain some satisfaction; provide an opportunity for perpetrators to break with the past, confess and reflect upon violations; and contribute to justice and accountability by revealing the truth and providing the country with a collective narrative.¹⁸³

A truth-seeking body will be key to bridging the accountability gap and addressing issues that will not be covered by other accountability measures.¹⁸⁴

The AU TJ Policy provides important benchmarks and standards that should guide the work of a Ugandan national truth commission, if one is established, including the need for independent and impartial commissioners; a fact-finding mandate with sufficient investigative powers to carry out their work; and the power to ensure that victims can speak out even in the face of official denials by the State.¹⁸⁵

Any truth-telling process will undoubtedly be politically sensitive given the prevailing accountability gap in relation to government forces and the still unaddressed reparative needs of victims. A successful national truth-seeking process must be driven and supported by the State and should ultimately catalyse a broader process of institutional reform which addresses the root causes of the conflict in order to prevent recurrence. However, it remains to be seen whether there is sufficient political will to unearth what appears to be buried in the past. Given the history of previous commissions in Uganda, it is far from guaranteed.

¹⁷⁷ See The National Reconciliation Bill 2009.

¹⁷⁸ UVF, *Statement on the National Reconciliation Bill 2009*, 4 November 2009.

¹⁷⁹ ICTJ Uganda, *Confronting the Past: Truth Telling and Reconciliation in Uganda*, ICTJ Briefing, September 2012, p. 5.

¹⁸⁰ *Ibid.* p. 4.

¹⁸¹ Carrington, Graham, and Naughton, Elena, *Unredressed Legacy: Possible Policy Options and Approaches to Fulfilling Reparations in Uganda*, ICTJ, December 2012, p. 18.

¹⁸² *Ibid.* p. 17.

¹⁸³ AU, *Transitional Justice Policy*, February 2019, para. 52.

¹⁸⁴ Acirokop, Prudence, *A truth commission for Uganda? Opportunities and challenges*, *African Human Rights Law Journal*, 2012, pp. 417-447 and p. 421; OHCHR, *The Dust has not yet settled*, pp. 14-15.

¹⁸⁵ AU, *Transitional Justice Policy*, February 2019, para. 53.

8. PRIORITISING REPARATIONS



Photo by ESA/REDRESS. Kenya Luke Alana lost two of his children, his home and his small business during the conflict. He has not received any reparations to date.



Watch Kenya Luke Alana's story on YouTube:
<https://youtu.be/ZW8ovXekgx8>

In Uganda, the vast majority of victims of serious conflict-related human rights violations are yet to realise their internationally-acknowledged right to remedy and reparation. Numerous surveys conducted by various actors attest to the urgent need for reparations to address the physical, material, economic and psychological suffering of Uganda's victims.¹⁸⁶ Government efforts at reconstruction, recovery, humanitarian, and development programs for the north and other conflict-affected parts of the country have been driven by stabilisation, devel-

opment, and poverty-reduction objectives, rather than justice and reparations goals.¹⁸⁷

The NTJP acknowledges the importance of reparations in bringing about post-conflict healing and reconciliation and addressing longstanding issues including the plight of children born of war, outstanding land disputes, socio-economic challenges, stigma and marginalisation of the victims.¹⁸⁸ However, moving beyond acknowledgment will be a complex undertaking given the scale of the human rights violations, the multiplicity of conflicts and the number of victims.

¹⁸⁶ See for example, OHCHR, *The Dust has not yet settled*; ASF, *A Beggar has no Choice*; UVF, *Victims centred reparations programming: The role of the victims*; ASF, REDRESS, *International Conference on Reparations: Redefining Complementarity with the International Criminal Court*, 2016.

¹⁸⁷ Carrington, Graham, and Naughton, Elena, *Unredressed Legacy: Possible Policy Options and Approaches to Fulfilling Reparations in Uganda*, ICTJ, December 2012, p. 1.

¹⁸⁸ JLOS, *The National Transitional Justice Policy*, June 2019, p. 13.

This chapter discusses the key issues which are critical to establishing a victim-centric national reparations programme in Uganda, as well as why engaging with victims and including them in both design and implementation will be crucial to its success.

Need for a Comprehensive National Reparations Programme

The NTJP notes that an “appropriately conceptualised” and “well-developed” reparations programme is needed to guide the government’s intervention in the affected areas and to contribute to broader development and security goals while meeting the needs of the affected communities.¹⁸⁹ To achieve this ambitious goal, the NTJP proposes that legislation must be enacted to guide the process; it should be financed from resources drawn from the consolidated fund and other development funds; a structure should be established to implement it and a reparations programme must be designed.

The Juba Agreement was not prescriptive concerning the government’s approach to setting up a reparations mechanism but recommended a range of reparative measures which could be awarded individually or collectively to victims “through mechanisms to be adopted upon further consultation.”¹⁹⁰ However, the Annexure to the Agreement mandated the government to review the financial and institutional requirements (and therefore implications) for setting up an effective reparations mechanism before proceeding.¹⁹¹

To ensure legal certainty and sustainability, the reparations programme should have a legal framework as “domestic reparation programmes tend to be weak, fragile and highly dependent on political will and on the context in which they are implemented.”¹⁹² The challenge is to

avoid a complex, technical and bureaucratic legal process which achieves little and only serves to further delay the award of reparations and the suffering of victims.

A national reparations programme should be linked with other TJ measures, including prosecution, truth-telling, and institutional reform, without which they will be “inherently flawed.”¹⁹³ It should however be distinguished from court-ordered reparations (although it may complement them) which are much narrower in scope and have more evidentiary rules which govern their application.¹⁹⁴

Reparations ordered by an international court such as the ICC will also be a relevant consideration in the event that Dominic Ongwen is convicted and a reparations award is made. In that event, the ICC TFVs will begin implementing reparations, raising important questions concerning synergies and potential tensions between a national reparations programme and ICC-ordered reparations. If not appropriately managed, the implementation of reparations in the areas that are within the ICC’s jurisdictions can fuel tensions amongst different victims’ groups.

8.1 Centrality of Victims

Victims must play an integral role in the design and implementation of a national reparations programme in Uganda. The process of participation in itself provides reparative benefits for victims and is vital for their recognition as rights-holders. Local consultation further enables a better understanding of the dynamics of past conflict, patterns of discrimination and types of victims.¹⁹⁵

During one forum in Barlonyo, the site of one of the most horrific LRA attacks on an internal displacement camp in

¹⁸⁹ Ibid. pp. 13 and 20.

¹⁹⁰ Agreement on Accountability and Reconciliation, paras. 9.1 and 9.2.

¹⁹¹ Annexure to the Agreement on Accountability and Reconciliation, para. 17.

¹⁹² UNGA, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/HRC/42/45, 11 July 2019, para 34. Various States have adopted legislation underpinning their domestic reparation programmes, such as Iraq with Law 20 on Compensation for Victims of Military Operations, Military Mistakes and Terrorist Actions, the Philippines with the Human Rights Victims Reparation and Recognition Act, Peru with the Comprehensive Reparations Plan, and Colombia with the Victims and Land Restitution Law among others.

¹⁹³ UNHCHR, *The Dust has not yet settled*, p. 19.

¹⁹⁴ Victims must demonstrate a link between the charges for which an accused person has been convicted and the harm suffered. Section 128(1)(b), *Trial on Indictments Act (TIA)*. See also section 126 (1) of TIA which provides that: “When any accused person is convicted by the High Court of any offence and it appears from the evidence that some other person, whether or not he or she is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed, the court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation as the court deems fair and reasonable”.

¹⁹⁵ Nakazibwe, Florence, Considerations for a programme of reparations in Uganda, in ASF, REDRESS, *International Conference on Reparations: Redefining Complementarity with the International Criminal Court*, 2016, p. 20.

northern Uganda, victims noted that participation in the implementation of reparation measures is key. According to the victims, the monument placed by the government in the middle of the memorial site, refers to 121 deceased victims. The Barlonyo victims were adamant that more than 300 victims were massacred that day and hastily buried. In their view, the fact that the monument reflects an inaccurate number is an attempt by the government to cover up what happened and an insult to the memory of the departed. Thus, a monument that was meant to honour the victims was perceived as a manipulation of the truth and a revictimising measure.

Communities in northern Uganda support the inclusion of victims in budget and planning processes to address victims' needs at the sub-county level. In a recent TRAC FM survey in April 2020 with more than 10,000 respondents (24% female and 76% male) in Northern Uganda, 31% of the respondents noted that victims should be involved in budget and planning at the sub-county levels.¹⁹⁶ 35% felt that women, children born in captivity, the elderly and persons with disabilities should be prioritised to benefit from post-conflict reparations programmes.¹⁹⁷

Yet the process should not delay the provision of reparations. A 2017 survey by ASF in select districts in northern Uganda found that although victims need to have reparations and it is their right, engaging in constant dialogue without tangible results is taxing for victims, many of whom are struggling to meet their daily basic needs for food, shelter and education.¹⁹⁸ The report noted that if the provision of reparations (and not only the discussion about it) is not prioritised, victims will also find it difficult to participate in other transitional justice mechanisms.¹⁹⁹

The government must therefore ensure that processes to engage victims are tailored to the realities they are facing. Victims will need to have clear information if they are to

engage effectively. As one commentator noted, "engagement should focus not only on what type of reparations victims may want or need, but also on the reparations process itself, throughout the process. There will be hard choices about what can be achieved with reparations; engaging with the victims on those hard choices can empower them, get their buy-in, and will help to validate the results."²⁰⁰

8.2 Provide Timely and Appropriate Measures

A REDRESS-commissioned survey with key informants in the affected sub-regions of West Nile, Lango, Acholi and Teso in January and March 2020 found that over 90% of affected victims had not received any form of reparations. Several of the respondents felt that the reason is because the Government of Uganda has never given victims' issues the priority they deserve.

Given the magnitude of the gross and systematic human rights violations experienced by victims in Uganda, the scope of victimisation and diversity of needs, the reparations programme should provide a range of benefits. Findings from diverse studies and consultations during victims' forums conducted by REDRESS and ESA in 2018-2019 indicate that victims desire both material and symbolic forms of reparation, in particular medical/rehabilitative, psychosocial and livelihood/economic support in addition to symbolic forms such as apologies and other forms of satisfaction.

Compensation: An assessment of results from different surveys indicates that the majority of victims want to be compensated for the loss that they have suffered and view such economic reparations as key to sustaining their livelihood.²⁰¹ Many request start-up capital for livelihood support initiatives or compensation for cattle and proper-

¹⁹⁶ TRAC FM Poll, *What should be done to address the immediate needs of victims of armed conflict*, April 2020.

¹⁹⁷ Ibid.

¹⁹⁸ ASF, *A Beggar has no Choice*, p. 15.

¹⁹⁹ Ibid.

²⁰⁰ Ferstman, Carla, Key note: *International framework for reparation*, in ASF, REDRESS, *International Conference on Reparations: Redefining Complementarity with the International Criminal Court*, 2016, p. 14.

²⁰¹ See for example, ASF, *A Beggar has no Choice*, pp. 13-14; Compendium of Conflicts in Uganda, p. 260; ACCS, *Northern Uganda Conflict Analysis*, pp. 33-34; UNHCHR, *The Dust has not yet settled*.

“ I was abducted in 1994 after P.7 and I stayed in the bush for 11 years. I returned in the year 2005 with many other abducted women. After getting psychosocial support, we were released back into the community but stigmatization and rejection resumed thereafter. The family did not accept the children that we produced from the bush and did not consider these children as people who can inherit some land. The biggest pain is that the Government did not do enough to protect us and no efforts to reach the Parliament have yielded any fruit. When we returned from the bush, I was given an Amnesty Certificate yet I was not a rebel and nobody explained to me what it meant. We the victims do not see any prioritization of the issues affecting victims on the floor of parliament.”

Victim leader, Uganda Victims and Survivors Network, Acholi sub-region.

ty lost during past conflict. Victims want compensation to be complemented by other mechanisms in a comprehensive approach to reparations.²⁰²

Restitution: Many victims prioritised restitution or restoration to the life they previously enjoyed prior to the conflict including return to their family, clan or community, and the opportunity to claim lost or stolen property and access educational opportunities.²⁰³ The lack of education and stigmatisation of children born of war remain pressing issues.²⁰⁴ Without identity documents, many were unable to access schools.²⁰⁵ For many SGBV victims, their priority for reparations is now for their children to access an education. During a forum in Gulu, one SGBV survivor noted: “It is too late for me now to try to get an education but what about my children. I do not want them to have the same future that I had.”²⁰⁶

Satisfaction: Symbolic measures such as memorial sites, decent burials, apologies and acknowledgment of suffering also have important reparative value for victims.²⁰⁷ For example, the plight of the missing and limited platforms from which to articulate their concerns have left the families silenced and disempowered.²⁰⁸ Memorial initiatives initiated by local community leaders or civil society organisations have helped families to heal, but there has been little support or interest from the central government. One such initiative is located at Dure along the Gulu-Kitgum highway in Pader district, spearheaded by the clan chief of Paibwore with support from the RLP. The community built a “missing person’s hut” in which the names and details of some missing persons are stored. Various traditional rituals are performed by calling the names of the missing persons, an act traditionally performed to instigate closure for the families and as a healing therapy.²⁰⁹

Rehabilitation: Participants in every REDRESS, ESA and UVF victim forum highlighted the persistent need for rehabilitation, as well as medical services to treat wounds and deal with the psychosocial effects of the war. Some

²⁰² Compendium of Conflicts in Uganda, p. 260.

²⁰³ Ibid.

²⁰⁴ See Annex A to this report- Letter to Honourable Speaker of Parliament, Rebecca Kadaga, 18 June 2019.

²⁰⁵ Article 18 of the Constitution of the Republic of Uganda provides that every birth and marriage that occurs in Uganda shall be registered under the Registration of Persons Act (2015) (RPA). Section 34 of the RPA which states that the father of the child must appear in person or that other means of establishing paternity must be presented, creates significant hardship for children born of war to be registered and obtain a birth certificate because in circumstances of forced marriage and sexual slavery where girls may have been ‘married’ to different commanders, the paternity of the child is not always known.

²⁰⁶ REDRESS, ESA Victims’ forum, 1 August 2018.

²⁰⁷ Compendium of Conflicts in Uganda, p. 261.

²⁰⁸ RLP, *Are the Missing Persons the Victims of Conflict we Forget?*, 30 October 2019.

²⁰⁹ Ibid.

assistance in the form of medical and psychological support has been provided to victims in specific conflict-affected areas through the implementation of the ICC TFV's assistance mandate. However, this is limited as the local implementing partners with whom the Trust Fund works are bound by the strict eligibility date for the assistance mandate which requires that the beneficiary demonstrate that the harm they suffered occurred after July 1, 2002.²¹⁰ For victims and the implementing bodies, these cut-off dates are often arbitrary, may not correspond to the totality of the harms experienced, and will often exclude victims' groups on the sole basis that they suffered harm before an arbitrary date. It is very difficult for staff to implement this provision, given the significant need of those who were harmed prior to 2002 and the absence of any comprehensive reparations programme by the Ugandan government.²¹¹

There were mixed views concerning what the precise modalities of the reparations awards should be. The ASF survey reported that some victims preferred individual reparations awards in order to give them flexibility in determining how to use the compensation they received, and to eliminate the "middle-man."²¹² Most victims supported the provision of collective reparations in the form of medical centres, hospitals and schools, scholarships for their children or elimination of school fees. Good roads and clean water were also seen as important because many of the physical infrastructures and communal areas were destroyed during the conflict.²¹³

Provision of interim assistance is urgently required. In 2014, the UVF called upon the government to urgently provide interim assistance to specific categories of vulnerable victims including SGBV victims and their children born of war. The UVF noted that interim reparations would "restore hope and dignity to the most vulnerable

victims who are in need of immediate support, whilst the policy development continues for a holistic government intervention."²¹⁴ More than 20 years after the end of the war, very little urgent assistance has been provided. Many victims continue to live with unresolved medical issues, some of which have resulted in physical disability.

For example, pending the passage of the TJ Act, to address the challenges currently being faced by children born of war in Uganda, a national dialogue should be held on the issue of children born of war involving the government, victims and victim communities in the affected regions, civil society organisations, grassroots organisations, and other concerned stakeholders. This should lead to a comprehensive national policy to register all children born of war within the next five years and a national multi-sectoral plan of action to immediately address the social, economic, psychosocial and educational needs of children born of war pending the passage of the TJ Act.

In addition, there should be an amendment to Section 34 of the Registration of Persons Act (2015) to eliminate the provisions that discriminate against the registration of children who do not meet the requirements set in the legislation. There should be commitment by all relevant government agencies to bring existing legislation into greater harmony with the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of Children and Ugandan Law, and ultimately to strengthen the protection of the rights of children in Uganda.

8.3 Identification of Eligible Victims

One of the most difficult tasks will be the process of identifying eligible beneficiaries and determining eligibility. The NTJP refers to the absence of a database with information about the beneficiaries, and the need for a comprehensive mapping exercise. Important considerations will be determination of eligibility criteria, whether to rely on existing data and the scope of the documentation process.

²¹⁰ Dutton, Anne and Ni Aolain, Fionnuala D., *Between Reparations and Repair: Assessing the Work of the ICC Trust Fund for Victims Under Its Assistance Mandate*, 24 September 2018, p. 58. The Trust Fund's mandate is limited to providing assistance to victims who fall within the Court's jurisdiction. The Rome Statute came into effect on July 1, 2002, thus the Trust Fund's work only applies to persons who can prove that they suffered harm after that time, which for victims is an artificial cut-off date.

²¹¹ Ibid.

²¹² ASF, *A Beggar has no Choice*, p. 17.

²¹³ Ibid. p. 23.

²¹⁴ UVF, *Transitional Justice Working Paper Series 2014, Restoring Hope for Humanity through Interim Reparations*, August 2014, p. 1.

While mapping is important, there are genuine concerns that an extensive and bureaucratic process could further delay the provision of reparations to victims. Absent the provision of interim reparations, there is a real likelihood that some victims “will not be willing to engage constructively in any consultations or mapping exercises without at least receiving some form of assistance.”²¹⁵ Furthermore, it is not clear who will be responsible for carrying out the mapping exercise; whether it will be a government commissioned activity with definitive timelines, or whether CSOs will be tasked with the responsibility. Where CSOs are called upon to 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.

According to ASF, in light of victims’ obvious frustrations with multiple consultations which have yielded little tangible reparative benefit, mapping should be approached with caution. They suggest that a better approach would be to gather relevant data from the several studies which have previously been undertaken by diverse actors documenting the scope and gravity of the violations and victims’ current needs.²¹⁶

In addition, the scope of the mapping exercise needs to be determined. The NTJP does not limit its scope to the latest civil war in northern Uganda, but supposedly covers all past conflict situations in the country, thus broadening greatly the universe of victims. The National Reconciliation and Transitional Justice Audit documented more than 125 conflicts from the pre-colonial and post-colonial period in Uganda, including the 1986-2006 war in the Greater North. Much of the focus has been on reparations for the war victims in the North and the government will therefore need to determine whether to prioritise victims of the war in the Greater North, before moving to address victims in other areas, some of whom have never received reparations.

²¹⁵ ASF, *A Beggar has no Choice*, p. 15.

²¹⁶ Ibid. ICTJ also suggests that much of the mapping for violations that took place in the North has already been done. Reference may be made, for instance, to the categories outlined in the Office of the UN High Commissioner for Human Rights (OHCHR) report “The Dust Has Not Yet Settled: Victims’ Views on the Right to Remedy and Reparation.”

Mapping will hopefully assist in determining issues of sequencing (which reparative needs should be addressed first) and prioritisation (which victims should be attended to as a matter of priority and how).

8.4 Ensure Good Governance and Sustainability

Effectiveness and sustainability of a national reparations programme in Uganda will require a solid governance structure, political support and sustainable financing. There is need for administrative leadership by a designated body and clarity concerning how the administrative body will engage with victims, civil society and other stakeholders and facilitate their participation.

The NTJP proposes that the Amnesty Commission will be tasked with overseeing the implementation of the Policy. It is not clear whether this implies that a separate Reparations Commissioner will be appointed who is specifically responsible for implementing the reparations programme.

Further, given JLOS’ indication of an intra and inter-sectoral approach to implementation of the NTJP, there should be clarity concerning the cooperation and coordination of different government Ministries (Gender, Health, Education) that will play an important role in administering some aspects of reparations.

Adequate and sustainable funding is crucial for the success of a reparations programme. The NTJP says that it will be funded by the Government of Uganda, development partners, private sector and civil society organisations. Sustainable funding of reparations is heavily dependent on the level of political commitment and requires innovation including through asset recovery.²¹⁷ The government should show its commitment to reparations by allocating resources annually from the national budget to fund the reparations programme as a way of ensuring its sustainability.

²¹⁷ Nakazibwe, Florence, Considerations for a programme of reparations in Uganda, in ASF, REDRESS, *International Conference on Reparations: Redefining Complementarity with the International Criminal Court*, 2016, p. 22.

8.5 Development and Reparations

Several development, recovery and reconstruction initiatives in the Greater North of Uganda such as the Peace, Recovery and Development Programme (PRPD) I, II and III and the Northern Uganda Social Action Fund (NUSAF) I and II undertaken by the government have been mistakenly considered as reparations. These recovery programmes are often funded by the government with the assistance of development partners.²¹⁸ Such projects have neither addressed victims' reparative needs nor targeted vulnerable victims.²¹⁹ NUSAF I, for example, was said to be instrumental in creating a platform in which communities became active players in ensuring decentralisation of service delivery, but was criticised for not reaching intended beneficiaries, and suffered from corruption and lack of accountability of funds.²²⁰ The PRDP, which followed NUSAF II, was also affected by corruption allegations, inadequate staffing and lack of accountability despite being aimed at rebuilding physical security, health, education and construction of water sources in the war-affected areas. Again the needs of victims were not specifically targeted despite being tangentially impacted by the programmes.²²¹

It is possible for development efforts to further reparative goals. For example, in the Greater North where women were disproportionately affected, a gender-transformative approach to land restitution could include amending property and inheritance laws to allow women to benefit from land restitution. While legal reform would redress the gendered inequalities in land ownership, these reparative efforts should be complemented by a targeted development strategy, including support to new women land owners, necessary infrastructure, access to micro-credit, markets and economic and livelihood development skills.²²²

²¹⁸ Oola, Stephen, *Reparations in Uganda*, p. 24.

²¹⁹ Otim, Michael and Kasande, Sarah Kihika, *On the Path to Vindicate Victims Rights in Uganda: Reflections on the Transitional Justice Process since Juba*, ICTJ Briefing, June 2015, p.9. Other programmes included the Karamoja Integrated Development Programs, Karamoja Livelihoods Programs and Agricultural Livelihood programme.

²²⁰ Oola, Stephen, *Reparations in Uganda*, p. 24.

²²¹ Ibid.

²²² UNDP and UN Women, *Reparations, Development and Gender: Report of the Kampala Workshop*, 1-2 December 2010, p. 3.

8.6 Way Forward

In his report on practical experiences of domestic reparations programmes, the Special Rapporteur noted that States often act as if reparation were a policy choice, instead of the fulfilment of an obligation owed to victims as a result of an unlawful breach of international and domestic law.²²³

In Uganda, there has been insufficient political leadership in making reparations for human rights violations a priority. The length of time that it has taken for the Policy to move beyond draft stage, for some measure of interim reparations to be provided for the most urgent cases and the absence of a clear national budgetary commitment for transitional justice processes speaks volumes. Donors fund many of the transitional justice, accountability, and reparations efforts, while the national budget shows other priorities. This also affects the sustainability of any of those efforts.

Reparations for victims in Uganda must be prioritised and while connected to other transitional justice measures, should not be dependent on their implementation in order to proceed. The failure to provide reparations is a potential driver of conflict, and taking concrete steps towards providing reparations is key to conflict-prevention. Community representatives in Teso talked about “unresolved legacies of past violence that, if unaddressed, will trigger new conflict.”²²⁴ They described palpable tensions between “victims and perpetrators living side by side in the absence of reparations” that are hampering peace and stability in many communities.²²⁵ In Bukedia, the issue of inadequate compensation for ex-combatants and for cattle stolen during the LRA war is also a significant driver of conflict in the sub-region.²²⁶

A reparations programme must aim to be comprehensive and extend benefits to the victims of all the violations that

²²³ UNGA, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/HRC/42/45, 11 July 2019, para. 28.

²²⁴ ACCS, *Northern Uganda Conflict Analysis*, September 2013, p. 33.

²²⁵ Ibid.

²²⁶ Ibid. p. 53.

may have taken place during the conflict. To truly achieve comprehensiveness, a reparations programme must define from the outset the human rights violations that are to be included and it must be transparent about those that will not.²²⁷ Understanding the inherent limitations of any programme is likely to help manage expectations and ensure effectiveness.²²⁸

Finally, for reparations to be meaningful and effective, victims must be involved in their design and implementation and their views, needs and expectations must be taken into account at every phase of the process. The implementation of reparations must lead to meaningful redress for victims and encourage the prevention of future violations in Uganda.

²²⁷ Jordash, Wayne, Closing recommendations, in ASF, REDRESS, International Conference on Reparations: Redefining Complementarity with the International Criminal Court, 2016, p. 56.

²²⁸ Ibid.

9. MOVING THE PROCESS FORWARD



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?>

9.1 Timely Implementation of the Policy

According to JLOS, the NTJP will be executed under a multi-sectoral, multi-dimensional approach with a cohesive implementation arrangement of various stakeholders. The TJ mechanisms will operate in a complementary manner, with victims/participants approaching the desired mechanism as a first justice option. Matters of integration and complementarity of the mechanisms will be detailed in the TJ Act which is yet to be drafted. Implementation will be led by the Ministry of Internal Affairs and the Ministry of Justice and Constitutional Affairs.

Other government ministries including health, education and sports, gender, labour and social development will participate in TJ interventions that align with their mandate. Specifically, the Policy will be implemented by the Amnesty Commission, within the Ministry of Internal Affairs, which will be strengthened for that purpose. Their current mandate will be expanded to consider reparations, TJ mechanisms, reconciliation and nation building.

The implementation phase is likely to be a further protracted process particularly if the government is not incentivised to ensure the timely passage of the TJ Act and begin to put its provisions into practice. JLOS promises that space will be made for the participation of faith-

based organisations, civil society, private sector organisations, development partners, traditional and cultural institutions, and academic and research organisations. No specific mention has been made of the participation of victims and victim-led groups at this stage, a particularly crucial phase for their engagement.

However, even before the Act is passed, JLOS needs to urgently convene a national dialogue on the issues which will be considered by Parliament to allow victims to directly engage with the process. Civil society should actively support victims' efforts to present their views to the Ministry of Internal Affairs and other relevant stakeholders.

9.2 Sustaining Transitional Justice in Uganda

The sustainability of transitional justice in Uganda will depend on three key factors: political will, effective engagement of victims and civil society organisations, 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. Some of the donors that have supported TJ in the past have shifted to development in their most recent strategies. The Ugandan government signalled this shift, by making no reference to TJ in its Vision 2040 document, with only passing reference to the conflict in the North, and no mention of redressing conflict-related issues of the past.²²⁹ The Vision 2040 is a development policy framework, conceptualized around strengthening the fundamentals of the economy to harness the abundant opportunities around the country.²³⁰

ICTJ cautions that "overreliance on donor aid to fund the justice sector, and in particular transitional justice, could have a devastating impact on the transitional justice process should donors reduce or withdraw their funding."²³¹

²²⁹ Bernath, Tania, Off the Agenda as Uganda moves towards Development, in *Transitional Justice, International Assistance, and Civil Society: Missed Connections*, Paige Arthur and Christalla Yakinthou (Eds.), Cambridge University Press, 2011, (Off the Agenda), p. 129.

²³⁰ *Uganda Vision 2040*.

²³¹ Otim, Michael and Kasande, Sarah Kihika, *On the Path to Vindicate Victims Rights in Uganda: Reflections on the Transitional Justice Process since Juba*, ICTJ Briefing, June 2015, p. 9.

To ensure sustainability, TJ needs to be mainstreamed into the government's broader programmatic agenda, so that it can be effectively implemented.

Uganda has a large bilateral and multilateral donor community including the World Bank and the United Nations agencies, USAID, DFID, the EU, including its member states, and Japan as the largest bilateral donors. In addition, there are thousands of international and local non-governmental, private-voluntary and faith-based organisations carrying out development activities at different levels.

In general, donors have engaged in several coordinated strategies in Uganda. The PRPD provides the overarching framework for strategy and decision-making around funding in the North, to which donors have aligned their development strategies.²³² In addition to the Democratic Governance Facility (DGF) which funds country-wide work, there is the JLOS Development Partners Group which includes agencies which support JLOS through various mechanisms including sector budget and support. The group includes The Netherlands, Ireland, Denmark, Norway, Sweden, Austria, Germany, OHCHR, UNDP, UNICEF, ICRC, UN Women, UN FPA and US AID. The UK and the EU Delegation participate as non-contributing members.²³³

Donors have engaged on TJ particularly in relation to criminal justice. Funding JLOS has always been a donor priority. Significant funds were poured into the War Crimes Division (as the ICD was known when first established). It received direct funding from donors and funding was also poured into JLOS' budget. Donors have not driven the TJ agenda, waiting instead for the finalisation and development of the NTJP.²³⁴ However, some development partners have reportedly complained that it is not clear whether the State or civil society are taking the lead on transitional justice in Uganda.²³⁵ Given the

²³² Bernath, Tania, Off the Agenda, p. 124.

²³³ Ibid. p. 125.

²³⁴ Ibid.

²³⁵ Ibid. p. 129.

length of time that the process has taken, donors have effectively begun to shift priorities.

It is essential that the diplomatic missions in Uganda continue to advocate for a space for victim-lead groups and CSOs to operate and advocate for the implementation of the NTJP provisions, especially for justice, reparations and truth-telling for victims. It is dangerous to plan and build a future without addressing the unresolved issues of the past. Donors should also monitor how the funds are spent and whether impact and outcomes are achieved. Peer pressure through diplomacy and political dialogue with the Ugandan government must continue to publicly highlight that transitional justice implementation is still a priority.

9.3 Civil Society Engagement

In Uganda, civil society organisations have been the leaders in advancing the TJ discourse. The more established NGOs have been instrumental in facilitating meetings and discussions on the NTJP and working with victims to foster healing and reconciliation in marginalised communities. Most capacity-building and information activities are carried out by civil society organisations with government representatives, including from JLOS, participating as invited guests.

Like victims, “civil society” is not a homogenous group and may not share a single perspective on the TJ process. Community-based or grassroots organisations may have very different priorities than national or internationally based NGOs who may have specific mandates and links to donors and foreign partners. CSOs within and outside

of Uganda provide a critical link between policymakers, donors, communities and victims, and are uniquely positioned to contribute to and shape policy discussions and to help create space for victims to participate at the table and achieve full empowerment.

CSOs should drive the process of change in relation to how victims engage in TJ processes by privileging victims’ agency. Genuine empowerment must “ideally go beyond representation, in terms of speaking on behalf of the community, to let the community members speak for themselves, which can be very challenging.”²³⁶ Risk assessments by CSOs supporting and working directly with victims is also critical. CSOs must fully respect the ‘Do No Harm’ principle and avoid putting victims and communities at greater risk than they would otherwise face without engagement in the TJ processes.

Thus, to further strengthen the important work already being done, CSOs with financial and resource capacity should push for victims’ participation in TJ processes and for their voices to be heard. A campaign initiated by the Justice Reconciliation Project (JRP), a northern Uganda based civil society organisation, provides an excellent example of civil society-supported victim/citizen-led activism on TJ. Ahead of the 2011 Uganda elections, JRP organised a campaign to empower voters from affected communities to demand that potential candidates from their areas address specific TJ issues in their election manifestos. While the actual impact on the elections is unknown, the campaign empowered the community to seek to influence the outcome of the elections and to make their voices heard on the issues that affect them.²³⁷

²³⁶ Tsai, Jennifer, and Robins, Simon, *Strengthening Participation in Local-Level and National Transitional Justice Processes: A Guide for Practitioners*, June 2018, p. 23.

²³⁷ JRP, *Campaign to put TJ on the 2011 Election Agenda*, 1 January 2011.

10. CONCLUSIONS

In Uganda, TJ falls under a comprehensive government-directed TJ framework which incorporates multiple mechanisms. More time has been spent designing the framework (10 years) than implementing the mechanisms, and despite claims of ‘victim-centredness’, there are still questions about victims’ ability and opportunity to shape or influence how TJ will be implemented. The dominant focus (apart from the drafting of the Policy) has been on formal justice processes where conceptual notions of victim participation in theory are not matched in practice.

The central issue in the Ugandan TJ context is whether the rhetoric of transitional justice is matched by solid action. The simple answer is no.

Despite extensive claims of victim-centredness, victims were only marginally consulted during the design phase of the NTJP and have been shut out of further discussion on the next phase including plans to expedite the drafting of the TJ Bill and its passage into law. Inclusion at this stage is crucial to inform policymakers and parliamentarians, many of whom are unfamiliar with and distanced from the experience and context of the victims. Direct input from victims would be particularly useful. Uganda has a poor record with the timely passage of victim-focused legislation and there is a risk that without sustained advocacy and consistent input from victims, civil society and other concerned stakeholders, the TJ Act will meet the same fate.

The Policy itself has become an excuse for failing to implement other transitional justice measures that are critically important to victims, including a truth commission and reparations. Reparations are being treated as a policy decision that must be debated rather than a right to which Ugandan victims are entitled. While there are policy considerations which must be addressed including the associated financial implications of reparations, the State owes a duty to redress the egregious harm that victims have suffered. This should not first await a protracted policy process.

Government priorities appear more focused on the future than on redressing the atrocities of the past. The government’s Vision 2040 development plan does not mention transitional justice and only briefly refers to the atrocities in the North. Donors have aligned their strategies to this vision, evidencing an increased level of impatience and fatigue with the pace and lack of results of the TJ process.

In our view, while it is important that the TJ Act be passed as soon as possible, the government should proceed with other urgent measures including a truth-telling mechanism and reparations. Establishing an interim framework to move these processes forward should become a priority that is fully supported by donors and civil society organisations. Truly ensuring victim participation in TJ processes also includes respecting their need for justice and reparations and taking steps to meaningfully and effectively address this.

ANNEX A

Letter of Petition

18th June 2019

The Rt. Hon. Rebecca Kadaga,
Office of the Speaker of Parliament
Parliamentary Avenue
P.O. Box 7178
Kampala, Uganda

Dear Honourable Madam Speaker,

Re: Petition of Victims from the war-affected regions in the Greater North of Uganda

We, the victims of the Greater North of Uganda representing the West Nile, Acholi, Lango and Teso sub-regions, with support from Emerging Solutions Africa, REDRESS, the Uganda Victims' Network, African Youth Initiative Network, Foundation for Justice and Development Initiatives, Gulu Women's Economic and Development, TERELEPAR-Religions for Peace, and other civil society organizations, hereby submit this joint petition concerning the challenges faced by victims which **need to be urgently addressed**. During victims' forums and mid-level policy dialogues held in the abovementioned sub-regions between October 2018 and May 2019, we the victims formed ourselves into a representative network to speak with one voice concerning issues which are affecting us as individuals, our families and the communities in which we live.

We are confident that you will use your esteemed office to help us to secure the help we need as you have already demonstrated by your leadership in relation to Parliament's participation in the Juba Peace Process and the ratification and domestication of the Rome Statute that led to the establishment of the International Crimes Division of the High Court of Uganda to hold perpetrators to account.

We therefore respectfully call upon you and the other leaders of the government to take the necessary action to:

1. **Ensure the speedy passage of** the Transitional Justice Bill into Law and ensure its timely implementation for the benefit of Ugandan post-war victims in all regions;
2. **Make** the implementation of a comprehensive national psychological and psychosocial rehabilitation programme for victims a priority;
3. **Take** affirmative action to register children born in captivity to ensure that they can access the benefits available to all Ugandan citizens; identify, trace and reunite unaccompanied children born of war with their families;

4. **Implement** a comprehensive programme to document war victims in Uganda and provide an update concerning the status of the existing documentation process currently being undertaken by the Uganda Human Rights Commission. Ensure that this documentation process recognises and includes persons who are disappeared and are still missing;
5. **Recognise, strengthen and support** grassroots victims' groups and provide them with platforms to advocate on behalf of Ugandan war victims;
6. **Develop** by-laws to end discrimination and the stigmatisation of the war victims living with HIV AIDS and other diseases;
7. **Prioritise** the provision of specialised medical care for war victims, including specialised drugs, personnel and equipment;
8. **Establish** a National Memorial Day for war victims to recognise the serious and continuing suffering of Uganda's war victims;
9. **Develop** affirmative, targeted and planned socio-economic programme for all victims, particularly the most vulnerable including women, children, persons with disabilities and life-threatening medical conditions;
10. **Fully implement** the Equal Opportunities Act in relation to women and children born in captivity concerning their access to socio-economic rights;
11. **Engage** and work with the cultural leaders to ensure access to and secure land rights for war victims;
12. **Ensure** accountability for crimes committed by all perpetrators including agents of the State.

Yours Sincerely,



Ending torture, seeking justice for survivors



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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