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## On the Path to Vindicate Victims' Rights in Uganda

### Reflections on the Transitional Justice Process Since Juba

Conflict has plagued Uganda since its first post-independence government was formed in 1962. Gross human rights violations committed under the regimes of Milton Obote, Idi Amin Dada, and Tito Okello have largely gone unpunished, perpetuating a legacy of impunity that remains in the country to this day.<sup>1</sup> While there has been undeniable progress away from the bloody years of the Obote and Amin era, major events of past violence, including the five-year guerilla war that brought the current president to power, remain contested, and historical grievances continue to divide the country.

Of these conflicts, the most protracted occurred in the north and east of the country, between the government of Uganda and various armed groups, notably the Lord's Resistance Army (LRA), led by Joseph Kony, with the most intense fighting occurring between the 1990s and 2006. During this time, a range of violations were committed against civilians, particularly children, including murder, mutilation, rape, sexual slavery, destruction of property, and mass abductions. Violence in the Karamoja region, as well as previous rebellions in the West Nile sub-region and the Western region, demonstrates that the LRA conflict is not an isolated problem.

To break the cycle of violence, a comprehensive approach to transitional justice that addresses the root causes of past conflicts is needed. Transitional justice debates regarding the LRA conflict hinge on the implementation of the protocols of the Juba peace process, which were negotiated between the government of Uganda and the LRA between 2006 and 2008. While the government's Justice, Law and Order Sector (JLOS) has made strides to create the institutional and policy framework to fulfill the government's commitments under these agreements, the process has been slow and most victims are rapidly losing faith in it.

Since the conclusion of the Juba peace talks, no formal truth-seeking process has been established, victims have not received any form of material or symbolic reparations, and the first trial for war crimes (against Thomas Kwoyelo, a mid-level LRA commander) before the International Crimes Division stalled temporarily due to questions about the defendant's eligibility for amnesty under the Amnesty Act.<sup>2</sup> This paper analyzes some of the underlying factors that seem to impede the effective implementation of transitional justice measures in Uganda and offers

#### TABLE OF CONTENTS

Trajectory of Transitional Justice in Uganda	2
Institutional Framework for Implementing Transitional Justice	4
Unpacking the Final Draft of the National Transitional Justice Policy	5
Constraints on the Transitional Justice Process	6
Political Climate	9
Role of Civil Society	10
Conclusions	11
Recommendations	11

<sup>1</sup> During the regime of Amin Dada, the "Commission of Inquiry into the Disappearances of People in Uganda since 25 January, 1971" investigated enforced disappearances perpetrated by members of the security forces; however, its final report was never made public and the four commissioners were subsequently targeted by the state in reprisal for their work. See United States Institute for Peace, "Truth Commission: Uganda 74," [www.usip.org/publications/truth-commission-uganda-74](http://www.usip.org/publications/truth-commission-uganda-74)

<sup>2</sup> Amnesty Act, Cap 294 (2000), [www.ulii.org/ug/legislation/consolidated-act/294](http://www.ulii.org/ug/legislation/consolidated-act/294). On April 8, 2015, the Supreme Court ruled that Kwoyelo's trial before the International Crimes Division should resume. See *Uganda v. Kwoyelo*, Constitutional Appeal Case No. 01/2012 (2012) (Uganda). For more background on the Kwoyelo case, see Kasande Sarah Kihika and Meritxell Regué, ICTJ, "Pursuing Accountability for Serious Crimes in Uganda's Courts: Reflections on the Thomas Kwoyelo Case" (2015), [www.ictj.org/publication/pursuing-accountability-serious-crimes-uganda](http://www.ictj.org/publication/pursuing-accountability-serious-crimes-uganda)

## On the Path to Vindicate Victims' Rights in Uganda: Reflections on the Transitional Justice Process Since Juba

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practical recommendations to the Ugandan government, civil society actors, and development partners to advance the process.<sup>3</sup>

### Trajectory of Transitional Justice in Uganda

Like many post-colonial African states, Uganda has experienced recurrent episodes of armed conflict and repressive rule since independence. These have been triggered by multiple factors, including weak state institutions, ethnic divisions, manipulation of elections, economic and political marginalization, and unequal development.

When the National Resistance Movement (NRM) came to power in 1986, there was a window of opportunity to deal with the past and move forward to a democratic, transparent, and accountable system of government. During the nascent years of the NRM government, President Yoweri Museveni initiated a series of measures aimed at entrenching democratic governance, constitutionalism, and the rule of law to ensure a departure from previous autocratic regimes. Prominent among these was the establishment of the Commission of Inquiry into Violations of Human Rights, commonly referred to as the "Oder Commission."

The Oder Commission was mandated to investigate "all aspects of violations of human rights" committed in Uganda from independence in 1962 until the NRM government assumed power in January 1986.<sup>4</sup> It conducted nationwide consultations, held hearings over a six-year period, and issued a report with detailed recommendations for political, legal, institutional, and social reforms aimed at facilitating a culture of constitutionalism and the rule of law. However, several significant weaknesses of the commission, including extremely limited publication and distribution of its final report, curtailed its ultimate impact.<sup>5</sup>

One significant outcome of the Oder Commission, however, was the promulgation of the 1995 Constitution of Uganda, which proclaims the sovereignty of the people and contains an elaborate bill of rights guaranteeing the fundamental human rights of individuals.<sup>6</sup> The recommendations of the Oder Commission also led to the establishment of the Uganda Human Rights Commission (UHRC), which is charged with monitoring and investigating human rights violations in Uganda and making recommendations to parliament to promote human rights and provide redress to victims.<sup>7</sup>

Despite efforts by the NRM government to promote reconciliation and improve democratic governance, the violent way in which it came to power in 1986 triggered the emergence of several rebel groups that considered the government to be illegitimate.<sup>8</sup> The most brutal of these was the LRA, which committed massive violations against civilian populations in the northern and eastern parts of the country.

In 2000, the government, having failed to quell rebellions through military force, passed the Amnesty Act, which provides immunity from prosecution to all persons who had taken up arms to fight the government after 1986 and voluntarily renounced rebellion.<sup>9</sup> When the top LRA commanders refused to participate in the amnesty process, the government in 2003 referred the situation to the International Criminal Court (ICC).<sup>10</sup> In 2004, the ICC prosecutor

3 This report is informed by a comprehensive analysis of the developments in the country, which draws on ICTJ's work in Uganda since 2005. It is based on a literature review of key policy documents, government and civil society reports, and research papers on the transitional justice process in Uganda. Qualitative field research was undertaken in Kampala, Gulu, and Lira (in the northern region). This involved a series of semi-structured interviews and meetings with a broad range of actors, including representatives of government, civil society, and academia who are engaged in the transitional justice process.

4 The Commissions of Inquiry Act, Legal Notice No. 5, Cap 56 (1986), [www.usip.org/files/file/resources/collections/commissions/Uganda86-Charter.pdf](http://www.usip.org/files/file/resources/collections/commissions/Uganda86-Charter.pdf)

5 For a more detailed analysis of the Commission, including its operations and its failures, see Joanna Quinn, "Constraints: The Un-Doing of the Uganda Truth Commission", *Human Rights Quarterly* 26 (2004), 401–427.

6 Constitution of the Republic of Uganda, 1995, § 20–45, [www.statehouse.go.ug/government/constitution](http://www.statehouse.go.ug/government/constitution)

7 *Ibid.*, § 51–52

8 Frederick Golooba-Mutebi, Crisis States Research Centre, "Collapse, War and Reconstruction in Uganda: An Analytical Narrative on State-Making" (Working Paper No. 27, Series 2) (2008), 17, [www.lse.ac.uk/internationalDevelopment/research/crisisStates/Publications/wpPhase2/wp27.aspx](http://www.lse.ac.uk/internationalDevelopment/research/crisisStates/Publications/wpPhase2/wp27.aspx)

9 *Ibid.*, § 2 and 3, [www.ulii.org/ug/legislation/consolidated-act/294Sections 2 and 3](http://www.ulii.org/ug/legislation/consolidated-act/294Sections%20and%203).

10 International Criminal Court, "President of Uganda refers situation concerning the Lord's Resistance Army (LRA) to the ICC" (ICC-20040129-44), January 29, 2004.

initiated investigations into the situation in Uganda,<sup>11</sup> and in 2005, ICC Pre-Trial Chamber II unsealed arrest warrants for five senior LRA leaders for crimes against humanity and war crimes committed in Uganda.<sup>12</sup>

Following a cessation of hostilities in 2006, the government and the LRA commenced peace negotiations that culminated in the signing of a number of agreements and annexes.<sup>13</sup> The two most significant agreements comprise the Agreement on Comprehensive Solutions, which focuses on how to deal with the underlying causes of the conflict,<sup>14</sup> and the Agreement on Accountability and Reconciliation, which provides for the establishment of several transitional justice measures for dealing with human rights violations committed during the conflict.<sup>15</sup>

The Agreement on Accountability and Reconciliation recognizes the need to promote reconciliation, prevent impunity for serious crimes, and deliver justice to victims of gross human rights violations. To this end, it envisages an overarching justice framework comprised of both formal and informal justice mechanisms,<sup>16</sup> including truth seeking, criminal prosecutions, traditional justice mechanisms, and reparations programs.

The government has since made some policy decisions and institutional arrangements to fulfill its obligations under the agreement. In 2008, it established the JLOS Transitional Justice Working Group (TJWG) and mandated it to lead the implementation of the government's related obligations. Among the TJWG's key deliverables is the final draft national transitional justice policy, released in September 2014, which sets the framework for a range of transitional justice mechanisms.<sup>17</sup> However, this draft policy is still pending approval and adoption by the cabinet and subsequent ratification by parliament.

In 2010, the government enacted the International Crimes Act to domesticate the Rome Statute of the International Criminal Court.<sup>18</sup> The act provides the legal basis for the International Crimes Division (ICD) of the High Court of Uganda to prosecute serious crimes, such as genocide, war crimes, and crimes against humanity. It further establishes a legal basis for Uganda's cooperation with the ICC. Given the principle of non-retroactivity, however, the act cannot be used to prosecute crimes committed prior to 2010.

As previously mentioned, the first trial before the ICD began in 2011 against Thomas Kwoyelo;<sup>19</sup> however, the Constitutional Court halted the trial in September 2011.<sup>20</sup> In April 2015, the Supreme Court partially allowed an appeal by the Attorney General, and ordered the trial to resume.<sup>21</sup>

In May 2012, the Minister of Internal Affairs declared that Part II of the Amnesty Act had "lapsed," thus terminating the blanket amnesty for those who yet to renounce the rebellion.<sup>22</sup> This move was intended to establish accountability measures and provide justice to victims of gross human rights violations, in compliance with Uganda's domestic and international obligation to prosecute serious crimes.<sup>23</sup> However, Part II was reinstated in May 2013, following a petition to parliament by a select group of civil society organizations and religious and cultural

11 Ibid.

12 Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo, and Dominic Ongwen. See International Criminal Court, "Warrant of Arrest unsealed against five LRA Commanders" (ICC-CPI-20051014-110), October 14, 2005.

13 The overall process collapsed, however, when Kony refused to sign the final peace agreement.

14 Agreement on Comprehensive Solutions Between the Government of the Republic of Uganda and Lord's Resistance Army/Movement (Juba, Sudan), May 2, 2007, [peacemaker.un.org/uganda-comprehensive-solutions2007](http://peacemaker.un.org/uganda-comprehensive-solutions2007)

15 Agreement on Accountability and Reconciliation Between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement (Juba, Sudan) [hereinafter AAR], June 29, 2007, [peacemaker.un.org/uganda-accountability-reconciliation2007](http://peacemaker.un.org/uganda-accountability-reconciliation2007). See also Annexure to the Agreement on Accountability and Reconciliation (Juba, Sudan), February 19, 2008, [peacemaker.un.org/uganda-annex-accountability2008](http://peacemaker.un.org/uganda-annex-accountability2008)

16 AAR (Juba, Sudan), June 29, 2007, § 5, [peacemaker.un.org/uganda-accountability-reconciliation2007](http://peacemaker.un.org/uganda-accountability-reconciliation2007)

17 See JLOS TJWG, "Final Draft of the National Transitional Justice Policy" (2014).

18 International Criminal Court Act, Act No. 11/2010 (2010).

19 Uganda v. Kwoyelo, HCD-00-ICC Case No. 02/2010 (2011) (Uganda), Amended Indictment, 1–25.

20 For a full description of the history, legal issues, and implications of this case, see Kasande Sarah Kihika and Meritxell Regué, ICTJ, "Pursuing Accountability for Serious Crimes in Uganda's Courts: Reflections on the Thomas Kwoyelo Case" (2015).

21 Uganda v. Kwoyelo, Constitutional Appeal Case No. 01/2012 (2012) (Uganda).

22 Amnesty Act (Declaration of Lapse of the Operation of Part II) Instrument, S.I. No. 34/2012 (2012).

23 For a full discussion and critique of the Amnesty Law, its compatibility with international law and jurisprudence, and its reintegration provisions, see JLOS TJWG, "The Amnesty Law (2000) Issues Paper: Review by the Transitional Justice Working Group" (2012).

**On the Path to Vindicate  
Victims' Rights in Uganda:  
Reflections on the Transitional  
Justice Process Since Juba**

*“There is limited political incentive for the government to hold state actors accountable for violations committed. Individuals who are alleged to have perpetrated heinous crimes continue to hold positions of authority and influence.”*

leaders who argued that the conflict in northern Uganda was not over and that the amnesty process would encourage further defections from rebel ranks. Some actors view this reinstatement as a barrier to achieving criminal accountability, and some victims have described it as providing a “justice imbalance.”<sup>24</sup>

A transition involving a change in political leadership (with incoming leaders intending to make a radical break with the past)<sup>25</sup> has not been the case in Uganda. The transitional justice logic and objectives face specific challenges. The Ugandan government appeared to embrace transitional justice in the context of the conflict in the north when there was mounting pressure to end the insurgency. Once the capacity of the LRA to affect stability had been reduced, the government’s enthusiasm to implement transitional justice receded. The current military focus on using the African Union Regional Task Force (with US support)<sup>26</sup> to pursue the LRA in the Central African Republic, Democratic Republic of the Congo, and South Sudan has overshadowed the pressure to address underlying accountability issues.

There is limited political incentive for the government to hold state actors accountable for violations. Individuals who are alleged to have perpetrated heinous crimes continue to hold positions of authority and influence; some are even instrumental to determining whether the transitional justice process will be implemented effectively. It is, therefore, unsurprising that the process has been slow and mostly focused on atrocities committed by the LRA and other insurgent groups. 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.

### **Institutional Framework for Implementing Transitional Justice**

The Agreement on Accountability and Reconciliation stipulates that accountability and reconciliation mechanisms would be implemented within existing national institutions.<sup>27</sup> The national transitional justice policy, which is currently in draft form, is intended to give effect to these commitments. Specialized sub-committees were established within JLOS and TJWG to undertake research in specific areas to inform the development of the policy. These sub-committees address formal justice, traditional justice, truth seeking, and integrated systems (developing an integrated approach to justice and accountability).<sup>28</sup> It was envisaged that JLOS would ensure the widest possible national ownership of the transitional justice project by consulting widely with civil society, academia, community leaders, traditional and religious institutions, and victims. It would thus guarantee overall objectivity and ensure all stakeholders are included.

When discussions began in 2008, there was initial goodwill towards inviting civil society to participate in TJWG’s meetings and deliberations. However, this openness appeared to wane in 2013 when relations deteriorated between JLOS and civil society actors who supported the reinstatement of Part II of the Amnesty Act (contrary to JLOS’s articulated position). At official levels, steps to implement transitional justice have become highly bureaucratic; opportunities for civil society participation in TJWG meetings and initiatives have greatly diminished, and the space for engagement has become more constricted.<sup>29</sup>

24 JLOS TJWG, “The Amnesty Law (2000) Issues Paper: Review by the Transitional Justice Working Group” (2012), 28.

25 Consider, for example, Liberia, Sierra Leone, and South Africa.

26 US Department of State, “U.S. Support to Regional Efforts to Counter the Lord’s Resistance Army,” March 24, 2014, [www.state.gov/r/pa/prs/ps/2014/03/223844.htm](http://www.state.gov/r/pa/prs/ps/2014/03/223844.htm)

27 Agreement on Accountability and Reconciliation Between the Government of the Republic of Uganda and the Lord’s Resistance Army/Movement (Juba, Sudan), June 29, 2007, § 5.4, [peacemaker.un.org/uganda-accountability-reconciliation2007](http://peacemaker.un.org/uganda-accountability-reconciliation2007)

28 JLOS, “Transitional Justice in Uganda,” [www.jlos.go.ug/old/index.php/2012-09-25-13-11-16/2012-09-28-06-56-14/transitional-justice](http://www.jlos.go.ug/old/index.php/2012-09-25-13-11-16/2012-09-28-06-56-14/transitional-justice)

29 Civil society was largely excluded from the drafting stages of the national transitional justice policy, despite earlier (unrealized) 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. See, for example, Avocats Sans Frontières and African Youth Initiative Network, “Victim and Civil Society Actors’ Views on the Draft Transitional Justice Policy for Uganda: Lango Sub-Region” (2013), 18.

## Unpacking the Final Draft of the National Transitional Justice Policy

In September 2014, TJWG issued the final draft of the transitional justice policy. Considerable resources and political will are still required to successfully push the policy through cabinet and parliament. The policy's objective is to "enhance legal and political accountability, promote reconciliation, foster social reintegration and contribute to peace and security."<sup>30</sup> As a notable step towards the government's fulfilling its obligations under the Agreement on Accountability and Reconciliation, it provides for the establishment of a series of measures that will operate in a complementary and holistic manner to achieve the goals of transitional justice. Implementation will be guided by key principles, including victim centeredness, vulnerability, gender equality, best interests of the child, transparency, accountability, public participation, inclusiveness, complementarity, confidentiality, neutrality, and integrity.<sup>31</sup>

The policy intends to cover acts committed from 1986 to the present throughout the entire country.<sup>32</sup> The temporal scope was limited to post-1986 because the government has previously acknowledged gross violations of human rights committed in the context of armed conflict or authoritarian rule before 1986. This limitation is of concern because a significant number of victims of human rights violations committed before 1986 have yet to receive any form of redress. Further, some of the structural causes of conflict and widespread human rights violations predate 1986, making it necessary for the transitional justice policy to have a temporal mandate that covers the entire post-independence period.

The final draft of the policy proposes the establishment of an independent transitional justice commission responsible for implementation of the overall policy. The structure, mandate, and powers of the commission would be outlined in the envisaged Transitional Justice Act.<sup>33</sup> A loosely defined set of roles and responsibilities vis-à-vis different implementation tasks are included in the policy for more than 20 agencies; some of the tasks are not specific to transitional justice. Interlinkages with five thematic areas (amnesty, criminal justice, truth telling, traditional justice, and reparations) are also proposed. Integration and complementarity issues will be further elaborated in the Transitional Justice Act.<sup>34</sup>

### Amnesty and Criminal Justice

In an encouraging departure from the current amnesty position, the draft policy provides that "there shall be no blanket amnesty and government shall encourage those amnestied to participate in truth telling and traditional justice processes."<sup>35</sup> This would overcome the inconsistency between international law and the blanket amnesty, which in its present form extends immunity from prosecution to all of those who renounce rebellion—regardless of the seriousness of the crimes that they are alleged to have committed—and attaches no conditions for those seeking to obtain it.<sup>36</sup>

It also calls on the government to put in place witness protection measures in order to: protect witnesses, encourage participation of victims in proceedings, and increase access to justice by the vulnerable—especially children and women—in post-conflict situations.<sup>37</sup>

### Truth Telling

The draft policy provides that the government "shall enact a transitional justice act and establish structures to facilitate truth telling at all levels,"<sup>38</sup> recognizing that such a process can contribute to national, personal, and communal healing and, thus, peace.<sup>39</sup> The policy urges community and political leaders to prepare for a truth-telling process.

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30 JLOS TJWG, "Final Draft of the National Transitional Justice Policy" (2014), 4.

31 *Ibid.*, 28, 29.

32 *Ibid.*, 34.

33 *Ibid.*, 32.

34 *Ibid.*

35 *Ibid.*, 31.

36 Amnesty Act, Cap 294 (2000), § 2 and 3, [www.ulii.org/ug/legislation/consolidated-act/294](http://www.ulii.org/ug/legislation/consolidated-act/294)

37 JLOS TJWG, "Final Draft of the National Transitional Justice Policy" (2014), 29.

38 *Ibid.*, 31.

39 *Ibid.*, 23.

### Traditional Justice

The draft policy recognizes that traditional justice measures (or localized approaches to justice and reconciliation in communities) play an invaluable role in conflict and dispute resolution and in providing redress to victims, especially among disadvantaged populations in conflict and post-conflict environments.<sup>40</sup> These measures are widely supported, given their pivotal role in resolving community disputes in areas where there is limited access to courts. They continue to facilitate the reintegration of former abductees and former combatants into society.

In order to guarantee the constitutional rights of vulnerable and marginalized persons who choose to participate in, or seek redress through, such measures, the draft policy proposes that the government “shall recognize traditional justice mechanisms as a tool for conflict resolution and put in place safe guards that will recognize and protect rights of parties that seek redress.”<sup>41</sup>

### Reparations

The draft policy acknowledges that reparations are integral to reintegrating victims back into society and helping to address outstanding issues common to post-conflict situations, including land disputes, children born in captivity, torn social fabric, marginalization, and revictimization of persons affected by conflict.<sup>42</sup> It proposes that the government establish and implement a reparations program for victims affected by conflict, and consider interim, short-term reparative measures.<sup>43</sup> It recommends that a reparations fund be established, resourced with money from the Consolidated Fund to institutionalize the program, rather than ad hoc budget allocations.<sup>44</sup> To increase its effectiveness, it proposes a mapping exercise “to identify victims of violations, define categories of violations and their magnitude and periods when they occurred and benchmarking in order to determine those that are eligible for reparations.”<sup>45</sup>

Given the considerable number of victims and the limited resources available, implementation of a comprehensive reparations program will be a challenging task. The proposed reparations legislation would have to carefully define the categories of victims eligible for individual and collective reparations as well as for pecuniary and symbolic reparations. It would also need to establish effective coordination mechanisms, preferably through a separate government agency with a political and administrative mandate to ensure multisector coherence among government agencies and a commitment from political leaders.<sup>46</sup>

### Constraints on the Transitional Justice Process

Government efforts to establish a comprehensive policy and legal framework to guide the implementation of transitional justice in Uganda are commendable. However, several complicating factors need to be addressed.

### Selective Focus on the North

At official levels, the motivation to pursue transitional justice in Uganda is largely shaped by the need to end violent conflict, heal communities, provide satisfaction to victims, and promote reconciliation in war-ravaged northern Uganda. Consequently, the Agreement on Accountability and Reconciliation serves as the blueprint to guide JLOS and the TJWG in their work. So far, the transitional justice process is still limited in scope, as it does not seek to address the broader underlying triggers of conflict and human rights violations committed across the country. Further, the process does not seem to confront the causes of

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<sup>40</sup> Ibid., 21.

<sup>41</sup> Ibid., 29.

<sup>42</sup> Ibid., 31.

<sup>43</sup> Ibid., 32.

<sup>44</sup> The Consolidated Fund was established under the Constitution of the Republic of Uganda, 1995, § 153(1), and is where “all revenues or other monies raised or received for the purpose of, or on behalf of, or in trust for the Government” are first received. This includes both taxation and non-taxation revenue, including donations. These funds are then withdrawn under § 154 and appropriated to fund government programs. See JLOS TJWG, “Fifth Draft of the National Transitional Justice Policy” (2013), 30.

<sup>45</sup> JLOS TJWG, “Final Draft of the National Transitional Justice Policy” (2014), 32.

<sup>46</sup> Ibid.

**On the Path to Vindicate  
Victims' Rights in Uganda:  
Reflections on the Transitional  
Justice Process Since Juba**

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low civic trust in the state, notably the governance deficit, declining rule of law, and weak state institutions.

On multiple occasions, JLOS has emphasized that it is developing a national transitional justice process; however, its strategies do not reflect a national approach. Experiences of victims of gross human rights violations in other parts of the country (such as those affected by the Allied Democratic Forces insurgency in western Uganda) and earlier conflicts (including the guerilla war in Luwero Triangle that brought the ruling NRM government to power) have not featured prominently in transitional justice discussions. Further, for Ugandans living in regions that did not experience conflict, the transitional justice process appears abstract and removed from the realities of day-to-day life. As a result, many perceive transitional justice as a "northern Uganda affair." These limitations could deprive transitional justice efforts of national character, ownership, and support.

### **Selective Focus on Atrocities Committed by Nonstate Actors**

The transitional justice process is perceived by many as selectively focused on atrocities committed by nonstate actors, mainly the LRA and other insurgent groups, to the exclusion of those committed by state actors. Human rights violations by members of the national army in and around camps for internally displaced persons have been documented extensively,<sup>47</sup> along with systematic violations of human rights in communities in northern and northeastern Uganda. In January 2014, during the commemoration of the 28th National Resistance Army/Movement Liberation day, Museveni publicly acknowledged that "shameful atrocities" had been perpetrated by some members of the national resistance army. He cited as examples the 1989 Mukura railway wagon incident, in which 69 people were suffocated to death while in the custody of government soldiers, and the massacre of civilians at Burcoro by a national army unit from the Gulu district. The president offered modest compensation to victims, but did not order a full inquiry or investigation into the crimes, nor have the perpetrators been held accountable.

In an interview with ICTJ, a government official noted that some state actors had been tried in military courts; however, there appears to be no publicly available official records to substantiate or elaborate on these trials. State officials also confirm that some state actors are being investigated for alleged crimes and that cases will be brought to trial once ready. However, it is unclear which officials are being investigated for what crimes.

A skewed approach to accountability raises concerns that transitional justice in Uganda may amount to nothing more than victors' justice. This could create a perception that the government lacks the political will to establish a transparent and credible process to address Uganda's legacy of gross human rights abuses in its entirety. One scholar interviewed for this study stated that "the government of Uganda has mastered the art of appearing to do something while doing nothing." Restricting accountability to nonstate actors would miss an important opportunity for Uganda to look at the causes of conflict across the country and to introduce measures that would guarantee nonrecurrence.

### **Waning Political Momentum**

The government's delay in implementing transitional justice measures creates concern among victims and civil society that it lacks interest in providing redress to victims. The political enthusiasm for transitional justice triggered by the Juba peace talks seems to have dissipated. With Kony and LRA fighters no longer posing a direct threat to peace and security in northern Uganda, the priority seems to have shifted elsewhere. There also seems to be some apprehension at official levels that a truth-seeking process might expose the culpability of some senior state officials.

Government officials, however, have assured ICTJ that transitional justice remains a key priority and political momentum is not fading, but that the government is exercising "caution" in its approach to transitional justice ahead of the 2016 general elections. They expressed optimism

<sup>47</sup> See, for example, Chris Dolan, *Social Torture: The Case of Northern Uganda, 1986–2006* (Oxford: Berghahn Books, 2009); and Human Rights Focus, "Between Two Fires, The Plight of IDPs in Northern Uganda" (2002).

that the draft policy has political support and will be passed. Delays could be explained by competing demands on the Ministry of Internal Affairs to move forward the transitional justice policy, roll out the mass registration exercise for the national identity card project, and oversee the proposed new law to regulate nongovernmental organizations.

### **Overly Bureaucratic Process and Lack of Outreach**

The engagement process has been highly state-centric and dominated by a few senior bureaucrats at the technical level, with limited involvement of civil society organizations and stakeholders at the grassroots level to obtain their input and galvanize public support.

Senior district officials interviewed by ICTJ observed that while some local government structures knew about the draft national transitional justice policy, most were unaware of its contents because JLOS had not involved them in its development. This shows a lack of coordination among state institutions and a failure to recognize the important role that local government structures could play in conflict-affected areas in designing and implementing the policy. JLOS officials suggested that once the transitional justice policy was approved, it would engage local governments more regularly at the implementation stage; however, contribution from the local level is crucial at all stages if the process is to be meaningful and relevant for victims.

Such a top-down approach has severe limitations and could undermine the legitimacy and successful implementation of future transitional justice measures. In a decentralized system of governance, like Uganda's, local authorities can—and should—play a pivotal role in supporting the design and implementation of state policies. They have the infrastructure, community trust, and knowledge of the local context to more effectively advance government programs.

Government officials have also noted that transitional justice debates rarely involve victims at the grassroots level; instead, they are dominated by academics and civil society actors who publish articles in journals and present papers at workshops and conferences. There is a perception that most war-affected communities and victims do not understand the term “transitional justice” and what it aims to do; the majority of Ugandans think that it is only about reconciliation and forgiveness. There is also a lack of clarity on what role victims can play in the process; most think that having an opportunity to participate is a benevolent gesture on the part of the state, rather than a right. It is clear that grassroots actors need to be informed and empowered to create local demand for transitional justice.

### **Conflicting Laws on Accountability**

Contradictory laws have compromised the process. For example, in 2008 the judiciary established the ICD within the High Court to try perpetrators of serious crimes and in 2010 parliament passed the International Crimes Act. However, in 2013 the government reinstated and extended blanket amnesties under Part II of the Amnesty Act. As witnessed in the Kwoyelo case, the amnesty issue has been a complicating factor for the ICD's execution of its mandate.<sup>48</sup> As Justice Moses Mukiibi, head of the ICD, recently noted, “The Amnesty Act has made the ICD walk naked—without work—and the International Community is watching with sympathy.”<sup>49</sup>

Such contradictions lend weight to the view that the government lacks the coherence, commitment, and conviction to end impunity for serious crimes in Uganda. Further, as observed by one civil society actor, the reinstatement of blanket amnesties demoralizes those who have participated in criminal cases and dissuades others from becoming involved in the future.

### **Lack of Effective Institutional Reform**

The transitional justice discourse in Uganda deliberately shies away from confronting the institutional and policy failures that fueled past conflict and gross violations of human rights. For

48 In its decision on April 8, 2015, the Supreme Court of Uganda has now clarified that an amnesty only applies to acts committed in furtherance of political objectives, and not for all crimes. See *Uganda v. Kwoyelo*, Constitutional Appeal Case No. 01/2012 (2012) (Uganda).

49 Hon. Justice Mukiibi, “To Give Full Effect to the Principle of Complementarity in Uganda and the Democratic Republic of Congo,” Keynote address at a Parliamentary Conference, Uganda (July 17, 2014), 18–19.



example, the draft policy does not offer recommendations for reforming security sector institutions that have historically been involved in systematic human rights violations, such as the police and the military.

Some institutional reform efforts have been initiated outside of the official transitional justice policy framework. One government official noted that some reforms are underway in the judicial sector, led by the Judicial Service Commission, which has the power to appoint new judges and other judicial officers. It has been noted that the Professional Standards Unit of the Uganda Police Force handles police disciplinary and misconduct cases. Other ongoing reforms aim to professionalize security sector agencies, including the Uganda Police Force, the Uganda Prisons Service, and the Uganda Peoples' Defence Force (UPDF), in order to ensure that these institutions carry out their mandates in conformity with the constitution and, thus, better serve the public. A government official acknowledged, however, that some former LRA members who received amnesty were never vetted for past human rights conduct before being allowed to join the UPDF.

These reforms, while welcome, seem to have had a limited impact and could be construed as an attempt to "whitewash" tainted institutions, given numerous complaints of rampant corruption in the police and other state institutions. Further, the Uganda Police Force and army are increasingly perceived as serving the interests of the regime, given their frequent involvement in stifling opposition events, carrying out arbitrary arrests of opposition leaders, attacking journalists who cover political issues, and using excessive force in handling otherwise peaceful demonstrations.<sup>50</sup> Consequently, a number of stakeholders have asserted that to ensure nonrecurrence of violations, state institutions that contributed to gross violations of human rights must be properly reformed.

### **Lack of Interim Relief and Reparations for Victims**

Early discussions on establishing a policy and institutional framework for implementing transitional justice raised victims' expectations that they would receive relief, yet their demands for reparations continue to go unanswered. There have been minimal government efforts to offer interim relief or reparations, even to the most vulnerable victims. Thousands of victims continue to live with physical injuries as well as mental and emotional trauma caused by gross human rights violations.<sup>51</sup>

While the government has implemented several reconstruction and development programs for war-ravaged regions, like the Peace, Recovery and Development Plan (PRDP), such projects have neither addressed victims' reparative needs nor targeted vulnerable victims. One government representative observed that "most budgeting for PRDP is done by the central government in Kampala, limiting the local governments' ability to budget and support victims." The problem is exacerbated by a lack of accurate data, including assessments of the status of victims.

### **Dependence on International Development Partners**

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. As one scholar interviewed for this study noted, if donors withdrew, the entire transitional justice project would collapse. Further, the process needs to be mainstreamed as part of routine government functions, including budgeting, so that it can be implemented effectively and sustainably.

### **Political Climate**

Recent political developments in Uganda, notably new restrictive laws, have further limited freedom of expression and association and negatively impacted minority rights, good gover-

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50 See Commonwealth Human Rights Initiative, "A Force for Good? Improving the Police in Kenya, Tanzania and Uganda" (2014), 70.

51 United Nations Office of the High Commissioner for Human Rights and the Uganda Human Rights Commission, "The Dust Has Not Yet Settled: Victims' Views on The Right to Remedy and Reparation, A Report from the Greater North of Uganda" (2011), 81–83, [www.ohchr.org/Documents/Press/WebStories/DustHasNotYetSettled.pdf](http://www.ohchr.org/Documents/Press/WebStories/DustHasNotYetSettled.pdf)

**On the Path to Vindicate  
Victims' Rights in Uganda:  
Reflections on the Transitional  
Justice Process Since Juba**

*“The Public Order Management Act of 2013 severely curtails the right to freedom of assembly and association, which could negatively impact the transitional justice process by undermining the ability of different groups to organize, share experiences, and advocate.”*

nance, and accountability. The Public Order Management Act of 2013, for example, severely curtails the right to freedom of assembly and association,<sup>52</sup> which could negatively impact the transitional justice process by undermining the ability of different groups to organize, share experiences, and advocate.<sup>53</sup> Proposed amendments to the Non-Governmental Organizations Registration Act could also severely limit the ability of civil society groups to mobilize victims to participate in, and influence, transitional justice processes.

These developments could contribute to a decline in the rule of law because state institutions responsible for implementing these regressive laws are perceived as less accountable to citizens and more responsible for violations of human rights. According to the Uganda Human Rights Commission's 2014 Annual Report, the highest number of complaints received for violations of the right to freedom from torture and ill-treatment were directed towards the Ugandan Police Force, followed by the UPDF.<sup>54</sup>

The Ugandan executive branch has also received criticism for blatantly ignoring the constitutional limits of its powers and systematically undermining parliament's independence and oversight role. Most notably, policy and legislative decisions are often handed down by the executive at the ruling party's parliamentary caucus meetings, which serve as a clearing house for parliamentary business. On several occasions,<sup>55</sup> NRM parliamentarians have used their numerical strength to push through unpopular laws and policies wanted by the president without sufficient parliamentary debate.

Moreover, in 2013, allegations of corruption and misuse of public funds intended for the rehabilitation of war-ravaged regions under the PRDP were made against officials from the Office of the Prime Minister. This led development partners to cut funding to affected regions, despite victims' continued need for support.

For transitional justice processes to be effective, there must be sufficient political will to ensure that resources meant for conflict-affected regions, particularly those intended for victims, are not squandered or embezzled by government officials.

### **Role of Civil Society**

Experiences in other contexts show that civil society can play a crucial role in advocating for transitional justice, shaping its contents, and keeping it on the national agenda. This has been most effective when civil society is involved from the very beginning of the process. It is much more difficult to persuade civil society to support a process if policies are only revealed and discussed once they are in an advanced stage.

Many organizations have conducted research and published detailed reports that government has used to design the draft transitional justice policy. Select domestic and international organizations have offered input and support, including to JLOS, to ensure that final policies reflect relevant best practices and conform to international standards. Civil society in Uganda needs to be supported to carry their work forward. It has a vital role to play in raising awareness and, thereby, generating local demand for subsequent implementation of transitional justice measures. Further, civil society groups can undertake advocacy and documentation projects, including mobilizing victims and grassroots actors to participate in transitional justice processes.<sup>56</sup> Information they collect could be used by future truth-telling and accountability initiatives.

52 Under § 5(1), an organizer is required to notify the police prior to holding public meetings to discuss issues “on a matter of public interest”. The police are then at liberty, under § 6(3) and 8(1), to either allow or disallow a meeting. See Public Order Management Act, October 2, 2013.

53 Section 5(2) requires those who intend to convene a public meeting to notify the police in writing of the venue, purpose, and estimated number of persons expected to attend. So far, police have prevented some public meetings where matters that concern the general public were to be discussed, including public rallies organized by opposition party leaders calling for electoral reforms.

54 Uganda Human Rights Commission, “The 17th Annual Report of the Uganda Human Rights Commission to the Parliament of the Republic of Uganda” (2014), 18–19.

55 For example, Parliament's passage of the Public Order Management Act, October 2, 2013.

56 See, for example, Justice and Reconciliation Project, “Community Led Documentation,” [justiceandreconciliation.com/tag/community-led-documentation/](http://justiceandreconciliation.com/tag/community-led-documentation/); and Refugee Law Project, “The National Memory and Peace Documentation Center (NMPDC),” [www.refugeelawproject.org/nmpdc.php](http://www.refugeelawproject.org/nmpdc.php)

Civil society organizations also are able to initiate or support unofficial approaches to justice and reconciliation. Several such projects are currently underway in communities that witnessed large-scale human rights violations, including the Barlonyo and Mukura massacres. Other initiatives are aimed at facilitating community reconciliation and the reintegration of formerly abducted persons. These local efforts can help to inform and shape broader official processes.

While some civil society actors are engaged in, and advocate for, transitional justice, most only do so in a limited way due to a lack of transitional justice expertise and funding. This hampers their ability to effectively advocate and mobilize victims and war-affected communities to engage in the process. Other organizations have also reported that by being critical of the government's approach to handling transitional justice, they have found themselves sidelined in discussions and planning.

## Conclusions

Uganda is presently at a crossroads in its journey to establish the truth about its turbulent past and provide justice and redress to victims. Many issues remain unresolved, notably the complicated political steps needed to turn the draft transitional justice policy into official policy. Other major issues include determining the future of amnesties, defining the scope of truth-seeking processes, designing reparations programs, and developing the relationship between local and national authorities. It remains unclear, for example, how localized justice ceremonies, which may entail truth telling and reintegration, will relate to other national transitional justice measures and processes. It is also unclear how the government's commitment to women's and children's issues will be safeguarded during implementation.

## Recommendations

### To the Government of Uganda

1. **Prioritize the formal approval of the draft transitional justice policy and commence implementing transitional justice measures without further delay.** The temporal scope of the transitional justice policy should be expanded to cover gross violations of human rights and conflicts that predate 1986.
2. **The Amnesty Act of 2000, which extended a broad exemption from prosecution to perpetrators of serious crimes and gross human rights abuses, should be repealed or amended to exclude individuals who bear responsibility for the commission of the serious crimes of genocide, war crimes, and crimes against humanity.**
3. **Ensure that transitional justice measures comprehensively address the broad scope of gross violations of human rights committed by both state and nonstate actors.** Accountability processes should not focus selectively on nonstate perpetrators. They should offer redress to victims of violations perpetrated by state and nonstate actors.
4. **Situate the official discourse on transitional justice in Uganda within the broader discussion on inclusive and participatory governance, rule of law, democratic institutions, and accountability.** The transitional justice process should lead to legal and institutional reforms of structures that have contributed to gross violations of human rights and nurture strong, accountable, and independent institutions. This would also help to restore civic trust in institutions, address social divisions and historical grievances, and help to build national accord.
5. **Implement the transitional justice process through an impartial and inclusive national body that recognizes and encourages the participation of marginalized and disenfranchised groups.** The right of victims to participate should be guaranteed and advanced. Victims should be free to mobilize and organize efforts to advocate for their rights.
6. **Increase public awareness and engage all citizens in discussions relating to the establishment of transitional justice measures, in order to make it a national issue.**

On the Path to Vindicate  
Victims' Rights in Uganda:  
Reflections on the Transitional  
Justice Process Since Juba

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7. **Ensure that transitional justice measures, along with other social and economic policies, address the underlying factors that have caused conflict and past human rights violations.** This is essential to guaranteeing nonrecurrence of mass atrocities and conflict.
8. **Expand the scope of the witness protection regime to include the protection of witnesses who testify in civil proceedings and nonjudicial processes.**

**To Civil Society**

1. **Actively engage in a constructive and inclusive debate on transitional justice so they can influence the design and implementation of appropriate transitional justice measures.**
2. **Endeavor to coordinate and strengthen partnerships among themselves, while respecting their diversity, in order to increase demand for national reconciliation, accountability, and justice for all victims.**
3. **Hold regular consultations and outreach meetings with victims and conflict-affected communities.** This will help to build and sustain momentum for transitional justice among affected populations by creating awareness about developments and soliciting the views of victims whose voices may not usually be heard. These views should be conveyed to the TJWG, to inform the implementation of the transitional justice policy.

**To Development Partners**

1. **Advocate for the prioritization and implementation of transitional justice measures as a core element of broader programs of accountability, rule of law, and good governance.**
2. **Continue to play an advisory role for transitional justice initiatives and take measures to strengthen political will.** Continue to provide political, technical, and financial support to transitional justice processes driven by either government or civil society, while ensuring that there can be long-term sustainability.
3. **Continue to build the capacity of civil society, victims, and victims' groups to meaningfully participate in, and influence, transitional justice processes.**