



Reparations, Responsibility

 Victimhood in Transitional Societies

“CUL PI BAL”

Reparations for the Northern Ugandan Conflict

June 2020

Stephen Oola and Luke Moffett

Reparations, Responsibility & Victimhood in Transitional Societies

Contents

Executive Summary.....	3
1. Introduction	4
2. The Conflict in Northern Uganda	6
Conflict Transformation and Peace Negotiation.....	9
2.1 The Consequences of the Conflict.....	10
3. Background on Reparations in Uganda	13
3.1 Assistance and Recovery Programmes.....	15
3.1.1 Northern Uganda Social Action Fund (NUSAF I) 2003-2009	15
3.1.2 Northern Uganda Social Action Fund (NUSAF II).....	16
3.1.3 Reparations Beyond the Courts and Legal Processes	18
3.2 Juba Peace Talks	20
3.3 Post –Juba Peace Talks 2009.....	21
3.4 National Transitional Justice Policy (NTJP).....	23
4. Views from the Ground on Reparations	23
4.1 The Concept of Reparations	24
4.2 Reparation Process	28
4.3 What Form Should Reparations Take?	30
4.4 The Challenges of Implementation.....	36
5. Conclusion and Recommendations	42
5.1 Principles.....	43
5.2 Administration and Process	45
5.3 Form of Reparations.....	49
5.4 Role of Ex-Combatants.....	52
5.5 International Community and Regional Actors	52

Executive Summary

Reparations are measures aimed at remedying the harm suffered by victims of serious violations of their human rights. Despite over a decade since the cessation of hostilities in northern Uganda and the promises of a comprehensive transitional justice programme that included reparations, it remains undelivered. A year on from the government's publication of the National Transitional Justice Policy that set out reparations as one of five priority policy areas, there has been little progress to pass legislation to give it effect. This is notwithstanding the long-term consequences of the over two decades Lord's Resistance Army (LRA) and Government of Uganda conflict on victims and their families throughout northern Uganda.

This report draws from interviews with key stakeholders on their perceptions on reparations and ways to move forward the debate in July 2018. It aims to provide some general sentiments on a range of actors' understanding of reparations, what should be considered in a reparation process and forms such measures take, as well as some of the challenges in implementing reparations for the conflict in Northern Uganda.

The report ends with a number of recommendations on reparations which include:

- ▶ The Uganda government should establish a national reparations programme on a legislative basis with a dedicated budget line for unaddressed conflict legacies, in particular the northern Uganda conflict;
- ▶ Reparations programmes should be conflict sensitive and target both direct and indirect victims and address some immediate and long-term needs of the affected communities;
- ▶ Take a gender-inclusive approach and make efforts on community education to reduce stigma;
- ▶ Create a process for children born of war to have access to birth registration, educational opportunities and land;
- ▶ Take a comprehensive approach to reparations so that they are integrated with other transitional justice mechanisms, in particular long-term reintegration programmes, for child soldiers and abductees;
- ▶ Set up a body in conjunction with a relevant international organisation on the location, recovery and identification of those missing;
- ▶ Design a reparation process that includes effective victim participation through the establishment of a Victims' Champion and victim board or forum to inform and monitor policy development and implementation;
- ▶ Reparations decisions may be forthcoming from the International Criminal Court and the Ugandan International Crimes Division that should be delivered through an established national reparations programme to avoid a hierarchy of victims;
- ▶ Traditional practices should be factored into certain forms of reparations, in particular in rebuilding social trust and reintegration, but needs to be monitored to avoid unequal power relations and to ensure participation of those who are vulnerable; and
- ▶ Donors and the broader international community should realign their priorities for supporting transitional justice initiatives that consider long-term support over 20-30 years, whether in smaller 4-5-year packages of delivery or different tranches of funding of activities.

1. Introduction

Reparations are intended to remedy victims' harm through acknowledgement and measures to relieve the consequences of such violations. Within northern Uganda, and particularly in Acholi-land, the term reparations are simply understood as “*cul pi bal*” meaning compensation for wrongs committed. We build upon important reports already published on reparations by NGOs and international organisations.¹ While there are a number of international standards on reparation, their implementation remains up to the state in consultation and participation with victims, perpetrators and civil society to find a solution that fits. We believe that for reparations to be feasible and sustainable there is a need for domestic reparations programmes to encourage ownership of a range of actors to facilitate their delivery. This means that compromises in finding an appropriate balance between the rights and interests of those involved needs to be struck. As such, full reparations after a conflict which involve gross violations of human rights and grave breaches of international humanitarian law, is unlikely to be achievable. Instead reparations should serve to vindicate victims' rights and dignity, as such to acknowledge the wrongfulness of their suffering and provide appropriate and effective measures in a prompt manner to relieve their continuing suffering and ensure their dignification.

Reparations can contribute to reconciliation and improving trust in the state (civic trust) and in society amongst groups and individuals (social trust). However reparations and the law can only do so much. We should be modest and honest in what can be achieved and appreciate that dealing with the past is not a one-time payment, but a struggle to deal with a painful past, to alleviate as much as possible of the continuing harm and to ensure that it does not recur again. This is mostly concentrated on victims, but also to affected communities and society at large in educating and remembering the past. More institutionally, this entails a reaffirmation of norms to restrain power and privileges that those on the margins are not victimised, but that all have equal respect under the law and access to justice.

Many violations that occurred in Uganda go more deeply than individual suffering to reflect structures and cultures of violence that continue to persist due to politics and bad governance. In addition, there is a historical context that needs to be confronted around colonialism and post-independence governments and their legitimisation of violence against other groups of the previous regime. Since Uganda's independence from Great Britain in October 1962, it has witnessed a number of conflicts, coups and purges that have victimised hundreds of thousands individuals and harmed communities. The pre-independence period is also noted for a range of atrocities committed by colonial forces and the subsequent violence in the independent Uganda cannot be detached from the colonial

1 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*, OHCHR (2011); *Making Peace Our Own: Victims' Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda*, Office of the United Nations High Commissioner for Human Rights (OHCHR), 2007; Justice and Reconciliation Project, *'Paying Back What Belongs to Us'*, JRP (2012); Graham Carrington and Elena Naughton, *Unredressed Legacy: Possible Policy Options and Approaches to Fulfilling Reparations in Uganda*, ICTJ (2012); Michael Otim and Kasande Sarah Kihika, *On the Path to Vindicate Victims' Rights in Uganda: Reflections on the Transitional Justice Process Since Juba*, ICTJ (2015); *Principles on court-ordered reparations: A guide for the International Crimes Division of the High Court of Uganda*, ASF (2016); and *A Beggar has no Choice: Victims' Perspectives on a Reparations Framework for Uganda*, ASF (2017).

practices of the British which through a divide and rule strategy pitched ethnic groups within the country in competition, and eventually conflict, with each other.

This is not to say that violence in Uganda is a historic phenomenon. given recent violence in the Rwenzori region and the ongoing ADF activities, nor is it simply the fallout of post-independence governance. As one interviewee remarked, Uganda represents around ‘thirty frozen conflicts’² held in place by the political and governance domination of the ruling party – the National Resistance Movement (NRM). The longest of these conflicts, the most brutal and well-known conflict is in northern Uganda with the Lord’s Resistance Army (LRA) from 1988 to 2008. It affected almost the entire northern Uganda even though different sub-regions suffered differently in scope and impact.³ The northern Uganda conflict therefore tends to overshadow other equally violent smaller conflicts that were much limited in time and scope, but left untold suffering and grievances within and in the other sub-regions.⁴ As such Uganda also faces the challenge of dealing with governments that were not only liberators, but also perpetrators, in the different conflicts around the country and neighbouring countries to date.

While Uganda has now produced its long-awaited transitional justice policy, as a case study, it represents a complex, historical and mass victimisation context that repairing through reparations alone would be financially unfeasible, but also speaks to the deep roots of the violence. We conducted fieldwork in July 2018, conducting 27 interviews with some 40 individuals in Kampala and Acholi-land. Respondents included victims, civil society actors, community leaders, government officials working on transitional justice, intergovernmental organisations and donors. The purpose of this report is to provide some insights into appropriate reparations based on views on the ground and some comparative practice to assist in the implementation of reparations as part of the National Transitional Justice Policy.

This report is divided into five further parts. The next section provides a historical context to the conflict in northern Uganda. Section three provides a background on past and current reparation measures and debates in Uganda. Section four provides some insight into the perspectives of our interview respondents on their understanding of reparations in the Uganda context, what a reparation process and appropriate measures should entail, and outstanding challenges in implementing reparations. The final section concludes by providing some recommendations on moving these issues forward.

2 Interview UG23.

3 See RLP, ‘Beyond the Violence: Understanding the War in Northern Uganda: Causes, Consequences and the Search for Solutions’ Working Paper No 11 (2004).

4 See Refugee Law Project, Compendium of Conflicts in Uganda, 2014.

2. The Conflict in Northern Uganda

The northern region of Uganda consists of five sub-regions (Acholi, Lango, West Nile, Teso, and Karamoja). Some of the conflicts that have occurred in the northern region affected either a specific sub-region, a combination of sub-regions, or the whole region and indirectly often the country at large.⁵ Whereas, there are many localized violence and historical inter-communal conflicts that occurred or continues to bedevil the northern region today, many of the conflicts identified here are large-scale protracted armed struggles against central authorities or those that resulted from disagreements with the regime in power. Below therefore is a synopsis of only the key northern Uganda's armed conflicts with a national appeal. Many resulted from unaddressed legacies of past violence, and have ramifications in the search for state led reparations in the future within the region.

There is a strong legacy of colonialism to the conflicts in and around Northern Uganda. For instance, the 1911-12 Lamogi rebellion against British colonial rule, after the British had failed to persuade Rwot Awich, the chief of the Payira, the largest chiefdom in Acholi-land, to accept British rule.⁶ The Lamogi rebellion resulted in the deaths of hundreds of fighters, many of whom were tortured and their descendants have made unsuccessful demands for reparations from the British government.⁷ Though there is a move to document and preserve the Guru Guru sites in Lamogi for memorialisation and tourism, the initiative is yet to gain the much needed financial support either from government or private sponsors.⁸

From the beginning of its imperial conquests, the British deployed an ethnic divide and rule strategy to aid establishment and expansion of administration in Uganda.⁹ In its over seventy-eight years of colonial rule (1884-1962) the British used colonial agents like Semei Kakungulu from Buganda to pacify and administer other parts of the country.¹⁰ They also allied with 'friendlier kingdoms' like Buganda at the time to conquer and subdue other kingdoms like Bunyoro. The friendlier kingdoms were equally rewarded with territories (Lost Counties) and property acquired from the defeated kingdoms. These sowed discord, which were later to haunt the newly independent country Uganda.

There was also social-economic engineering within the populations with parts of Central and Western Uganda prepared for civic service whereas those from the northern and eastern regions reserved for the army and manual labour supply. The concentration of wealth and political power

5 Ibid.

6 See Ogenga Otunnu, 'Crisis of Legitimacy and Political Violence in Uganda, 1890-1979' Springer 114. Also see Charles Amone, 'Reasons for British Choice of the Acholi as the Martial Race of Uganda, 1862-1962' *Asian Journal of Humanities and Social Sciences* 2(2), May 2014, 72-77 available at <http://ajhss.org/pdfs/Vol2Issue2/8.pdf> accessed February 08, 2018.

7 See Sam Lawino, Locals seek reparations, 140 years after Lamogi rebellion, *Daily Monitor*, January 16, 2012 available at <http://www.monitor.co.ug/News/National/688334-1306336-9n4qumz/index.html> accessed on January 26, 2018.

8 See, Presidential Press Unit, Lamogi rebellion against British rule was justified-President Museveni, Sunday March 22, 2015 available at [http://www.statehouse.go.ug/media/news/2015/03/22/\"lamogi-rebellion-against-british-rule-was-justified\"---President-Museveni](http://www.statehouse.go.ug/media/news/2015/03/22/\) accessed January 26, 2018.

9 Northern Uganda Conflict Analysis, *ibid*.

10 See Monitor Reporter, The Baganda agents and their role in entrenching colonial rule in Uganda, *Daily Monitor* Monday May 14, 2012 at <http://www.monitor.co.ug/SpecialReports/ugandaat50/Role-of-Baganda-agents-in-entrenching-colonial-rule-in-Uganda/1370466-1405434-66kej7z/index.html> accessed January 26, 2018.

in the South and the 'military reservoir' in the North created hatred and fermented grievances that defines North-South relations to date.¹¹ At the independence, the bulk of the armed forces were from the northern part of the country and power was handed over to Dr. Apollo Milton Obote also from the region. Obote's attempt to address some of the colonial era injustices aggrieved the Buganda and culminated into a chain of events that underpins Uganda contemporary political realities.¹² He deployed the military to resolve political disagreement with Buganda and hence the militarisation of politics in Uganda to date.

Although the conflict has its roots in colonialism, it is also the result of cycles of victimisation through atrocities committed by both northern and southern forces. Many Acholi, who make up a large proportion of northern Ugandans, see the current conflict as revenge for the 'Luwero triangle' massacres.¹³ These massacres were committed against southern civilians in the 1980s by both the National Resistance Army (NRA) rebels and the then Ugandan Army mostly made up of northerners (Acholi and Langi soldiers) under President Milton Obote, a northerner. With the coming to power in 1986 of Yoweri Museveni, a south-westerner, northern Ugandans feared brutal reprisals for Luwero, which many witnessed. This brought back memories of Idi Amin's massacre of Acholi and other northerners in the 1970s.¹⁴ Over the past 30 years the conflict in northern Uganda has been defined by its brutal use of violence against civilians by both the Lord's Resistance Army and the Ugandan government.

The Lord's Resistance Army (LRA) led by Joseph Kony has been fighting the Ugandan government since 1987.¹⁵ The LRA has cut off civilians' lips, ears, noses, and limbs;¹⁶ burnt civilians alive in their homes; abducted and used 24,000–38,000 children and 28,000–37,000 adults as combatants, porters, and 'wives', and committed mass murder, pillaging, and torture.¹⁷ Some of the most notable LRA massacres include the 1995 Atiak massacre of over 200 civilians, the 2004 Barlonyo massacre where over 300 civilians were killed, and the 2004 Lukodi massacre of 60 civilians.¹⁸ Those abducted by the LRA were also subjected to beatings, torture, and in many cases forced to kill their families, civilians, or other abductees as part of their initiation. Although the LRA does not generally commit rape when attacking villages or camps, those girls and women captured in raids are often forcibly

-
- 11 ACCS, Northern Uganda Conflict Analysis, September 2013 available online at <https://www.saferworld.org.uk/.../accs---northern-uganda-conflict-analysis-report.pdf> (Accessed 17, Jan 2018)
 - 12 See Tarsis B. Kabwegyere, The Dynamics of Colonial violence : The Inductive System in Uganda, *Journal of Peace Research*, 9(4) (1972) 303-314.
 - 13 See Tim Allen, *Trial Justice: The International Criminal Court and the Lord's Resistance Army*, (Zed Book 2006); Adam Branch, *Displacing Human Rights: War and Intervention in Northern Uganda*, (Oxford University Press 2011).
 - 14 See Tony Avirgan and Martha Honey, *War in Uganda: The Legacy of Idi Amin*, Hill (1982).
 - 15 See Ruddy Doom and Koen Vlassenroot, Kony's Message: A New Koine? The Lord's Resistance Army in Northern Uganda, *African Affairs* 98(390) (1999) 5–36.
 - 16 Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda, HRW, 2005, pp. 20–21.
 - 17 UNICEF Uganda Report December 2005; Abducted and Abused: Renewed Conflict in Northern Uganda, HRW, 2003; P. Pham, P. Vinck, and E. Stover, Abducted: The Lord's Resistance Army and Forced Conscription in Northern Uganda, Berkeley-Tulane Initiative on Vulnerable Populations, June 2007.
 - 18 See Remembering the Atiak Massacre April 20th 1995, Justice and Reconciliation Project, Gulu District NGO Forum, Field Note No. 4, April 2007; Kill Every Living Thing: The Barlonyo Massacre, Justice and Reconciliation Project (JRP), Gulu District NGO Forum, Field Note IX, February 2009; The Lukodi Massacre, 19th May 2004, Field Note XIII, April 2011.

The Conflict in Northern Uganda

8

used as ‘wives’ for commanders, thereby institutionalising rape and sexual slavery.¹⁹ LRA atrocities in Lango intensified after 2003, when the war spread to the west and particularly the east.²⁰ The LRA’s incursion in Lango caused mass displacement and suffering like that in Acholiland.²¹ Atrocities escalated and become more brutal when the population organised itself in militias, with support from the UPDF in groups known as the Amuka Boys in a bid to fight the LRA.

The Uganda army (UPDF, previously NRA)²² is also responsible for atrocities, abuses, and neglect committed as part of its ‘counter-insurgency’ strategy against the LRA and other northern rebellions.²³ Since 1986, the NRA/UPDF has used brutal counter-insurgency tactics against the LRA. These have at times indiscriminately targeted the whole Northern Ugandan civilian population, such as extra-judicial executions, torture, rape, and pillaging. From 1996–2006, the UPDF also used murder, torture, and aerial bombardment to corral over 90 per cent of the northern population, some two million civilians, into so-called “protected villages”. Often the UPDF gave civilians days or even hours to leave their homes before shelling or shooting them on sight.²⁴ The ‘protective villages’ title is a misnomer, considering the camps were inadequately protected by the UPDF.²⁵ Moreover, without effective assistance, the camps resulted in high civilian mortality, due to insanitary conditions, lack of food, and insufficient medical supplies.²⁶

Between January and July 2005 alone, some 25,694 civilians died (including 10,054 children) in protected villages in Northern Uganda, of which 3,971 were killed in combat, giving an average figure of 1,000 civilians dying each week from camp conditions.²⁷ The Ugandan security forces also perpetrated numerous abuses and atrocities. The UPDF and the Local Defence Units (LDU) often beat, tortured, raped and killed civilians who left the camps, dissented, or refused to join them. Ugandan security forces have been implicated in numerous rapes as well as forcibly recruiting children as combatants.²⁸ Additionally, the insecurity in Northern Uganda meant civilians’ livestock, possessions, and homes were subjected to pillaging and destruction by government forces, particularly in relation to their prized cattle, which were decimated by raids from UPDF soldiers and

19 HRW (2005), p21–22; Allen (2006), p43.

20 Zachary Lomo and Lucy Hovil, *Behind the violence: The war in northern Uganda*, Institute for Security Studies (2004).

21 By 2005, approximately 2 million people in the Acholi sub-region, 200,000 people in the Teso sub-region, 41,000 people in West Nile, and 33% of the population in the Lango sub-region were displaced due to the conflict. See 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, UHRC and OHCHR (2011), p55.

22 Uganda People’s Defence Force/National Resistance Army.

23 Adam Branch, Uganda’s Civil War and the Politics of ICC Intervention, *Ethics and International Affairs* 21(2) (2007) 179–198, p. 180.

24 Breaking the Circle: Protecting Human Rights in the Northern War Zone, Amnesty International, 1999, AI Index: AFR 59/001/1999; and Nowhere to Hide: Humanitarian Protection Threats in Northern Uganda, Civil Society Organisations for Peace in Northern Uganda, 2004.

25 HRW (2005), p64.

26 Health and Mortality Survey among Internally Displaced Persons in Gulu, Kitgum and Pader Districts, Northern Uganda, Ugandan Ministry of Health, WHO, UNICEF, WFP, UNFPA, and IRC, 2005; see *Between Two Fires: The Human Rights Situation in ‘Protected Camps’ in Gulu District*, Human Rights Focus (HURIFO), 2002.

27 Ministry of Health *ibid*.

28 HURIFO (2002), p15–17.

neighbouring Karamojong raiders.²⁹ Some UPDF commanders have also profited from the conflict, through seizing displaced people's land or corruption.³⁰ Accordingly, the Acholi saying 'when two elephants fight, it is the grass who suffers' epitomises the brutality of the conflict on the civilian population.

Conflict Transformation and Peace Negotiation

Frustrated by government inability to protect them, and with no end of the war in sight, the IDPs led by their cultural and religious leaders marched on the streets of Gulu calling upon the government to forgive the LRA, declare amnesty and peacefully resolve the conflict. The Acholi in diaspora also rallied together, convened a number of meetings known as "*kacoke madit*" in London and Nairobi, which brought together key Acholi leaders, and generated a consensus amongst them, that the conflict in northern Uganda should be ended through negotiations. In 2000, after initial resistance from government the Parliament of Uganda passed a law offering amnesty to those who have been involved in insurgency against the government from 1986.³¹

The Amnesty Act encouraged hundreds of rebel fighters within the LRA and other insurgent groups across the country to denounce violence and to return home.³² Over 27,000 combatants benefited from the amnesty law, about half of which were from the LRA. The amnesty law significantly reduced the capability of the LRA and other insurgent groups and opened the opportunity for peaceful negotiation with the LRA.³³ However, unknown to many people, President Museveni had in 2003 secretly referred the LRA to the International Criminal Court (ICC).

By 2005, a series of piecemeal peace engagements with the LRA, led by some cultural leaders and Hon. Betty Bigombe then Minister for Northern Uganda Pacification, had generated real optimism for a credible peace talk between the LRA and government.³⁴ The new rounds of peace talk was to be conducted in Juba South Sudan under the auspices of the Government of Southern Sudan mediated by then Vice President Dr. Riek Machar. Around the same, the ICC unsealed its arrest warrants for key LRA commanders complicating the peace process.

In 2006, talks commenced in Juba with five agenda items and resulted into cessation of hostilities and facilitated the relocation of the LRA from all parts of northern Uganda into assembly points in South Sudan.³⁵

29 The head of cattle in northern Uganda in 1985 numbered some 285,000, by 1997 it numbered as little as 5,000, an economic loss of some US\$25 million; Robert Gersony, *The Anguish of Northern Uganda*, USAID, (1997), p31.

30 Allen (2005) p49.

31 BBC News, Uganda offers amnesty to rebels, 7 December 1999, <http://news.bbc.co.uk/1/hi/world/africa/554780.stm> (Accessed 17 January 2018)

32 BBC News, Uganda offers amnesty to rebels, 7 December 1999, <http://news.bbc.co.uk/1/hi/world/africa/554780.stm> (Accessed 17 January 2018)

33 Carlos, R.S (2009) " Tall grass: Stories of Suffering and Peace in Northern Uganda" p.24

34 See Caroline Lamwaka, 'The peace process in northern Uganda 1986-1990,' Conciliation Resources (2002) available at <http://www.c-r.org/accord-article/peace-process-northern-uganda-1986-1990-2002> accessed February 11, 2018.

35 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, OHCHR (2011) p55.

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.³⁶ This was allegedly because of the failure by the ICC to suspend its arrest warrants issued in 2005 for five top LRA leadership.

In December 2008, the Ugandan army with support from Democratic Republic of Congo (DRC), Central African Republic (CAR) and South Sudan launched a renewed military campaign dubbed 'Operation Lightning Thunder' which dispersed the LRA into eastern parts of the DRC, CAR and south of South Sudan³⁷ where they continue to operate to date.³⁸ The LRA launched a series of counter offensives, displaced thousands of civilians and killed many in retaliation, the worst being the Christmas Day massacre in December 2008.³⁹ Over a decade on the LRA is much diminished with many of its top commanders having defected, captured or killed, but it still has some capacity to carry out attacks against civilians in central Africa. Notably one of the LRA's senior commanders, Dominic Ongwen, was captured in the Central African Republic in 2015 and transferred to the Hague for trial at the ICC.

2.1 The Consequences of the Conflict

The conflicts in northern Uganda have had a profound and devastating effect at the individual, family, communal and societal level that continues to reverberate over time and through subsequent generations. Research carried out by the Berkeley Human Rights Center suggests the extent of northern Ugandans' victimisation with 95 per cent of respondents identifying themselves as direct victims,⁴⁰ 88 per cent reporting being displaced, 57 per cent household members killed, and 45 per cent abducted, with many northern Ugandans subjected to numerous other crimes and violations.⁴¹ As such, the UN Office of the High Commissioner for Human Rights has recognised victims' suffering as 'a wide range of physical, emotional, psychological, cultural and economic harms, both as individuals and communities . . . different harms have had a compounding effect'.⁴² Victimisation is also complex with children or adults being abducted by the LRA and forced to commit crimes,

36 Ibid. p55.

37 Among, Barbara (14 February 2009). "Ninety Days of War in Garamba Forest". *New Vision*. <http://allafrica.com/stories/200902150006.html> (Accessed 19 January 2018)

38 Atim Sheilla Gloria, Exploring The Viability Of Reparations As A Transitional Justice Mechanism In Northern Uganda: The Case Study Of Gulu District (2012). See <https://hhi.harvard.edu/research/insights-impact-of-lra#project>; http://www.fao.org/fileadmin/user_upload/drought/docs/Cross-border%20Findings%20DRC-CAR-Uganda-SS.pdf; and <https://reliefweb.int/report/uganda/fact-sheet-counter-lord-s-resistance-army-c-lra>.

39 See Mareike Schomerus and T. Kennedy After Operation Lightning Thunder: Protecting communities and building peace' Conciliation Resources, April 2009 available at https://reliefweb.int/sites/reliefweb.int/files/resources/2C7F381F378F481B492575A60004C53B-Full_Report.pdf accessed February 11, 2018.

40 When the War Ends: Peace, Justice, and Social Reconstruction in Northern Uganda, Human Rights Center, University of California Berkeley, 2007, p. 27

41 Transitioning to Peace: A Population-based Survey on Attitudes about Social Reconstruction and Justice in Northern Uganda, Human Rights Center, University of California Berkeley, December 2010, p. 22.

42 Making Peace Our Own: Victims' Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda, Office of the United Nations High Commissioner for Human Rights (OHCHR), 2007, pp. 4–5.

causing them to be both victims and perpetrators.⁴³ In sum, victimisation in northern Uganda is endemic, compounding, and complex.

As one community psychologist said there are “a lot of invisible voices” who have suffered during the Northern Ugandan conflict, in particular those who suffered physical and psychological injuries, including victims of landmines, gun shot wounds, sexual violence and torture.⁴⁴ These victims who are left seriously injured and disabled are often not able to travel to consultations on transitional justice issues, as they cannot walk there, afford a bodaboda or for someone to carry them.⁴⁵ Many victims suffer psychological consequences, with some unresponsive, lost pleasure in everyday things, are chronically depressed, or aggressive when asked about the past.⁴⁶ Mental health can be in some communities a taboo to openly talk about and used by some individuals to tarnish those returnees and their children as ‘mad’, killers and having bad blood.⁴⁷ Educational and cultural institutions were disrupted or destroyed during the conflict, along with the economic devastation of clans’ cattle and personal wealth being taken.

Abductees can suffer from stigmatisation upon returning home, due to them being forced to commit crimes against their local communities. Many also received multiple violations over a number of years including gunshot wounds, incontinence and sexual dysfunction, or injured through carrying heavy loads as children through the bush, that has left them with chronic health problems.⁴⁸ They also missed out in educational and vocational training, while some of this is provided to those who return from the bush and are reintegrated, they often struggle to support themselves in the long term. As Akello points out some victims may exercise their agency by using moral or social pressure on demobilised combatants who have received benefits where victims have obtained no redress, as an informal way to punish and ostracise them, risking social disruption and potential communal violence.⁴⁹

For children born to mothers who were sexually enslaved by the LRA, as they were born in the bush they do not have national identification documents, which as they are getting older prevents them from attending university or availing of loans and land purchase.⁵⁰ The mothers who were sexually enslaved continue to face stigma and discrimination as they engage in small business enterprises to survive.⁵¹ Dealing with stigma can be a “constant battle” for victims.⁵²

43 Abducted and Abused: Renewed Conflict in Northern Uganda, HRW, 2003; and Worst Place to be a Child, Civil Society Organisation for Peace in Northern Uganda, March 2007.

44 UG11.

45 UG11.

46 UG11.

47 UG11.

48 UG21.

49 Grace Akello, Reintegration of Amnestied LRA Ex-Combatants and Survivors’ Resistance Acts in Acholiland, Northern Uganda, *International Journal of Transitional Justice* 13(2) (2019), 249–267, p266.

50 See Virginie Ladisch, *From Rejection to Redress: Overcoming Legacies of Conflict-Related Sexual Violence in Northern Uganda*, ICTJ 2015.

51 Norman Mukasa, War-child mothers in northern Uganda: the civil war forgotten legacy, *Development in Practice* 27(3) (2017) 354-367.

52 UG21.



Rwot Dermoi Oweka Ajao II exhibiting the lists of those documented as missing

The passage of time has had a compounding effect on victims' harm with ASF noting that they 'continue to struggle for survival—each day is yet another reminder of their pain, loss and suffering. Many cannot afford a day's meal or even pay tuition for their children to attain an education.'⁵³ Many of those victims abducted by LRA and other groups have never returned and are 'missing', having likely died in the bush or in neighbouring countries, preventing their family from knowing the whereabouts of their remains and allowing them to carry out the proper burial rituals.

While the conflict ended in 2006 with the LRA moving into neighbouring countries and most displaced persons moving back to their original residences, there remain numerous disputes over land, which at time have erupted into violent confrontations.⁵⁴ Some of this is as a result of the breakdown in communal management of land, exploitation by private companies and individuals who have returned from being abducted or displaced in camps selling their ancestral land to make some money to survive.⁵⁵ Added to this is the impact of the numerous bodies that are buried on land formerly inhabited by the protected villages. Not only does this create challenges for the identification of those killed, but also for the owners of the land who are unable to sell it or use it productively without carrying out the required traditional practices to cleanse it of the blood spilled on it.⁵⁶ Families are unable to afford the sheep, goat or chicken needed to sacrifice for the ritual to

53 ASF, *A Beggar Has No Choice*, (2017), p7.

54 See Anna Macdonald, *Transitional justice and political economies of survival in post-conflict northern Uganda*, *Development and Change*, 48 (2) (2017), 286-311.

55 UG14.

56 See Jaymelee Kim, *Of Justice and the Grave: The Role of the Dead in Post-conflict Uganda*, *International Criminal Law Review* 19(5) (2019), 1-25.

cleanse the land.⁵⁷ Moreover, disputes over land were usually determined by community leaders and kinship, which was ‘heavily disrupted by conflict and displacement’.⁵⁸

In more recent years Uganda has faced an influx of hundreds of thousands of South Sudanese refugees as well as displacement caused by violence in Rwenzori and the spill over of violence in neighbouring Ituri, DRC. There have been no formal reparations or land restitution programmes initiated in DRC or Uganda, with continuing disputes over land boundaries of communal and private land. In Uganda, the recent publication of the National Transitional Justice Policy recognised that contemporary conflicts over land have been a direct consequence of armed conflicts in the country, which need to be addressed through its proposed reparation programme.⁵⁹

3. Background on Reparations in Uganda

Despite decades of violence and being signatory to many human rights conventions, Uganda has a weak record in implementing remedies for victims. Instead only some victims have received acknowledgment, monuments and compensation payments, resettlement packages, and apologies coming up to elections.⁶⁰ There have been some notable developments, such as the establishment of Commission of Inquiry into Disappearances of People in Uganda 1974, which recommended compensation for illegally detained prisoners, restitution of property of disappeared soldiers, and social services to widows and children of those disappeared, but was never implemented.⁶¹ This was followed by the 1986 Commission of Inquiry into Violations of Human Rights in Uganda into atrocities committed by previous governments, that included recommendations for the establishment of Ugandan Human Rights Commission to investigate complaints and recommend remedies for victims.⁶² Nevertheless there has been no comprehensive reparations programme. Amongst civil society actors in northern Uganda there remains a ‘deeply held sense of injustice’ for the lack of reconciliation and reparation for the atrocities committed during the war.⁶³ This has an impact on social trust, reintegration and community cohesion with victims and perpetrators living side by side, but also civic trust of people in the north with the government in the south.

57 Ibid. UG16.

58 Anna MacDonald and Raphael Kerali, Being Normal: Stigmatization of Lord’s Resistance Army Returnees as ‘Moral Experience’ in Post-war Northern Uganda, *Journal of Refugee Studies* (2020).

59 National Transitional Justice Policy, Ministry of Internal Affairs, June 2019, p21.

60 See Justice and Reconciliation Project, ‘Paying Back What Belongs to Us’ JRP Field Notes XVI, October 2012. Also see ICTJ, What Became of Reparations? Civil Society dialogue.

61 See Joanna R. Quinn, Constraints: The Undoing of the Uganda Truth Commission, *Human Rights Quarterly* 26, (2004) 401-427; and 1974 Commission of Inquiry into the Disappearances of People in Uganda since 25 January 1971, at 789–800, <https://www.usip.org/index.php/publications/1974/06/truth-commission-uganda-74>.

62 Commission of Inquiry Act, Legal Notice No. 5 May 16, 1986 and Article 52 of the Constitution of the Republic of Uganda, 1995. See Benjamin J. Odoki, *In the search for a National Consensus: The Making of the 1995 Constitution*, Fountain Publishers 2005.

63 Northern Uganda Conflict Analysis Advisory Consortium on Conflict Sensitivity (ACCS), 2013, p33

Background on Reparations in Uganda

Only a few selected victim groups from Acholi, Lango and West Nile sub-regions have been offered some forms of ‘politicised’ compensations, usually as out of court settlements.⁶⁴ The government has avoided any court case filed by victims to end up in binding judgment. In all other cases reparations payments have been mere political tokens calculated for electoral gains,⁶⁵ delivered without genuine acknowledgement, lacks a policy framework, and excludes directly affected victims.⁶⁶

In some instances, where the state has supported local memorials and commemorations like in Mukura in Teso sub-region, such supports or monuments are calculated to perpetuate narratives that vindicates the real perpetrators.⁶⁷ For example, the people in Mukura were burnt alive by government forces, but the monument constructed by the same army has writings which memorialises their contribution to the protection of Ugandans. There is still no comprehensive government reparations policy and implementation guidelines buttressed by genuine commitment to deal with the past and to address the myriad legacies of violence in different parts of the country. From the international system, the ICC Trust Fund for Victims have equally attempted to assist some victim’s communities, mainly in sites targeted by ICC investigations in the ongoing case against Dominic Ongwen. With the scale of victimization and complexity of actors responsible, such an effort by the ICC Trust Fund for Victims have simply been a drop in the ocean.⁶⁸

Victims have formed a number of associations to claim reparations against the government through the Ugandan courts. For example, the Acholi War Debt Claimants Association, was successful in settling with the government for Shs2 billion (£500,000) for their 14,000 claimants for livestock and agriculture equipment taken during the conflict, a tiny fraction of their original Shs45 trillion (£12 billion) claimed for full compensation. Though there have been persistent complaints about delays and corruption. There have also been a handful of cases before the Gulu High Court where individual victims have been able to overcome the barriers to justice and to claim compensation from members of the UPDF,⁶⁹ or against the government for forced displacement and destruction of their property,⁷⁰ but there are no reported cases against the LRA due to the predominance of amnesties. In some LRA massacre attacks victims have brought claims against the government for unfulfilled promises of compensation, but so far none have succeeded.⁷¹

64 See Justice and Reconciliation Project, ‘Paying Back What Belongs to Us’, JRP Field Notes XVI, October 2012.

65 See Henry Mukasa and Milton Opolot, ‘Government to compensate Teso war victims’, New Vision, August 21, 2008 available at https://www.newvision.co.ug/new_vision/news/1182804/govt-compensate-teso-war-victims accessed Wednesday, January 24, 2018.

66 See Joanna R. Quinn, ‘The Politics of Acknowledgement: An analysis of Uganda’s Truth Commission.’ YCISS Working Paper No. 19 (2008).

67 See Mukura Memorial and Development Initiative in Justice and Reconciliation Project, ‘Paying Back What Belongs to Us’ JRP Field Notes XVI, October 2012, p7-8.

68 See ICRW, External Evaluation of the Trust Fund for Victims in Northern Uganda and DR : Towards a Perspective for Upcoming Interventions, September 2013 available at <http://www.iccwomen.org/news/docs/WI-WomVoices12-13/downloads/TFV-Evaluation.pdf> accessed January 24, 2018.

69 See *Marcelino Ladaa v Ivan Opok* [2008] UGHC 133 (29 August 2008); *William Abura v Attorney General* [2008] UGHC 40 (14 November 2008); *Odong Cypriano v Attorney General* [2009] UGHC 55 (30 April 2009).

70 *Omito & 5 Ors v The Attorney General*, [2017] UGHCLD 85 (15 June 2017).

71 See ASF (2017), p13.

As Sarkin observes, 'establishing a reparations programme in Uganda will be a difficult and complex process. It will be fraught with the politics of the present and the politics of dealing with the past.'⁷² There will be major questions such as how many resources the state will be willing to allocate? Whether it will be done at the expense of the development process that government is presently carrying out? Who will be covered in such a process? Will it also cover victims of government abuses? Will it be done based on application by victims and proof of loss etc.⁷³ This requires a clear policy framework on reparations to see such measures effectively implemented. In addition, the policy framework and implementation guidelines should guarantee that such a process will be corruption proof; because unfortunately, even where the government has allocated sufficient money, identified a broad range of victims, and identified core recovery and development challenges, the monies have not reached the intended victims due to systemic corruptions within government institutions.⁷⁴

3.1 Assistance and Recovery Programmes

Even though normal governmental development programmes are usually distinct from reparations and should be treated as such, the line between recovery interventions and reparations are increasingly blurred in practice in northern Uganda. This is because civil war inherently disrupts government service delivery and developmental programme in conflict affected areas.⁷⁵ In the case of Uganda, where the conflict raged on for more than two decades, other parts of the country were relatively peaceful and enjoyed uninterrupted government service delivery and developmental programmes.⁷⁶ As a result, northern Uganda - a region already historically marginalised was set back twenty years, further widening the development gap between the north and the south. The same can be said for all the sub-regions affected by conflicts even though the degree varies. In such contexts therefore, immediate post-conflict recovery programmes are vital.

In the absence of a comprehensive reparation policy and programme in Uganda, the NRM government has over the last thirty years implemented several post-conflict recovery programmes in different parts of the country. A substantive sum of money has been spent in post conflict recovery assistance in various conflict affected areas albeit with minimal impact due to lack of acknowledgment and systemic corruption.⁷⁷ These recovery programmes are often funded by the government with assistance of development partners.⁷⁸ The reluctance by foreign donors to directly fund reparations programmes,

72 See Jeremy Sarkin, Providing Reparations in Uganda: Substantive Recommendations for Implementing Reparations in the Aftermath of the Conflict that Occurred over the Last Few Decades, *African Human Rights Law Journal* (2014) 14 526-552.

73 Ibid.

74 See 'We Saw What was Done, Not our Will was Done' RLP Briefing Paper on Impact of PRDP.

75 See, Arthur Bogner and Dieter Neubert, 'Negotiated Peace, Denied Justice? The Case of West Nile (Northern Uganda) in *Africa Spectrum* (2013) 55-84.

76 See MFP&ED, OPM and Office of the President, 'Post-Conflict Reconstruction: The Case of Northern Uganda' Discussion Paper 7 (Draft) April 2003 available at <http://siteresources.worldbank.org/UGANDAEXTN/Resources/CG2003.pdf> accessed January 26, 2018.

77 See International Alert, Monitoring the Impact of the Peace, Recovery and Development Plan on Peace and Conflict in Northern Uganda, July 2013 available at http://www.international-alert.org/sites/default/files/Uganda_PRDPNorthernUganda_EN_2013.pdf

78 See Sarah Bayne, Aid and Conflict in Uganda: Conflict, Security and Development in the Horn of Africa, Saferworld Report, March 2017 available at <https://www.gichd.org/fileadmin/pdf/LIMA/Aid-and-conflict-in-Uganda.pdf>.

and in the absence of comprehensive transitional justice process, the government has often coined some tokens of reparation measures into recovery assistance as illustrated in the various initiatives like the Northern Uganda Social Action Fund (NUSAF) I and II and the Peace Recovery and Development Plan (PRDP) I, II and III.⁷⁹ Similar recovery programmes have been implemented in other sub-regions for example Karamoja Integrated Development Programs, Karamoja Livelihoods Programs and West-Nile Development Programme.

3.1.1 Northern Uganda Social Action Fund (NUSAF I) 2003-2009

The Government of Uganda with support from the International Development Association (IDA) implemented the Northern Uganda Social Action Fund (NUSAF 1) project from 2003- 2009 with the purpose of improving the socio-economic conditions of the people in Northern Uganda and ensuring the improvement in service delivery in the region. NUSAF I had four components which inter alia included to provide support and encourage community reconciliation and conflict management using traditional and non-traditional approaches, based on indigenous knowledge, the way communities have in the past managed conflict so that it has not led to open warfare, and helping communities reclaim this knowledge for use in modern-day living in Uganda and institutional development component to support training and capacity building for different sets of stakeholders.

During its six years implementation period, it has been reported that NUSAF I project strengthened transparency in local government service delivery processes in the region and was instrumental in creating a platform in which communities became active players in ensuring decentralisation of service delivery.⁸⁰ NUSAF I was criticized for not reaching the beneficiaries that it was intended for despite a budget of \$100 million over five years. In addition its public image was tainted by allegations of corruption, lack of accountability of funds, which greatly affected the implementation of the project.⁸¹

3.1.2 Northern Uganda Social Action Fund (NUSAF II)

Even before NUSAF I had ended and given its relative success and popularity with donors, the government rapidly developed NUSAF Phase II. This Fund had a purpose of improving the access of beneficiary households in Northern Uganda to income earning opportunities and to better the access to basic socio- economic services. The NUSAF II had three components: the livelihood investment support; community infrastructure rehabilitation; and institutional development.⁸² In terms of livelihood investment support, the emphasis was on supporting the communities to come up with income generating activities and provide them with skills that would help them in creation of self-employment.

79 International Alert *ibid*.

80 Richard M. Kavuma "NUSAF developing Northern Uganda" The Guardian <https://www.theguardian.com/katine/2010/jan/11/nusaf-developing-north-uganda>

81 Tonny Okwir 'The reason behind the NUSAF Project phase one in Uganda' January 15 2012, <https://okwirtonny2011.wordpress.com/2012/01/15/reasons-behind-the-failure-of-nusaf-project-phase-one-in-uganda/> (Accessed 20/1/2018). Also See <https://openknowledge.worldbank.org/bitstream/handle/10986/9584/382060UG0Social0action0find26901PUBLIC1.pdf?sequence=1&isAllowed=y> accessed February 19, 2018.

82 Richard M. Kavuma "NUSAF developing Northern Uganda" The Guardian <https://www.theguardian.com/katine/2010/jan/11/nusaf-developing-north-uganda> (Accessed 20/1/2018)

The community infrastructure rehabilitation, was intended to ensure the rehabilitation of community infrastructure to improve access to basic socio-economic services such as rehabilitation of schools, hospitals, community water points, health centres and basic solar lighting system.⁸³ This project had been designed to feed into the PRDP with the aim of rebuilding and empowering communities.

Peace Recovery and Development Plan (PRDP I and II) 2007-to date

Even before NUSAF II had ended, and following the signing of the Agreement on Comprehensive Solutions in Juba, the Government of Uganda and development partners established the PRDP I to provide for a framework of reconstructing northern Uganda after the conflict. The plan covers some districts in northern and eastern part of the country. The purpose of the plan was to strengthen coordination, supervision and monitoring of development programs in Northern Uganda. It further focused on stabilisation of peace to regain and consolidate peace in the area. This program lasted for three years. After the expiration of PRDP I, the government undertook the next phase of developing PRDP II as it was highlighted that more efforts needed to be taken, to ensure that northern Uganda is at par in terms of development with other regions of the country. It was reported that PRDP II could contribute towards rebuilding physical security, health, education and construction of water sources.⁸⁴

The program encountered challenges such as inadequate staffing, low absorption of funds by the local government at the different districts, lack of accountability, grandiose corruption, issues of reporting which is not in line with the funds received. PRDP I and II focused on infrastructural development. It has been argued that this mandate of these PRDPs was centred on hardware (development programs) and neglecting the software component of the needs of victims that directly benefits them per se.⁸⁵ PRDP II program ended in June 2015 and as such the Government undertook to develop PRDP III. However, by this time donor interest had substantially faded and PRDP III is anything but a name. A forensic investigation into the Office of the Prime Ministers tasked with implementation of these recovery programs unearthed systemic corruption with impunity.⁸⁶

The government narrative believed by many in Uganda is that the PRDP and all the other programs above were reparatory and that the legacy of conflict in northern Uganda has been substantially addressed. With that mind-set and intentions, large portion of the PRDP funding were diverted by the government to settle victims lawsuits and out of court settlements. The rest were swindled by technocrats within the Office of the Prime Minister tasked with implementation of the programme.

83 See Okwir, 2012.

84 "We Saw What was Done but Our Will was not Done: Assessing the impact of the impact of the Peace, recovery and Development Plan1 in Northern Uganda. ACCS PRDP II Baseline Survey June 2013. Available at http://www.refugeelawproject.org/files/ACCS_activity_briefs/RLP_PRDP_II_baseline.pdf (Accessed on 20/1/2018). Also see RLP, 'Thrown Along the Way: Community Perspective on Conflict Drivers in the Implementation of the PRDP' November 2012 available at https://www.refugeelawproject.org/files/ACCS_activity_briefs/Thrown_Alone_the_Way.pdf accessed February 19, 2018.

85 RLP, Are we There yet?, http://refugeelawproject.org/files/ACCS_activity_briefs/Are_We_There_Yet_%20ACCS_PRDP_III_Briefing.pdf

86 "Letting the Big Fish Swim" Failures to Prosecute High-Level Corruption in Uganda, HRW (2013).

This PRDP as part of a reparation narrative remains the government contention even in the face of gross abuses of the recovery funds, lack of impact on the individual victims and groups as well as the total absence of acknowledgment and accountability for specific harms suffered by the victims during conflict. The PRDP projects were delivered as assistance, political favours by the NRM government, for which the population of northern Uganda should be grateful, but never as victims' entitlements. In retrospect, it was simply meant to reassert the regime authority and control in the region, but never to empower them with fear that they may rise up again. As a result, victims across northern Uganda continues to demand effective reparations. For them, they saw what the PRDP did, but not their will - the wishes for reparations, were not done.⁸⁷

3.1.3 Reparations Beyond the Courts and Legal Processes

For the government the payment of reparations is avoided due to connotations of reparations as admission of responsibility for its role in the many wars they have fought to date. Instead conflict-affected communities must embrace the governmental programs and appreciate the recovery efforts invested in them. There is stiff resistance to any mention or reparations for victim victims or comprehensive transitional justice process involving public acknowledgment of responsibility or truth seeking. In one of the TJ Policy consultation convened by JLOS-TJWG, the then Minister of Justice and Constitutional Affairs, Hon. Kahinda Otafire asked sarcastically, "who can handle the truth in Uganda" and urged JLOS to let the "sleeping dog lie."⁸⁸ This kind of attitude does little to build victims and civil society's confidence in trusting the state to seriously engage in transitional justice.

Without the implementation of a state administrative reparations programme victims and affected groups within northern Uganda have resorted to community led reparatory initiatives. These measures range from civil society led interventions to customary/traditional justice mechanisms.⁸⁹ Some civil society organisations have designed and piloted several transitional justice projects targeting individual victims and groups to address urgent conflict related physical/mental wounds⁹⁰ as well as livelihood challenges.⁹¹

87 See "We Saw What was Done but Our Will was not Done: Assessing the impact of the impact of the Peace, recovery and Development Plan1 in Northern Uganda". ACCS PRDP II Baseline Survey June 2013. Available at http://www.refugeelawproject.org/files/ACCS_activity_briefs/RLP_PRDP_II_baseline.pdf (Accessed on 20/1/2018).

88 See JLOS, National Validation Workshop: Report on Study of Traditional Justice, Truth-Telling and National Reconciliation,' held at Imperial Royale Hotel, Kampala, 13 July 2012.

89 See Phil Clark, 'All these Outsiders Shouted Louder than Us:' Civil Society Engagement with Transitional Justice in Uganda, SiT /WP/03/15 available at http://www.securityintransition.org/wp-content/uploads/2015/11/CS-and-TJ-working-paper_Uganda.pdf accessed January 26, 2018.

90 See Dyan Mazurana et al, The War wounded and recovery in northern Uganda, Briefing Paper May 2014 at <http://fic.tufts.edu/publication-item/the-war-wounded-and-recovery-in-northern-uganda/>

91 See ACTV Programme, 'Healing in Northern Uganda' at <https://www.cvt.org/what-we-do/training/healing-northern-uganda>

Refugee Law Project's Beyond Juba Project,⁹² Justice and Reconciliation Project,⁹³ Acholi Religious Leaders Peace Initiative and several organizations have embarked on collecting and documenting testimonies of victims, archiving them and exhibiting them to the public. The RLP's National Memory and Peace Documentation Centre is conceived of as a "history clinic."⁹⁴ Based in Kitgum, the facility is a repository of victims' testimonies and conflict related artifacts.⁹⁵

Local truth telling have been conducted and key conflict events profiled to promote victim centered narratives of the conflict and their experiences.⁹⁶ Victims groups have been supported by non-government organizations and religious groups to build monuments⁹⁷ and hold annual commemorations to preserve their memories and those of their loved ones.⁹⁸ This is motivated by various reasons for various actors- sometimes by genuine attempts to preserve memory, foster healing but also as sometimes as part of project implementation.

Local rituals such as *mato oput*, *nyono tong gweno*, *moyo piny* and *culu kwor* have especially been useful in facilitating return and reintegration of ex-combatants and facilitating community level reconciliation.⁹⁹ *Mato oput* (drinking the bitter root), has been used where warring parties are reconciled after the responsible party or clan acknowledges their wrongdoing in front of the community, provides a truthful account, makes compensation to the victim's clan (*culo kwor*) to atone for the harm, and then both clans share a meal together. Where clans are warring amongst each other, the *mato oput* ceremony can be linked to negotiations on appropriate reparations for the damage caused, and followed by the *gomo tong*



Memory hut for missing persons, Pader

92 See Refugee Law Project, Conflict, Transitional Justice and Governance Programme, at <https://refugeelawproject.org/our-work/conflict-transitional-justice-governance>

93 See Justice and Reconciliation Project, Annual Report 2007 available at http://justiceandreconciliation.com/wp-content/uploads/2008/01/JRP_AnnualReport_2007.pdf

94 See RLP, the National Memory and Peace Documentation Centre (NMPDC) available at https://refugeelawproject.org/work-with-us/index.php?option=com_content&view=article&id=298&catid=31&Itemid=163

95 NMPDC *ibid*.

96 See JRP, The Cooling of Hearts: Community truth telling in northern Uganda, (2012) Human Rights Review 13 107 at <http://restorativejustice.org/rj-library/the-cooling-of-hearts-community-truth-telling-in-northern-uganda/11309/#sthash.sBiecbTP.dpbs>

97 See Laurence Ocen, 'Memory and Loss in northern Uganda' MISR blog post 27 November 2015 at <https://mistr.mak.ac.ug/news/laurence-ocen-memory-and-loss-northern-uganda>.

98 See Phillippa Kerri Ovonji-Odida, Landscape of Memory: A study of Memorialization in Northern Uganda, Masters Thesis, March 2016, available at <https://dalspace.library.dal.ca/xmlui/bitstream/handle/10222/71390/Ovonji-odida-Philippa-MArch-ARCH-April-2016.pdf?sequence=1&isAllowed=y>.

99 See Barney Afako, 'Traditional drinks unite Ugandans' BBC Focus on Africa Magazine, September 29, 2016 available at <http://news.bbc.co.uk/2/hi/africa/5382816.stm>.

Background on Reparations in Uganda

(bending of spears) to prevent recurrence of violence.¹⁰⁰ *Moyo piny* is a ritual used to cleanse the land contaminated by unburied dead.¹⁰¹

The Acholi cultural institutions and local traditional leaders have performed a range of rituals to facilitate return of abducted children across northern Uganda. Cultural and religious institutions have also played great role in promoting healing and reconciliation amongst the affected communities.¹⁰² Nonetheless, these mechanisms without official acknowledgement and state level reparations are insufficient.¹⁰³ Reburial rites like '*inko cogo*' (reburial of the bones)¹⁰⁴ and area cleansing have facilitated decent burials and family reunion.¹⁰⁵

Given that the Agreement on Accountability and Reconciliation recognises the central place of traditional justice mechanisms in all processes of dealing with the past in Uganda and this position is affirmed in the draft national transitional justice policy, there is no doubt that the above non-formal processes will constitute a core component of an integrated justice approach and potentially any reparations programming in Uganda.

3.2 Juba Peace Talks

At the Juba Peace Talks 2006-2008, a range of accountability and reconciliation measures were agreed including some key principles for reparations to the conflict affected communities. The Principle Agreements and Implementation Protocols on Comprehensive Solutions to the Conflict¹⁰⁶, and on Accountability and Reconciliation¹⁰⁷ set forth the framework upon which future reparations programmes and policy were to be developed and implemented in post-conflict Uganda.¹⁰⁸

The Agreement called for the setting up of a Special Division of the High Court in Uganda to deal with those most responsible for serious crimes; a truth seeking body to inquire and recommend measures to address past violations; traditional justice processes for reintegration and reconciliation; and a whole range of legal and institutional reforms to ensure accountability, serve justice and

100 See Joanna R. Quinn, 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, p190-191; and Erin K Baines, The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda, *International Journal of Transitional Justice*, 1(1)(2007), 91-114.

101 Paul Bukuluki, *Negotiating Retributive and Restorative Justice in Conflict Transformation Efforts: A Case of Northern Uganda*, Lit Verlag (2011) p66-67.

102 See Erin K Baines, 'The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda' *International Journal of Transitional Justice*, Volume 1, Issue 1, 1 March 2007, pg 91-114.

103 See Bill Oketch, 'Uganda: War wounds too deep to heal', IWRP November 13, 2008 available at <https://iwpr.net/global-voices/uganda-war-wounds-too-deep-heal> accessed January 26, 2018.

104 See RLP Video " Lets Save the Future" available at <https://www.youtube.com/watch?v=2IDBpDPZj7A> accessed January 26, 2018.

105 See USAID, 'Healing rites promotes return in northern Uganda' January 31, 2009 available at <https://reliefweb.int/report/uganda/healing-rites-promote-returns-northern-uganda> accessed January 26, 2018.

106 See Implementation Protocol to the Agreement on Comprehensive Solutions February 28, 2008.

107 See Agreement on Accountability and Reconciliation (AAR), signed June 29, 2007.

108 Ibid.

promote reconciliation, with particular attention to upholding victims' rights, participation and witness protection.¹⁰⁹

Article 9 (1) – (3) provide that reparations may include a range of measures such as rehabilitation, restitution, compensation, guarantees of non-recurrence and other symbolic measures such as apologies, memorials and commemorations. Furthermore the agreement stated that priorities shall be given to members of vulnerable groups (women, children, elderly and persons with disabilities) and shall take the form of both collective and individual reparations.

Article 9 (3) provide that reparations, which may be ordered to be paid to a victim as part of penalties and sanctions in accountability proceedings, may be paid out of resources identified for that purpose.¹¹⁰ The annexure to the AAR further provide that the government shall establish the necessary arrangements to provide reparations to the victims of the conflict in accordance with the terms of the principal Agreement.¹¹¹

3.3 Post – Juba Peace Talks 2009

After the Juba talks ended in 2008, and even though the Final Peace Agreement was not signed, the government of Uganda committed itself in principle to implement key protocols as agreed at the Juba talks. It established an inter-ministerial committee to implement the peace agreement and set up a Transitional Justice Working Group (TJWG)¹¹² under the Justice Law and Order Sector (JLOS)¹¹³ to consult further and develop mechanisms for implementation of the agreement on accountability and reconciliation.

As a result, the Peace Recovery and Development Plan for Northern Uganda (PRDP) was eventually developed and implemented led by the Office of the Prime Minister (OPM) pursuant to the Agreement on Comprehensive Solutions. Also, the JLOS – TJWG set up four sub-committees to study the effective implementation of the AAR. Unfortunately, corruption within the OPM negated the impact of the PRDP and equally, the JLOS – TJWG have since been trapped in an endless process of a developing a Transitional Justice Policy¹¹⁴ for Uganda, with almost ten different drafts.¹¹⁵ The Transitional Justice Policy contains a detailed chapter on Reparations based on the key principles espoused under the AAR and which could form the basis of future legislations on reparation in Uganda.¹¹⁶

109 See AAR *ibid*.

110 AAR *ibid*.

111 See Annexure to the Agreement on Accountability and Reconciliation February 19, 2008. Also see Phuong Pham et al, *When the War Ends: A Population Based Survey on Attitudes about Peace, Justice and Social Reconstruction in Northern Uganda* December 2007 available at https://www.law.berkeley.edu/files/HRC/Publications_When-the-War-Ends_12-2007.pdf accessed February 13, 2018.

112 See <http://www.jlos.go.ug/index.php/about-jlos/priority-focus-areas/transitional-justice>

113 See <http://www.jlos.go.ug>

114 See <https://beyondthehague.com/2013/08/09/the-lapse-of-amnesty-in-uganda-stimulating-accountability-or-prolonging-conflict/>

115 See <http://www.jlos.go.ug/index.php/document-centre/transitional-justice/transitional-justice-policy>

116 See https://reliefweb.int/sites/reliefweb.int/files/resources/Orientation_of_MPs_on_TJ.pdf

After the collapse of the Juba peace talks the Beyond Juba project proposed a National Reconciliation Bill to implement a broader understanding of transitional justice, which included provisions for truth recovery and a National Reconciliation Forum that would have the power to make recommendations for reparations. However the international community placed greater focus on the implementation bill of the Rome Statute through the International Criminal Court Act 2010.¹¹⁷ Uganda has also made strides to enhance its legal and institutional capacity to deal with war crimes and crimes against humanity in accordance with international norms and standards. There has been less of an effort to secure reparations to victims.

In 2009, a War Crimes Division (WCD) was set up by the then Principle Judge in accordance with the AAR. The ICD is a special division of the High Court of Uganda mandated to try international crimes. It has a bench of five dedicated judges who are ordinarily justices of the High Court and only sit a war crimes court whenever a matter within its jurisdictions arises. In 2010, the International Crimes Act was enacted to domesticate provisions of the Rome Statute in Uganda,¹¹⁸ and in 2011, the WCD was renamed the International Crimes Divisions (ICD) with expanded jurisdiction including to award reparations.¹¹⁹ In June 2016, a Special Rules of Procedure was adopted for the ICD which inter-alia empowers victims to participate in all ICD proceedings and for determination of appropriate reparations for victims by the court.¹²⁰ So far only one case against Thomas Kwoyelo, a former LRA commander, has touched on the conflict in Northern Uganda. Despite proceedings starting in 2011, over nine years later the trial continues, with 85 victims participating through two lawyers.¹²¹ While a trust fund has not been established and Mr Kwoyelo is indigent, it is unlikely there will be sufficient support for reparations to the victims participating before the Court without funding from donors and the Uganda government. Given the focus on one perpetrator, and so few victims participating in the case, reparations at the ICD would be disproportionate to redressing the larger victim population and the need to establish an administrative reparation programme.

In November 2015, the Women's Advocacy Network together with several civil society and victims' groups petitioned the speaker of parliament to urge government to pay attention to the plight of conflict-affected communities. Parliament passed to resolution to that effect including for the government to expedite reparations programmes for conflict-affected communities.¹²² Even though not binding upon the government and there is no specific timeline upon which to respond, the Prime Minister then Hon. Amama Mbabazi in his remarks undertook before Members of Parliament that government would take as a priority the development of appropriate reparation programmes

117 See Stephen Oola, In the Shadow of Kwoyelo's Trial: The ICC and Complementarity in Uganda, in C. Stahn, C. de Vos and S. Kendall (eds.), *Contested Justice: The Politics and Practice of International Criminal Court Interventions*, CUP (2015), 147-170.

118 The International Crimes Act of 2010 does not create a right to reparations but provides for the enforcement in Uganda of reparations orders made by the ICC and its Trust Fund for Victims.

119 See the High Court (International Crimes Division) Practice Directions, Legal Notice No. 10 of 2011.

120 See REDRESS, Uganda International Crimes Division (ICD) Rules 2016: Analysis on Victims Participation Framework, August 2016.

121 UG15.

122 See UN Women, 'Uganda Parliament adopts resolutions to address needs of war affected women,' April 26, 2014 available at <http://www.unwomen.org/en/news/stories/2014/4/ugandan-parliament-adopts-resolution-to-address-needs-of-war-affected-women> accessed on January 26, 2018.

targeting conflict affected women and communities in northern Uganda. However, action has since been undertaken in this regard.

3.4 National Transitional Justice Policy (NTJP)

Reparations in the 2019 published National Transitional Justice Policy is priority 5, which the government sees as ‘integral to victim’s re-integration in society’ and going ‘a long way in addressing outstanding issues of post conflict situations’ including land disputes, CBOW, damage to social fabric and marginalisation.¹²³ The Policy commits the Ugandan government to establish and implement a reparations programme for those affected by conflict, with consideration for ‘interim, short term reparations’. To implement this the policy outlines that the government will enact legislation for ‘comprehensive reparations’, suggesting it would be separate from a proposed Transitional Justice Act mentioned in the policy. The policy also commits the government to undertake a mapping exercise to identify victims, define categories of violations and the time period in which they occurred along with the ‘magnitude of the violations and benchmarking exercise to ascertain who receives reparations.’¹²⁴ It stipulates that public participation will be ensured in the design and implementation of reparation, identify responsible actors in the ‘execution’ of reparation programmes, and involve local governments, traditional leaders, CSOs and local communities. Outreach activities will be undertaken to improve ‘information flow on government reparations programmes.’¹²⁵ In addition, traditional justice is seen as a key local mechanisms as a ‘tool for conflict resolution and safeguards will be implemented that will recognise and protect [the] right of parties that need redress.’¹²⁶ This all sounds well and good, but given that it has taken over a decade for the policy to be finalised and published, it is very thin on detail as to how a reparations programme would look or operate. The final section of this report makes some recommendations on what shape implementation of this policy should take.

4. Views from the Ground on Reparations

This section draws together reflections of our respondents on what they consider as appropriate reparations, what a reparation process would look like, what forms it should take and some of the challenges in implementation. Victims’ perceptions of, attitudes toward and priorities for reparation are mediated by their level of organization, access to information, education, socioeconomic standing and broader perceptions of the conflict.¹²⁷ Rural populations often lack access to information, especially about the ICC and its cases. Yet, 4,065 Ugandan victims are participants at the ICC, a

123 NTJP p20.

124 NTJP p20.

125 Ibid.

126 NTJP p18.

127 UC Berkeley Human Rights Center, 2015. “THE VICTIMS’ COURT? A Study of 622 Victim Participants at the International Criminal Court.” Phuong Pham et al, ‘When the War Ends: A Population Based Survey on Attitudes about Peace, Justice and Social Reconstruction in Northern Uganda’ December 2007

clear indicator of interest in justice—an interest which extends to non-state and state actors alike.¹²⁸ However, the prospect of receiving reparations has been the primary motivation for victims who have elected to participate at the ICC.¹²⁹

Attitudes toward reparation, including broader conceptions of “what should be done for victims of the conflict”, center around financial compensation in Uganda. Other priorities, including food, livestock, counseling and education also stand out in perception studies. But individualized, financial compensation has stood out as a priority in perception studies.

Notably, perceptions of the broader conflict revolve more around “struggles for power” than one-sided accounts of non-state actors like the LRA.¹³⁰ This reflects the complex, multi-sided history of violence throughout the country. Lack of accountability for perceived violations by the government has aggrieved many. These attitudes vary considerably by region within the country as well. Overall, there is broad agreement about the responsibility of the government to support and build peace.

4.1 The Concept of Reparations

Respondents’ understanding of reparations were broadly on the same page, reflecting a strong understanding of the concept as distinct from assistance and requiring more than money.

Civil society and donor respondents understanding of reparations

“At its very basic, reparations is a human rights concept. Going back to the ICCPR which I think is really a foundational instrument in all of this is if there’s been a violation of human rights, if there’s been harm that’s occasioned there’s a responsibility to repair that harm. So, the guidelines I think provide a framework on how that harm can be repaired and the different means of repairing that harm but there could be other concepts on harm because harm varies. Harm that accrues from a human rights violation varies and it also depends on context, what value is attached to that particular experience or to that object that is subjected to harm. ... [It] also determines how that harm has to be repaired but at the very minimum there should be a process that seeks to repair that harm.”¹³¹

“Reparation means working with people who have been in war, who have been displaced probably internally or externally as refugees, and then working towards reintegrating them into their community. Towards an aspect of compensating probably the damages, the losses that they incurred in the course of the conflict. This compensation can be individually different to individuals or to different groups or they can also be symbolically like, maybe a monument or a school built in memory of those things that have happened. And then there’s the aspect of justice also to the victims. ... As the LRA or government or whoever was responsible should now lead to reconciliation and say ‘yes we have hurt you’ and then the

128 Ibid.

129 Ibid.

130 Ibid.

131 UG01.

people also say ‘yes you have hurt us but we have to move forward’. That should end in a reconciliation between the perpetrators and victims that were wounded or had a lot of bad things done in their life. So we look at reconciliation as part of reparation. As an aspect that seals it, that sermons it, that makes it stronger because once people reconcile they are able to move on together.”¹³²

“Reparation is just ways or mechanisms that communities that have gone through conflict, to address the aftermath of what happened. Issues around accountability of what happened and issues of compensation take different shapes. They can either be through the formal justice mechanisms or through the traditional justice mechanisms. So ideally, the idea of reparation is around how do communities that have been affected by conflict move forward.”¹³³

“Reparations is about repair and healing of a society....whether it is material or symbolic it has to have a component of healing in society. We cannot talk about guarantee land restitution when you’ve not guaranteed the health and safety of that society who will be dreading to think there will be a repetition if there is no healing of the society. So, for me, reparations basically means repair and heal a society, that is the beginning of it.”¹³⁴

One victim lawyer said, reparations “means making something good, right? To like repair in the literal sense to put not something new, but to try and make it work.”¹³⁵ Ultimately it is the ‘context’ that shapes the appropriate measures to be used for reparations in societies transition from conflict.¹³⁶ One civil society actor viewed reparations as, “the set of measures that must be put in place to enable people to recover. It’s a statement of recognition first and then enabling victims. So reparations come with recognising that something was done which was bad, with an act of omission or commission and you’re putting in place measures to repair those harms.”¹³⁷

One individual who spoke to a number of victims summarised their perspective on reparations as, “What some of us want is an admission of some wrongdoing, bring some people to justice and to that end, this is a form of reparation. Recognise us as victims of a situation that was either created or an attempt to address a situation that affected us adversely.”¹³⁸

Another said that “the ultimate goal for reparation is reconciliation ... because right now there’s a lot of distrust, people don’t trust the government anymore. They have lost that belief that we have a government that can actually stand in for its people.”¹³⁹

132 UG04.

133 UG03.

134 UG10.

135 UG15.

136 UG01.

137 UG21.

138 UG25.

139 UG03.

Views from the Ground on Reparations

One CSO distinguished reparations from more assistance or development initiatives, “you cannot conflate development with reparations because development accrue from the government’s responsibility to provide services to all members of society, whereas reparations accrue from the harm suffered.”¹⁴⁰

“There is a lot of disillusionment because it’s now ten years since Juba, there’s been a lot of promises that have been made in Juba and now the government unfortunately are saying there is peace now, people have gone back, people should now transition from the state of victimhood.”¹⁴¹

Victims and Combatants

For one victim they said “reparations should start repairing the lives of girls and women, then it can now extend to society”¹⁴²

For one senior army officer, reparations are seen as inappropriate. “No human life can be replaced even when somebody loses part of the body, no amount of rehabilitation can bring you back to normal.”¹⁴³ One LRA ex-combatant said that for him, “reparation is like helping people forget about the negative past. Reparation means staying together in peace with other people. You should also have something to do so that you forget the negative past, something that is disorganised from your life in the past, so if you have something to do it will enable you to forget that bad thing that you went through.”¹⁴⁴ Another LRA combatant who was abducted viewed reparations as important in discovering the truth, that required “investigating and understanding exactly what happened in Northern Uganda. So once you have investigated and found out what happened exactly then the response should now to get those people who were found to have suffered, whether it is from the government or from other groups.”¹⁴⁵

Community Leaders

One traditional leader said that, “The word reparation to me would mean restoring the value of something that has been damaged to a certain extent that would be accepted by the people that suffered during a particular war or insurgency or whatever happened to them. And those values would be anything physical, spiritual, or cultural.”¹⁴⁶

One local government administrator said “when I look at the aspect of reparation, I then begin to look at what happened and what needs to be done to repair the situation so it may not necessarily be paying back or compensation per se, but the effort that has to be met in terms of trying to correct

140 UG01.

141 UG01.

142 UG05.

143 UG07.

144 UG19.

145 UG12.

146 UG06.

and trying to improve on a status that has gone wrong completely, as a result....[this] means steps that will be taken to rehabilitate, to create a deliberate recovery strategy; and also to compensate where things can be compensated.”¹⁴⁷

Another traditional leader said, “reparation is actually saying what is supposed to be in the heart of each and everybody, because how will I look tomorrow from now and what is my attitude, how do I feel at the moment, do I have a positive way of living with others, if I’m not then why don’t I go and actually do something so that we come together....Now, for the previous war I think the process is now moving direct, each and every time we are moving on land reconciliation, we are moving on people who’ve been killed, we are trying to bring these people back. That’s what we mean by reparations – bringing peace to the normalcy.”¹⁴⁸

One local politician importantly frames reparations in the following terms, “In our culture we don’t believe in revenge. Reparation is one way of forestalling revenge. That is the meaning in the Acholi culture, reparations is also about restoring broken relationships. Any form of violence or conflict for that matter, creates cleavages in a society, it undermines harmony. If there are reparations, it’s more about the acknowledgement of guilt and the collective responsibility by a perpetrator and their household or clan, in the case of the Acholi people.

Obviously, if you kill a person accidentally, and the Clan Chief says you should pay compensation of five heads of cattle, five heads of cattle is not an equivalent of human life. So it’s not really about the equivalency, it is more about a symbolic gesture to show acknowledgement of responsibility and some consolation in a material form. And reparations don’t go without actual acknowledgement. So it is not enough just to bring stuff and leave them there. But more importantly, there are elaborate rituals that accompany any of the reparations. These elaborate rituals border on the temporal and spiritual. Before the advent of Christianity our people believed that the spirits of our ancestors hover around our home states. That’s why in Acholi the dead are buried right in the [family/clan] compound. So the rituals had more meaning to the materials that we consider to be reparations. Therefore, both the victims and perpetrators use the reparation and the rituals as a kind of intersection between those who have been sinned against and those who have sinned.”¹⁴⁹

Another local political leader framed reparations in a cultural context, in terms of claiming compensation for the cattle that were lost during the war. Cattle for him were their informal ‘development bank’, where they would be used to strategically invest money and use them for long term family and community planning of wealth, whereas chicken and goats were used for short term commercial dealings.¹⁵⁰ So the loss of the cattle as assets reflects a rupture of more communal and cultural interactions and social and economic capital devastated by the war that has left Northern Ugandans economically disadvantaged and marginalised.

147 UG09.

148 UG16.

149 UG08.

150 UG20.

Reparations “means rehabilitating the victim. I think not so much as financially but also emotionally, and medically, and seeing to it that the person is integrated back into the community, is no longer ostracised and comes to terms with what happened to him or her.”¹⁵¹

4.2 Reparation Process

Over the past few years a number of civil society organisations have focused on building up the capacity of victims themselves to participate in transitional justice debates, by informing them of their rights and giving them platforms and avenues to speak directly to decision makers to advocate for reparations.¹⁵² With many victims illiterate, due to missing education because of war or the poverty caused by it, means that they have to be “walked through” concepts such as victims’ rights and transitional justice, that is not solved by a one-day workshop, but through continuous engagement and support.

“building a victims movement, seeing that victims continue to push as active citizens for their right to redress and reparations as opposed to having it as purely civil society initiative and once that is done you see this pressure to a certain extent, begins to move things. I was giving an example of when victims organised we started seeing parliament making pronouncements. Parliament wasn’t bothered about civil society, they listened to us but who cares? But when they saw that formally abducted women coming forward and saying we have children whose birth rights are being violated, they’re stateless, they have no birth registration opportunities, so we saw the speaker in parliament come out and say – I want this to be an issue that is prioritised, I want the state to present to us a process immediately and we are hearing that there could be proposals for parliament moving a private members bill on a number of the factors that are contained in the transitional justice policy. So, one of the things we’re seeing is keeping the affected communities engaged and at the forefront of this as opposed to it being just the civil society led initiative as one of the approaches. Other than that, the State will simply keep telling us that look, the war has ended, peace has been restored, we’re now focusing on moving forward, development but it is the communities that continuously remind them that look, these harms did not go away, the violations did not go away.”¹⁵³

This has also seen victims’ needs change over time as they wait for decades for redress, as one victim said,

“The needs of the victims are changing probably after a period of 5 years. When we returned there were so many challenges in the community, there were issues of stigma in the communities, rejection. The communities had a negative attitude towards them, but then with time and also with the intervention of many NGOs in terms of capacity building, at least I find that then they started changing at least after 5 years. I say that because around after 5 years after the intervention by NGOs and civil society and that is through the empowerment of capacity building, that’s when the victims decided to come together to voice their opinions and to advocate. At the time, their major concern was to raise awareness to the war and to know that what they went through as young girls who were abducted and taken to the bush, they faced a lot of challenges so they

151 UG02.

152 UG01 and UG03.

153 UG01.

wanted the world to understand that so they should understand that it is not proper to abduct young girls, because she said that during the war the children and women were the target. It is from that moment that we also realised that we should really have the right petition to the government. So, one of the things that we included, we actually raised ten issues in the petition, we submitted it in 2014 and one thing is about the education of our children and reparation. The other thing that I still remember in that petition is that it is the government that failed to protect us, that's why we were abducted, so the issue of our health when we returned and have developed complication, such as health-related problems, and we wanted a voice from the government to start taking care of that. We also wanted government to apologise for what happened to us.”¹⁵⁴

The passage of time also creates difficulties in victims having sufficient evidence to make applications or claims for reparations before a court or if a administrative body was established.¹⁵⁵ Most victims were displaced, some were born in the bush without any birth registration, others had their homes with their identity documents destroyed, and many cannot afford to pay for new documentation. This passage of time is causing further frustrations amongst victims who attend consultations and outreach by the government on the transitional justice policy or ICD, but see no change to their situation only “lip service.”¹⁵⁶

Another civil society organisation, while helping victims be aware of the ICC proceedings and to participate in proceedings, also focused more in setting the groundwork in communities to have a fuller conversation on dealing with the past. As one of the managers said, “we started engaging in things around facilitating communal repair and social healing, specifically to say that we cannot talk about national reconciliation without a healed society. We cannot talk about national reconciliation with just victims that are wounded, so we need to first heal the individuals who will participate in healing their communities.”¹⁵⁷

There remain tensions and divisions amongst victims. Some civil society actors have pointed out cases where reparations were made to the victims as exceptions, with some viewing the success of securing money from the government was because they “sang a song that was pleasing to the President, praising him.”¹⁵⁸ This is problematic as it is seen as not reparations, but “gifts”¹⁵⁹ from the government in a way to encourage patronage and support, rather than to vindicate victims’ rights. T also reflects the vulnerability of the victims who are frustrated and vulnerable, demanding compensation, but do not have a full understanding of all their need and how to articulate reparations as a demand that can look after a more complex range of needs.¹⁶⁰

For those individuals who have brought civil claims, generally those who are better off and able to afford fees and even bribes are more likely to succeed that most victims who are impoverished.

154 UG05.

155 UG15.

156 UG15.

157 UG10.

158 UG03.

159 UG03.

160 UG03.

This speaks to class inequalities, its intersection with gender and access to justice, as well as more broadly the state institutions which seem remote and removed from people's daily lives.¹⁶¹ Any reparation programme could use data already collected or being mapped, such as violations in northern Uganda during the conflict by the Human Rights Commission.¹⁶²

4.3 What Form Should Reparations Take?

Reparations can become a technocratic exercise in crafting the appropriate measures to remedy victims' harm. This is particular true in developing effective reparations with scarce resources and involves a key role for civil society to act as honest brokers in mobilising, educating and advocating with victims to find a solution with the state. Some victims do have a clear understanding of what measures are needed to remedying their continuing harm. For female victims of sexual violence and who had children born in the bush, they view reparations in terms of health, in that "they should be really taken care of, their health and also education because they believe that if these children are not educated, at some point they may even think of going back to fight again. So, the women think that education of their children means a priority that they want."¹⁶³ However, this requires technical input into making it operate in a reparations programme. As our team has dealt with elsewhere, it requires sensitisation of medical professionals to victims' needs, development of specialist services and complemented with other measures such as compensation, birth registration of children born of war and community education to counter stigma.¹⁶⁴

For land issues some suggested that "restitution as reparations considers land as an object or property, but does not take enough account of how a particular piece of land has special significant for an individual or community that is tied to their ancestral heritage and dignity."¹⁶⁵ In relation to those who remain missing one individual said, "I think in a way the government should own up this process and say can I work with this different CSOs. You know, bring on the church, bring on the religious, the cultural leaders let's see how we can actually help these victims identify or find missing persons. That is something I think that could be, you know, the sufficient reparation that people want, they might not want your money, you know, but just knowing where their people are is sufficient enough."¹⁶⁶

There is strong support amongst Northern Ugandans for reparations.¹⁶⁷ Victims view both individual and collective reparations as a necessary, if not fundamental, part of remedying the conflict in Northern Uganda. Quantitative research by the Berkeley Human Rights Center supports these findings, with respondents identifying memorials (90 per cent), cattle restocking (74 per cent), financial compensation (66 per cent), housing (44 per cent), education (38 per cent), and counselling (22 per

161 UG01.

162 UG01.

163 UG05.

164 See Sunneva Gilmore, Julie Guillerot and Clara Sandoval, *Beyond Silence and Stigma – Crafting a Gender-Sensitive Approach for Victims of Sexual Violence in Domestic Reparation Programmes*, RRV, March 2020, p51-52.

165 UG01.

166 UG03.

167 See ASF and OHCHR reports.

cent), as important.¹⁶⁸ Some believe compensation paid directly into their hands is an important means of repairing the harm they have suffered, so that they can determine for themselves the best way to spend it, as ‘money speaks’. This could also avoid the money going into the hands of officials, risking it being lost through bureaucracy and corruption. Some victims believe that restitution of their property is vital for them to ensuring their economic and social recovery.¹⁶⁹ For the pillaging of livestock, some victims propose the replacement of cattle, but there have been complaints that the government’s restocking programme used weak and sick animals.¹⁷⁰ They instead considered compensation as a more appropriate remedy.

For monetary awards some suggested that “if a person lost their life then it is compensation for that should be for all those who died so of course.”¹⁷¹ Others believed that education and health reparations were needed immediately for many victims, before many more die as a result of the consequences of the conflict.¹⁷²

Apologies

“I think a good apology and confession cannot be relative, it can only be real and that comes from your heart, you cannot be forced to apologise. If you force me to apologise, I will say OK now I apologise. You will surely look at me and say that is coming from my lips but not from my heart. But for somebody who is really sorry for what he has done some people even cry because he would share in the pain that he has caused others. The pain that he see others in, he would share in that pain and feel really he or she has not done something that is good for the people. So if that really comes from the heart and people are able to see and say really this person is sorry for what they did. People would forgive you. Yeah and maybe that is one thing that even that our people here have been expecting from government. Even just a word of sorry, people expected the government should be humble enough to say. Because while the war was here between the LRA and then the government you cannot tell whose gun, has killed the people.”¹⁷³

Another civil society actor said, “an apology will not make any sense if people are still bleeding, if people are still struggling with their wounds in their bodies. So, the reparations should focus on first and foremost, making sure that you are medically rehabilitating rape victims and you are able to get them to a position where they acknowledge at their own individual level what happened to them and take it as part of their journey. It has happened, it’s part of their history. Once people have got to see the past as part of them and not procrastinate or imagine as something else but to know that it

168 *Transitioning to Peace: A Population-based Survey on Attitudes about Social Reconstruction and Justice in Northern Uganda*, Human Rights Center, University of California Berkeley, December 2010, p44–46.

169 ASF (2017), p21.

170 Luke Moffett, *Justice for Victims before the International Criminal Court*, Routledge (2014), p228.

171 UG12.

172 UG21.

173 UG04.

happened and to know what the future is for them, they will tell you what their justice means to them because by the time they tell you they just need an apology they have options.”¹⁷⁴

Rehabilitation

Local services are not available or affordable to victims, with specialists with required equipment to carry out reconstructive surgery hundreds of miles away in Kampala. Some civil society organisations provide counselling and train communities in psychosocial support, but this is limited due to funding constraints.¹⁷⁵ Collective services have not been specialised to provide victims benefits, but more generally aimed at reconstructive efforts for the community and country. As one civil society actor who had interviewed a number of victims about reparations found,



Lukodi Memorial

“The majority of people preferred to have individual reparations than the collective reparations. And then the other thing also that was very, very interesting in terms of our research was the fact that people could clearly identify that PRDP was not reparations in the communities because they kept on saying no, but they’ve opened the road. Some people were telling us okay, they say they’re constructing roads, but I don’t have a car to pass on that road, I have a bicycle which can pass everywhere. So, how am I benefitting from this?”¹⁷⁶

Others have advocated that investment needs to be in education and health rehabilitation to mitigate the continuing consequences for victims and their children.¹⁷⁷

Memorials and Symbolic Reparations

As one community leader said, “monuments also help to cleanse people...a crime committed by an individual can stigmatise an entire community. So monuments, rituals, memorial occasions, help to de-stigmatise the community and in our culture many of these occasions are recorded and remembered through songs....

174 UG10.

175 UG11.

176 UG22.

177 UG21.

We come from an oral tradition, we seldom write things down, we keep talking about them.”¹⁷⁸ Other individuals spoke about the damage to traditional institutions and the need to repair clan shrines intended to honour ancestors and avoid spirits disturbing the living, which if repaired could take the form of symbolic reparations.¹⁷⁹

We also visited the massacre site of Mucwini, where the government provided funding in 2017 to the community to build a school following the victims’ wishes, so as to allow child an education “to build a new future.”¹⁸⁰ They are going to complement this with a memorial to the people killed by the LRA beside the school, but the individual compensation claim for the over 50 civilians killed remains contentious given the inter-clan dimension of the killing, which local traditional leaders are trying to mediate.¹⁸¹



The National Memory and Peace Documentation Center walk way, Kitgum

Social and culture rituals help to situate the rupture in the past and to reconstitute the social and spiritual order again, but also brings together the wisdom and proximity of the community around the victim. One transitional justice practitioner spoke about the role of traditional ceremonies in breaking the cultural stigma of children born of war being called ‘killers’ in their community, because their fathers were LRA commanders, by using cleansing ceremonies to break the “contaminations” in the lineage.¹⁸² In Kitgum one clan chief (rwot) with families who have had their children abducted by the Lord’s Resistance Army have created a memorial hut where they can gather with each other,

178 UG08.

179 UG11.

180 UG18.

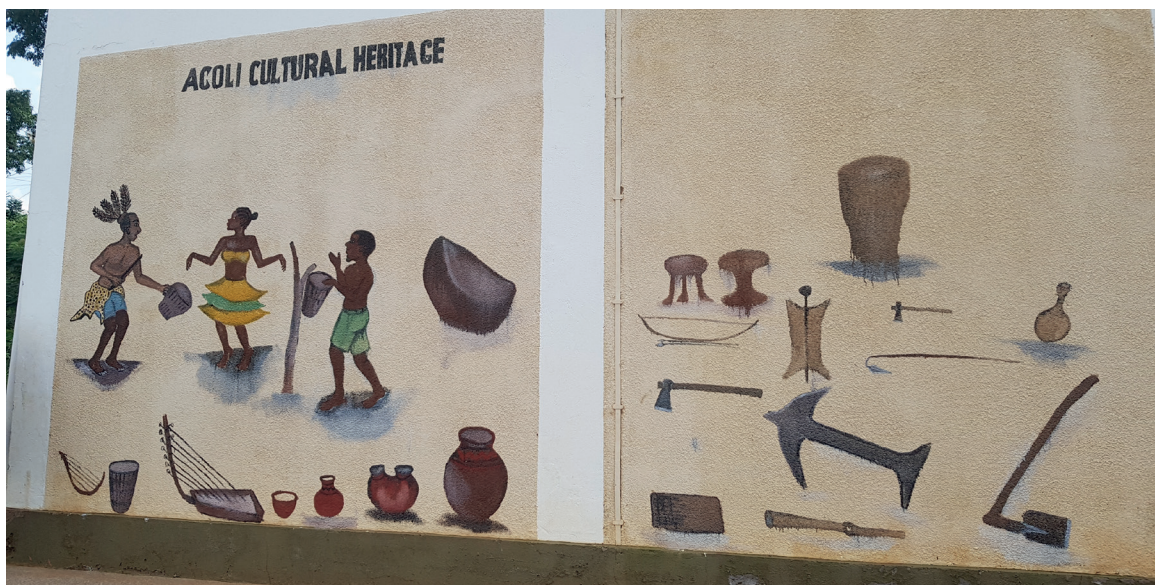
181 See Julius Ocungi, Mucwini Massacre; unfulfilled compensation demands cripple reconciliation, Uganda Radio Network, 25 July 2019, available at <https://ugandaradionetwork.net/story/mucwini-massacre-unfulfilled-compensation-demands-cripple-reconciliation>

182 UG21, Kampala, July 2018.

carry out ceremonies, such as calling back the missing person while winnowing the millet, provide counselling and have constructed a museum of objects to remember their loved ones along with their names.¹⁸³ Such efforts represent both an informal adoption of traditional connections with spirituality, memorialisation and social gathering to build solidarity, especially given the spiritual and psychological disharmony of not knowing the fate of their loved one and to bury their remains.

Role of Traditional Institutions

One Acholi government official “What has been tested here is amnesty and reconciliation and what has been done is based on our culture and tradition because naturally culture, life cannot be replaced, you cannot repay people for a life lost, all that is normally done is what tradition they call mato oput, making the perpetrator accept their own what they’ve committed, ask the victims to accept their sincere apology. A token, I don’t call it a reparation.”¹⁸⁴



The conflict has had a devastating impact of cultural institutions, rupturing knowledge and their connection with individuals and communities. As one traditional leader said,

“The traditional leadership was quickly affected because right from the 60s when the government disbanded the cultural institutions in Uganda, for us, we didn’t have time to recover fully since that time. ... together with people living in camps and then a new generation of religion coming from the camps this means that this is completely lost. Culture is part of the people, it’s part of life of the people, it’s the people itself and if people are lost, lose their culture then that means that the people themselves are lost and therefore, anything that would bring them to say in front of reparation has that cultural aspect, so people really take it in.... because of the war particularly, because it reached a certain moment when people lost almost all hopes and then luckily enough, people turned to their cultural leaders and that is

183 UG16, Kitgum, July 2018.

184 UG07.

how naturally the cultural institution also survived to help. So, at least now we have the clans traditional leaders, they are all there and each clan has its own tradition and practices. We had wanted very much to put this together, all these oral histories but we have not been able to do it. We have documented a few special issues to do with land, cultural principles and practices, our traditional land management and all that. We also did something on agenda but because this conflict. So yes, we have these oral histories and practices that we can all put together and then it will form policies and bring back the way of life and culture.”¹⁸⁵

This disruption of cultural institutions, which played a key role in understanding land demarcation and conflict resolution, has resulted in land grabbing and conflict.¹⁸⁶

For some traditional leaders the use of their local cultural understanding of justice is important in “we believe that by cleansing those spirits a proper settlement will come and that will also help in building the human capacity and renewing their livelihood.”¹⁸⁷ As one clan chief explained the role of traditional justice,

“we looked at this process, traditional process that’s the best alternative to all these other conventional processes, amnesty, the government, the courts of law and all that. If somebody does not want to go through we don’t force them but if there is an issue against you then you will have to participate and our system is open in that it is communal, even if you don’t participate directly your relatives will be working to participate on your behalf because after a while if it comes to compensation then everybody has to contribute. And that was also a way of restraining people in the past that if you commit a crime it is not only you, it is the whole family, so you need to be careful not to spread any pain to the whole community. So, it’s quite flexible that it can deal with people who are willing and people who are not willing but so long as there is an issue against you either directly or indirectly you have to participate.”¹⁸⁸

Some respondents spoke about collective responsibility of the community in resolving conflict, where traditional leaders were seen as having a key role. Others discussed the traditional notion of clan responsibility for violations committed by its members against other clans. We interviewed some clan leaders, including those of the LRA leaders. While some were supportive of reparations, there was reluctance to recognise the responsibility of the clan for the crimes committed by Kony and other leaders. This is understandable given the scale of harm caused and many clans being impoverished. However, it also speaks to a lack of ownership with the violence caused, despite some clan leaders being supportive of Kony, it did not extend to taking responsibility for making reparations to LRA victims.¹⁸⁹ There was some disagreement after the Juba peace talks that the government would pay reparations, but some local people found that this was inappropriate for the actions of the LRA, who should still be responsible. As stated by one local leader, “For purposes

185 UG06

186 See ASF 2019.

187 UG06.

188 UG06.

189 UG14.

of the LRA, it has got to be the clan to which these LRA commanders belong. In fact, if I commit an atrocity, I can't just write a cheque, no! And our culture even...however much money I have, I can't just get out my chequebook and say how, how much? And then write a cheque. That will not be acceptable. What is acceptable is that my clan should sit...I can contribute, but all members of my clan have got to come because people must feel...everybody's wallet must be hit, so to speak.”¹⁹⁰

4.4 The Challenges of Implementation

There are a number of obstacles and tensions to the implementation of reparations. Some that were raised by a number of respondents included stigma, impact of ongoing criminal trials, resources, trust and structural problems.

Stigma

For victims of sexual violence and who have children born of war or rape, stigma remains a continuing barrier for their enjoyment of their full rights and dignity. As one civil society actor articulated this,

“stigma is grounded in what norms demand. Social norms around that regulates sexuality, marriage, identity, belonging – those are the underlying factors. Yes, the experience of being there, committing crime or having been abducted is not the big thing. I think for me; the contestation is how you are defined within your society. How they experience those harms position you once you're back. As a woman you're already seen as taken because sexually it is very traditional. You are expected to be, like women told me 'I need to keep my honour, my respect', that is where your honour and respect comes from. Being known as a good woman. And having suffered sexual violence is already a question on your morality, on your sexuality and that is the questions your family's own honour and respecting the area of other people. So, the stigma is the family and community's own way of dealing with those contestations caused by the conflict. I don't think it's that simplistic that is just about being in the bush. Yes, being in the bush is one, but it's largely grounded in that social understanding of what harms do to people do to their own social status, their place, their honour. Your father can't now get a sort of bride well, actually people already say it's lowered, if you got married it's already lowered, because you already have children and you're known to have been sexually violated, your potential suitors will be reluctant to come forward. And so, for families where mothers pride with you know, you're seen to have been a good mother because your daughter is married, that's like your success, it's a question of honour on success, on ability to be a good mother but all this has changed the way people look at that and I think for me, the point is people trying to deal with all the changes that this war, suffering those harms caused not just to those women but to their own notion of how they define themselves and define the person within these social settings.”¹⁹¹

190 UG08.

191 UG21.

“In most cases people tend to be silent even if they are going through gender based violence. They tend to be silent, they tend to persevere with whatever difficulties, whatever hard situations they are going through. Probably in the hope that there could be positive changes and life can be well.”¹⁹²

As one victim recounted, “most of us experienced various violations, others were raped, others were returned and had the bullets were stuck in them, but when we returned we found that is a challenge, nothing much has been done.”¹⁹³ While some benefited from the amnesty fund’s reintegration package, they had to go through the amnesty commission and receive a certificate renouncing their rebellion, but for victims who were abducted they felt this was inappropriate and treated them as “perpetrators” and “instead of government to apologise to us”.¹⁹⁴ Female abductees were also felt “discriminated” against compared to males, some of whom were integrated into the armed forces and able to avail of a salary.¹⁹⁵ Despite campaigning to get a resolution passed in 2014 in the Uganda Parliament the victim group said that “we haven’t got any result, some of our members are even now dead. They were the ones who were championing that cause, others are now but it’s taking too long, that’s why even some of our members are dying before they can realise what they campaigned for.”¹⁹⁶

For victims of sexual violence, the lack of state support meant that some have organised themselves and supported each other. As one person said, “One of the things that helped us to come together and start speaking about the things was the use of story-telling. As victims, we sat together and we enjoyed story-telling amongst us all and we shared experiences and stories and that would make some, each of us open up to tell the challenges we are facing, even that relates to sexual violence. And one thing we used was 0:57:14.6 mapping to help them open up really, to speak about some difficult things. For example, body mapping allows a victim, they will draw a map of a person and then you indicate where you find you’ve got a problem. For example, if it’s psychological it’s the head and you map it with a marker and then later on, this victim will narrate more about that. She is saying there is somewhere that’s used, victims speak about the issue of sexual violence.”¹⁹⁷

Stigma is also felt by abductees and ex-combatants, who face further violations upon their return home, as one community leader told us,

“Three years ago outside of Kitgum there was a formerly abducted person who returned. The neighbours wanted his land, and thought he had already died in the bush, but he returned and found that people already occupied his land. He started claiming his land and then communities that were in rivalry for his land started accusing him of being a bandit, of being a thug and that he has a gun.”¹⁹⁸ Community leaders are often involved in resolving such disputes as one, where “when we intervene, we talk with the community and that was what

192 UG04.

193 UG05.

194 UG05.

195 UG05.

196 UG05.

197 UG05.

198 UG04.

we also used to do in the past before somebody goes back to be reintegrated the community needs to be prepared. And in the preparation we always ensure that the community gets to understand that the mode of the recruitment for the LRA was abduction. In this area there can be very few who voluntarily chose to join the LRA but most of the people were abducted against their will. And also both the community, both the government were there and could not do much to stop their abduction. So you cannot blame somebody for being abducted and taken to the bush. So if the person by good luck return, you should be able to receive that person back, then live with the person well so that the person can cope with life in the community. So, when we talk with the community and then they understand, it the helps a lot to resolve such conflicts. Usually sometimes it is a matter of living...I should say...you surrender certain things. Sometimes in a village it is a piece of land, even the for the sake of peace. Some people just surrender and say if it is this that is causing conflict take this, I will live in the rest of the pieces of land that I have. So that has helped to reconcile the different people, including the formally abducted persons.”¹⁹⁹

Another former child soldier spoke about how he still faces people gossiping about him and continuing his stigma. As every time he makes some money or has some money to start a small business, people in his village will say he must have got it from fighting in the bush, even though he returned years ago.²⁰⁰

Criminal Trials

The ongoing trials at the ICC and ICD for LRA commanders have captured the attention of donors and international community, but do little in alleviating victims’ everyday suffering. As one civil society actor said in relation to victims of sexual slavery and rape before the ICC case, reparations from the Court may help and provide some recognition, but the process itself “is not very closely connected to the everyday reality of these women and their children.”²⁰¹ There are also tensions between the two cases, as one victim lawyer recounted, “victims of Kwoyelo don’t have the luxury of the ICC [with some saying] we wish we were victims of Ongwen ... because of the treatment through the Trust Fund for Victims, there are some kind of tangible benefits.”²⁰² If Ongwen is found guilty at the ICC it will mean reparations could follow for the 4,065 victims who are participating in the case and others who are eligible. However both trial have defendants who are indigent meaning that support for reparations for victims will need to come from donors, whether through the ICC Trust Fund for Victims or other mechanisms. More problematic is that it will only be available to those victims were the specific charges and locations of crimes are convicted. This risks a real hierarchy of victims between those who could access to some reparations before these courts and the majority of victims outside of them, in particular for other LRA and Ugandan government violations.

199 UG04.

200 UG12.

201 UG21.

202 UG15.

Responsibility

As one former child soldier said, “the government of Uganda that stepped on the snake and created the mess so they bear sole responsibility as the sovereign authority to prevent this kind of outbreak of violence. So they bear the first level of responsibility, because if they had protected some of us we wouldn’t have abducted and do what happened within the war. Even me I’m not happy, I wouldn’t be the way I am now if it wasn’t for the abduction.”²⁰³ One individual felt that people were not simply victims of the LRA or the government, but ‘victims of the political process of this country.’²⁰⁴

Resources

The National Transitional Justice Policy outlines that funding for the reparations programme will be drawn from the consolidated fund and development support.²⁰⁵ There is a need to encourage donor involvement in transitional justice process. However, there was a feeling amongst civil society organisations that donors are constantly looking for the next ‘hot topic’ to fund, neglecting more longer-term issues caused by conflict. That development and reconstruction projects by the government like PRDP, while supported by donors, had achieved little in dealing with the past and its continuing effects, making it feel more like a “band aid to stop the bleeding.”²⁰⁶ For another local leader the PRDP was “meaningless” and that a more comprehensive approach was needed to address victims’ needs,

“The intention is good but poorly designed and you end up not doing much, OK. Because when you forget you forget the uniqueness of the situation, the environment in which people live, you then fail to design something that works. You cannot just come with a blanket idea and you think will work for someone who live in captivity for 20 years and got rehabilitated for six months and started life from scratch; you can’t do that, you can’t do much. So to me after the infrastructural aspect (0:17:03) needed to deliberately move to the next step; economic empowerment, not forgetting the psychosocial aspect because that has a lot to do with how you prepare people to actively get involved. Right now we have got interesting statistics, cases of GBV prevalence rate is at 60%... Then last year alone we documented over 150 people took their life, committed suicide. ... To me at an institutional level we need to look at the aspect of creating functional systems that can deliver services. But at victims level you also need to look at their cases and try to design something that works for them at individual level, at group level, at community level. At community level for example the community of Lukodi – what works for them? Every year the community of Lukodi, where the massacre took place; they just initiated themselves every year they visit and pray for those who died; at community level, without government coming in.”²⁰⁷

This was shared by some victims, including one child soldier who went back to school, but only had funding for two or three years from a NGO, so when it ran out he was no longer able to continue his

203 UG12.

204 UG13.

205 NTJP p20.

206 UG08.

207 UG09.

studies.²⁰⁸ There were concerns that donors then to be “fair weather” and not strategic in long term engagement on issues dealing with the past, instead focus on headline grabbing issues, which is problematic in relying on them to support CSO advocacy and implementation of reparations as it can result in civil society becoming too “donor minded” in achieve their goals, rather than the goals of the community, society and those most affected.²⁰⁹

In the case of Northern Uganda one civil society actor felt that greater education of donors on transitional justice was needed so they could better understand the long-term impact of conflict. For him the “conflict still exists, it still lives on, among its victims. But how it lives on is that it has transformed, and no longer active, trauma is still at its highest.”²¹⁰ This may reflect broader misunderstandings of Northern Uganda that it has recovered, yet land disputes, drug abuse, mental and physical health inequities, social and communal disruption remain. In addition, this tension stems from the different pressures and cultures of practice that donors work within, where outcomes and measureable outputs are ways of determining success in the short term, given limited funding and the need to demonstrate value for money. This can be seen as a ‘checked box’ exercise, that only addresses victims’ short-term needs, such as shelter, micro-financing projects or communicable diseases treatment. However, for transitional justice and reparations in particular, outcomes of recovery or reconciliation can be difficult to measure or require years of programming to see success. This is further complicated by the legal connotations of reparations, which imply responsibility and involve the obligations of the state to ensure remedies for victims of gross violations of human rights and serious breaches of international humanitarian law. The development driven approach also taps into the government’s perspective of instrumentalising donors to look to recovery and assistance to victims, rather than more critical engagement at the structural and human consequences of the conflict.²¹¹

Perhaps this also requires a broader vision of transitional justice that actively looks beyond the state to consider informal repair, such as between individuals and communities. In the National Transitional Justice Policy the Ugandan government recognises the role and value of traditional justice mechanisms as forums for conflict resolution, but also lack regulation so safeguards need to be introduced to protect the rights of the parties seeking redress.²¹² In light of this the government intends to introduce legislation to provide guiding principles and regulations for traditional justice mechanism along with capacity building and sensitisation in communities. However without funding, appeal avenues or oversight, there is a risk that traditional justice mechanisms will not operate effectively, be subject to undue influence and corruption, or be captured by the state.

208 UG12.

209 UG20.

210 UG03.

211 UG01.

212 NTJP p18.

Trust

Lack of engagement and willingness of the Ugandan government to deliver on transitional justice indicates it is “not committed in terms of reparations”, undermining people’s trust in it.²¹³ Others felt that “the government just hopes that people can forget. Unfortunately, people can never forget. That’s why these processes are very important. So that even when people remember dark episodes, they also remember efforts to rise above them.”²¹⁴ This was a common theme amongst civil society actors who feel frustrated of the continued inaction in dealing with the conflict. Moreover, the government use of development funds as reparations, which have been beset with corruption, also represents a conscious effort to encourage “selective forgetting” of the past and takes away from directly benefiting from victims means there is a “conceptual deficit” in the practice of reparations.²¹⁵ This reflects the government’s broader narrative of the conflict to encourage society to move on and “let the sleeping dogs lie”.²¹⁶

This frustration over the government’s inaction in delivering on transitional justice was tied to bigger issue with the state of democracy in Uganda, that power too easily silence critiques and bought too many people off. As one politician said when asked about the visibility of LRA victims in comparison to those the state had victimised responded that “the government control the media, the government control the frame of the of the discussion, the government dictates the narrative.”²¹⁷ Another local leader suggested that the North-South divide that was a result of British colonialism, has been fuelled by subsequent government and that the current government tried to tackle the division it would not succeed, as it is “part of the problem. So it will require a new set of leadership that is able to recognise [the past] ... and [to establish a] Truth and Reconciliation Commission, as a body that should be able to talk about the things that happen in Uganda. Pointing them without fear or favour in the spirit of reconciling Uganda; but also identifying what happened and who is accountable.”²¹⁸

This historical context of mistrust was shared by another civil society actor who said, “in Uganda there is total mistrust between the citizens and the State, this was broken a long time ago before the conflict in Northern Uganda and in fact, some of the grounds from which the conflict in Northern Uganda sprung up was basically all those unresolved grievances and a lot of this mistrust in terms of our governing system.... right from pre-colonial times and post-colonial times and all these other regimes that have come they have failed to resolve these grievances. So, in Uganda it’s the only country that you’ll find generations of victims.”²¹⁹

²¹³ UG04.

²¹⁴ UG08.

²¹⁵ UG20.

²¹⁶ UG21.

²¹⁷ UG08.

UG09.

²¹⁹ UG10.

Conclusion and Recommendations

The passage of time is compounding victims harm, this is well captures in the research of Atim, who finds that communities and victims continue to face volatility, uncertainty and the struggle to move on years and even decades after violations, which reverberate with more structural inequalities.²²⁰

Structural problems

There remains a number of structural problems that compound victims harm and risk future violence, including disputes over land, poverty and corruption. These issues have been touched upon throughout this report. One respondent pointed out that Acholi people were main pastoralists who owned numerous heads of cattle before the conflict, but now live more subsistence and small enterprises, reducing their wealth and ability to engage in social activities such as dowries for marriages.²²¹ One civil society actor said that the lack of a structure to transitional justice and accountability for those within it meant that victims had no way of challenging the provision of services or enforce their rights.²²² Measures that the government has made to victims that they have 'branded' as reparations, have been only 'token' amounts more to "help with votes and possibly it will also help man's perception about NRM, help to sell NRM to these communities that we first took away their cattle."²²³ Reparations are often aimed at responding to direct violations, and thus need to be complemented by more structural reform to make their efforts at redress effective for generations to come.

5. Conclusion and Recommendations

It has been one year since the Ugandan government published the Transitional Justice Policy, which was debated behind the scenes for over a decade with almost different version published and shelved each year. Victims cannot wait any longer suffering as they have been living with for decades. Reparations not only aim to redress, but to reconstitute society, reaffirm citizens' rights, rebuilding trust in social and state institutions, and provide some common ground to reintegrate perpetrators and allow a space for reconciliation, so that yesterday's grievances do not become tomorrow's justification for insurrection.

The scale of the conflict in Northern Uganda victimised hundreds of thousands of people, with many continuing to struggle with the consequences in their everyday lives. For reparations to be effective and meaningful they should go beyond symbolic or service based measures to the whole greater north. There is a need for individual measures, including compensation, rehabilitation and where possible restitution. That said, reparations to be implemented need to be feasible, which requires a dedicated budget line from the state, financial oversight and monitoring of implementation. We

220 Teddy Atim, *Looking Beyond Conflict: The Long-term Impact of Suffering War Crimes on Recovery in Post-conflict northern Uganda*, PhD Thesis (2018), p197-198.

221 UG04.

222 UG10.

223 UG20.

have a number of recommendations to the Ugandan government and the international community on reparations in how to make such measures effective and feasible.

To the Ugandan government

5.1 Principles

Reparations should be based on principles of remedying and acknowledging the harm caused in a non-discriminatory, victim-centred manner. Reparations can only be effectively delivered on a national level where there are sufficient guarantees of peace and security. Reparations can play an important part in establishing a human rights-based culture and rebuilding the social fabric amongst individuals and communities, as well as civic trust in the state. Such efforts have to be complemented with wider efforts to deal with the past and the root causes of violence, including issues such as power sharing and constitutional and administrative governance reform. Reparations have to be part of a broader, coordinated transitional justice process, that collectively seek to prevent victimisation going unaddressed and grievances festering to cause future social disruption and potentially violence.

As recognised in the Transitional Justice policy, a Ugandan reparation programme should take a gender-inclusive approach to reparations at the design, access and implementation stages.²²⁴ Women and girls can suffer harm differently from men and boys. Wider social inequalities can disproportionately compound the suffering of women and girls, such as being subjected to sexual and domestic violence, being forced to abandon their education or career to care for their family after parents or a spouse is killed or seriously injured, suffering loss of income, or being left to search for the remains of loved ones and to demand justice.²²⁵ Girls and women can also have distinct reparation preferences from their male counterparts, such as prioritising healthcare over compensation. It may be appropriate for the Uganda government to adopt certain bespoke reparations based on gender. Reparations as such should also be gender-sensitive in content and delivery. Attention should also be paid to conflict-related sexual violence and efforts to provide an inter-disciplinary approach to responding to the harms caused to the physical, psychological health and dignity of such victims.²²⁶ This is particularly apparent for children born in the bush or as a result of sexual violence, who need as a priority access to identification documents to partake their full rights as citizens in Uganda.

A Ugandan reparation programme should consider the needs and interests of youth, who have been disproportionately affected by the conflict, not only through their direct victimisation and coercion to join armed groups, which have meant they have lost out in education and job opportunities later on, but also from the transgenerational impact of harm caused to their family, which can result in

224 See Nairobi Declaration on Women's and Girl's Right to a Remedy and Reparations 2007; and Reparations for Conflict-Related Sexual Violence, UN Guidance Note of the Secretary-General, June 2014.

225 Ruth Rubin-Marín, A Gender and Reparations Taxonomy, R. Rubin-Marín (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, (CUP 2009), 1-17, p2.

226 Sunneva Gilmore, Julie Guillerot and Clara Sandoval, *Beyond Silence and Stigma – Crafting a Gender-Sensitive Approach for Victims of Sexual Violence in Domestic Reparation Programmes*, RRV, March 2020.

Conclusion and Recommendations

psychological trauma.²²⁷ It may be that interim or prioritized reparations are made to vulnerable victims, such as those who have suffered sexual violence, children, disabled or elderly to help mitigate early on their harm.²²⁸ Prioritisation can take the form of paying interim relief payments, as in Nepal and Sierra Leone, or fast tracking their applications.²²⁹

The government before delivering reparations needs to engage with and consult victims, victim associations and civil society on what reparations should look like, so that they adequately and appropriately respond to their needs.²³⁰ This may require some sensitization on what reparations means in international law and the practices of other jurisdictions. Civil society and donors could play an important role in improving the reach of the state in these efforts across the country, particularly given the size of the country and poor infrastructure. A range of mediums should be used, such as community mobilization events, radio broadcasts, SMS messaging, and newspaper notices. Engagements with victims, victim associations and affected communities should be made in accessible and understandable terms, including in local languages and using mediums such as visual representations and storytelling where appropriate for those who are illiterate. Consultations and participation of victims in the design of reparations should make a special effort to ensure that women, children, elderly and those who are disabled are able to contribute to the process and have their views and concerns heard and considered. Particular attention and provision should be paid to victims of sexual violence and torture, who may feel stigmatized, socially excluded or psychologically harmed, such as private, discreet forums.²³¹

It may be worth establishing a Victim Champion to advocate victims' rights and interests to government bodies, such as JLOS and ICD. Such a Victim Champion should be someone who commands respect and confidence of victims, public authorities and others, and is able and willing to exercise their functions in an independent, impartial and sensitive manner. In Northern Ireland a Commissioner for Victims and Survivors is empowered to hear from victims and survivors, review the adequacy and effectiveness of law, practice and services for victims or those which affect their interests, seek their views, commission research and educational activities, issue guidance on best practice and provide advice on issues on the interests of victims and survivors.²³² The Commissioner is also guided by a Victims and Survivors Forum, made up of victims and survivors that provide advice to the Commissioner and provide direction to the Commission's work.²³³ Such a Victim Champion and Victim Forum in Uganda could help ensure transparency and victim input in the implementation of

227 See such an approach in Northern Ireland - Transgenerational Trauma: Dealing with the Past in Northern Ireland, WAVE Trauma Centre, March 2014; and in Peru Article 7(c), Reglamento de la Ley N° 28592, Ley Que Crea El Plan Integral de Reparaciones (PIR), Decreto Supremo N° 015-2006-JUS.

228 Such as in Sierra Leone - See Mohamad Suma and Cristián Correa, Report and Proposals for the Implementation of Reparations in Sierra Leone, ICTJ (2009); and in Tunisia - Article 12, Organic Law on Establishing and Organizing Transitional Justice 2013. See Report of the Commission on Human Rights in South Sudan, A/HRC/37/71, 13 March 2018, para.122.

229 Section 16, Agreement between the Federal Republic of Germany and the State of Israel 1952.

230 See Principle 32, 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.

231 See Lorraine Smith Van Lin, *Not Without Us: Strengthening Victim Participation in Transitional Justice Processes in Uganda*, Redress (2020).

232 See Victims and Survivors (NI) Order 2006.

233 See <https://www.cvsni.org/about-us/victims-and-survivors-forum/background-to-the-victims-and-survivors-forum/>

the proposed Transitional Justice bill and reparations programme. It would not be enough in itself to meet requirements of consultation and victim participation, which should be a broader engagement process. That said, in Colombia victim tables were used at community, regional and the national level to bring in a range of inputs from victims, but such participation requires funding to allow victims, in particular women, youth and disabled persons access, and have consequences on decision making and not a tick box exercise so that such engagement is sustainable and meaningful.²³⁴

Victims, their relatives and the public should have access to easily obtainable, in relevant languages and concise information on the transitional justice processes and progress. The state is responsible for disseminating information to victims and the general public on ‘all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access.’²³⁵ Engagement with victims should be a ‘two-way communication ... to conduct interactive activities, to listen to victims and respond to what they are saying, and to take into account victims’ concerns’.²³⁶ The Office of the High Commissioner for Human Rights as stated that ‘national consultations are a form of vigorous and respectful dialogue whereby the consulted parties are given the space to express themselves freely, in a secure environment, with a view to shaping or enhancing the design of transitional justice programmes.’²³⁷

As such consultations are not PR exercises and are distinct from outreach, which aim to sensitise affected communities. Once institutions are legislated for, set up and operational, outreach to affected communities is key. The United Nations Secretary General notes the importance of outreach in ensuring the impact and sustainability of transitional justice institutions so that they are clearly understood and coherently communicated.²³⁸ Effective consultation also can contribute to the collective dimension of the right to truth for society and not just victims to be aware of the consequences of the conflict and the need to redress the suffering of those most affected.²³⁹

5.2 Administration and Process

The Uganda government should pass legislation to give effect to the creation of a reparations commission. The legislation should stipulate the organisation and membership of the commission, its powers, funding and audit procedures. The government should designate a dedicated budget line to ensure the financial security of the reparation commission and demonstrate its commitment to delivering redress to victims. While the international community and regional actors may provide technical and/or financial assistance in the delivery of reparations, any long lasting solution must

234 See Mijke de Waardt and Sanne Weber, Beyond Victims’ Mere Presence: An Empirical Analysis of Victim Participation in Transitional Justice in Colombia, *Journal of Human Rights Practice*, 11(1) (2019), 209–228.

235 Principle 24, 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, A/RES/60/147, 16 December 2005, (UNBPG).

236 ICC Strategy in Relation to Victims 2009, ICC-ASP/8/45, para.22.

237 National consultations on transitional justice, Rule-of-Law Tools for Post-Conflict States, (2009), p3.

238 Guidance Note of the Secretary-General, United Nations Approach to Transitional Justice, March 2010, p10.

239 See *Youth Initiative for Human Rights v. Serbia*, (Application No. 48135/06), 25 June 2013; and *Magyar Helsinki Bizottság v Hungary*, (Application No. 18030/11, 8 November 2016.

Conclusion and Recommendations

come from within the society itself,²⁴⁰ requiring the Ugandan government to take ownership and responsibility for implementing reparations. There has been some innovation in finding funding for reparations in other contexts that may be useful for Uganda, such as a wealth tax,²⁴¹ a levy on natural resources,²⁴² debt buyouts,²⁴³ legal and illegal assets of members of non-state armed groups,²⁴⁴ and donor contributed trust funds.²⁴⁵

The Uganda government will need to establish a registry of victims' harm and identification details to help map out the type of violations and provide transparency for costing.²⁴⁶ Application forms for reparations should be limited to requiring victims to provide essential information, such as basic personal information, statement of facts and violations suffered, confidentiality issues, harms suffered, and supporting documents.²⁴⁷ The International Criminal Court has reduced its initial application for victim participation and reparation forms from 17 pages to 1 page, with further information asked later on when determining amounts and forms of reparations.

Application forms for reparations should be accessible, written in a simple and clear manner, in local languages of victims. Well-designed application forms can 'contribute to an efficient and transparent registration process that can respond to victims' right to "access to relevant information concerning violations and reparation mechanisms."' ²⁴⁸ It may be helpful for victims to have a body map on the application form to indicate their disability, rather than having to articulate it.²⁴⁹ Alternative versions of the application form should be made available in braille, audiotape and other mediums as needed for those who are audio or visually impaired. The application form allows for it to be completed by someone on behalf of the injured victim, such as a carer.

Consideration will need to be made on how personal identifying information of victims can be securely held and if it needs to be verified or shared with other bodies, such as the ICD or government institutions such as the Ministry of Health for provision of rehabilitation. Thought will be needed on how to facilitate victims' access to the process. In other contexts this has included evidential presumptions that victims' claims for certain reparations would be accepted on the grounds of 'good

240 Question of the impunity of perpetrators of human rights violations (civil and political), Revised final report prepared by Mr Joinet Pursuant to Sub-Commission Decision 1996/119 (Joinet Report), E/CN.4/Sub.2/1997/20/Rev.1, 2 October 1997, para.28.

241 South African TRC, Vol. V, Chapter 8, p319.

242 Such as on gold and diamonds in Sierra Leone, Lomé Agreement, Article VII (6) and (14).

243 Such as in Peru. See Lisa J. Laplante and Kimberly Theidon, Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru, *Human Rights Quarterly* 29(1) (2007), 228-250, p247.

244 See Christine Evans, *The Right to Reparations in International Law for Victims of Armed Conflict*, (Cambridge University Press 2012), p214-215.

245 Such as in Sierra Leone, but only raised \$50,000.

246 Jairo Rivas, Official Victims' Registries: A Tool for the Recognition of Human Rights Violations, *Journal of Human Rights Practice*, 8(1) (2016), 116-127.

247 Forms of Justice: A Guide to Designing Reparations Applications Forms and Registration Processes for Victims of Human Rights Violations, ICTJ (2017), p22.

248 Ruben Carranza, Cristián Correa, and Elena Naughton, Forms of Justice A Guide to Designing Reparations Application Forms and Registration Processes for Victims of Human Rights Violations, ICTJ 2017, p10, citing UN General Assembly, Basic Principles on Reparation, paragraph VII. 11(c).

249 See ICTJ *ibid.* p30-31.

faith' subject to verification by the state administrative body.²⁵⁰ Many individuals are likely to have lost their identification, have insufficient medical records, or be unable to provide other evidence to support their claims for reparations. To require victims to supply such evidence may exclude most victims, in particular impoverished and rural victims who cannot afford to travel to the capital to have new documents issued. The government has a responsibility to provide displaced individuals with new documentation.²⁵¹

In other contexts identification by two credible witnesses' statements were deemed necessary to support victims' claims on harm and identification.²⁵² The Inter-American Court of Human Rights in dealing with reparation claims after conflict has taken a relaxed burden of proof, finding that such claims are 'not subject to the same formalities as domestic judicial actions' and the court pays 'special attention to the circumstances of the specific case and taking into account the limits imposed by the respect to legal security and the procedural balance of the parties'.²⁵³ The UN Claims Commission for the Iraqi invasion of Kuwait took a flexible approach requiring claimants to provide 'simply' documentation on the proof of the fact and the date of injury or death, i.e. *prima facie* proof.²⁵⁴ For those claiming for property damage up to \$100,000 they had to be 'supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss', i.e. on the higher evidential burden of a balance of probabilities.²⁵⁵

Eligibility should be based on data and surveys of harm caused to the civilian population during the conflict in Northern Uganda. Not all victims will likely to be eligible given that reparation programmes often prioritise those who suffer the most, i.e. those who have been killed or disappeared, suffered serious injury resulting in disability, torture, slavery or sexual violence.²⁵⁶ The reparations commission will have to define the temporal scope of eligibility from the start of the conflict in Northern Uganda in 1986, or allow more historic claims from independence. The reparations commission will also have to determine which violations should be included, but it is recommended that torture, disappearance or murder, sexual violence, conscription of child soldiers, and serious injury should be prioritised as causing particular gross violations of human rights that requires reparations.

250 In Colombia see Artículo 5, Ley de 1448/2011.

251 Article 13(2), African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 22 October 2009.

252 Carla Ferstman and Mariana Goetz, Reparations before the International Criminal Court: The Early Jurisprudence on Victim Participation and its Impact on Future Reparations Proceedings, in C. Ferstman, M. Goetz, and A. Stephens (eds), *Reparations for Victims of Genocide, Crimes Against Humanity and War Crimes: Systems in Place and Systems in the Making* (Martinus Nijhoff 2009), 313–350, p.323. *Uganda Situation*, Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06 of 10 August 2007, ICC-02/04-101, 10 August 2007, para.14.

253 *Miguel Castro Castro Prison v Peru*, Merits, Reparations and Costs. Judgment 25 November 2006, Series C No.160 (IACtHR), para.184.

254 Recommendations made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category "B" Claims), S/AC.26/1994/1 26 May 1994, at 34-5. Article 35(2)(b), UNCC Rules.

255 Article 35(2)(c), UNCC Rules.

256 Chega! Commission for Reception, Truth and Reconciliation in East Timor (CAVR), (2005), 12.1; and Sierra Leone Truth and Reconciliation Commission Report Vol. II, Chapter 4, para.69-70; and in the Philippines s.19, Act Providing for Reparation and Recognition of Victims of Human Rights Violations during the Marcos Regime, Documentation of Said Violations, Appropriating Funds Therefor and for Other Purposes, Republic Act No. 10368, 25 February 2013.

For those seriously injured and being eligible for reparations will require determining the level of disability. While as far as possible it can be organised under degrees based on injury or illness, there will need to be some form of medical assessment to determine the appropriate individual level of injury arising to disability. In other contexts a specialist medical commission or committee to inform the award of payments, such as doctors within the ministry of health.²⁵⁷ In Zimbabwe a medical board to assess claimants is made up of two medical doctors.²⁵⁸ In Spain the Medical Advisory Board is made up of doctors and a member of the Ministry of the Interior who is familiar with providing assistance to victims of terrorism.²⁵⁹ In Northern Ireland, a single health care professional is required to determine if an individual claimant has suffered a 'permanent disablement' as a result of a Troubles-related incident, more than 14%, with differing levels of a monthly pension awarded.²⁶⁰

Some countries have included IDPs and refugees in their reparation programmes, such as Peru and Colombia. In the case of Colombia the inclusion of IDPs resulted in them accounting for 7.48 million claimants out of 8.7 million registered victims.²⁶¹ However including such a large number of victims has meant that only a fraction of victims have actually received redress. The Kenyan Truth, Justice and Reconciliation Commission categorised and prioritised victims to concentrate resources on those most vulnerable and only provide individual reparations to IDPs and refugees where they died.²⁶² The Commission organised victims of gross violations of human rights into the following categories: (1) violations of the right to life; (2) violations to the right to personal integrity, including sexual or gender based violence; (3) forcible transfer of populations; (4) historical and contemporary land injustices; and (5) systematic marginalisation. The TJRC prioritised victims in categories 1 and 2 as those most vulnerable under the heading of Priority A, and eligible for monetary compensation through a ten-year annual pension, as well as medical and psychological vouchers for rehabilitation. Under the TJRC reparation recommendations, all victims in the five categories are entitled to collective reparations, with other victims in Priority B only able to claim collective reparations. These collective reparations are to address the 'policies and practices that negatives impacted entire groups of people',²⁶³ and include measures such as apologies, memorials, and land restitution.²⁶⁴ The purpose of these collective reparations is to recognise victims' experiences, acknowledge the state's responsibility, restore their dignity and ensure non-recurrence.²⁶⁵

257 Article 10.2, Kosovo 2011; and Article 2(2), Iraq Law No. 20 on Compensation for Victims of Military Operations, Military Mistakes and Terrorist Actions, 2009.

258 Section 27, War Victims Compensation Act 1980.

259 Article 28(2), Act on the Recognition and Comprehensive Protection of Victims of Terrorism, Ministerio del Interior, October 2014.

260 Victims' Payments Regulations 2020.

261 See Camilo Sanchez and Adriana Rudling, *Reparations in Colombia: Where to? Mapping the Colombian Landscape of Reparations for Victims of the Internal Armed Conflict*, Policy Paper, Reparations, Responsibility and Victimhood in Transitional Societies, February 2019. Available at <https://reparations.qub.ac.uk/assets/uploads/ColombiaReparationsPolicyReportFORAPPROVAL-SP-HR-NoCrops.pdf>

262 TRJC Report Volume IV, p97–122.

263 Ibid., p107.

264 Ibid., p108.

265 Ibid., p114.

Efforts should also be made to make the DDR process more comprehensive and integrated with the transitional justice system, in particular for disabled or otherwise victimized ex-combatants, such as former child soldiers. In Kosovo the reparation law includes provision for civilians and combatants killed or injured during the conflict.²⁶⁶ Protection measures such as anonymity or private, discreet meetings are held with victims wanting more information on the reparation process. The Presidency and Vice-Presidency should strong support the reparation process and encourage people to apply, so that security forces do not feel that there is a risk to their own position. Allegations of threats or intimidation of victims applying for reparations should be thoroughly investigated and those responsible prosecuted and punished.

In terms of splitting amounts of compensation amongst family members who have lost a loved one during the conflict, there are different practices to ensure an equitable outcome. In Chile reparations were allocated according to a standard formula whereby the pension for a person disappeared or killed was apportioned as 40% for a surviving spouse, 30% for a mother or father in the absence of a surviving spouse, 15% for the mother or father of victim's biological children and 15% for each child of a victim.²⁶⁷ Apportionment of reparations does not have to follow domestic inheritance law. The Moroccan Equity and Reconciliation Commission (IER) departed from sharia-based inheritance law to give a larger percentage to widows (40% rather than 12.5%) instead of the eldest son. In Peru the Comisión de la Verdad y Reconciliación (CVR) prioritised compensation to the spouse or widow, over children and parents. This amount was to be split with the spouse or cohabitee partner to obtain not less than 2/5, with 2/5 for children (to be equally divided), and not less than 1/5 for the parents (equally divided).²⁶⁸

5.3 Form of Reparations

Reparations can take the form of restitution, rehabilitation, compensation, measures of satisfaction and guarantees of non-repetition. These measures are intended to be used together to comprehensively respond to victims' harm. For instance, the Chilean National Corporation of Reparation and Reconciliation provided the children of those who had been disappeared a pension, as well as military service waivers and education support, including university fees and expenses.²⁶⁹ In Guatemala the national reparations programme (PNR) provided a range of reparations including restitution, compensation, psychosocial rehabilitation, dignification of victims and cultural reparations to communities. It also prioritised compensation for extrajudicial execution, massacres or forced disappearance, with a smaller amount for victims of torture or rape.²⁷⁰

266 2011 Law on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosovar Liberation Army, Civilian Victims of War and Their Families, Law No. 04/L-054.

267 Article 20, Law 19.123, Establishes the National Corporation for Reparation and Reconciliation and Grants other Benefits to Persons as Indicated, Official Gazette No. 34 (188), 8, February 1992.

268 Comisión de la Verdad y Reconciliación (CVR), 27 August 2003, p190-191, available at: <http://www.cverdad.org.pe/iffinal/pdf/TOMO%20IX/2.2.%20PIR.pdf>

269 Law 19.123, 8 February 1992; educational scholarships were made transferrable to grandchildren under Law 20.405, 10 December 2009.

270 See Report: A Promise to be Fulfilled: Reparations for Victims of the Armed Conflict in Guatemala By Denis Martínez and Luisa Gómez, RRV August 2019, p22-23; and Beyond Silence and Stigma (2020), p48-49.

Conclusion and Recommendations

In terms of compensation this can take the form of one off payment of a lump-sum, periodic or pension payments,²⁷¹ micro-financing²⁷² or even a top-up for collective measures, such as housing or education.²⁷³ Compensation can be more discreet than collective measures, given tension over children born of war or abductees receiving money; it can make use of technology, such as mobile banking. A symbolic amount to provide victims with some means to start a new life or to cover costs for education, may provide some remedy and acknowledgement of their suffering. At the same time the amount of compensation should not be so symbolic that its value is seen as an insult to victim and does not provide any improvement of their material conditions as a consequence of their suffering.

In South Africa, the Truth and Reconciliation Commission recommended that \$2,700 be awarded for six years to victims of gross violations of human rights (namely killing, abduction, torture or severe ill-treatment) who came before it, but the government only made a single payment of less than \$4,000.²⁷⁴ In Colombia compensation for disappearance, murder, torture or sexual violence is calculated based on 30 or 40 monthly minimum salaries, depending on the seriousness of the harm (\$6,218-\$8,290).²⁷⁵ In Argentina families of those disappeared were awarded a far larger amount of \$224,000 based on the highest earnings of public employees, rather than the industrial accidents scheme, so as to distinguish their individual harm as intentional, wrongful acts. Regional and international courts have determined the appropriate amount of compensation based on discretionary amounts of 'equity' or what seems fair, not to enrich or impoverish the victim.²⁷⁶ The Ugandan government should engage with victims to find an equitable amount for different categories of harm.

The conflict in Northern Uganda did not just harm individuals, but also ruptured family, clan and community social fabric, the government should consider collective reparations to respond to this. Collective reparations are meant to provide 'benefits conferred on collectives in order to undo the collective harm that has been caused as a consequence of a violation of international law.'²⁷⁷ Collective reparations can include the collective delivery of victim-focused services, such as to child soldiers, as well as symbolic measures, such as memorials or apologies to a community for a massacre. Collective reparations are distinguishable from general economic development to war affected areas, by being responsive to victimised groups' suffering and acknowledging such harm by a responsible actor. Providing collective reparations alongside compensation may help to broaden benefits and inclusion of affected communities in the reparation process and may provide financial support to continue communal activities such as annual memorial prayers and commemorations.

271 As in Chile, see Elizabeth Lira, The Reparation Policy for Human Rights Violations in Chile, in P. de Greiff, *Handbook of Reparations*, OUP (2006), 55-101.

272 See Anita Bernstein, Tort Theory, Microfinance, and Gender Equality Convergent in Pecuniary Reparations, in R. Rubio-Marin (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, Cambridge (2009) 291-323.

273 *Prosecutor v Germain Katanga*, Draft implementation plan, ICC-01/04-01/07-3751-Red, 25 July 2017, para.102.

274 Promotion of National Unity and Reconciliation Act, No. 34 of 1995. TRC Vol.5, Chapter 5, at 184-6.

275 Article 149, Decree 2800 of 2011.

276 *Garrido and Baigorria v Argentina*, Judgment, Series C No. 39, IACtHR, 27 August 1998, para.43; *Case of Varnava and Others v Turkey*, ECtHR, 18 September 2009, para.224; and *Prosecutor v Katanga*, Order for Reparations pursuant to Article 75 of the Statute, ICC-01/04-01/07-3728-tENG 17-08-2017, para.191.

277 Friedrich Rosenfeld, Collective reparation for victims of armed conflict, *International Review of the Red Cross* 92(879), September 2010, 731-746, p732.

Rehabilitation should also be freely provided to victims, including healthcare, social and legal support. At the International Criminal Court in the *Lubanga* decision, rehabilitation services for victims of murder should include the provision of ‘medical services and healthcare, psychological, psychiatric and social assistance to support those suffering from grief and trauma; and any relevant legal and social services’.²⁷⁸ Such support may include equipping public or NGO-run hospitals and health centres to provide psychological assistance to victims. Rehabilitation is vital for victims, as it often serves as a precondition for victims to benefit from other forms of reparations.²⁷⁹

The cases of Dominic Ongwen and Thomas Kwoyelo could result in reparations being awarded to victims in these cases if the defendants are convicted. It would be more equitable for Uganda to have a reparations programme established as soon as possible to avoid creating a hierarchy of victims, between those before the ICC and the majority of victims dependent on the Ugandan government to deliver redress.²⁸⁰ That said reparations at the ICC are limited to those victims who have their crimes convicted, and with Ongwen being indigent it will require funding through donors, which may compete with fundraising efforts for a Ugandan reparations programme. In an ideal system an established Ugandan reparation programme would allow the ICC to refer reparations claims to be managed by it, rather than creating a fractured redress scheme, where the realisation of victims’ right to reparation are a lottery.

The Ugandan government beyond compensation and rehabilitation, reparations should also aim to provide symbolic measures to awaken society to the violations to occur so that they remember, and victims’ suffering is publicly acknowledged to prevent its repetition. Symbolic measures can include memorials, apologies, acknowledgements of responsibility and memorial prayers as a ‘communal process of remembering and commemorating the pain and victories of the past’.²⁸¹ Traditional rituals should be incorporated where appropriate to ensure social equilibrium and spiritually cleanse persons and land from the bloodshed. While President Kiir recently apologized to the country, it may also worthwhile to provide regional or local apology ceremonies by other responsible actors, including Kiir, Machar and other senior leaders acknowledging responsibility for specific incidents and patterns of violence committed by the SPLA and other factions.

The government should also connect reparations to guarantees of non-repetition to provide some physical and social security to the civilian population that violence will not be repeated. Such measures should include strengthening community dispute resolution, bolstering the independence of the judiciary, protect civil society actors (legal, healthcare, media, human rights defendants), and providing human rights education to all society and in particular to military and security forces.

278 ICC-01/05-01/08-3399, para.42.

279 See Clara Sandoval, *Rehabilitation as a Form of Reparation under International Law*, (London, REDRESS, 2009).

280 See Luke Moffett, Complementarity’s Monopoly on Justice in Uganda: The International Criminal Court, Victims and Thomas Kwoyelo, *International Criminal Law Review* 16 (2016) 503-524.

281 Report of the Truth and Reconciliation Commission Report, Volume 5, Chapter 5, 175.

5.4 Role of Ex-Combatants

Ex-combatants and commanders can play an important role in contributing to truth recovery and location of the remains of those missing or disappeared during the conflict.²⁸² It may also be helpful for ex-combatants to engage in community rebuilding activities, such as infrastructure repair or traditional ceremonies, to facilitate their social reintegration and diffuse tensions. In Colombia in coordination with international and local NGOs, members of FARC are assisting in demining operations, there may be a role for ex-combatants to contribute to such processes in Uganda, but sufficient training, adherence to protocols and support would be needed. Leaders of organisations should also provide acknowledgements of responsibility and apologies for atrocities committed, which should be reflected in any sentencing brought against individuals before the ICD and ICC. There are a number of factors that can make an apology successful in that it mainly satisfies victims: timeliness; explicit statements of apology and regret; an acceptance of personal responsibility; the avoidance of offensive explanations or excuses; sincerity; willingness to make amends and promises to avoid future transgressions. This may mean that an effective apology takes the form of an individual or group: 1 Acknowledging the wrong; 2. Acceptance of their responsibility in that wrong; 3. Expression of regret to victims for the harm caused; 4. Assurance of non-repetition; and, 5. An offer of repair or corrective action.²⁸³

5.5 To International Community and Regional Actors

The international community, regional actors and donors (AU and DGF) can provide important backing of a reparation programme in Uganda. This can involve providing financial support to local civil society groups to sensitise affected communities on the issue, legal advice or assistance to victims in completing application forms and supporting evidence, or psychological support to survivors. Donor assistance to affected communities could help to improve social bonds and make communities more resilient to cope with the trauma, giving victims a baseline of community support to claim reparations.

In terms of the thousands of individuals who were abducted and never returned (the ‘missing’), there is a strong role for an international organisation with experience in the location, recovery and identification of remains of those disappeared to build capacity in Uganda to develop a national forensic database and team to assist in such work. However, the transnational reach of the LRA and the terrain that they operate in complicates this. This work could be complemented by information from ex-combatants and UPDF declassified intelligence, but with the former such data may be patchy given the passage of time, lack of geographical markers and night/military operations when individuals were killed. The experience in Northern Ireland with only 16 unrecovered bodies and twenty years of

282 See Luke Moffett, Cheryl Lawther, Kieran McEvoy, Clara Sandoval and Peter Dixon, *Alternative Sanctions before the Special Jurisdiction for Peace: Reflections on International Law and Transitional Justice*, Reparations, Responsibility and Victimhood in Transitional Societies (2019).

283 See Apologies and Institutional Abuse, 2018, p7 available at <https://apologies-abuses-past.org.uk/outputs/reports/>

work to recover them with cooperative ex-combatants (13 have been retrieved by 2020) attests to the difficulty and long term engagement on these issues.²⁸⁴

Alternatively financial support can be provided directly to the reparation programme to cover its administrative costs, or to fund technical capacity building. Reparations are measures intended to provide some sense of justice to victims, this often means that the responsible party should contribute to make good the damage caused. In cases of international crimes, often this means that state is responsible for delivering reparations to all victims, donors financially funding the cost of reparation awards may detract from the Ugandan government facing its responsibilities for the consequences of the war. Successful reparation programmes have worked because there was will to politically and financially support them through a dedicated budget line,²⁸⁵ rather than a donor contributed trust fund, which can have associated concerns of being non-sustainable and subject to corruption. While the AU has recently established the trust fund in light of the conviction of Hissène Habré, it has struggled to attract sufficient funding to meet the reparation judgment of the Extraordinary African Chambers.²⁸⁶ There may be a balance to be struck in donor and state engagement from the international community, such as providing international loans or reducing or restructuring national debt payments.

The international community has a vital role to play in maintaining the transitional framework beyond the ICC/ICD process and ensuring the sustainability of peace in Uganda by facilitating reparatory initiatives. This will ensure that unaddressed conflicts of the past do not become causes for violence tomorrow. Reparations are a key victim-centred measure to alleviate and acknowledge individuals and communities suffering, so that they are able to economically, personally and culturally develop as well as to mitigate their grievances from becoming tomorrow's sites of conflict. More broadly, the role of international community and donors is thus to keep reparations on the government's agenda and ensure transparency to such a process. The Transitional Justice bill will be the key vehicle for the implementation of the 2019 Transitional Justice Policy, but it needs to be backed up with financial commitment, long term planning and monitoring of delivery to maximise its effectiveness.

284 See Lauren Dempster, 'Quiet' Transitional Justice: 'Publicness', Trust and Legitimacy in the Search for the 'Disappeared', *Social and Legal Studies* (2019).

285 Pablo de Greiff, Reparations: Report by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, 8 October 2014, A/69/518, para.56.

286 See Nader Diab, Challenges in the Implementation of the Reparation Award against Hissène Habré: Can the Spell of Unenforceable Awards across the Globe be Broken? *Journal of International Criminal Justice*, 16(1) (2018) 141-163.

Reparations, Responsibility

 Victimhood in Transitional Societies

“CUL PI BAL”

Reparations for the Northern Ugandan Conflict

June 2020

Dr. Luke Moffett

School of Law
Queen's University Belfast
Main Site Tower
University Square
University Square
BT7 1NN
t: 028 90973893
e: info@reparations.qub.ac.uk
w: <https://reparations.qub.ac.uk>

Stephen Oola

Amani Institute Uganda
P.O Box 508
Gulu-Uganda
e: oolalawyer@gmail.com

(Print): 978-1-913643-06-5

(Digital): 978-1-913643-07-2

Image: Cover Photo – Photograph by Luke Moffett