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A truth commission for Uganda? Opportunities and challenges

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Summary

The article addresses challenges and opportunities that a truth-telling process presents to Uganda after the two-decade-long conflict between the Lord's Resistance Army and the national army. The article specifically analyses the appropriate features of legislation regarding a truth-telling process that it argues account for its success. It makes reference to the National Reconciliation Bill, 2009, drafted by civil society groups in Uganda, which is the only comprehensive document relating to a possible truth-telling process in Uganda. The article argues that a truth-telling process will give Uganda an opportunity to confront its past, official denials and imposed silences, and will provide victims with public validation of their suffering and make unquestionable the state's obligation to provide integral reparations. The article, however, questions the extent to which individuals with state authority and state institutions will allow a truth-telling process to exercise its powers and publicly question their conduct with a looming threat of prosecutions. The article further questions whether the National Resistance Movement government will accept that its rule has been tarnished by decades of conflict and that state institutions are in need of reform, or whether it will set its sights on justifying policies, hiding complicity and rejecting blame. The article concludes that a political will and commitment are essential to ensure adequate investment in technical, material and financial resources and that non-interference of the government in the work of the Truth Commission will ensure success. It further finds that with such political will and commitment, and robust consultation with stakeholders, including victim groups, and the creation of alliances locally, nationally,

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regionally and internationally, a truth-telling process will lead to justice, truth, reparations, reintegration and reconciliation in Uganda.

1 Introduction

The peace talks that began in Juba in July 2006 between the Lord's Resistance Army (LRA) and the government of Uganda was viewed by many in Uganda and abroad as the best chance to a negotiated settlement to the two-decade conflict in Uganda. Although a comprehensive peace agreement was not reached, in some respects the talks were successful as the two sides recognised the grievances in Northern Uganda and the country at large and proposed ways forward.[1] In particular, the parties recognised the need for accountability for the grave violations of human rights and humanitarian law and the need for reconciliation. On 29 June 2007 the parties signed the Agreement on Accountability and Reconciliation (Agreement) and on 19 February 2008 signed an Annexure that set out the framework for implementing the Agreement.[2]

The parties further signed an accord on Disarmament, Demobilisation and Reintegration on 29 February 2008, leaving the signing of a comprehensive peace agreement itself as the last missing action. The mediator planned several ceremonies for the signing, but Joseph Kony, the LRA leader, repeatedly failed to appear to sign the deal.[3] Kony claimed that his negotiating team had misled him on the true nature of the agreement and suspended them.[4] On 11 April 2008 he declared that all the signed agreements were invalid, except the Cessation of Hostilities, which he agreed to extend for five days, marking the end to the peace talks.[5]

Nonetheless, the Juba talks ensured calm and stability in the affected areas of Uganda and ended a series of internal conflicts and gross human

1 T Allen & K Vlassenroot 'Introduction' in T Allen & K Vlassenroot (eds) *The Lord's Resistance Army: Myth and reality* (2010) 17.

2 Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, signed in Juba, South Sudan on 29 June 2007 and the Annexure to the Agreement signed 19 February 2008 (Annexure).

3 'Uganda rebels delay signing peace deal' *Reuters* 10 April 2008 http://www.france24.com/en (accessed 20 January 2009).

4 'Uganda rebels suspend talks, appoint new team' *Sudan Tribune* 10 April 2008 http://www.sudantribune.com/spip.php?iframe&page=imprimable&id_article=26715 (accessed 20 February 2011).

5 'Uganda LRA fails to sign final peace deal in Riikwanbwa' *Sudan Tribune* 13 April 2008 http://www.sudantribune.com/spip.php?article26734 (accessed 17 August 2012).

rights violations that Uganda has experienced since independence.[6] The government of Uganda used the Agreement to pave the way for legislative arrangements to ensure domestic prosecutions, traditional justice, truth-telling and reparation processes in Uganda.[7]

At the same time, the International Criminal Court (ICC) that in 2003 received a referral of the LRA situation from President Museveni of Uganda, issued warrants of arrest in 2005 for top LRA commanders, including Joseph Kony, Vincent Otti, Raska Lukwiya, Okoth Odhiambo and Dominique Ongwen and continued with its investigations.[8] Further, to fulfil its commitment under the Agreement, the Ugandan government, through a legal notice, created a new division of the High Court of Uganda – the International Crimes Division (ICD) – to try persons for international crimes committed in the conflict.[9] The ICD is fully constituted and operational and begun its first trial in July 2011.[10] The ICD will co-operate with the ICC to ensure that those most responsible for crimes in the LRA conflict are prosecuted and will not assert jurisdiction over those already indicted by the ICC.[11]

In addition, the government of Uganda, through the Justice Law and Order Sector (JLOS), in 2008 established a high-level Transitional Justice Working Group (TJWG) to give effect to the provisions of the Agreement. The TJWG is comprised of five thematic sub-committees, including international crimes prosecutions, truth and reconciliation, traditional justice, sustainable funding and integrated systems that

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6 High Court: The establishment of the International Crimes Division of the High Court http://wwww.judicature.go.ug/index.php?option=come_content&task=view&aid=117&Itemid=154 (accessed 17 August 2012).

7 Agreement clauses 2.1, 2.3 & 3.1.

8 *The Prosecutor v Joseph Kony, Vincent Otti, Okoth Odhiambo and Dominic Ongwen*, Situation in Uganda (ICC-02/04-01/05) arrest warrants issued on 8 July 2005 as amended on 27 September 2005 after Trial Chamber II was satisfied that there were reasonable grounds to believe that the persons named had ordered or induced the commission of war crimes and crimes against humanity in the territories of Uganda. Raska Lukwiya was killed in battle in 2006 and Vincent Otti is said to have been executed on the orders of Kony in 2008; the other indictees are at large.

9 The International Crimes Division was created in 2008 as War Crimes Division and in 2011 re-designated, International Crimes Division; Legal Notice 10 of 2011, The High Court (International Crimes Division) Practice Directions 2011, cl 3. The ICD is a permanent division of the High Court of Uganda.

10 *Thomas Kwoyelo Alias Latoni v Uganda* (HCT-00-ICD-Case 2/10). Thomas Kwoyelo was captured in the Garamba forests in the DRC in 2008 and his trial commenced on 11 July 2011 after several delays. A few months later, in a constitutional petition, Kwoyelo challenged his prosecution as amounting to unequal treatment before the law (Amnesty Act), claiming that he had been denied amnesty while similarly-situated individuals were granted it. The Constitutional Court agreed with Kwoyelo and ordered his immediate release – see *Thomas Kwoyelo Alias Latoni v Uganda* Constitutional Petition 036/11 (arising out of HCT-00-ICD-Case 2/10) Ruling of the Court, para 625 ordering the ICD to cease the trial of Kwoyelo. The state is set to appeal this decision.

11 Interview with Joan Kagezi, Senior Principal State Attorney in charge of international crimes prosecutions at the ICD on 18 January 2011.

meet regularly to discuss and work on policies around the thematic areas. Representatives from civil society and donors are invited to attend and contribute to these discussions.[12] In line with the Agreement that calls for wide consultations with all stakeholders,[13] JLOS in 2009 started a process of country-wide survey to get views on appropriate transitional justice forums.[14] Although a truth commission is not specifically mentioned in the Agreement, the survey found that overwhelmingly Ugandans desired truth, reconciliation and reparations as part of a comprehensive solution to the conflict.[15] It showed that 70 per cent of respondents thought that it was essential to know the truth of what happened in the war and that 76 per cent of the respondents indicated that Uganda needed a national truth-telling process for this purpose.[16] In addition, a report compiled by the Uganda Human Rights Commission (UHRC) and the United Nations Office of the High Commissioner of Human Rights (UNOHCHR) indicated that victims in Uganda overwhelmingly desired mechanisms to investigate the truth about past harms, to ensure effective steps to investigate human rights violations, and to provide reparation for violations and harms.[17]

Truth commissions give a country the opportunity to confront its past official denials and imposed silences, and provide victims with public validation of their suffering. Truth commissions make the state's obligation to provide integral reparations increasingly unquestionable.[18] Usually, victims are central in the work of truth commissions, and a lot of emphasis is put on their voices, giving those who have been excluded, persecuted or stigmatised an opportunity to participate in public life and to have their suffering acknowledged.[19] Equally important, attention is paid to the institutions and sectors of society that formed the structure of power for the regimes where gross human rights violations and abuses were perpetrated to clearly identify the 'why, how, what and where' of reforms that are needed.[20]

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12 Interview with Ismene Zarifis, technical advisor, transitional justice with JLOS conducted on 24 February 2012 in Kampala, Uganda. The process is aimed at a comprehensive national transitional justice policy that will include national peace, traditional justice and truth-telling policies.

13 Agreement cl 2.4.

14 'Transitional justice in Northern, Eastern Uganda and some parts of West Nile region' (March 2008) JLOS.

15 n 14 above, 22.

16 n 14 above, 23.

17 '"The dust has not yet settled"', Victims' view on a right to remedy and reparations: A report from the Greater North of Uganda' Uganda Human Rights Commission and United Nations High Commissioner of Human Rights (2011) 60.

18 S Cohen *States of denial: Knowing about atrocities and suffering* (2001) 255-266.

19 P Smith 'Memory without history: Who owns Guatemala's past?' (2001) 24 *Washington Quarterly* 59-61 64.

20 Smith (n 19 above) 64.

A truth commission may well bridge the accountability gap that will be left by the other accountability measures in Uganda. There are many features of the LRA conflict that would not be accomplished through traditional justice or formal prosecutions. For instance, an investigation into the various strategies and rationales that the government has followed in handling the LRA conflict that led to one of the world's worst humanitarian crisis; an investigation into how and why both the LRA and UPDF involved children in the hostilities and atrocities committed by and against them during the conflict; an investigation into the different military offensives undertaken by the UPDF against the LRA and why they failed; an investigation into the various attempts at peace talks and the factors that led to their failure; and an investigation into abductions, disappearances, detentions, torture, murder and other offences committed both by the LRA and the UPDF.[21] These investigations transcend individual perpetrators and put emphasis on the role of government institutions and voices of victims.

In addition, the process will make recommendations aimed at addressing the root causes and outcomes of the conflict, thereby countering inequality in society and also identifying perpetrators and naming them individually. This will allow victims to pursue compensation against those identified through civil suits and will shame and bar such individuals from the position of public trust, thereby promoting justice. In addition, a truth commission would be best placed to recommend reparations for victims of the atrocities and legislative and institutional reform to ensure reconciliation and to prevent reoccurrence of violations.[22]

Since 2009, the TJWG has been undertaking a consultative process aimed at a policy on the operation of traditional justice, truth telling, reparations and reconciliation measures. The TJWG is also in the process of developing a comprehensive National Policy on Transitional Justice.[23] The process that began in 2009 has taken on a very slow

21 C Rose 'Looking beyond amnesty and traditional justice and reconciliation mechanisms in Northern Uganda: A proposal for truth telling and reparations' (2008) 28 *Third World Law Journal* 371.

22 The ICD will not award reparations to victims of atrocities and the ICC reparations regime will only come into play if indictees are arrested and tried. Further, only a limited number of victims stand to benefit from the process. In addition, the ICD and ICC for the moment are concentrating on crimes committed by the LRA only, so victims of crimes committed by the UPDF may not receive reparations – a truth and reconciliation commission could deal with these limitations.

23 Interview with Ismene Zarifis, Transitional Justice Advisor of JLOS, conducted on 24 February 2012. The main complaint by civil society groups is that their involvement in the process is very limited and so is the consultation with the local population. This was further discussed during a meeting to ensure greater civil society involvement in the process organised by the African Institute for Strategic Research, Governance and Development hosting representatives from 27 different organisations that took place in Kampala, Uganda, on 26 August 2011.

pace. To date, there is yet to be a concerted effort on the part of the government of Uganda to document, investigate and provide victims with access to relevant information concerning the violations they and others in the region suffered due to the conflict. The Ugandan government is yet to make progress in the pursuit of justice regarding the mass atrocities perpetrated in the LRA conflict and there has hardly been any systematic information, outreach or consultation with victims on any development or planning for reparations mechanisms.[24]

In addition, a truth-telling process is not only the expressed desire of Ugandans, but the government has repeatedly expressed its commitment to accountability and reconciliation. This, together with the ongoing civil society and donor involvement, oversight and dialogue potentially will lead to a credible process.[25] This article, therefore, analyses the appropriate features of legislation of a truth commission that will account for the success of the process. The government of Uganda has not yet come up with a comprehensive document relating to a truth-telling process, but civil society groups drafted a National Reconciliation Bill, 2009 (Working Bill)[26] and JLOs have expressed the intention to use this Working Bill as a basis to commence dialogue on appropriate policy and legislation for a truth-telling process. It is likely that many of its provisions will be retained or modified, taking into account the ongoing consultative process.[27] This article therefore makes reference to the Bill and discusses the appropriate form, structure and composition, powers and functions, jurisdiction, amnesty provisions, relationship with formal prosecutions, and provisions on reparations and reconciliation, while paying close

24 UHRC & UNOHCHR (n 17 above) 61.

25 'Dialogue: The crossroads of amnesty and justice' keynote address by Frederick Ruhindu, State Minister for Justice and Constitutional Affairs and Deputy Attorney-General and closing speech by Hilary Onek, Minister of Internal Affairs (11 November 2011). Various stakeholders, including representatives from JLOS, UN bodies, development partners, key civil society actors and victims groups in Uganda attended this dialogue; the government expressed its commitment to accountability and reconciliation; UN and other civil society groups also expressed their support and commitment to this endeavour. However, there is a persistent complaint from civil society groups in Uganda that their involvement in the transitional justice processes is limited. This, eg, was the main agenda in a meeting organised by the African Institute for Strategic Research, Governance and Development (n 23 above).

26 The Working Bill was prepared by the Department of Peace and Conflict Studies and the Refugee Law Project of Makerere University. It is very much a working document that is continuously being improved. The drafters are aware of the political environment in Uganda that is hostile to a truth-telling process and are making all attempts to ensure that the government of Uganda endorses the Bill and presents it as a government Bill for discussion in parliament. Although great progress was made before the 2011 elections, discussions with the government are still ongoing (telephone discussion with Leandro Komakech of the Refugee Law Project conducted on 23 February 2012). Provisions of the Working Bill are cited in this article with permission of the drafters.

27 Informal discussion with Ismene Zarifis, conducted on 24 February 2012.

attention to the history, the political, social and legal realities in Uganda and lessons learned from other states. The article concludes that, with the right legislation, a political will and commitment, a truth commission could accomplish the desired accountability and reconciliation goals in Uganda.

2 Form, structure and composition

The Working Bill provides for different forums to operate on a national and regional level with support from existing institutions, including the UHRC, local government and traditional justice institutions.[28] The forum is to be composed of 13 members, all Ugandans,[29] with no less than seven women. A member is to be appointed from the existing Amnesty Commission, another from the UHRC, and others from academia, civil society and the four regions of Uganda.[30] A five-member 'selection committee', appointed by parliament, two of whom shall be women, with the composition that reflects a regional balance and comprises of highly-qualified persons of integrity drawn from academia, civil society organisations, faith-based institutions and cultural institutions are responsible for the selection of members.[31] The candidates are to be nominated by the public[32] and members selected by the selection committee are to be approved by parliament.[33]

Criteria for selection are high moral character, proven integrity and impartiality.[34] The process provided for in the Working Bill, if followed,

28 Working Bill part II(B).

29 An earlier draft of the Bill provided for a mixed national and international composition, but this provision was amended in the later draft because members of the public favoured a purely national composition. Guatemala and Sierra Leone both had mixed tribunals which was attributed to their success. Advantages put forward for mixed commissions include the fact that foreign members usually have experience from other countries that the commission can draw from and help enrich the process and that where the credibility of nationals is questioned, the presence of foreign members can to some extent give the public confidence in the process. Prof Henrietta Mensa-Bonsu, a former commissioner in Ghana and Liberia, suggests that if persons with the requisite credentials exist in Uganda, appointing nationals with the support of internationals at the technical level may be the best way to go (interview conducted via e-mail on 28 March 2011). See also Judge Thomas Buergenthal, lecture given on 17 October 2006 at Western Reserve University School of Law, 'Truth commissions: Between impunity and prosecution' transcript of the Frederick K Cox International Law Centre, Lecture in Global Legal Reform.

30 Working Bill part IV(B).

31 Working Bill part IV(A)(1).

32 The Working Bill does not clarify how the public nomination shall be done; this needs to be clearly spelled out to ensure that persons nominated meet the necessary criteria and are also representative of the people.

33 Working Bill part IV(B).

34 Working Bill part IV(C).

will ensure local ownership, credibility and the legitimacy of the members of the forum which is desirable for the success of the process. The drafters of the Working Bill are evidently conscious of Uganda's history – regional and gender marginalisation – and therefore see the need for regional and gender balance to give credibility to the forum. In addition, the forum is to be composed of an amnesty and investigative committee. Members of these committees, other than the Chairperson, need not be members of the forum.[35]

3 Powers and functions

The Working Bill seeks to empower the Truth Commission with powers to hold hearings, take statements, summon witnesses, conduct searches and seize relevant documents, issue warrants, preserve documents, determine eligibility and grant or deny amnesty, conduct investigations, including exhumations and forensic examinations, identify perpetrators and issue a final report and recommendations.[36] This list is inclusive and not exhaustive and gives the Commission all powers reasonable and necessary to carry out its mandate, but these powers can only be exercised if there is a political will not to interfere with the processes and to make the necessary financial, material and technical resources available to the Commission.

The question is: How likely will individuals with state authority and state institutions give room to a commission to exercise its powers and publicly question their conduct, with the looming threat of prosecutions? The Agreement provides for commitment of the parties to accountability,[37] but in respect of crimes by state actors, a proviso excuses them from measures envisaged under it.[38] Will the government of Uganda that expressly seeks to shield its officials from prosecutions by the ICD, be willing to subject those officials and its institutions to another investigative process? Uganda clearly departs from the 'transitional justice' paradigm as there is no regime change, certainly not in the traditional sense. The National Resistance Movement (NRM) government has been in power for the last 25 years and in February 2011 it won elections for another five-year term as Uganda prepares to undertake accountability measures with its apparent blessings and goodwill. Will these blessings, goodwill and co-operation be guaranteed to allow a commission to honestly deal with past abuses and violations to pave the way for reform and accountability? Will the Ugandan government accept that its rule has been tarnished by decades of conflict and that state institutions are in

35 Working Bill parts IV(H) & IV(I).

36 Working Bill part II(C)(1).

37 Agreement cl 2.

38 Agreement cl 4.1.

need of reform? Or will it set its sights on justifying policies, interfering with investigations, hiding complicity and rejecting blame? These are the odds that a truth commission will have to work against.

Co-operation of the state and a political will are crucial for the success of the process, but with the history of investigative processes in Uganda, it is far from guaranteed. For instance, the 1974 inquiry into the disappearance of people, established by President Idi Amin Dada in response to pressure to investigate disappearances effected by the Ugandan military since he came into power in January 1971,[39] did nothing to stop the brutality and human rights violations that characterised Idi Amin's eight-year rule in Uganda.[40] In addition, the 1986 Commission of Inquiry into Violations of Human Rights was created by President Museveni[41] with a mandate to investigate human rights violations by previous regimes from the time Uganda attained independence in 1962 to 1986 when President Museveni took over power in a *coup* did nothing to secure the prosecution of perpetrators. During the inquiry, files, audio and video recordings disappeared and the speculation is that the commissioners or other people working with the Commission of Inquiry had purposely destroyed evidence that would implicate them or their friends and family in heinous crimes. In addition, the Ugandan government did not allow any investigations into its actions during the 'bush war' that led to the *coup* in 1986, a clear indication that it is unable or perhaps unwilling to tolerate attempts to unearth violations that could implicate it.[42]

4 Period of operation

The Working Bill proposes a three-month preparation period upon establishment within which to facilitate activities necessary for the commencement of the core activities of the Commission.[43] These activities include determining operation guidelines and procedures,

39 Commission of Inquiry into Disappearance of People in Uganda since 25 January 1971, Legal Notice 2 of 1974 Cap 56 Laws of Uganda (Legal Notice 2, 1974); posted by USIP Library, available at Truth Commissions Digital Collection, Truth Commission in Uganda http://www.usip.org/publicatios/truth-commission-uganda-74 (accessed 2 November 2010).

40 PB Hayner 'Fifteen truth commissions – 1974 to 1994: A comparative study' (1994) 16 *Human Rights Quarterly* 612; R Carver 'Called to account: How African governments investigate human rights violations' (1990) 89 *African Affairs* 399 states that the Commission was successful in view of the practical difficulties it faced and highly unfavourable political climate under which it operated.

41 Legal Notice Creating the Commission of Inquiry into Violations of Human Rights, Commission of Inquiry Act, Legal Notice 5 (16 May 1986) Cap 56 Laws of Uganda (Legal Notice 5, 1986).

42 JR Quinn 'Constraints: The undoing of the Ugandan Truth Commission' (2004) *26 Human Rights Quarterly* 413.

43 Working Bill part II(D).

the recruitment and training of staff, designing a witness protection mechanism, designing work schedules, work plans and a code of conduct,[44] and designing an outreach programme that will be necessary to ensure, local ownership and participation. Considering the duration and level of atrocities, the state of the roads, media and other infrastructure that it will rely on for its activities, three months is a short time for members to come up with credible, comprehensive, integrated and visible programmes and procedures. Sufficient preparation time should therefore be accorded to a commission in the founding legislation.

The Working Bill, in addition, proposes that after commencing with the preparation period, the Commission shall have five years within which to receive matters and will conclude all pending matters within six months of the end of the five-year filing period. It shall have one year beyond the end of the filling period to write and publicise its reports to Ugandans.[45] Provisions are made for the extension of time for an additional three months at a time by resolution of parliament.[46] This time limitation is sufficient and may well contribute to the success of the institution. A weakness of the Commission of Inquiry was that, although it was thought that its work would be completed within a period of three years, the Commission only tabled its final report eight years after it began its operations.[47] By that time public interest in its work had waned.[48] A clear articulation of the operation period is therefore very important.

5 Temporal jurisdiction

The Working Bill proposes the temporal jurisdiction of the Commission to be from 1962 when Uganda attained independence to the date of assent of the new legislation.[49] This is in line with the general opinion among the victim groups in Uganda,[50] but raises a few issues of practical concern. For instance, how will the Commission be able to finish its work in a timely manner if it has to sift through evidence of almost 50 years? One main reason cited for the failure of the 1986

44 As above.

45 Working Bill part II(D).

46 Working Bill part II(E).

47 The operation period was not spelled out in the legal notice creating the Commission, which was a weakness, but other reasons advanced for this duration is a lack of adequate financial and material investment by the Ugandan government. Therefore, the work of the Commission came to a standstill every few months; see JR Quinn 'The politics of acknowledgement: An analysis of Uganda's Truth Commission' (2003) 19 *York Centre for International and Security Studies* 22.

48 Quinn (n 42 above) 409.

49 Working Bill part III(A).

50 UHRC & UNOHCHR (n 17 above) 61.

Commission of Inquiry into Violations of Human Rights was its attempts to unveil 25 years of atrocities, under different regimes, with different groups of perpetrators and victims. In addition, what 'truth' can a new truth commission reasonably uncover that the 1986 Commission of Inquiry failed to unearth during its eight years of existence?[51] There is also the additional worry that digging up the past through such a comprehensive process would only serve to inflame the situation by rehashing old quarrels and reopening wounds.[52] A lot of people have the desire to move on and not to be dragged back to the past again and again, especially considering that nothing much came out of the Commission of Inquiry.[53]

Valid as these issues may be, victim groups in Uganda have stressed the need to have an inquiry into the conditions that led to the rise of the NRM government to power and violations by its troops.[54] Furthermore, there may be people or new evidence that were not available during the 1974 and 1986 investigative processes and which should be heard now. As well, there remains a need to comprehensively question and understand the root cause of conflicts in Uganda since independence for the Ugandan society to defeat the deep-rooted division that has paralysed the nation since independence.[55] To achieve this, credible, national investigations into the events, even prior to independence,

51 Quinn (n 47 above) 20-21, stating that during the operation of the 1986 Commission, thousands of people filled in questionnaires with regard to their recollection of events that had occurred in the past, many of which were then investigated in the field. At least 608 witnesses appeared before the Commission and the commissioners travelled to virtually every region of the country holding hearings and collecting testimonies. These testimonies are bound into 18 enormous volumes that are available at the Uganda Human Rights Commission's offices. The final report, 720 pages long, contains testimony, analyses and recommendations, along with a list of names of those subjected to torture and abuse. What are the chances that these people will want to go through such a comprehensive process again, since nothing much came out of the 1986 inquiry? In addition, the information collected is still available for reference for a new commission in Uganda.

52 Interview with Frank Onapito Ekomoliot, conducted on 14 January 2011 in Kampala, Uganda. This sentiment has been echoed by a number of Ugandans who do not clearly understand the difference a new truth commission will make in regard to 'truth' of what happened in the past – some have even suggested that going far back may derail the matter at hand – the abuses and violations perpetrated in the LRA conflicts with wounds still visible and suffering ongoing.

53 Quinn (n 42 above) 412; JR Quinn 'Dealing with a legacy of mass atrocity: Truth commissions in Uganda and Chile' (2001) 23 *Netherlands Quarterly of Human Rights* 391.

54 UHCR & UNOHCR (n 17 above) 65.

55 Quinn (n 47 above) 22.

must be done.[56] The establishment of another committee, the 'historical clarification committee' with the sole responsibility of creating an independent and objective historical record, is necessary. This committee would examine the underlying causes, nature, extent and manifestations of all conflicts in Uganda, the nature, causes, extent and manifestations of the north-south divide and violations and abuses, identifying perpetrators by name and recommending prosecutions and reforms in state institutions as necessary.[57] Evidence collected and recommendations by the Commission of Inquiry into Violations of Human Rights could inform the committee that could adopt or modify them as necessary.

6 Subject matter jurisdiction

The Working Bill broadly defines subject matter jurisdiction to include considering and analysing any matter relevant to violent conflict and to widespread or systematic violations or abuses of human rights, making recommendations on the appropriate mechanisms of reconciliation and reparations and initiating legal, institutional and other reforms.[58] The Working Bill, in the same part, spells out the manner in which a new commission may carry out its functions,[59] but its scope, subject matter and operations are largely undetermined. Pertinent issues, such as witness protection programmes and their relationship with existing commissions, are left for members of this forum to determine. As so often happens in the establishment of investigative commissions, this sweeping mandate may prove difficult to manage[60] and therefore needs revision.[61]

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56 The necessity of a historical analysis is recognised in cl 3.2 of the Agreement on Accountability and Reconciliation. In addition, the Refugee Law Project has embarked on a country-wide national reconciliation and transitional justice audit to document all major conflicts and their legacies in Uganda, alluding to the need for a national reconciliation process in the country. For more on the audit, see http://www.beyondjuba.org/NRTJA/index.php (accessed 17 August 2012).

57 Agreement on Accountability and Reconciliation cl 3.2 recognises the need for historical analysis and clarification. Uganda's history since independence has largely been dominated by coups and other insurgencies, all characterised by gross human rights violations and abuse; the LRA conflict is the longest running one. Several other insurgencies cropped up since 1986 when President Museveni took over power and, according to him, in the 2011 presidential campaigns, the NRM quelled 32 insurgencies, many of which Ugandans do not seem to know about.

58 Working Bill part III.

59 As above.

60 Quinn (n 47 above) 7, referring to C Tomuschatt 'Clarification Commission in Guatemala' (2000) 23 *Human Rights Quarterly* 239-240.

61 Quinn (n 47 above) 5 states that one critical reason for the failure of the 1986 Commission was its very broad and vague mandate.

The only reference in the Working Bill to women and children is that 'particular attention to should be given to their experiences'.[62] Founding legislation should go further than that in clarity as the LRA conflict involved the large-scale use of children as soldiers, sex slaves, porters and domestic workers. In addition, atrocities committed by both parties to the conflict, like abductions, sexual violence, massive population displacement, disruption of education and health services, affected mostly children and men and women were affected differently. The investigative process must therefore give great emphasis to the experiences of women and children and the impact of the multiple levels of violations on them both as direct and indirect victims of the conflict.

The founding legislation must clearly spell out gender and children's rights issues, to examine their experiences in detail and also to ensure their participation and protection.[63] For example, the Liberian Truth and Reconciliation Act[64] goes furthest to set the stage for a concerted effort both to focus on the impact of the conflict on children and women and to involve children in its activities.[65] In its mandate, the Act provides for specific mechanisms and procedures to address the experiences of women, children and other vulnerable groups. It urges the commissioners to pay particular attention to gender-based violations and issues of child soldiers.[66]

The Act further provides that the Commission should take into account the security and other interests of women, children and other vulnerable groups and should design a witness protection programme on a case-by-case basis, and include special programmes for the group.[67] The Act further mandates the Commission to employ specialists in children's and women's rights and to ensure that special measures are employed that will enable them to provide testimony, while at the same time protecting their safety and not endangering or delaying their social reintegration or psychological recovery.[68] The clear articulation of children and women's important role in the mandate, operation, outcomes and the call for policies, procedures and operational concerns to secure their safe involvement in its work were significant achievements of the Liberian Truth Commission as they raised new challenges and responsibilities requiring human and

62 Working Bill part III(B)(1)(a).

63 UHRC & UNOHCHR (n 17 above) XVI-XXVII states that it is the desire of the victims that vulnerable groups, especially women and children, participate and that they are adequately protected.

64 An Act to Establish the Truth and Reconciliation Commission (TRC) of Liberia, enacted by the National Transitional Legislative Assembly on 12 May 2005.

65 Liberia TRC Act art IV(4), VI(24) & VII(26)(n) & (o).

66 Liberia TRC Act art IV(4)(e).

67 Liberia TRC Act art IV(26)(n).

68 Liberia TRC Act art IV(26)(o).

financial resources, as well as a sustained commitment to give primary consideration to the safety and participation of children and women.[69]

7 Amnesty provisions

The Working Bill seeks to create an Amnesty Committee with powers to consider applications for the granting of amnesty.[70] Like in South Africa, the Amnesty Committee is empowered to grant amnesty in respect of those acts, omissions or offences for which the applicant has made full disclosure.[71] The Committee will, however, have no jurisdiction to admit for hearing and grant amnesty to persons who may have committed international crimes until such a time when the Director of Public Prosecutions advises that it will not prosecute such a person.[72]

Previously, the Amnesty Act of 2000 granted blanket immunity to all persons who renounced armed rebellion against the government of Uganda. This provision raised serious and complex questions in regard to accountability in conflict and post-conflict situations and, on 23 May 2012, the Minister of Internal Affairs declared the lapse of operation of Part II of the Amnesty Act.[73] Part II of the Amnesty Act regulated the provisions of the law relating to the granting of amnesty as well as the procedures for the granting of amnesty in accordance with section 2 of the Act. The declaration of a lapse therefore means that amnesty has ceased in Uganda and from 25 May 2012, when the lapse took effect, any person engaged in war or armed rebellion shall be investigated, prosecuted and punished for any crime committed in the course of the war if found guilty. On the other hand, persons already issued with amnesty certificates when the law operated shall not be subject to prosecution or any form of punishment for conduct during the war.[74] Therefore, there is a need for an immediate and comprehensive information campaign, especially targeting former combatants, so that people are assured that those that have already been awarded amnesty will not lose their certificates.

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69 T Sowa 'Children and the Liberian Truth and Reconciliation Commission' in S Pamar *et al* (eds) *Children and transitional justice: Truth telling, accountability and reconciliation* (2010) 198.

70 Working Bill parts IV(H) & V(B).

71 Working Bill part V(B)(b).

72 Working Bill part V(A)(1).

73 Effected under Statutory Instrument 34 of 2012, signed and gazetted on 1 June 2012. This was by virtue of sec 16(3) of the Amnesty Amendment Act of 2006 that provides that the Minister may by statutory instrument declare the lapse of the operation of Part II of the Act.

74 Such persons are protected under the Constitution of Uganda that in art 28(5)(f) provides that no person shall be tried for a criminal offence if that person shows that he or she has been pardoned in respect of that offence.

In addition, the Minister extended the expiry period of Parts I, III, and IV of the Amnesty Act for a period of 12 months.[75] Part III of the Act, among other provisions, establishes the Amnesty Commission, a demobilisation and resettlement team, and elaborates its functions. The extension of this Part means that the Amnesty Commission will continue with its duties of demobilisation, reintegration, resettlement of reporters, and sensitisation of the public on the Amnesty Law and promote appropriate reconciliation mechanisms to affected communities. The Amnesty Commission and the demobilisation and resettlement team must complete these activities within the one year of the extension period.[76]

The Director of Public Prosecutions has indicated that his office will only seek prosecution of those responsible for international crimes and other gross violations of human rights and that preference would be to help those who were forcibly conscripted to reintegrate into their communities.[77] Therefore, there is an urgent need for an information campaign to assuage the fear in communities. In addition, although the reporters no longer receive amnesty certificates, they need to be informed that they will still get assistance for Disarmament, Demobilisation and Reintegration from the Amnesty Commission.

Amnesty was always perceived as a vital tool in conflict resolution and in longer-term reconciliation and peace within the specific context of Northern Uganda as it resonates with specific cultural understanding of justice.[78] In addition, due to the collective victimisation of children and other civilians by the LRA, who were forcibly trained to become soldiers and forced to commit crimes, many of them designed to alienate them from their communities, amnesty still has a vital role to play in their reintegration.[79] Therefore, an amnesty process that excludes certain crimes considered especially serious from the award of amnesty and adopts conditional amnesties which exempt lower-level perpetrators from prosecution if one applies for amnesty and satisfies certain conditions, such as acknowledgment of harm done, seeking an apology, full disclosure of the facts about the violations committed, and the willingness to co-operate with truth-telling procedures aimed

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75 Effected under Statutory Instrument 35 of 2012, signed and gazetted on 1 June 2012. This was done by virtue of sec 16(2) of the Amnesty Amendment Act of 2006.

76 Interview with Judge Onega, Chairperson of the Amnesty Commission, conducted on 11 July 2012 in Kampala, Uganda.

77 Interview with Joan Kagezi, conducted on 15 June 2012 in Kampala, Uganda.

78 L Hovil & Z Lomo 'Whose justice? Perceptions of Uganda's Amnesty Act 2002: The potential for conflict resolution and long-term reconciliation' (2005) 15 *Refugee Law Project Working Paper* 15.

79 This has been extensively documented. See, eg, Human Rights Watch 'Stolen children: Abduction and recruitment in Northern Uganda' http://hrw.org/reports/2003/uganda0303 (accessed 14 February 2009); Human Rights Watch *Abducted and abused: Renewed conflict in Northern Uganda* (2003) 15 (12A) 14-28.

to promote reconciliation, resonates with the aspirations of Ugandans and aims of accountability.[80]

8 Relationship with formal prosecutions

Uganda is considering prosecutions and a truth-telling process as complementary measures and their work will no doubt overlap as they have similar objectives. The co-existence in Sierra Leone of the TRC and Special Court for Sierra Leone (SCSL) is especially instructive for Uganda and demonstrates some tensions and the feasibility of the co-existence of these institutions.[81] The SCSL was mandated to prosecute persons who bear the greatest responsibility for international crimes and crimes under domestic law committed in the territory of Sierra Leone since 30 November 1996,[82] while the TRC was mandated to look into human rights violations from 23 March 1991, when the conflict in Sierra Leone began, to the signing of the Lomé Peace Agreement on 7 July 1999.[83] These two institutions never came to a formal agreement on how they would co-operate; instead they exercised respectful relations with each other.[84] According to Schabas, one of the commissioners of the TRC, concerns about overlapping mandates and jurisdictions did not actually play out in any significant way as the day-to-day work of the TRC and the Court shared little common ground.[85]

Schabas argues that, although many Sierra Leoneans did not appreciate the distinction between the TRC and the SCSL, what was significant was that the people understood that the institutions were working towards accountability for the atrocities suffered during the war and suggests that the failure of people to grasp the distinctions between the two institutions did not represent a significant problem.[86] This could have been because, while the SCSL prosecutor began to issue indictments in March 2003, actual trials only began in June 2004, at which point the TRC's work was nearly complete.[87] This

80 Joint Leadership and Steering Committee 'Presentation by Hon Justice Gidudu, Chair Transitional Working Group' (18 May 2012) http://www.jlos.go.ug/page.php? (accessed 10 July 2012).

81 WA Schabas 'Truth commissions and courts working in parallel: The Sierra Leone experience' (2004) 98 *American Society of International Law* 198.

82 Art 1(1) Statute of the Special Court for Sierra Leone.

83 Art 2 Truth and Reconciliation Act of Sierra Leone.

84 WA Schabas 'A synergistic relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone' in WA Schabas & S Darcy (eds) *Truth commissions and courts: The tension between criminal justice and the search for truths* (2004) 191.

85 WA Schabas 'The relationship between truth commissions and international courts: The case of Sierra Leone' (2003) 25 *Human Rights Quarterly* 1035.

86 As above.

87 Schabas (n 81 above) 190.

certainly will not be the case in Uganda where the ICC has already issued indictments and the ICD has begun operations while a truth process is still only an idea.[88] It is therefore very important that during the consultation process, the stakeholders must ensure that Ugandans understand and that there is no confusion about the different roles and functions, including the purpose of investigations, hearings and statements taken by the different institutions and consequences as relating to each.

Another area of concern is sharing information that potentially will deter perpetrators and witnesses from giving testimony before a truth commission out of fear that such information will be used to prosecute them or others and that they may be required to give evidence in court. The Working Bill provides that the forum shall have the discretion to grant use immunity from prosecutions so that testimony given before it cannot be used in subsequent criminal proceedings as evidence, although a proviso states that the Director of Public Prosecutions may use such statements to develop leads or background for its cases.[89] In Sierra Leone, the TRC publicly stated that it would not share confidential information with the SCSL, and the SCSL prosecutor stated that the Court would not use evidence presented by the TRC.[90]

There is disagreement among commentators on the impact of this. While Schabas argues that the willingness of perpetrators to participate in truth-telling processes has little to do with the threat of criminal trials or the promise of amnesty,[91] Kelsall argues that the presence and work of the SCSL were factors deterring witnesses from giving testimony before the TRC.[92] A truth commission should not withhold information critical to prosecutions in the performance of its functions, but it should make use of its discretion not to divulge information that could for instance be obtained by a court from another source to allow the institutions to function autonomously without being affected by each other's operations.[93]

Another related issue is whether persons being prosecuted could give testimony to a truth commission. The Working Bill does not restrict

88 The Constitutional Court of Uganda ordered the ICD to cease the first trial of its first case and the ICC indictees are at large.

89 Working Bill part V(D)(8).

90 A Tejan-Cole 'The complementary and conflicting relationship between the Special Court for Sierra Leone and the Truth and Reconciliation Commission' (2002) 5 *Yearbook of International Humanitarian Law* 326.

91 Schabas (n 84 above) 192.

92 T Kelsall 'Truth, lies, ritual: Preliminary reflections on the Truth and Reconciliation Commission in Sierra Leone' (2005) 27 *Human Rights Quarterly* 361 381.

93 M Wierda *et al* 'Exploring the relationship between the Special Court and the Truth and Reconciliation Commission of Sierra Leone' (2002) *The International Centre for Transitional Justice* 3; Rules of Procedure and Evidence of the International Criminal Court for the Former Yugoslavia, rule 54*bis*.

members from taking testimony from anybody[94] and that should extend to persons indicted both nationally and internationally to give the TRC room to fulfil its mandate of creating an impartial historical record.[95] In Sierra Leone, several detainees of the SCSL, including Sam Hinga Norman of the Civil Defence Forces (CDF), Augustine Gbao and Issa Sesay of the Revolutionary United Front (RUF), approached the TRC about giving public testimony. This request provoked the only public tension between the institutions. While the TRC intended to receive testimony from the detainees, the SCSL prosecutor opposed public testimony. The matter was brought for determination before a trial chamber of the SCSL by detainee Sam Hinga Norman and the TRC. The trial judge refused the request to conduct a public hearing of the detainee in the interests of justice and to retain the integrity of proceedings of the Court. The Judge was careful to point out that the TRC Act allowed the TRC to receive testimony from victims, witnesses and perpetrators and that none of the categories properly defined an accused.[96]

On appeal, a common ground allowing the accused to give private rather than public testimony to the TRC was reached.[97] This matter must be considered carefully in the founding legislation of a truth commission in Uganda to avoid such collision and, to deal with potential issues of conflict and rivalry during operations, regular meetings between liaison staff of the different institutions should be encouraged to ensure smooth operations.[98] Negative perceptions can be ironed out by a robust outreach programme categorically stating the different functions and autonomous role of the processes, the purpose of evidence collected and a clear spell of confidentiality guarantees. The success of the institutions, above all, will depend on the high calibre of officials and staff and their ability to deal wisely with challenges that will inevitably arise.[99]

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94 Working Bill part III(A)(1) extends the jurisdiction of the truth process to all nationals and all atrocities committed within the geographical limits of Uganda.

95 Wierda *et al* (n 93 above) 3-4.

96 *Prosecutor v Sam Hinga Norma*n Case (SCSL.2003.08.PT), Decision on Request by the Truth and Reconciliation Commission of Sierra Leone to Conduct a Public Hearing with Sam Hinga Norman JP (29 October 2003) para 3.

97 *Prosecutor v Sam Hinga Norman* Case (SCSL.2003.08.PT) Decision on Appeal by the Truth and Reconciliation Commission (TRC) of Sierra Leone and Sam Hinga Norman JP Against the Decision of His Lordship Mr Bankole Thompson delivered on 30 October 2003 to Deny the TRC's Request to Hold a Public Hearing with Sam Hinga Norman JP (28 November 2003) para 47.

98 Wierda *et al* (n 93 above) 19.

99 As above.

9 Reparations

Reparations are defined in the Working Bill as any remedy or any form of compensation, symbolic or *ex gratia* payment, restitution, rehabilitation or recognition, reconciliation, satisfaction or guarantee of non-repetition made in respect to victims,[100] in effect encompassing the definition as enumerated in the Van Boven Principles.[101] The Commission is tasked with making recommendations to the Ugandan government and other actors with regard to the most appropriate modalities for implementing a regime of reparations and rehabilitation, taking into account the needs of victims and perpetrators.[102]

The government of Uganda has made some timid effort towards compensation, specifically through the Acholi War Debt Claimants Association, a victim lobby group, created in 2005, advocating for comprehensive compensation for the loss of human life, livestock and other property destroyed during the war. This body and the Ugandan government reached an out-of-court settlement, where the government agreed to pay 38 trillion shillings for property lost during the war due to government action. So far, the government has only paid 2,1 billion.[103] There is a further and huge need for a coherent reparations plan for the millions of victims of the LRA conflict that could be implemented through a truth commission.[104]

Harm that victim groups feel they must be compensated for includes murder; torture; sexual violence on both men and women; forced displacement; abductions and forced recruitment; pillage; slavery; and forced marriage, committed by both the LRA and the UPDF, and land expropriated by the Ugandan government.[105] There is an overwhelming conviction among victim groups that the government should be the main entity responsible for awarding reparation, although some people feel that compensation should also be recovered from the LRA leadership.[106] There is a further conviction that the international community should maintain oversight in the

100 Working Bill part I(B)(18).

101 The Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (16 December 2005).

102 Working Bill part III (B)(13).

103 See http://savenorthernuganda.org/about_us.html (assessed 1 March 2012); several victims are dissatisfied with this compensation that has been limited to cattle lost during the war. The victims state that while they lost hundreds of herds, they have been compensated for the loss of one or two cattle.

104 'Government compensation to Acholi war claimants not enough' *Daily Monitor* 23 November 2011.

105 UHRC & UNOHCHR (n 17 above) 29-53 provides detailed accounts of the crimes that victim groups in Uganda feel that they must receive a remedy for.

106 There is no evidence to suggest that the LRA leadership has property and money stashed somewhere to enable it to pay reparations.

process.[107] The Working Bill, however, does not clearly state the government's reparation responsibility, other sources for funds or guidelines on how to go about securing funds.

The founding legislation must clearly define the duties on the state to make reparations and the possibility for victims to seek reparations from the perpetrators.[108] The legislation should include a clause requiring reparations to be financed through the state budget, a model used in Argentina, Brazil and Chile, which has been effective in procuring the necessary financial resources for reparations.[109] There is a further need to make provision for urgent interim reparations in cases where victims are unable to wait for the final outcome and recommendation of a truth commission.[110] The budget line for reparations should be permanently established to respond to reparation needs that may arise in future. The founding legislation should further require the government to raise additional and separate funds from external donors, well-wishers and other development partners to support its efforts. Any such support from externals should be treated as a separate fund and not replace the government's contribution. The fund should be channelled through the national body responsible for implementing reparations.[111]

Unfortunately reparations are often perceived to be a luxury that only affluent states can afford, therefore governments limit their responsibility. For instance, in South Africa, although the Reparations and Rehabilitation Committee (RRC) noted that reconciliation was not possible without reparation, it was not as visible as the amnesty and reconciliation committees and did not have an independent budget, except for a small amount used as urgent interim measures like medical attention for those who testified at hearings.[112] In the performance of its role, the RRC was criticised for not being adequately inclusive and participatory since only those willing to give testimony were

107 UHRC & UNOHCHR (n 17 above) 15.

108 The set of Principles for Protection and Promotion of Human Rights Intended to Strengthen Action to Combat impunity UN Sub-Commission for Prevention of Discrimination and Protection of Minorities (29 June 1996) (Joinet Principles) principle 31.

109 I Cano & PS Ferreira 'The reparations in Brazil' in P de Greiff (ed) *A handbook on reparations* (2006) 102; E Lira 'The reparations policy for human rights violations in Chile' in P de Greiff (ed) *A handbook on reparations* (2006) 55; MJ Guembe 'Economic reparations for grave human rights violations: The Argentinean experience' in De Greiff (above) 21.

110 See eg South Africa Policy Framework for Urgent Interim Reparation Measures 1995.

111 Uganda Victims' Foundation c/o Africa Youth Initiative Network 'Statement on the Need for Reparations and Guiding Principles for Victims of Crimes Perpetrated in Uganda' (6 May 2011) 5.

112 CJ Colvin 'Overview of the reparations programme in South Africa' in De Grieff (n 109 above) 176.

entitled to compensation.[113] Whilst the range of reparations proposed by the RRC was comprehensive, financial compensation was fairly conservative[114] and there was no requirement for reparations from perpetrators.[115] The RRC recommendations exist in varying degrees of implementation and community reparations, and have not been fully developed as the government insists that victims should avail themselves with the existing government services.[116]

In Colombia, by law, the government created a victim's reparation fund to consist of all illegal goods and properties from the demobilised individuals subjected to the law, augmented by international and public funds within the limits authorised by the national budget.[117] Colombia's plan relied on judicial determinations for individual, collective or symbolic reparations, putting the burden of seeking reparations on victims who had to present claims before courts and could only receive reparations after establishing responsibility for and circumstances surrounding the human rights abuse.[118]

Meanwhile, in Peru, the TRC proposed detailed reparation measures for different types of abuses, including the restitution of rights for political detainees and economic benefits for the disabled, the families of those who had disappeared, and victims of rape. The President took the necessary steps and asked for forgiveness in the name of the state from all victims, but rejected calls for individual compensation, citing Peru's scarce resources.[119] These examples show that there is a need for governments to appreciate that reparations are a necessity, a matter of legal obligation, and therefore a priority, and

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113 B Goldblatt 'Gender and reparations in South Africa' International Centre for Transitional Justice and International Development Research Centre http://www.ictj.org/static/Africa/SAfrica/ SouthAfricaExecsSum.pdf (accessed 15 November 2010).

114 MR Amstutz *The healing of nations: The promise and limits of political forgiveness* (2005) 196-197. The RRC principle recommendation was that the government should grant all victims monetary reparations and recommended equal financial compensation to all qualified victims regardless of need or level of suffering of US $20 000 over the next six years. In April 2003, the government promised instead to pay US $3 900 to each of the victims' families. Considering that this amount was intended to serve not just as compensation, but also to contribute to a better quality of life for survivors, it is a very conservative sum which is yet to be paid.

115 LS Graybill *Truth and reconciliation in South Africa: Miracle or model?* (2002) 6-8.

116 Goldblatt (n 113 above).

117 LJ Laplante & K Theidon 'Transitional justice in times of conflict: Colombia's Ley de Justicia Y Paz' (2007) *University of Michigan Law School* 95, referring to arts 10, 11, 54, 55.1 & 56 of Justice and Peace Law of Columbia, 975 of 22 July 2005.

118 Laplante & Theidon (n 117 above), referring to art 8 of Justice and Peace Law of Columbia, 975 of 22 July 2005.

119 The International Centre for Transitional Justice and the International Development Research Centre 'Repairing the past: Reparations and transitions to democracy, perspectives from policy, practice and academia' Symposium Summary (Ottawa Canada) 11-12 March 2004 http://www.ier.ma/IMG/pdf/REPARATIONsymposium_report_.pdf (accessed 15 November 2010).

to resist the temptation to substitute normal development measures for reparations to preserve the integrity of the link between violations and obligations.[120]

The examples highlighted only scratch the surface of the problem and clearly show that establishing a successful reparations programme is not easy and requires a great deal of commitment from governments.

In addition, provisions on reparations should be informed and sensitive on gender needs to facilitate the effective and meaningful participation of females. Females are more disadvantaged within societies before, during and after the war and for socio-economic, physical and psychological reasons, they experience violations and outcomes differently.[121] The effects and outcomes of particular violations affect them adversely and differently from males and some forms of violence specifically target them.[122] Therefore, a reparation programme should consider this and address the disproportionate effects of the crimes and violations on women and girls, their families and their communities.[123]

The Nairobi Declaration that comprehensively provides for a gender-just understanding of the right to a remedy and reparations should be used as the guiding document on any reparation policy in Uganda. In addition, due to stigma, victims of sexual crimes, both male and female, are usually reluctant to come forward to claim reparations. The founding legislation should therefore include measures to enable them to come forward even after a formally-prescribed period has expired.[124] In addition, trained specialists should be made available

120 n 119 above; stating that in Peru, President Toledo proposed a Peace and Development Plan worth US $ 820 million to support reconstruction in the areas most affected by the conflict. This fund is not specifically linked to the actual abuse suffered, therefore its reparatory effect may be extremely limited.

121 R Bubio-Marín 'Introduction: A gender and reparations taxonomy' in R Rubio-Marín (ed) *The gender of reparations: Unsettling sexual hierarchies while redressing human rights violations* (2009) 2-3.

122 Several international instruments recognise and reflect in their provisions how violence and other abuses affect girls and women adversely and differently from males, eg CRC and the two Optional Protocols on the Involvement of Children in Armed Conflict and the Sale of Children, Child Prostitution and Child Pornography; the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children that Uganda is a party to. In addition, several policy outcomes of intergovernmental processes have reached consensus on this issue, eg, the Beijing Platform for Action (1995); the Outcome of the Twenty-Third Session of the General Assembly (2000); The International Conference on Population and Development (1994); the World Summit for Children (1990); the Millennium Declaration (2000) that led to the Millennium Development Goals (2005); as well as the various Security Council Resolutions such as Resolution 1325 on Women Peace and Security; Resolutions 1261, 1314, 1379, 1539 & 1612 on Children and Armed Conflict.

123 Preamble Nairobi Declaration on Women's and Girls' Rights to Remedy and Reparations 22 May 2007 (Nairobi Declaration).

124 Cl 3(g) Nairobi Declaration.

to victims of sexual violence to help with administrative procedures necessary to obtain reparations.[125]

Most importantly, the reparations programme should provide an indication to victims and others that the government takes human rights violations and abuses seriously and that the government is determined to contribute to the quality of life of victims. To the extent that reparations programmes may become part of a political agenda that enjoys broad and deep support, they might even have a positive impact not just on social trust between citizens and the institutions of the state, but also among citizens.[126] If integrated and implemented within a comprehensive accountability process, reparations might provide beneficiaries with a reason to think that the institutions of the state take their well-being seriously, that they are trustworthy. This in turn will create an environment conducive for reintegration and reconciliation.

10 Reintegration and reconciliation

As the title of the proposed Bill suggests, one of the aims of the Truth Commission is to ensure reconciliation in Uganda.[127] Broadly speaking, the mandate of the forum is to promote national peace, unity and reconciliation.[128] The Working Bill comprehensively provides for how reconciliation will be promoted to include designing reconciliation initiatives, conducting symbolic reconciliation activities in collaboration with relevant institutions and facilitating inter-communal reconciliation initiatives.[129] However, challenges to reintegration as communities in Northern Uganda move back to the homes of origin are already immense. In 2008 the government issued Camp Phase-Out Guidelines, which included plans for the gradual demolition of abandoned huts as internally-displaced persons (IDPs) moved to decongestion camps. The camp phase-out plans focused exclusively on return without other options for those who were forced to or those who chose to stay in the camps. The majority of those forced to stay are the most vulnerable groups, including orphaned children who do not know their original homes, children heading households and could not build huts in their original homes and the

125 UHRC & UNOHCHR (n 17 above) 28.

126 Office of the United Nations High Commissioner for Human Rights 'Rule of law tools for post-conflict states: Reparations programmes' (2008) 30-31.

127 The proposed Bill is titled the National Reconciliation Bill 2009.

128 Working Bill part III(B).

129 Working Bill part III(B)(14).

elderly.[130] In 2009 the government phased out camps, basic services were discontinued, ensuring *de facto* return. Those who could not leave were left to negotiate a way forward with landowners, with no involvement of government.[131]

According to aid workers and local government officials, the majority of the population in Northern Uganda have returned to their original homesteads, while others have settled in originally-unoccupied land,[132] but there are still many scattered groups of vulnerable people, especially children and the old in the camps who live at the mercy of the landowners. Yet, many youths find the transition from life in the camps to life in villages challenging as the majority lack any agricultural skills, which is the main way of life in the villages. This has led to an increase in the number of street children in the larger towns and an increase in the number of robberies, alcohol and drug abuse in the region, a severe impediment to reintegration.[133]

As a measure to ensure return and reintegration after decades of displacement and insecurity, the government and its development partners developed the Peace Recovery and Development Plan (PRDP) and Northern Uganda Social Action Fund (NUSAF) as part of the framework for rebuilding the affected areas, ensuring reintegration of the displaced, former abductees, and returned rebels. The first phase of the PRDP was completed, but the government extended the implementation to cover 40 districts instead of the original 14 districts affected by the conflict. This was done without any increase in funding and significantly reduced the intended impact of the PRDP in the affected districts.[134] In addition, the PRDP and NUSAF and other programmes of the developmental partners have emphasised the construction of schools and health centres without the necessary equipment and personnel to keep them running. As a result, a number

130 According to the Durable Solutions Officer of the Norwegian Refugee Council (NRC); NRC and other NGOs stepped in to construct houses for some of the vulnerable children who knew their original homes, but those who did not have land were left out of this programme.

131 Interview with NRC officials that specifically handled camp management in Northern Uganda.

132 Land has become a major source of conflict in Northern Uganda; several people have lost claims to clan land that has been taken by the more powerful families and the government; its officials, including officials with security organs, are cited as the major land grabbers in the region.

133 Interview with local government officials and staff of civil society organisations, including Save the Children in Uganda, the Norwegian Refugee Council and CARITAS, conducted in Gulu from 19 to 25 October 2011.

134 Interview with officials working with the NRC; Save the Children in Uganda and local government officials in the Gulu district.

of newly-built schools and health centres lie dormant. This creates a further negative impact on the rebuilding and reintegration process.[135]

Several children have lost parents during the conflict and have assumed adult roles of heading households and caring for younger siblings – often these children drop out of school to undertake this role. Traditionally, the extended family would step in to take care of such children but, due to poverty, families are no longer willing or able to do so, yet, some children lost their extended family in the conflict. There is hardly any data on the number of child-headed households in Northern Uganda, but according to local government officials there could be thousands.[136] These children face a number of difficulties, often in securing physical safety, shelter, food, health and education for themselves and their siblings.[137]

Although several of the government officials and aid workers interviewed state that stigma has reduced, the formerly-abducted and returned rebels say they are subject to stigma and ridicule and several are alienated from their families. Families of victims expose many formerly-abducted children to potential dangers such as revenge and stigma that keep them away from school and the villages of their birth; instead, they seek life on the street.[138] A great number of street children in Gulu are formerly-abducted children. According to an official with World Vision, 'several of the children are traumatised and have behavioural problems including habitual recourse to violence which they use as a survival strategy. This makes it difficult for them to reintegrate into normal life.'[139] As evidence of this, 'at least 70 per cent of juvenile offenders in Gulu prison are formerly-abducted children facing charges of rape, defilement, assault, theft and different degrees of robberies'.[140]

Formerly-abducted girls face a more precarious situation; many were subjected to forced marriages and have had children as a result. These girls or women and their children usually have nowhere to go. Going back to their families is not always an acceptable option since, according to the patrilineal nature of societies in Northern Uganda,

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135 This information was consistent among all interviewees. However, there seems to be no data showing the actual number of child-headed households in Northern Uganda.

136 Discussion with the probation and welfare officer in the Pader district conducted on 22 October 2011.

137 John Bosco Oryema, a 15 year-old boy living in the former camp in Acholi Bur with his four siblings, gave this information.

138 A great number of street children in Gulu are former abductees and they cite stigma, ridicule and alienation from families as the reason why they left their villages.

139 Interview with an official at the World Vision Reception Centre in Gulu, conducted on 21 October 2011. The officer added that there were no reported cases of former abductees or rebels that had been killed.

140 Information from the probation and social welfare officer in the Gulu district.

children belong to their fathers. A culturally-appropriate place for female returnees with children is to resettle in the communities of the father of their children, but several of these men are still active within the LRA. These women may be unaware where these men's villages are and, where they know, they may not be recognised as 'wives' or their children recognised as belonging to the family and clan. There is a general reluctance to accept children born in the 'bush' or due to war-time rape into lineages, especially so as it will give these children claims over clan land.[141] In addition, gendered hierarchies have been flaunted and those who can have demanded and continue to demand various kinds of recompense. Ownership of property, especially land, will be bitterly contested and will divide families. As already evidenced, a large number of children and young adults born in the 'bush' or born out of war-time rape have not been accepted into clan lineages.[142]

At the national level, there is also a need to overcome ethnic, religious and regional divisions and tensions dating back to the colonial era, which have been cited as major causes of the LRA conflict.[143] At the start of his rule, President Museveni and the NRM embarked on an ambitious programme of popular inclusion that aspired to transcend all divisions and promised fundamental change in the politics of the country.[144] Like his predecessors, he has so far failed at the process of national integration and there are now serious doubts about the ability or desire of the NRM government to resolve longstanding antagonisms and divisions.[145]

The once-promising democratic transition has weakened and power has become increasingly centralised and concentrated in the

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141 T Allen *Trial justice: The International Criminal Court and the Lord's Resistance Army* (2006) 171.

142 Allen (n 141 above) 171-172.

143 Several studies have assessed the causes of the LRA conflict and conclude that it is rooted in the history of ethnic politics in Uganda dating back to the colonial era. See eg A Branch 'Exploring the roots of LRA violence: Political crisis and ethnic politics in Acholiland' in T Allen & K Vlassenroot (eds) *The Lord's Resistance Army: Myth and reality* (2010); C Dolan *Social torture: The case of Northern Uganda* (2009); S Finnström *Living with bad surroundings: War, history and everyday moments in Northern Uganda* (2008); A Branch 'Neither peace nor justice: Political violence and the peasantry in Northern Uganda 1986-1998' (2005) 8 *African Studies Quarterly* 1; C Mbazira 'Prosecuting international crimes committed by the Lord's Resistance Army in Uganda' in C Murungu & J Biegon (eds) *Prosecuting international crimes in Africa* (2011) 197.

144 International Crisis Group (ICG) 'Uganda: No resolution to growing tension' Africa Report 187 (5 April 2012) 7, referring to YK Museveni 'Ours is a fundamental change' in YK Museveni (ed) *What is Africa's problem? Speeches and writings on Africa* (1992) 21; YK Museveni *Selected articles on the Uganda resistance war* (1985) 46. The initiatives the government introduced to solve the longstanding divisions and broaden NRM support included the national 'no party' structure, broad-based government and a process to adopt a constitution through extensive popular consultations.

145 ICG (n 144 above) 8-9.

President's hands. Power plays by President Museveni have included the removal of constitutionally-mandated term limits to allow him an unlimited term in office and the arrest of political opponents prior to elections and increasing harassment and intimidation of political opponents. State policies have created a more personal, patronage-based, executive-centred and military-reliant regime. Many state policies enrich the President's inner circle, intensifying resentment.[146] Popular protests are on the rise. For instance, the 'walk to work' protest that started after the re-election of the President in 2011, ostensibly over the rising cost of living, is clearly directed at Museveni's rules and continues in Kampala and other urban centres despite a violent crackdown. These frequent demonstrations and violent crackdowns by the government indicate that many sectors of society are deeply dissatisfied and the government's methods of resolving the dispute are far from satisfactory.[147]

Further, Uganda confirmed significant oil reserves, predominantly located in the Lake Albert region on the border with the DRC (estimated at 2,5 billion barrels) for commercial extraction in 2006, that many fear is a curse rather than a blessing as it may become an additional source of division.[148] If extracted, these resources would put Uganda among the top 50 world oil producers, which could be quite a boon for Uganda, doubling or tripling its current export earnings, but it is also likely to exacerbate social and political tensions. The oil may ensure President Museveni's control by enabling him to consolidate his system of patronage and will increase corruption. If President Museveni gains access to substantial oil revenue, the combination of considerable oil funds and strong presidential powers could increase the ability of his government to remain in power indefinitely.[149]

Indeed, President Museveni is reported to have stated categorically that he discovered the oil and that it is his duty to ensure that it benefits all before he leaves power. This is a ploy to secure a life presidency that can only be sustained through an expensive patron-client system, and the construction of a state security machinery to intimidate and harass those who dare to oppose or question government's dealings.[150] This inevitably will involve an increase in corrupt behaviour and a reduction in government transparency in oil and tax revenue management that can only be accomplished through an increasing autocratic relationship

146 ICG (n 144 above) 1.

147 As above.

148 The fears that abundant natural resources are a curse are unscientifically drawn from Nigeria, Sierra Leone, the DRC and Sudan, among others, that have all experienced at one time or another different levels of armed conflict due to poor institutional and governance quality that allows national elites to become corrupt and give maximum advantage to foreign mining companies to reap huge profits.

149 J Kathman & M Shannon 'Oil extraction and potential for domestic instability in Uganda' (2011) 12 *African Studies Quarterly* 27.

150 W Okumu 'Uganda may face an oil curse' *Africa Files* 1 June 2010.

with public and political opponents. This unfortunately is a reality that Uganda will face, as already witnessed through the October 2011 parliamentary revolt over the lack of transparency in oil contracts and alleged resulting large payments in bribes to government ministers.[151]

In addition, the Lake Albert region is an ecologically-sensitive area with an enormous amount of biodiversity. If not properly managed, oil extraction could lead to environmental degradation that could, in turn, lead to local strife.[152] Further, there are indications that social unrest could be on the rise in the region. As news of the oil deposits spread, large numbers of people from outside the region began to move into areas that they expect to be rich in oil with the goal of obtaining oil rents from the government. This has generated animosity among the Banyoro people who are the longstanding inhabitants of the region on the Ugandan side of Lake Albert. In addition, given that the oil reserves were discovered under what is largely Bunyoro land, the Bunyoro kingdom has called for a greater share of the oil revenues as compensation for hosting the oil extraction infrastructure. Yet, such an agreement is likely to exacerbate the existing ethnic and regional conflict and produce further unrest due to migration to the oil-rich region.[153]

The foregoing clearly shows that it is dangerous to assume that reintegration and reconciliation will be an easy process in Uganda. On the contrary, it will be a long, painful and difficult process and violent incidences may be anticipated. The success of the process will depend largely on a political will and readiness to overcome social, political, ethnic and regional divisions. Nonetheless, the recognition that grave wrongs have been committed in the past, that people have been severely victimised and that individuals, groups and institutions have been identified as perpetrators underlines a new moral regime and gives victims the confidence required for their re-entry into civic processes of negotiation.

In addition, truth telling and the acknowledgment and coming to terms with the past are necessary for societal recovery and

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151 See, eg, 'Top ministers took bribes from Tullow Oil – Parliament told' *The Independent* 11 October 2011; 'Oil bubble burst' *Monitor* 11 October 2011; 'MPs demand halt in government oil deals citing bribery' *Monitor* 11 October 2011; Kutesa & Onek 'Willing to step aside, Mbabazi stays put' *Monitor* 12 October 2011; 'Here is what is at stake with Uganda's oil' *Monitor* 12 October 2011; 'Accused ministers deny corruption' *Monitor* 12 October 2011; 'MPs order ministers to resign over alleged oil bribes' *Monitor* 12 October 2011; 'MPs collect signatures to censure ministers named in saga' *New Vision* 12 October 2011; 'Oil saga – Museveni speaks out' *New Vision* 12 October 2011.

152 Kathman & Shannon (n 149 above) 24.

153 Kathman & Shannon (n 149 above) 29-30. In addition, the Lake Albert region is a politically-sensitive area that lies between Uganda and the DRC that has had a violent history and border disputes. In addition, the region has also been vulnerable to rebel activities, eg the ADF in the 1990s and the LRA after the failure of Operation Iron Fist in 2002.

reintegration and provide the best ground for reconciliation. It is, however, unwise to assume that these will automatically lead to reconciliation. The lesson from South Africa is very instructive for Uganda in this regard. One major critique of the South African Truth and Reconciliation Commission (TRC) was that, although South Africans were far from satisfied, the TRC lectured that South Africans had forgiven perpetrators and were reconciled.[154] Reconciliation is not an event but a process and the work of the TRC is just the beginning of such a process that may take several years to complete.

11 Recognition of the regional dimension of the conflict

It is the expressed desire of victim groups in Uganda to have an inquiry into the regional dimension of the LRA conflict, including the role of the government of Sudan and the Diaspora that funded, supported and fuelled it.[155] In addition, the conflict spread from Uganda to the tri-border area of the DRC, South Sudan and the Central African Republic and scores of people in the region have been victimised by the LRA and other fighting forces in the region.[156] The spread of the conflict alludes to the disastrous and interrelated nature of conflicts in the Africa Great Lakes region, where the legacy of colonialism, ethnic conflict, weak state structures and the illegal exploitation of natural resources have given rise to a vicious cycle of violence, displacement and institutional collapse that sometime spills across borders.[157] It

154 See eg N Valji 'Race and reconciliation in a post-TRC South Africa' paper presented at a conference entitled Ten Years of Democracy in Southern Africa (May 2004) organised by the Southern African Research Centre and Queen's University.

155 UHRC & UNOHCHR (n 17 above) 66.

156 J Spiegel & J Prendergast 'A new peace strategy for Northern Uganda and the LRA (Strategy Paper)' *Enough Project* 18 May 2008 http://www.enoughproject.org/publications/new-peace-strategy-northern-uganda-and-lra (accessed 17 January 2012).

157 M Mamdani *When victims become killers: Colonialism, nativism, and the genocide in Rwanda* (2011) 36, indicating that the genocide in Rwanda found roots in the invasion of Rwanda by the Rwanda Patriotic Front (RPF) from Uganda with support of the Ugandan government and that, by providing this support, Uganda exported its first political crisis since coming into power in 1986 to Rwanda; 'Evaluating peace and security in the DRC and US policy in the Great Lakes region' *Africa Faith and Justice Network* http://afjn.org/focus-campaigns/promote-peace-d-r-congo/30-commentary/788evaluating-peace-and-stability-in-the-rdc-and-us-policy-in-the-great-lakes-region.html (accessed 22 November 2011), indicating that from 1996, Rwanda, Uganda and Angola supported the rebel group, Alliance of Democratic Forces for the Liberation of Congo, until the overthrow of the then President, Mubotu Sese Seko. In addition, the Congo War (1998 to 2003) drew in eight African nations, including Rwanda, Uganda, Sudan and 25 armed groups becoming the deadliest conflict since World War II, killing an estimated 3,8 million people; millions were displaced and millions sought refuge in neighbouring countries such as Uganda, Tanzania, Rwanda and Burundi.

therefore follows that the problems in Uganda can only be addressed effectively if the regional dimension of the conflict is acknowledged and dealt with.

In addition, countries in the region have actively extended military, logistic, economic and financial support to irregular forces operating in the neighbouring territories which has led to suspicion and mistrust. For instance, immediately after the LRA arrest warrants were unsealed by the ICC, the Ugandan government announced its intention to re-enter the DRC to 'hunt down' the LRA leadership and hand them over to the ICC, a move that was resisted by the Congolese government.[158] The UPDF had prior to this invaded the DRC with a stated mission of protecting its borders from the militias in the DRC, but were later accused of aggression, massive looting and atrocities against Congolese civilians.[159] A truth-telling process in Uganda should therefore open doors to a regional inquiry that establishes support, determines motive and violations and ensures reparations for all victims.[160]

12 Conclusion

A truth commission gives Uganda the opportunity to know the truth about the many armed conflicts, an opportunity to amend wrongs through reparations and the identification of perpetrators, and may clear the path for institutional reform to ensure the non-recurrence of conflict and human suffering. These processes will, however, be a wasted opportunity without a political will and commitment to ensure the adequate funding and sincere participation of government and

158 'Museveni wants to hunt LRA in Congo' *New Vision* 19 June 2006.

159 Case Concerning Armed Activities on the Territory of Congo (*Democratic Republic of Congo v Uganda*) ICJ (19 December 2005) *ICJ Reports* (2005) 168. The DRC alleged that Uganda committed the crime of aggression against it and violated its sovereignty and territorial integrity. Uganda disputed the claim and counter-claimed that the DRC had committed acts of aggression towards it when it attacked its diplomatic premises and personnel in Kinshasa as well as other Ugandan nationals. The ICJ observed that instability in the DRC has had negative security implications for Uganda and some other neighbouring states and that by actively extending military, logistic, economic and financial support to irregular forces operating in the territory of DRC, Uganda had violated the principle of non-use of force in international relations and the principle of non-intervention. The ICJ also decided that there was credible and persuasive evidence to conclude that officers and soldiers of the UPDF were involved in the looting, plundering and exploitation of Congo's natural resources and that the military authorities did not take any measures to put an end to these acts.

160 The regional governments recognised the interrelatedness of conflict in the region and started a process aimed at devising means to deal with violations and the abuse of human rights and humanitarian law in the region through the International Conference on the Great Lakes Region. For more, see https://icglr.org/index.php (accessed 31 August 2012).

security institutions as well as politicians – individually and collectively. This is the biggest challenge that a truth commission will have to overcome. It is important to remember that, although guns have been silent for a while, the peace in Northern Uganda is illusionary and could be shattered, thus creating a sensitive environment that may be hostile to a truth-telling process. Victims and witnesses have to be given adequate protection so that their involvement and participation in the truth process do not endanger them any further. A political will and commitment, together with ongoing consultations, will ensure the local ownership, credibility and legitimacy of a truth commission. If members selected have the desired integrity, experience and if their selection ensures a regional and gender balance, the Working Bill (including amendments as recommended in this article) will go a long way in ensuring the desired goal of truth, justice and reparations, paving the way to institutional reform and reconciliation in Uganda.