

WHY ESTABLISHING A CREDIBLE AND LEGITIMATE TRANSITIONAL JUSTICE MODEL IN CONJUNCTION WITH DEMOCRATIC REFORMS IS NECESSARY FOR LONG-TERM PEACE AND STABILITY IN UGANDA

Jeremy Sarkin

Professor of Law, University of South Africa (UNISA) and Distinguished Visiting Professor of Law and member of CEDIS at NOVA University, Lisbon Law School, Lisbon, Portugal

Attorney, South Africa and Attorney, New York, United States

BA LLB LLM LLD

Email: JSarkin@post.harvard.edu

ABSTRACT

Uganda is a specific focus of international criminal justice at present because of issues relating to the International Criminal Court, and specifically the trial of the Lord's Resistance Army commander Dominic Ongwen, which began in late 2016. In this context, this article reviews domestic developments in Uganda over the past few years to determine what Uganda ought to do about the past, and why the time is right for democratic reforms and transitional justice to occur in the country. It examines the processes Uganda has set up recently to determine when and how its past ought to be confronted, including a government inter-ministerial working group that has been dealing with transitional justice matters. The article considers why dealing with the past in Uganda, combined with democratic transformation, is a necessity, and why Uganda, at least in theory, has been embarking on a process to deal with the past. It examines the atrocities that have occurred in Uganda to examine why dealing with the past is essential to obtaining peace and stability. The article briefly examines Uganda's two previous truth commissions to determine what should be avoided in a future process and what procedural and substantive steps could be taken to ensure a viable and successful transitional justice model combined with democratic reforms.

Key words: Uganda; transitional justice; democratic reforms; human rights; peace; stability



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INTRODUCTION

After he had handed himself over to a taskforce operating in the Central African Republic (CAR) in January 2015, Lord's Resistance Army (LRA) commander Dominic Ongwen's¹ trial began at the International Criminal Court (ICC) on 4 December 2016. This taskforce had been established to hunt for members of the LRA.² However, even though Ongwen's trial at the ICC will be one of the most significant trials in international criminal justice, it is also critically important for Uganda.³

This context is crucial when considering what will happen domestically as Uganda attempts to deal with the past. The fact that the ICC is prosecuting Ongwen means that what has occurred in Uganda will be in the news regularly, and that it will give greater impetus to dealing with similar issues in the country.⁴ Uganda is therefore on the cusp of facing its past again, as this article discusses. The reasons why previous attempts were not successful are analysed to indicate that they were not open, transparent, credible, accepted or able to play the role that such institutions were mandated to play.⁵ These were major problems, because '[p]eace and stability, human rights and effective governance based on the rule of law and transparent institutions are outcomes and enablers of development.'⁶

This article focuses on Uganda's domestic issues and not on what is occurring in the international space, despite the fact that what happens at the international level will no doubt have a bearing on the domestic situation. As with other countries, the fact that Uganda is not undergoing a bright line transition (the current government has been in power for the past thirty years and is likely to remain so) means that the type of transitional justice process which will be adopted in Uganda ought to be similar to that in countries where there has been a reform of the system (such as occurred in Chile, Hungary and Spain) rather than a specific break with the past by bullet or at the ballot box (such as in Argentina, the former East Germany, Greece, Iran, the Philippines and Rwanda). It is crucial for this to be understood, because the nature of the transition in a

1 For more about him see EK Baines, 'Complex Political Perpetrators: Reflections on Dominic Ongwen' (2009) 47(2) *The Journal of Modern African Studies* 163–191.

2 Somini Sengupta and Rick Gladstone, 'Fighter Defects, Citing Ties to the Fugitive African Warlord Joseph Kony' *The New York Times* (New York, 6 January 2015).

3 See LN Malu, 'The International Criminal Court and Conflict Transformation in Uganda: Views from the Field' (2016) 15(2) *African Journal on Conflict Resolution* 81–103.

4 On Uganda's relationship with the ICC see V Freeland, 'Rebranding the State: Uganda's Strategic Use of the International Criminal Court' (2015) 46(2) *Development and Change* 293–319.

5 See JR Quinn, 'Dealing with a Legacy of Mass Atrocity: Truth Commissions in Uganda and Chile' (2001) 23(4) *Netherlands Quarterly Human Rights* 383–402; JR Quinn, 'Constraints: The Undoing of the Ugandan Truth Commission' (2004) 26(2) *Human Rights Quarterly* 401–427.

6 United Nations Secretary-General's Report, 'A Life of Dignity for All: Accelerating Progress towards the Millennium Development Goals and advancing the United Nations Development Agenda Beyond 2015' (2013).

specific society plays a major role in determining how past human rights violations will be dealt with.

It is argued that transitional justice processes in Uganda ought to be carried out in careful and democratic ways to ensure that the truth, as an internationally accepted right, fully emerges. The pursuit of truth should therefore be an intrinsic part of a broader transitional justice approach or strategy to deal with the past. Moreover, not only is such a pursuit worthwhile in its own right; it is a sorely needed component of reparations in Uganda, as discussed below.⁷

This article reviews the developments in Uganda over the past number of years to determine what to do about the past and why the time is right for democratic reforms and transitional justice to occur. It is noteworthy that Uganda has recently set up processes to determine when and how its past ought to be confronted, including a government inter-ministerial working group that has been dealing with transitional justice matters. The article considers why dealing with the past, combined with democratic transformation in Uganda, is a necessity, and why Uganda, at least in theory, has been embarking on a process to deal with the past. It examines the atrocities that have occurred in Uganda to understand why dealing with the past is essential to securing peace and stability. The article also briefly examines Uganda's two previous truth commissions to determine what should be avoided in a future process and what procedural and substantive steps could be taken to ensure a viable and successful transitional justice model combined with democratic reforms.

HUMAN RIGHTS VIOLATIONS COMMITTED IN UGANDA

Uganda has a long history of human rights violations.⁸ This was certainly the case during the colonial period, but it became even more prevalent in the post-independence era.⁹ In 1967, Milton Obote assumed the Presidency after a new Constitution made Uganda a republic. Obote relied on the army that was recruited mainly from the North, particularly from the Acholi ethnic group.¹⁰ This exacerbated the divide between the north and south of the country.¹¹ When General Idi Amin overthrew Milton Obote in 1971, the human rights situation became even worse.¹² Government forces killed tens of

7 See further on the link between truth and reparations in MU Walker, 'Truth Telling as Reparations' (2010) 41(4) *Metaphilosophy* 525–545.

8 See M Mutua, 'Beyond Juba: Does Uganda Need a National Truth and Reconciliation Process?' (2007) *Buffalo Human Rights Law Review* 401–414.

9 R Gersony, *The Anguish of Northern Uganda: Result of a Field-based Assessment of the Civil Conflicts in Northern Uganda* (USAID 1997).

10 J McKnight, 'Accountability in Northern Uganda: Understanding the Conflict, the Parties and the False Dichotomies in International Criminal Law and Transitional Justice' (2015) 59(2) *Journal of African Law* 193–219.

11 See further A Branch, *Displacing Human Rights: War and Intervention in Northern Uganda* (Oxford University Press 2011).

12 Amnesty International, 'Uganda: Six Years after Amin, Tortures, Killing, Disappearances'

thousands of Ugandans, imprisoned people without trial and were responsible for torture and disappearances.¹³ By the time Amin himself was ousted in 1979, approximately 300 000 people had been killed. Amin expelled approximately 70 000 of Uganda's Asian population. Amnesty International's Annual Report of 1979 notes 'the murder of up to 300 000 people including judges, politicians, civil servants, religious leaders, academics, teachers, students, businessmen, writers, soldiers, police officers, foreigners, women and members of ethnic groups, particularly Acholi and Langi.'¹⁴ Later, Obote, who had previously committed extensive violations, was returned to power. Thousands more people were killed, more than 500 000 people were displaced¹⁵ and torture was routinely resorted to. Therefore, ethnic issues were at the centre of the violence and continued to entrench polarisation between various groups in Uganda.¹⁶

Division within the nation has been a major issue since at least colonial times;¹⁷ it has been the intention of many governments over the years to divide and rule the country.¹⁸ As a result of these policies, Ugandan power and resources have been concentrated in the south and the north has been left marginalised.¹⁹ Individuals and groups in the south have a clear advantage over those in the north.²⁰ Even the security forces are made up of groups from the south.²¹ Various leaders have made use of perceived ethnic differences in statements and in other ways²² to further sow divisions between the groups.²³ These cleavages and negative perceptions²⁴ need to be overcome through an inclusive political reconciliation process.²⁵

(1985). <<http://www.amnesty.org/es/library/asset/AFR59/042/1985/en/5dca1c86-ef0f-422d-80eb-b37a3fd02caa/afr590421985en.pdf>> accessed 22 June 2015.

- 13 AC Decker, "'Sometime You May Leave Your Husband in Karuma Falls or in the Forest There': A Gendered History of Disappearance in Idi Amin's Uganda, 1971–79" (2013) 7(1) *Journal of Eastern African Studies* 125–142.
- 14 Amnesty International, *Amnesty International Annual Report* (AI Publications 1979).
- 15 P Clark, 'Bringing Them all Back Home: The Challenges of DDR and Transitional Justice in Contexts of Displacement in Rwanda and Uganda' (2014) 27(1) *Journal of Refugee Studies* 234–259.
- 16 Amnesty International, *Uganda: The Human Rights Record 1986–1989* (AI Publications 1989).
- 17 McKnight (n 10).
- 18 O Otunnum, 'Causes and Consequences of the War in Acholiland' (2002) 11 *Accord: An International Review of Peace Initiatives* 10–15.
- 19 R Doom and K Vlassenroot, 'Kony's Message: A New Koine? The Lord's Resistance Army in Northern Uganda' (1999) 98(390) *African Affairs* 5–36.
- 20 M Boas and A Hatloy, 'Poor, Terrorised and Internally Displaced: The Humanitarian Situation in Northern Uganda' (2006) 36 *Humanitarian Exchange* 22.
- 21 See E Laruni, 'Regional and Ethnic Identities: The Acholi of Northern Uganda, 1950–1968' (2015) 39(11) *Journal of Eastern African Studies* 212–230.
- 22 S Finnström, 'In and Out of Culture Fieldwork in War-torn Uganda' (2001) *Critique of Anthropology* 247–258.
- 23 Boas and Hatloy (n 20) 22.
- 24 S Finnström, 'Wars of the Past and War in the Present: The Lord's Resistance Movement/Army in Uganda' (2006) 76(2) *Africa* 200–220, 204.
- 25 DP Thomas and R Gardner, 'Restorative Justice in Post-conflict Northern Uganda: Exploring Reconciliation and Reconstruction through Transitional Justice Mechanisms' (2014) 3(7) *Online*

Obote and Amin both exacerbated the divisions that existed between the ethnic groups in the northern and southern parts of the country. They favoured their own regions and their own ethnic groups: Obote was Langi and Amin was Kakwa and their ethnic differences exacerbated regional polarisation between the north and the south. As a result of the strife, Yoweri Museveni formed the National Resistance Movement (NRM) and began an insurgency campaign, claiming that the NRM was intending to liberate the country from years of northern domination. Owing to widespread anti-Obote attitudes resulting from his past human rights violations, the NRM was widely supported by people in the south of the country, who felt alienated and ethnically divided from the people in the north.²⁶ Therefore, when Museveni came to power in 1986, various Acholi opposition groups were born, including the Ugandan People's Democratic Movement and the Holy Spirit Movement. In 1987, these two movements united to become the Lord's Resistance Army (LRA) rebellion, launched by Joseph Kony. For more than twenty-five years the LRA subjected northern Ugandans to massive human rights violations through murder, mutilation, rape, looting, the destruction of property and abduction of children.²⁷ However, it must be understood that the war was based on long-term underlying grievances in the north,²⁸ and the LRA was 'a poor manifestation' of these grievances.²⁹ Conflict and violence have been a critical part of Uganda's history since independence,³⁰ and Yoweri Museveni's NRM has withstood up to fourteen insurgencies while in power.³¹ Yet, it is incorrect to assume that the LRA is the only group involved in the conflict with the government. Atrocities committed by other groupings have included attacks against the civilian population, pillaging, murder, the enlisting of children, enslavement, inhumane acts, cruel treatment, sexual enslavement and rape. However, the LRA's initial role in waging war against President Museveni's Ugandan People's Defence Forces (UPDF) has had the most dramatic impact on the country.³² The effects of this conflict on the country increased in the 1990s, when the LRA began to target the civilian population and committed many atrocities that constitute war crimes and crimes against humanity. The LRA has used extreme violence as a tactic

Journal of African Affairs 95–105.

26 M Mamdani, *Imperialism and Fascism in Uganda* (Heinemann 1983).

27 International Crisis Group, *Northern Uganda: Understanding and Solving the Conflict* (ICG 2004).

28 H Behrend, *Alice Lakwena and the Holy Spirits: War in Northern Uganda, 1985–97* (University of Wisconsin Press 1999).

29 Human Rights Watch, 'Abducted and Abused: Renewed Conflict in Northern Uganda' (2003) 15(12A) Human Rights Watch 1–73.

30 M Ssenyonjo, 'Accountability of Non-state Actors in Uganda for War Crimes and Human Rights Violations: Between Amnesty and the International Criminal Court' (2005) 10(3) *Journal of Conflict and Security Law* 405–434.

31 Refugee Law Project, 'Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda' Refugee Law Project Working Paper (2004).

32 T Lyons, 'The Importance of Winning: Victorious Insurgent Groups and Authoritarian Politics' (2016) 48(2) *Comparative Politics* 167–184.

and this has had a profound psychological impact on the local population.³³ The LRA is allegedly responsible for more than 200 000 deaths. From the mid-1990s to 2006, it is believed that they abducted approximately 66 000 people between the ages of 14 and 30 in Uganda alone.³⁴ Another source claims that from 1988 to 2004, the LRA abducted 30 000 children.³⁵ Moreover, from December 2008 until the beginning of 2014, it is estimated that 2 332 civilians died and 4 894 abductions took place.³⁶ Tens of thousands of children have been abducted by the LRA to swell its ranks.³⁷ They have been used as cooks, porters, guards, spies, or directly in the hostilities as human shields or fighters. These children were often forced to take part in atrocities, to kill members of their own community as well as torture them. They received military training and were routinely abused, beaten or tortured, and at times they were used as sex slaves.³⁸

The internal conflict has been fought for the control of people as much as the territory where those people reside. Women and children have routinely been targets of gender-based violence.³⁹ As such, gender-based violence or violence against women committed in Uganda⁴⁰ has included rape, mutilation, forced prostitution, forced pregnancy and sexual slavery.⁴¹ Rape has been used systematically as a weapon of war and as a means of terrorising populations and destroying community ties.⁴² Adolescent girls have been especially vulnerable to rape and abduction for purposes of trafficking and sexual slavery.⁴³

Violence against children is a generally pervasive problem in Uganda.⁴⁴ The annual police crime report of 2011 reported 7 690 defilement cases, 520 cases of rape, 69 of

33 See also F Shanahan, 'Cultural Responses to the Reintegration of Formerly Abducted Girl Soldiers in Northern Uganda' (2008) 1(1) *Psychology* 14–28.

34 The Survey for War Affected Youth (SWAY), *The State of Youth and Youth Protection in Northern Uganda*. (UNICEF 2007) 26.

35 Jan Egeland, 'A Ugandan Tragedy' *Washington Post* (Washington, 10 November 2004).

36 LRA Crisis Tracker <<http://www.lracrisistracker.com/>> accessed 3 March 2016.

37 United Nations, 'Uganda: Child Soldiers at Centre of Mounting Humanitarian Crisis' UN: *Ten Stories the World Should Hear More About* (2004) <<http://www.un.org/events/tenstories/07/list04.shtml>>.

38 P Pham, P Vinck, E Stover, A Moss and M Wierda, 'When the War Ends: A Population-Based Survey on Attitudes about Peace, Justice and Social Reconstruction in Northern Uganda' (HRC, Payson CID, ICTJ 2007).

39 M Okello and L Hovil, 'Confronting the Reality of Gender-based Violence in Northern Uganda' (2007) 1(3) *International Journal of Transitional Justice* 433–443.

40 See further O Bamidele, "'I'm not Leaving, I'm not Afraid": (Re)visiting the Dysfunctional Systems of Justice on Gender-based Violence (GBV) in Uganda' (2016) 12(1) *Democracy and Security* 23–43.

41 Bamidele (n 40).

42 A Mazimhaka, 'Much to be Done: Towards an Effective Transitional Justice Model for Dealing with Conflict-related Crimes of Sexual and Gender-based Violence' (Minor Dissertation, University of Cape Town 2014).

43 See further S Amin, A Austrian, M Chau, K Glazer, E Green, D Stewart and M Stoner, 'The Adolescent Girls Vulnerability Index: Guiding Strategic Investment in Uganda' (UNICEF 2013).

44 E Walakira and D Ddumba-Nyanzi, 'Violence against Children in Uganda: A Decade of Research and Practice, 2002–2012' Kampala: Ministry of Gender Labour and Social Development and UNICEF (2012) and R Saile, V Ertl, N Neuner and C Catani, 'Does War Contribute to Family Violence against

child trafficking, eight of child sacrifice, 8 075 of child neglect, 1 973 of child desertion, 1 775 of child abuse and torture, 125 of kidnapping, 66 of infanticide and 423 of other sexual-related offenses, including assault and incest for that year.⁴⁵ Human trafficking is also a serious human problem in Uganda: Uganda is a source and a destination country for men, women, and children who fall victims to human traffickers.⁴⁶

The UN Secretary-General's 2010 report on Children and Armed Conflict stated that children in a number of countries, including Uganda, were killed and maimed by explosive weapons, including landmines and explosive remnants of war (ERW), and from their use in populated areas.⁴⁷ The conflicts have had a great, and dramatic impact, and extraordinarily traumatic, impact on women and children.⁴⁸ These events have caused massive mental and psychosocial harm and developmental effects. The conflict removed and severely undercut the usual systems that were in place to provide support for these types of problem. All of these issues have had enduring consequences for children:⁴⁹ they have damaged their ability to function and be fulfilled. Not only are these impacts acute in the short term, but they also have serious long-term effects, which may have a serious impact on peace, human rights and development.

Children living in places of conflict are 300% more likely not to attend school, 200% more likely to die before they reach their fifth birthday and 200% more likely to lack access to clean water. Eight out of the ten countries with the highest under-five mortality rate are fragile and/or engaged in conflict.⁵⁰ In addition, the adverse effects of conflict on education, especially for women and girls, are enormous. Needless to say that conflict aggravates the wealth and gender disparities that occur in many countries.⁵¹ Statistics indicate that 50% of children of primary school age who are not in school live in fragile states.^{52 53} In other words, in poor countries affected by conflict, 28 million

Children? Findings from a Two-generational Multi-informant Study in Northern Uganda' (2014) 38(1) Child Abuse & Neglect 135–146.

45 Uganda Police, 'Annual Crime and Traffic/Road Safety Report' (2011) <[http://www.upf.go.ug/download/publications\(2\)/Annual_Crime_Report_2011.pdf](http://www.upf.go.ug/download/publications(2)/Annual_Crime_Report_2011.pdf)> accessed 25 December 2015.

46 United States Department of State, 'Trafficking in Persons Report – Uganda' (2013). <<http://www.refworld.org/docid/51c2f37c18.html>> accessed 3 March 2016.

47 United Nations, 'UN Secretary-General's Report: Children and Armed Conflict' (2010).

48 H Liebling-Kalifani, A Marshall, R Ojiambo-Ochieng and N Kakembo, 'Experiences of Women War-torture Survivors in Uganda: Implications for Health and Human Rights' (2013) 8(4) Journal of International Women's Studies 1–17.

49 JN Corbin, 'Returning Home: Resettlement of Formerly Abducted Children in Northern Uganda' (2008) 32(2) Disasters 316–335.

50 World Bank, 'World Development Report 2011' (2011).

51 L Fiske and R Shackel, 'Gender, Poverty and Violence: Transitional Justice Responses to Converging Processes of Domination of Women in Eastern DRC, Northern Uganda and Kenya' (2015) 51 Women's Studies International Forum 110–117..

52 UNESCO, 'Education for All Global Monitoring Report: The Hidden Crisis: Armed Conflict and Education' (2011) 132.

53 On Uganda's fragility and the way that the state has used that see J Fisher, 'When it Pays to be a "Fragile State": Uganda's Use and Abuse of a Dubious Concept' (2014) 35(2) Third World Quarterly

children are not in school. The children in such countries are at twice the risk of dying before they turn five years old than children living in other poor countries.⁵⁴ The literacy rate is only 79% among young people in conflict-affected poor countries as compared to 93% in other poor countries.⁵⁵

Over the past decade, the role of the Security Council has become critical in dealing with violations of children's rights during armed conflict, including those committed in Uganda.⁵⁶ The Council has done much to establish norms and to oversee the investigation and practices in the area.⁵⁷ Furthermore, a number of UN agencies and others have been working to mitigate the effects of the conflict.⁵⁸ For example, UNICEF conducted an assessment of the situation of children in camps for the internally displaced people (IDP) in western and northern Uganda,⁵⁹ to learn about how the rights and development of children and adolescents were being affected and to recommend specific actions to reduce their vulnerability and improve their conditions.⁶⁰ These recommendations were made on a variety of issues, including abducted children, children orphaned by AIDS, and child abuse and exploitation.⁶¹ Problematically, little data exists and therefore these studies will be important when the Human Rights Commission, with the support of the United Nations, establishes a national human rights database. A number of consultancies have already begun to work on the establishment of the database.

It is important to remember that it is not only those fighting against the state who have committed violations. The UPDF has itself also been responsible for heinous atrocities, including summary executions, torture, rape, child recruitment, and inhumane detentions. Therefore, for example, it has been argued that 'a focus on formerly abducted girls by the international community has rendered unacknowledged the victimhood of never-abducted girls who have been raped or forced into marriage with UPDF soldiers, many of whom also become young mothers as a result.'⁶² Few perpetrators have been

316–332.

54 UNESCO (n 52).

55 UNESCO (n 52).

56 SM Field, 'UN Security Council Resolutions Concerning Children Affected by Armed Conflict: In Whose "Best Interest"?' (2013) 21(1) *The International Journal of Children's Rights* 127–161.

57 DS Koller and M Eckenfels-Garcia, 'Using Targeted Sanctions to End Violations Against Children in Armed Conflict' (2015) 33(1) *Boston University International Law Journal* 1–36.

58 R Tiessen and L Thomas, 'Gendered Insecurity and the Enduring Impacts of Sexual and Gender-based Violence (SGBV) in Northern Uganda' in D Buss, JM Lebert, BA Rutherford, D Sharkey and O Aginam (eds), *Sexual Violence in Conflict and Post-conflict Societies: International Agendas and African Contexts* (Routledge 2014) 69–85.

59 See further R Saile, V Ertl, F Neuner, and C Catani, 'Does War Contribute to Family Violence Against Children? Findings from a Two-generational Multi-informant Study in Northern Uganda' (2014) 38(1) *Child Abuse & Neglect* 135–146.

60 UNICEF, 'Review of UNICEF Supported Right to Play Interventions in Responding to the Psychosocial Needs of Children Affected by Conflict in Northern and Eastern Uganda' (2007).

61 See also A Skeels, 'Refugee Children's Participation in Protection: A Case Study from Uganda, New Issues in Refugee Research' UNHCR Policy Development and Evaluation Service (UNHCR 2012).

62 A Veale, S McKay, M Worthen and M Wessells, 'Participation as Principle and Tool in Social

held to account. It is also alleged that the UDPF created local civilian militias, such as the so-called Local Defence Units (LDUs), to deter the LRA in some regions. These militias were also responsible for committing human rights abuses against civilians.

The role of the security forces in the commission of offences is not a recent phenomenon. Before the civil war that occurred between 1981 and 1986, Idi Amin and Milton Obote created security organisations and secret police units to preserve their regimes. These practised torture, looting, murder, rape, the imprisonment of opponents, and disappearances.⁶³ It is reported that the police killed between 100 000 and 500 000 persons.⁶⁴ The NRA is also accused of committing many violations, including the arrest of thousands of persons and detaining them without trial, keeping people in custody for long periods without prosecuting them.⁶⁵ Extrajudicial executions often occurred. Mutilations, deliberate burnings, beatings and other atrocities were also meted out during the conflict. The Ugandan Commission of Human Rights has reported the caning of detainees as well as severe beatings during custodial detention.⁶⁶ The African Centre for Treatment and Rehabilitation of Torture Victims has registered 170 allegations of torture against the police, 214 against the UPDF, one against the military police, 23 against the Special Investigations Unit, 361 against unspecified security personnel, and 24 against prison officials between January and September 2013.⁶⁷ A 2005 study by the Isis-Women's International Cross Cultural Exchange (Isis-WICCE) found that 28.6% of women and 6.7% of men have suffered sexual violence in the country.⁶⁸ It is also important to note that when people think of the conflict in Uganda, they mostly (and almost always) think only about the LRA. As mentioned, there are many other groups that have waged conflict in Uganda and in the region, and have a variety of grievances.⁶⁹ However, these are mostly low-intensity conflicts that are often not reported. For instance, the Allied Democratic Forces (ADF) is a group that operates in the Democratic Republic of the Congo (DRC) but originates from Uganda. In April

Reintegration: Young Mothers Formerly Associated with Armed Groups in Sierra Leone, Liberia, and Northern Uganda' (2013) 22(8) *Journal of Aggression, Maltreatment & Trauma* 829–848.

63 Amnesty International, 'Six Years after Amin, Tortures, Killing, Disappearances' *Amnesty International* (1985) <<http://www.amnesty.org/es/library/asset/AFR59/042/1985/en/5dca1c86-ef0f-422d-80eb-b37a3fd02caa/afr590421985en.pdf>> accessed 12 July 2014.

64 B Baker, 'Conflict and African Police Culture: The Cases of Uganda, Rwanda and, Sierra Leone' in M Marks, M O'Neil and N Singh (eds), *Police Occupational Culture: New Debates and Directions* (Elsevier Science 2007) 321–347.

65 See, for example, Amnesty International, 'Uganda: The Human Rights Record 1986–1989' (AI Publications 1989).

66 US Bureau of Democracy, 'Human Rights, and Labor' <<http://www.state.gov/j/drl/rls/hrrpt/2013/af/220173.htm>> accessed 18 March 2016.

67 US Bureau of Democracy, 'Human Rights, and Labor' (n 66).

68 E Kinyanda, S Musisi, C Biryabarema, I Ezati, H Oboke, R Ojiambo-Ochieng, J Were-Oguttu, J Levin, H Grosskurth and J Walugembe, 'War Related Sexual Violence and Its Medical and Psychological Consequences as seen in Kitgum, Northern Uganda: A Cross-sectional Study' (2010) 10(28) *BMC International Health and Human Rights* 1–8.

69 CR Day, 'The Fates of Rebels: Insurgencies in Uganda' (2011) 43(4) *Comparative Politics* 439–458.

2015, a United Nations report alleged that the ADF had committed grave violations, possibly amounting to war crimes and crimes against humanity in the north-eastern part of the DRC at the end of 2014.⁷⁰ It is alleged that at least 237 civilians were killed, but the number is probably much higher because of the difficulties in accessing the region. These deaths, and a variety of other atrocities, occurred when 35 villagers were attacked using machetes, hammers and knives. Therefore, groups such as the ADF and others also need to be brought into the transitional justice and democratisation processes in order to create stability in the country and the region in the years to come.

PURSUIING TRANSITIONAL JUSTICE AND DEMOCRATIC REFORMS IN UGANDA

The violence and conflict that played out in the nation are symptomatic of both a divided past and a divided present. Uganda therefore needs to confront its past⁷¹ In fact, it has set in place processes to deal with that violent chapter. It has examined different methods for determining which steps would be useful to deal with the situation in the country at present. For instance, the fact that the 2016 Ugandan presidential elections saw the incumbent easily being re-elected gives the opportunity and space for the transitional justice plans once designed and discussed in government to be acted upon, as discussed below. Moreover, the fact that the LRA has been decimated and that its forces are hardly active, almost never operating in Uganda, is another opportunity for Uganda to find ways to tackle its divergences and problems.

Uganda has instituted transitional justice processes before, but, for a variety of reasons, those mechanisms did not achieve the desired peace and stability. One such reason is the fact that they were not sufficiently democratically established and there was insufficient buy-in to those processes. These previous initiatives were the Oder Commission of 1974 (The Commission of Inquiry into the Disappearances of People in Uganda) and the Odoki Commission of 1986.⁷² The Oder Commission was set up to investigate and document human rights violations committed during post-independence military regimes. It seemingly had a credible profile among the Ugandan public with nationwide coverage, offered key recommendations that led to, among other measures, the establishment of the Ugandan Human Rights Commission.⁷³ Unfortunately, as the first commission of its kind, a range of problems beset it. In addition, the Oder (and later the Odoki) Commission's recommendations were not fully implemented by the

70 United Nations, 'Report of the United Nations Joint Human Rights Office on International Humanitarian Law Violations Committed by Allied Democratic Forces (ADF) Combatants in the Territory of Beni, North Kivu Province, between 1 October and 31 December 2014' (2015).

71 J Sarkin, 'Ensuring Justice, Reparations and Truth Through a Truth Commission and Other Processes in Uganda' (2015) 48(3) *Journal Law and Politics in Asia, Africa and Latin America* 391–402.

72 See the report of the Commission of Inquiry into Violations of Human Rights, Uganda (1994).

73 See Quinn (n 5).

government.⁷⁴ Furthermore, there was insufficient dialogue and discussion between the government and the commissions. Quinn argues that these commissions did not have a lasting impact.⁷⁵ In this regard, it has been argued that the previous processes

were narrow in focus and did not receive the necessary political will to implement the recommendations made. Their establishment was occasioned by the political expediency of the governments in power.⁷⁶

Fundamentally, a truth commission on its own is not a panacea for a country to move in a different direction.⁷⁷ It takes all sectors, and especially a government, to ensure that the problems of the past are resolved or at least dealt with. Truth commissions make recommendations, but do not act on them since that is neither within their mandate nor within their competence. The fact is that in the case of Uganda, the political situation after the commissions remained much the same: little changed to heal the rifts that existed. In fact, some of the divisions between the various groupings in Uganda became more entrenched over time as a result of the political realities that occurred from the time that Yoweri Museveni became president.

What is crucial is that the recovery or revelation of the truth occurs.⁷⁸ Today the right to the truth is commonly acknowledged as part of international law.⁷⁹ It is found in many instruments, including the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity of 5 February 2005, which reaffirms the ‘inalienable’ right to know the truth regarding gross human rights violations.⁸⁰ It is also found in the International Convention for the Protection of All Persons from Enforced Disappearance (2006) in Article 24(2).⁸¹ The right to the truth has also been recognised in decisions of the European and Inter-American Courts,⁸² by treaty bodies, as well as in the General Comment, of the Working Group on Enforced and Involuntary Disappearances in their *Right to Truth in Relation to Enforced Disappearance* (2010).⁸³

74 J Perry and TD Sayndee, *African Truth Commissions and Transitional Justice* (Lexington Books 2015).

75 Quinn (n 5).

76 KP Apuuli, ‘Prospect of Establishing a Truth-telling and Reconciliation Commission in Uganda,’ (2013) 10 US–China Law Review 596–619.

77 For a negative position on their role see D Mendeloff, ‘Truth-seeking, Truth-telling, and Postconflict Peacebuilding: Curb the Enthusiasm?’ (2004) 6(3) International Studies Review 355–380.

78 K Anyeko, E Baines, E Komakech, B Ojok, LO Ogora and L Victor, ‘The Cooling of Hearts’: Community Truth-telling in Northern Uganda’ (2012) 13(1) Human Rights Review 107–124.

79 JD Ciorciari and JM Franzblau, ‘Hidden Files: Archival Sharing, Accountability, and the Right to the Truth’ (2014) 46(1) Columbia Human Rights Law Review 1–84.

80 M Klinkner and E Smith, ‘The Right to Truth, Appropriate Forum and the International Criminal Court’ in N Szablewska and S Bachmann (eds), *Current Issues in Transitional Justice* (Springer 2015) 3–29.

81 Ciorciari and Franzblau (n 79).

82 M McDonagh, ‘The Right to Information in International Human Rights Law’ (2013) 13(1) Human Rights Law Review 25–55.

83 M Klinkner and E Smith, ‘The Right to Truth, Appropriate Forum and the International Criminal

The reports of the Advisory Committee of the Human Rights Council on Best Practices and Missing Persons (2010) also mention this right.⁸⁴

Some may argue that investing resources, time and energy on past grievances will achieve few positive results, claiming that a new process will cause past wounds to reopen and will further deepen cleavages that already exist in Ugandan society. But the reality is that those divisions are already wide and cause continuing difficulties. Such deep divisions need to be healed. While there may be short-term pains in beginning the process, long-term positive results are in view. Not doing so at this moment may lead to further difficulties and violence. Furthermore, while the LRA may have been routed, the conditions in which they flourished have not. Therefore, taking the steps necessary may be difficult initially, but will in the medium to long term have positive effects for the country as a whole. Dealing with the truth can have reparative effects,⁸⁵ which are critically needed in the country. Other issues, such as what to do about people who have been abducted and/or gone missing as a result of the conflict, also need to be dealt with. This is one legacy of the conflict that will continue to haunt the country unless it is dealt with.⁸⁶

But, a good transitional justice mechanism cannot, on its own, solve a country's problems: the government has to take whatever political steps are necessary to heal the divides.⁸⁷ It is the state that needs to establish new institutions, or sufficiently and meaningfully reform the old ones, to build trust in and ensure their legitimacy. Reforming the security forces and taking a whole host of rule-of-law steps is of fundamental importance to achieving the necessary transformation.⁸⁸ In this context, the UN Secretary General has stated that

the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.⁸⁹

Court' in N Szablewska and S Bachmann (eds), *Current Issues in Transitional Justice* (Springer 2015) 3–29.

84 S Lodi, 'The Mediterranean Sea and the Right to Know About the Fate of Missing Relatives: Access to Justice for Families of Missing Migrants' (2016) 3 SOAS Law Journal 103.

85 M Lawry-White, 'The Reparative Effect of Truth Seeking in Transitional Justice' (2015) 64(1) *International and Comparative Law Quarterly* 141–177.

86 On the need to deal with the missing see J Sarkin, 'The Need to Deal with All Missing Persons including Those Missing as a Result of Armed Conflict, Disasters, Migration, Human Trafficking, and Human Rights Violations (Including Enforced Disappearances) in International and Domestic Law and Processes' (2015) 1 *Inter-American and European Human Rights Journal* 112–142.

87 See V Arnould, 'Transitional Justice and Democracy in Uganda: Between Impetus and Instrumentalisation' (2015) 9(3) *Journal of Eastern African Studies* 354–374.

88 See further J Sarkin, 'The Interrelationship and Interconnectness of Transitional Justice and the Rule of Law in Uganda: Pursuing Justice, Truth, Guarantees of Non-Repetition, Reconciliation and Reparations for Past Crimes and Human Rights Violations' (2015) 7(1) *Hague Journal on the Rule of Law* 111–139.

89 United Nations Security Council, 'The Rule of Law and Transitional Justice in Conflict and Post

Achieving these goals is sorely needed in Uganda.⁹⁰ To achieve them, however, a grand redesign of the state might be needed, including by promulgating a new constitution achieved through a highly participatory process to ensure that it is both acceptable and desirable. This is vital because democratic countries based on the rule of law should ensure that they incorporate and guarantee

principles of supremacy of the law, equality before the law, accountability to the law, legal certainty, procedural and legal transparency, equal and open access to justice for all, irrespective of gender, race, religion, age, class, creed or other status, avoidance of arbitrary application of the law, and eradication of corruption.⁹¹

These have not generally been the basis of the legal system in Uganda and, therefore, incorporating them and ensuring that they are centrepieces of the state in the future is essential to ensuring that past problems are not perpetuated.⁹²

Yet, these guarantees will be meaningless in the absence of guaranteeing judicial independence and the separation of powers.⁹³ These fundamental elements in helping to avoid the present difficulties⁹⁴ are indispensable because

[a]n independent, impartial judiciary; the presumption of innocence; the right to a fair and public trial without undue delay; a rational and proportionate approach to punishment; a strong and independent legal profession; strict protection of confidential communications between lawyer and client; equality of all before the law; these are all fundamental principles of the Rule of Law. Accordingly, arbitrary arrests; secret trials; indefinite detention without trial; cruel or degrading treatment or punishment; intimidation or corruption in the electoral process, are all unacceptable.⁹⁵

Moreover, there is a need to change fundamentally the way the security forces are appointed, controlled and operated:⁹⁶ independent institutions and robust oversight mechanisms are needed in a range of areas, including the military, the police, prisons,

Conflict Societies' Report of the Secretary General (S/2004/616) (2016).

90 Arnould (n 87) 354–374, 360.

91 G8 Foreign Ministers Meeting, 'Declaration of G8 Foreign Ministers on the Rule of Law' (2015). <<http://www.g8.utoronto.ca/foreign/formin070530-law.html>> accessed 19 May 2016.

92 An integrated approach is needed on a range of issues. See further J Sarkin, 'Integrating Transitional Justice and Demobilisation, Disarmament and Reintegration: The Need to Achieve Rehabilitation, Reintegration and Reconciliation for Child Soldiers and Child Victims of Enforced Disappearances' in I Derluyn, C Mels, S Parmentier and W Vandenhole (eds), *Remember: Rehabilitation and Reintegration of War-Affected Children* (Intersentia 2012) 77–104.

93 See further MB Ndulo and R Duthie, 'The Role of Judicial Reform in Development and Transitional Justice' in P de Greiff and R Duthie (eds), *Transitional Justice and Development: Making Connections* (International Center for Transitional Justice 2009) 251.

94 On the present problems with the courts see Arnould (n 87) 354–374.

95 International Bar Association, 'Commentary on the IBA Council "Rule of Law" Resolution of September 2005' (2009).

96 On the limited oversight at present see Arnould (n 87) 360.

and the prosecuting arm of the state; moreover, new appointment mechanisms are needed that do not continue the high levels of corruption,⁹⁷ nepotism⁹⁸ and cronyism⁹⁹ of the past. These are critical issues because

all persons, institutions and entities, public and private, including the State itself, [must be] accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.¹⁰⁰

Furthermore, a new flag and a new national anthem may be helpful in indicating a break with the past and a new beginning. The colours of a new flag should that be seen to be important, should be as representative of all the Ugandan factions as possible and the design should be inclusive. Rebuilding the state and embarking on nation-building are essential if the reforms are not to be contested.

The methodology to achieve these steps is as important as the actual steps taken: the process of creating these new symbols must be inclusive. The more the process is democratically established and performed, and not seen as an exercise controlled by the state, the greater the likelihood of its success.¹⁰¹

While violence and conflicts are major problems in the country, they are not by any means the only problems:¹⁰² The structural imbalances that underlie social conflicts are enormous. As political leaders plunder the state and the economy for themselves while the majority of the population suffer poverty, mass unemployment, repression, and denial of basic rights and dignity,¹⁰³ the imbalances increase. This caused the high levels of income inequality within the country to be exacerbated, while the corruption has created huge problems with state expenditure.¹⁰⁴ The country's educational system

97 R Tangri and AM Mwenda, 'Elite Corruption and Politics in Uganda' (2008) 46(2) *Commonwealth & Comparative Politics* 177–194. See also R Tangri, 'Politics, Donors and the Ineffectiveness of Anti-corruption Institutions in Uganda' (2006) 44(1) *The Journal of Modern African Studies* 101–124.

98 S Nangoli, M Ngoma, H Kimbugwe and M Kituyi, 'Towards Enhancing Service Delivery in Uganda's Local Government Units: Is Fiscal Decentralization Still a Feasible Strategy?' (2015) 4(5) *International Journal of Economics & Management Sciences* 1–5

99 J Tumushabe, 'The Politics of HIV/AIDS in Uganda' (United Nations Research Institute for Social Development, Geneva 2006).

100 United Nations Security Council (n 89).

101 See Arnould (n 87).

102 E Mayanja, 'Strengthening Ethical Political Leadership for Sustainable Peace and Social Justice in Africa: Uganda as a Case Study' (2014) 13(2) *African Journal on Conflict Resolution* 113–146.

103 Mayanja (n 102).

104 See further L Fiske and R Shackel, 'Gender, Poverty and Violence: Transitional Justice Responses to Converging Processes of Domination of Women in Eastern DRC, Northern Uganda and Kenya' (2015) 51 *Women's Studies International Forum* 110–117.

is also less than satisfactory, being unable to provide sufficient human resources to meet the country's needs.¹⁰⁵

DOMESTIC JUSTICE IN UGANDA

Since Uganda ratified the Rome Statute in 2002, domestic and international justice have coexisted in Uganda.¹⁰⁶ Complementarity in the context of the ICC means that the Court prosecutes only if the state itself is unable or unwilling to do so.¹⁰⁷ Therefore, because Uganda was unable to prosecute the LRA in 2002 when it referred itself to the ICC, the onus fell onto the ICC to do so.¹⁰⁸

As a result of the ICC process in Uganda, a number of domestic events have occurred. First, a War Crimes Division, now called the International Crimes Division (ICD), was established in the High Court and a number of prosecutions have begun to take place. One of the most important cases, against Thomas Kwoyelo, has been continuing for some years. The delays are the result not of prevarication, but because the defendant has been able to exercise his rights to ensure that the case against him run up against numerous difficulties.¹⁰⁹ The fact is that numerous LRA suspects have been given amnesty over the years¹¹⁰ making prosecution unlikely, if not impossible. Importantly, in April 2015 the Supreme Court of Uganda ruled that the trial of Kwoyelo needed to resume before the ICD because the applicant could be refused amnesty by the Director of Public Prosecutions and could therefore be lawfully prosecuted.

Despite the Kwoyelo case, the Ugandan government has not shown a great appetite of late for these types of cases. Part of the reason for this is the abovementioned widespread amnesties that have been given to thousands of people that make it difficult to prosecute such individuals. Besides this, there is little political will to prosecute many, if any of these people. For this reason, the government has metamorphosed the ICD into one that mainly deals with human trafficking, piracy and similar matters. And there seems to be an acceptance that some perpetrators will be prosecuted even though thousands¹¹¹ have been granted amnesty.¹¹² However, there ought to be prosecutions against all the groups

105 Mayanja (n 102).

106 On the positive role of the ICC in the country see, for example, Malu (n 3) 81–103.

107 See further on the pitfalls and issues relating to complementarity S Nouwen, *Complementarity in the Line of Fire: The Catalysing Effect of the International Criminal Court in Uganda and Sudan*. Cambridge Studies in Law and Society (Cambridge University Press 2013) 518–520.

108 See J Sarkin, 'Enhancing the Legitimacy, Status and Role of the International Criminal Court by Using Transitional Justice or Restorative Justice Strategies' (2011–2012) *Interdisciplinary Journal of Human Rights Law* 83–102.

109 KMcNamara, 'Seeking Justice in Ugandan Courts: Amnesty and the Case of Thomas Kwoyelo' (2013) 12(3) *Washington University Global Studies Law Review* 653.

110 McKnight (n 10).

111 Malu (n 3).

112 See further IK Souaré, 'Moving the Ugandan Peace Process from the Dichotomy of Criminal Trials vs Amnesty' (2008) 17(2) *African Security Review* 106–112.

who committed serious crimes, including the state security forces¹¹³—this is critical to breaking the cycle of violence. There ought to be no holy cows and all sectors should be held accountable for their actions, levels of impunity need to be removed, not only those targeted by a justice policy.

PROGRESS IN DEALING WITH THE PAST DOMESTICALLY IN UGANDA

Despite obstacles and apparent strong opposition to dealing with the problems associated with past violence, the government of Uganda has made various statements and developed institutions to proceed with transitional justice issues. For instance, the Cessation of Hostilities Agreement in 2006 between the Government and the LRA resulted in five agreements known as the Juba Peace Agreements.¹¹⁴ Some of the developments mentioned above emerged from the Juba Peace Agreements that put in place a commitment to dealing with transitional justice.¹¹⁵ The Juba Agreement No 3 on Accountability and Reconciliation (2007) marked the beginning of a process to address the crimes committed during the conflict and the redress of victims.¹¹⁶ The Implementing Protocol identified the government as being responsible for meeting the reparations needs of victims.¹¹⁷ It provided that the government ought to develop and implement a policy for supporting and rehabilitating the victims of the conflict. The Implementation Protocol to the Agreement on Comprehensive Solutions of 2008 provided that the government ought to establish a special fund for victims from which reparations were to be paid, including reparations ordered by an institution established pursuant to the Agreement on Accountability and Reconciliation. The Agreement provides that ‘the Government shall establish the necessary arrangements for making reparations to victims of the conflict in accordance with the terms of the principal agreement.’ The government was also given the responsibility of establishing a structure to recommend the best way to deliver reparations. Therefore, in 2008, the Ugandan Justice and Law and Order Sector (JLOS), a cross-government departmental body, responsible for moving forward a policy on reparations for victims of the conflict in Northern Uganda, set up the Transitional Justice Working Group (TJWG) to implement the provisions

113 J Almqvist and C Esposito, *The Role of Courts in Transitional Justice: Voices from Latin America and Spain* (Routledge 2013).

114 R Atkinson, ‘Realists in Juba? An Analysis of the Juba Peace Talks’ in T Allen and K Vlassenroot (eds), *The Lord’s Resistance Army: Myth and Reality* (Zed Books 2010) 205–222.

115 Atkinson (n 114).

116 On the need to do so under international law see I Bottigliero, *Redress for Victims of Crimes Under International Law* (Springer 2013).

117 J Sarkin, ‘Providing Reparations in Uganda: Substantive Recommendations for Implementing Reparations in the Aftermath of the Conflicts That Occurred Over the Last Few Decades’ (2014) 14(2) *African Human Rights Law Journal* 526–552.

of the Juba Peace Agreements.¹¹⁸ The TJWG has five sub-committees: international crimes prosecutions; truth and reconciliation; traditional justice; sustainable funding; and integrated systems.

The TJWG has been developing a transitional justice policy for the country and has embarked on processes to study and understand attitudes and positions on transitional justice mechanisms, including reparations mechanisms and needs. A number of processes have been implemented and studies undertaken to determine the views of victims on the issues of transitional justice and reparations in particular.¹¹⁹ JLOS and other organisations such as the Uganda Human Rights Commission have held workshops on various transitional justice issues.¹²⁰ The process, however, has been slow and while conferences have been held and papers issued, little progress has been made and the government's stance, particularly that of the cabinet, is unknown.

On 21 May 2013, a draft Transitional Justice Policy was published. It contained various proposals, including witness protection and processes to ensure victim participation. The draft set out the need to incorporate traditional justice mechanisms in order to resolve conflict. Also included in the draft policy was a national truth-telling process and the establishment and implementation of a reparations programme. The draft also provided that there would be no blanket amnesty and that the government would encourage those who had already obtained amnesty to participate in the truth-telling and traditional justice processes. There have also been discussions about a truth recovery process.¹²¹

Having a truth-telling process at this juncture of Uganda's history could be momentous:¹²²

- It could put the country on a different path, away from the extensive difficulties it faces.
- It could help to promote reconciliation.¹²³
- If established with independent credible commissioners, a wide mandate, sufficient time, and enough resources that permit all the issues to be investigated and sufficient truth to be discovered, it could have a critical bearing on the country's future.¹²⁴

118 M Otim and M Wierda, 'Justice at Juba: International Obligations and Local Demands in Northern Uganda' in N Waddell and P Clark (eds), *Courting Conflict* (Royal African Society 2008) 21–29

119 United Nations OHCHR, 'The Dust has not yet Settled: Victims' Views on the Right to Remedy and Reparation' (2011).

120 See, for example, United Nations OHCHR, 'Making Peace Our Own: Victims' Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda' (2007).

121 M Minow, 'Forgiveness, Law, and Justice' (2015) 103(60) *California Law Review* 1615, 1623.

122 Bamidele (n 40) 23–43.

123 J Sarkin, 'Understanding the Journey to Reconciliation in Transitional Societies: Using the Metaphor of a Motor Vehicle Road Trip to Understand South Africa's Path (Process) to Political Reconciliation' (2015) 10(2) *International Journal of Renaissance Studies* 87–103.

124 KP Apuuli, 'The Prospect of Establishing a Truth-telling and Reconciliation Commission in Uganda'

- It would certainly be beneficial for victims, allowing those who have suffered to obtain some financial and other assistance in the form of reparations.¹²⁵

There are many who have suffered physically, mentally, emotionally and financially as a result of the conflicts and the violence.¹²⁶ Many need urgent assistance.¹²⁷ To have a process of healing and dialogue would be advantageous for those individuals and the country as a whole.¹²⁸ A process of getting the country to deal with the past, discuss and engage with its present problems and to allow reconciliation initiatives to begin¹²⁹ can only be positive.¹³⁰ Obviously, as discussed above, the way in which it is done and the manner in which it is established procedurally will have a major bearing on whether it is successful or not. The state should lead, but not be prescriptive—it should show openness. The state should take various positive steps, including symbolic ones, to promote such a process: one positive step could be a presidential national apology for what has occurred in the past,¹³¹ which could be of major significance to the country.

However, the process of beginning such a course of action has been slow as there has been a lack of specific, accepted state policy. This continues to remain an obstacle to dealing with the past. For instance, at the end of 2014, various members of parliament and civil society from the greater northern parliamentary caucus—including a grouping of legislators from Lango, Acholi, West Nile, Bukedea, Teso, and Bunyoro subregions—issued a press release claiming that the absence of a transitional justice policy had complicated the efforts of the government and civil society actors to rebuild communities. It was noted that, despite an agreement being reached between the government and the LRA between 2006 and 2008, no policy had been determined or implemented. The Chairperson of the caucus commented that:

I know the government is working on the policy but the process needs to be sped up because we cannot have proper reparations and reconciliation programs without it.¹³²

(2013) 10 US-China Law Review 596–619.

125 Lawry-White (n 85) 141–177.

126 H Liebling, L Davidson, GF Akello and G Ochola, ‘The Experiences of Survivors and Trauma Counselling Service Providers in Northern Uganda: Implications for Mental Health Policy and Legislation’ (2016) Sep–Dec 49 (Pt A) *International Journal of Law and Psychiatry* 84–92.

127 See, for example, H Liebling-Kalifani, A Marshall, R Ojiambo-Ochieng and N Kakembo, ‘Experiences of Women War-torture Survivors in Uganda: Implications for Health and Human Rights’ (2013) 8 *Journal of International Women’s Studies* 1–17.

128 Thomas and Gardner (n 25).

129 For a comparative perspective see J Sarkin ‘South Africa’s Reconciliation Process: Tools, Resources and Obstacles in the Journey to Deal with Its Atrocious Past’ in A Frieberg and CKM Chung, *Reconciling with the Past: Resources and Obstacles in a Global Perspective* (Routledge 2017) 15–28.

130 Thomas and Gardner (n 25) 95–105.

131 See generally on the need for an apology D-N Tshimba, ‘Beyond the Mato Oput Tradition: Embedded Contestations in Transitional Justice for Post-massacre Pajong, Northern Uganda’ (2015) 2(2) *Journal of African Conflicts and Peace Studies* 62–85.

132 Editorial Staff, ‘MPs Appeal to Gov’t on War Injustice’ *New Vision Uganda* (Kampala, 2 December

It is also important to note that Uganda has taken note of the need to deal with problems caused by the split between the northern and southern parts of the country, and the problems that have occurred between them. Various development initiatives have been put in place to specifically consolidate security matters and to ensure the recovery of the northern parts of Uganda.¹³³ In 1992, the Northern Uganda Reconstruction Program (NURPI) was established to remedy the existing social and economic difficulties,¹³⁴ and to restore basic economic and social infrastructure in order to revive economic activities in the region. However, the NURPI did not achieve many of the objectives it was meant to attain, partly because the needs were so great. Between 2003 and 2009, the Northern Uganda Social Action Fund (NUSAF) attempted to empower conflict-affected communities, improving service delivery and giving support to various people. Subsequently, NUSAF II, as part of the Peace Recovery and Development Plan (PRDP),¹³⁵ is aiming to improve the access of people in the north to earning opportunities and to better basic socio-economic services.¹³⁶ The Northern Uganda Rehabilitation Programme (NUREP) is also attempting to strengthen the self-reliance and protection of the people in the north, while also rehabilitating infrastructure and improving Uganda's capability to deal with conflict and disasters. The PRDP, launched by the government in 2007, seeks to consolidate 'peace and security' and '[lay] the foundation for recovery and development' in the north of the country. It aims to promote socio-economic development and bridge the divide between the north and the other parts of the country.¹³⁷ However, it is criticised as being

ill-equipped to comprehensively address the over two decades of deep-seated human anguish, devastation and psychosocial trauma caused by the civil war. It lacks the mechanism to institute social justice through non-discriminatory and equitable accountability of the state and non-state parties for women, men and children in the region.¹³⁸

One of the big issues will be whether the people in these places deem the development programmes that are already in operation acceptable reparations processes.¹³⁹ While

2014) <<http://www.newvision.co.ug/news/662450-mps-appeal-to-gov-t-on-war-injustice.html>> accessed 27 September 2016.

133 On the need to include development in transitional processes see Z Miller, 'Effects of Invisibility: In Search of the Economic in Transitional Justice' (2008) 2(3) *International Journal of Transitional Justice* 266–291.

134 On social reconstruction in general see E Baines, 'Spirits and Social Reconstruction After Mass Violence: Rethinking Transitional Justice' (2010) 109(436) *African Affairs* 409–430.

135 See Refugee Law Project, 'Is the PRDP Politics as Usual?' (Refugee Law Project 2008).

136 J Claussen, R Lotsberg, A Nkutu and E Nordby, 'Appraisal of the Peace Recovery and Uganda' (Norad 2008).

137 On the need to engage with these issues in general see L Waldorf, 'Anticipating The Past Transitional Justice and Socio-economic Wrongs' (2012) 21(2) *Social & Legal Studies* 171–186.

138 RS Esuruku, 'Beyond Masculinity: Gender, Conflict and Post Conflict Reconstruction in Northern Uganda' (2011) 4(1) *Journal of Science and Sustainable Development* 25–40.

139 See L Laplante, 'On the Indivisibility of Rights: Truth Commissions, Reparations, and the Right to

reparations programmes are often thought about as being individualistic in orientation, collective reparations are often granted, which means that these development projects are indeed seen as reparations. Therefore, developing a region and providing infrastructure and a range of services to one area could be considered a type of reparation. This could, however, be controversial due to the political fallout of calling processes already underway ‘reparations’, which could be quite negative for the region and the country. If reparations were to be deemed acceptable in the north of the country, they would probably have to be above and beyond what is already being done and that which has already been contemplated by government if they are to be seen to be meeting the requirements of reparations for past neglect in that part of the country.

Therefore, if the JLOS process is followed, Uganda can be said to have planned a transitional justice process. However, whether this will actually occur remains to be seen: it will depend on how the president views these matters. It will also depend on whether he wants to continue leading the country for more than just this election cycle, or whether he wants to remain in office for longer.¹⁴⁰ Technically, he may not stand for re-election after he reaches the age of 75,¹⁴¹ but the Constitution was in fact changed in 2006 to allow him to run for a third term.¹⁴² He could therefore have the Constitution changed again. Issues of succession tied to concerns about what will happen when someone else takes over the reins of the presidency, and whether there are guarantees for the former president, must all be concerns for Museveni.¹⁴³ More crimes and violations might emerge that he is already seen to have been responsible for in the past. Therefore, not knowing what will emerge, and what the results of the process may be for him, may be a reason why he treads with caution when dealing with these issues. While he may try to orchestrate matters so that individuals loyal to him are appointed to such a process, that is not guaranteed; and even if they are, there is no certainty about what will be revealed, especially by those disenchanted with thirty years of his rule.

As has been noted by various researchers, allowing traditional processes to be part of the transitional justice mechanisms¹⁴⁴ ensures greater likelihood of acceptance and long-term sustainability.¹⁴⁵ This is especially important in the case of disagreements over land and land claims, since land issues remain a source of major discontent in the country.¹⁴⁶ Land ought to be fully and comprehensively dealt with in a way that is deemed

Development’ (2007) 10(1) *Yale Human Rights & Development Law Journal* 141–177.

140 See generally B Dulani, ‘Democracy Movements as Bulwarks against Presidential Usurpation of Power: Lessons from the Third-term Bids in Malawi, Namibia, Uganda and Zambia’ (2011) 11(20) *Stichproben Vienna Journal of African Studies* 115–139.

141 A Izama and M Wilkerson, ‘Uganda: Museveni’s Triumph and Weakness’ (2011) 22(3) *Journal of Democracy* 64–78.

142 Dulani (n 140) 115–139.

143 See further Izama and Wilkerson (n 141) 64–78.

144 McKnight (n 10).

145 J Hopwood, ‘Women’s Land Claims in the Acholi Region of Northern Uganda: What can be Learned from What is Contested’ (2015) 22 (3) *International Journal on Minority and Group Rights* 387–409.

146 JR Quinn, ‘The Impact of Internal Conflict on Customary Institutions and Law: The Case of Uganda’

open, transparent and without bias.¹⁴⁷ All processes, and especially those dealing with reparations and land, should specifically empower women to participate and benefit in more meaningful ways, and certainly in ways that allow everyone from all groups to be included.

Local processes should be incorporated into whatever transitional justice model is agreed to as doing so can play a very beneficial role. As noted in the United Nations report ‘The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies’,

due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their often vital role and to do so in conformity with both international standards and local tradition.¹⁴⁸

In this regard a number of researchers have noted that processes adopted in a specific setting must be culturally appropriate.¹⁴⁹ Using local mechanisms and approaches avoids problems of depending on imposed or unsuitable mechanisms.¹⁵⁰ However, at the same time, there has been significant criticism on using traditional methods, so care should be taken in this regard. While it is true that there is, in some places, a dearth of empirical enquiry into precisely how transitional justice is experienced and perceived at the local level, this is not true in a range of places such as Nepal, Zimbabwe, and especially Uganda, where a lot of work has been done on the ground to determine attitudes and perspectives on transitional justice.

CONCLUSION

Uganda has had an atrocious human rights record going back decades. In fact, the violence and abuse stretches at least from the colonial times, where the roots of the conflicts that have racked the country emanate.¹⁵¹ Much needs to be done to learn about the past, to allow varieties of macro and micro truth to emerge, and to deal with the various issues to be addressed within the nation. Communities and individuals must be able to tell their stories and be listened to.¹⁵² Furthermore, much still needs to be done to ensure that recommendations are acted upon to avoid the continuing issues that have haunted Uganda for so long.

(2015) 59(2) *Journal of African Law* 220–236.

147 See further JR Quinn, ‘Tradition?! Traditional Cultural Institutions on Customary Practices in Uganda’ (2104) 49(3) *Africa Spectrum* 29–54.

148 United Nations Security Council (n 89).

149 See eg AL Hinton, *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence* (Rutgers University Press 2011).

150 D-N Tshimba (n 131) 62–85.

151 On the responsibility of colonial powers see J Sarkin, ‘Should Reparations for Massive Human Rights Abuses perpetrated on African Victims during Colonial Times be given?’ in I Vanfraechem, A Pemberton and F Ndahinda (eds), *Justice for Victims: Perspectives on Rights, Transition, and Reconciliation* (Routledge 2014) 89–104.

152 See, for example, Anyeko et al (n 79) 107–124.

There can be no doubt that the political process in the country over the years has had a tremendously negative effect on the human rights situation. Major reforms are needed to address existing political deficiencies which have led to many feeling alienated from the political system and that the advantages and resources flow only to the few. A whole range of measures, including new laws and new or transformed institutions, are needed in Uganda as part of any transitional justice process. A widely inclusive consultation process is a necessity in drafting a new Constitution, as well as redesigning and establishing institutions that can play legitimate and credible roles in the country.

A Truth and Reconciliation Commission or a number of different truth recovery processes need to operate all over the country. It, or indeed they, should be established in an impartial and inclusive way. In designing and establishing a mechanism or process to deal with the past, political considerations need to be understood, but should not be the central concern when attempting to move forward. Ensuring limited political interference and appointing people with limited political baggage will advantage the processes enormously. It must be remembered that transitional justice issues can have very positive political effects on a polity, but politics can severely undermine a transitional justice process.¹⁵³

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153 See further J Sarkin, 'Achieving Reconciliation in Divided Societies: Comparing the Approaches in Timor-Leste, South Africa and Rwanda' (2008) 3(2) Yale Journal of International Affairs 11–28.

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