



The Long Wait



Victims' Voices on Transitional Justice

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Editor: Špela Kunej
Writers: Špela Kunej, Victor Ochen, Antoine Stomboli
Design: Steven R. Namanya
Cover photo: Heather McClintock
Photography: Heather McClintock, Semine Brorson, Antoine Stomboli, and AYINET
Conference mobilisation team: Denis Odwar, Chris Ongom, Doreen Muhumure and Antoine Stomboli
AYINET Director: Victor Ochen

African Youth Initiative Network

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ACRONYMS

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|--------|--|
| ADF | Allied Democratic Forces |
| AYINET | African Youth Initiative Network |
| CGHPB | Center for Global Health and Peacebuilding |
| CSO | Civil society organisation |
| FIC | Feinstein International Center |
| GAPS | Center for Governance, Peace, and Security |
| GoU | Government of Uganda |
| ICC | International Criminal Court |
| ICCPR | International Covenant on Civil and Political Rights |
| ICD | International Crimes Division of the High Court |
| IDP | Internally displaced persons |
| IRRI | International Refugee Rights Initiative |
| ICTJ | International Center for Transitional Justice |
| JLOS | Justice Law and Order Sector |
| LRA | Lord's Resistance Army |
| NGO | Non-governmental organisation |
| NUSAF | Northern Uganda Social Action Fund |
| NWVC | National War Victims' Conference |
| OHCHR | Office of the High Commissioner for Human Rights |
| PBF | Peacebuilding Fund |
| PRDP | Peace Recovery and Development Programme |
| SACCO | Savings and Credit Cooperative |
| TJ | Transitional Justice |
| TFV | Trust Fund for Victims |
| UHRC | Uganda Human Rights Commission |
| ULRC | Uganda Law Reform Commission |
| UN | United Nations |
| UNDP | United Nations Development Programme |
| UPDF | Uganda Peoples' Defence Forces |
| UVF | Uganda Victims Foundation |

ACKNOWLEDGEMENTS

On a sunny Wednesday morning in Kampala when the moderator asked those present in the hall to find their seats as the National War Victims' Conference (NWVC, Conference) was about to begin, a lot had already been achieved. We, the African Youth Initiative Network (AYINET), found partners who shared our vision and were willing to financially back our dream. For over eight months we travelled to remote corners across Uganda, heard testimonies and met with communities which had experienced conflict. Members of these communities courageously agreed to travel to Kampala as did victims from across Africa who were curious to see what we were up to.

The Government endorsed our efforts and allowed the participation of key people. Academics, international experts, Uganda's development partners and diplomatic dignitaries honoured our invitation to speak face-to-face with persons they had until then only met on paper as the standard protagonists in emotional grant applications or as numbers in matter-of-fact reports: victims of Uganda's many post-independence wars.

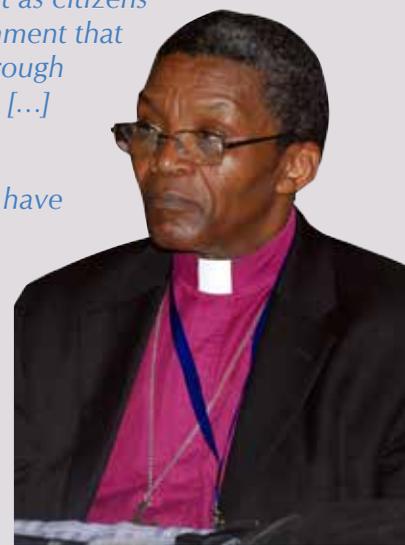
As the diverse crowd followed the moderator's call, a truly breath-taking three-day event was about to happen. As its organisers, we are deeply grateful to everyone who made it possible.

DONORS

Our organisation was passionate about organising an event that would unite victims from across the country and give them a platform to speak about their needs. Many donors, however, failed to see either the importance or the feasibility of such an event. **TRUSTAFRICA**, on the other hand, showed genuine enthusiasm for our vision and agreed to make it happen. They have been a reliable, involved and supporting partner from conceptualisation to actualisation of the event. We are grateful for the trust they put in us and the positive energy with which they have escorted us on our way to the NWVC and beyond. Their address to the participants, delivered by their Trustee Bishop Malusi Mpumlwana from South Africa reflected their ardour:

"This Conference is an uncommon occasion for surviving victims of this experience to tell their story, not as beggars that seek to be pitied, but as citizens who have a right to contribute to the shaping of a Government that will make for their sense of freedom and equality and, through justice, restore their dignity and the sanctity of their lives. [...]"

We heartily congratulate the Government of Uganda for developing these Transitional Justice mechanisms, which have attested to be "victim-centred, age- and gender-sensitive, comprehensive, transparent and broadly inclusive." We stand proud of the African Youth Initiative Network, whose passion for this work beams a brilliant light ahead, that the long night of African distress and victimisation will yet yield to the dawn of a new day when these young people take up the reigns of authority in our society." (Bishop Malusi, member of Board of Trustees of TrustAfrica)



The **CENTER FOR GLOBAL HEALTH AND PEACEBUILDING** has been a long-time sponsor of our health work, contributing to the physical and emotional healing of hundreds. As TrustAfrica they too saw the importance and potential of a national gathering of victims of war and contributed their ideas as well as generous financial support. Their contribution relieved us of many distracting worries for which we are truly thankful. The Center's President, Dr. Thom R. Feroah, stressed the importance.



To become peacebuilders, we all need to be heard and recognised. We need to open our hearts and our minds and generously listen to each other. We need to suspend our bias and mistrust and act with compassion. These are the key qualities of a peacebuilder who will build safe and secure communities that can solve conflict peacefully. This extraordinary event is empowering Uganda's victims to become peacebuilders.

VICTIMS

The majority of participants at the NWVC were persons who have been victimised by one or more than one Ugandan conflict. Although the word "victim" will be used frequently throughout this report, we encourage you to pause as often as possible and try to visualise what it means to be victimised by a war and how it feels to relive a traumatising experience by talking about it in front of a large audience.

As the organisers we are indebted to every single person who spoke to us during our country-wide outreaches, who confided their frustrations, hopes and needs to us, and who participated in the selection of community members to travel to the NWVC.

We are just as grateful to every victim who traveled to Kampala in order to participate at the event. These persons took on the responsibility to represent their communities, disregarding the difficulty of talking about past trauma. Having been sensitised to the idea and purpose of Transitional Justice, they assisted us in shaping the agenda of the Conference and contributed to its success, not least as they demonstrated unmatched maturity and a spirit of victims' unity. They bravely spoke to each other, to Government officials and to development partners and while the latter two at times appeared reserved and preoccupied with obstacles and limits, victim-participants revealed their passion for the process of Transitional Justice to kick off as soon as possible on an as great a scale as possible. We are humbled by and grateful for their openness and positivity.

INTERNATIONAL VICTIMS

Uganda's victims were joined by their brothers and sisters from neighbouring Burundi, Democratic Republic of the Congo (DRC), Kenya and South Sudan, and the Ivory Coast, Mali, Senegal, Somalia and South Africa. They shared updates and opinions about their countries, assessed the Ugandan development from the broader Pan-African perspective and, in the words of Bishop Malusi, rekindled the promise for a prosperous Africa at peace with itself.

NATIONAL CIVIL SOCIETY

The Conference was preceded by regional consultations and a country-wide mobilisation of participants for the event in Kampala. Our outreaches could not have been so successful without the invaluable assistance of numerous local civil society organisations (CSOs) and individuals. Our sincere thanks go out to everyone who welcomed us in their community and who helped us reach out to the victims, sensitise them about Transitional Justice and gain their trust.

We would like to specifically acknowledge the Uganda Victims Foundation (UVF) and their members. They helped us strategise our outreach, provided local insight and accompanied us to meet victims' communities country-wide. The supportive spirit of the network allows all of us to assist victims better.

Victim-led and victim-centred CSOs not only participated in our outreach, but also joined us at the event in Kampala, where they offered their unique insight and ideas. They continue to collaborate with us in all our country-wide work and amplify our reach, acceptance and finally, victims' participation in Transitional Justice. We are honoured by their continued support and trust.

Beyond their assistance in reaching out to the community, many victim-led civil society organisations participated at the event in Kampala, offering their insight and ideas. We are honoured by their continued support and trust. They are: African Development and Peace Initiative, Alliance for Development Uganda, Advocates for Public International Law Uganda (APILU), Avocats Sans Frontières (ASF), Centre for Governance, Peace, and Security (GAPS), Community Development and Child Welfare Initiatives, Center for Reparations and Rehabilitation (CRR), Empowering Hands, Enough Project, Foundation for Human Rights Initiative, Foundation for Women Affected by Conflicts (FOWAC), Gideon Foundation Against Child Sacrifice, HURINET, Isingiro NGO Forum, Justice and Reconciliation Project (JRP), Islamic University in Uganda, Kakiika Women's Group, Kumi Human Rights Initiative, Lira NGO Forum, Moyo Victims' Association, Mpigi District NGO Forum, Nakaseke Community Child Care, Northern Uganda Transitional Justice Working Group (NUTJWG), Refugee Law Project, Soroti Development Association and NGOs Network (SODANN), Uganda Coalition on the International Criminal Court (UCICC), Unitrust Development Association, Twerwaneho Listeners Club, War Child, and others.

INTERNATIONAL CIVIL SOCIETY

The international civil society was represented by numerous African and international civil society organisations and individuals. They complimented the opportunity to directly engage with victims in a "not-business-as-usual dialogue." Their support for our grass-roots approach to victims' empowerment and Transitional Justice gives us confidence and vigour to continue with our approach.

In no particular order we would like to thank Mr. Charles F. Dambach, Prof. Jeremy Sarkin, Mr. Hamse Warfa, Ms. Denise Sherman, Mr. Richard Sherman, Mr. James Feroah, the Feinstein International Center at Tufts University (FIC), the Fund for Peace, the International Center for Transitional Justice (ICTJ), the International Commission of Jurists Kenya, International Refugee Rights Initiative (IRRI), Justice Africa, the Kenya Human Rights Commission, the National Internally Displaced Persons Network of Kenya and REDRESS for their interest in Africa's victims' issues, their contributions and their continued engagement with our work.

GOVERNMENT OF UGANDA

The Government of Uganda deserves recognition on various levels. First, its development of the National Policy on Transitional Justice, the first of its kind in Africa, shows a commitment to overcome the legacy of violent conflict and to improve the lives of victims and victims' communities. Their globally unprecedented outreaches and consultations with victims on earlier draft versions, some of which have been carried out in partnership with our organisation, show genuine effort to make Transitional Justice a victim-centred and victim-driven process. Furthermore, the Government's ownership of the Transitional Justice process will allow for a coordinated and stable progress of the country and its people.

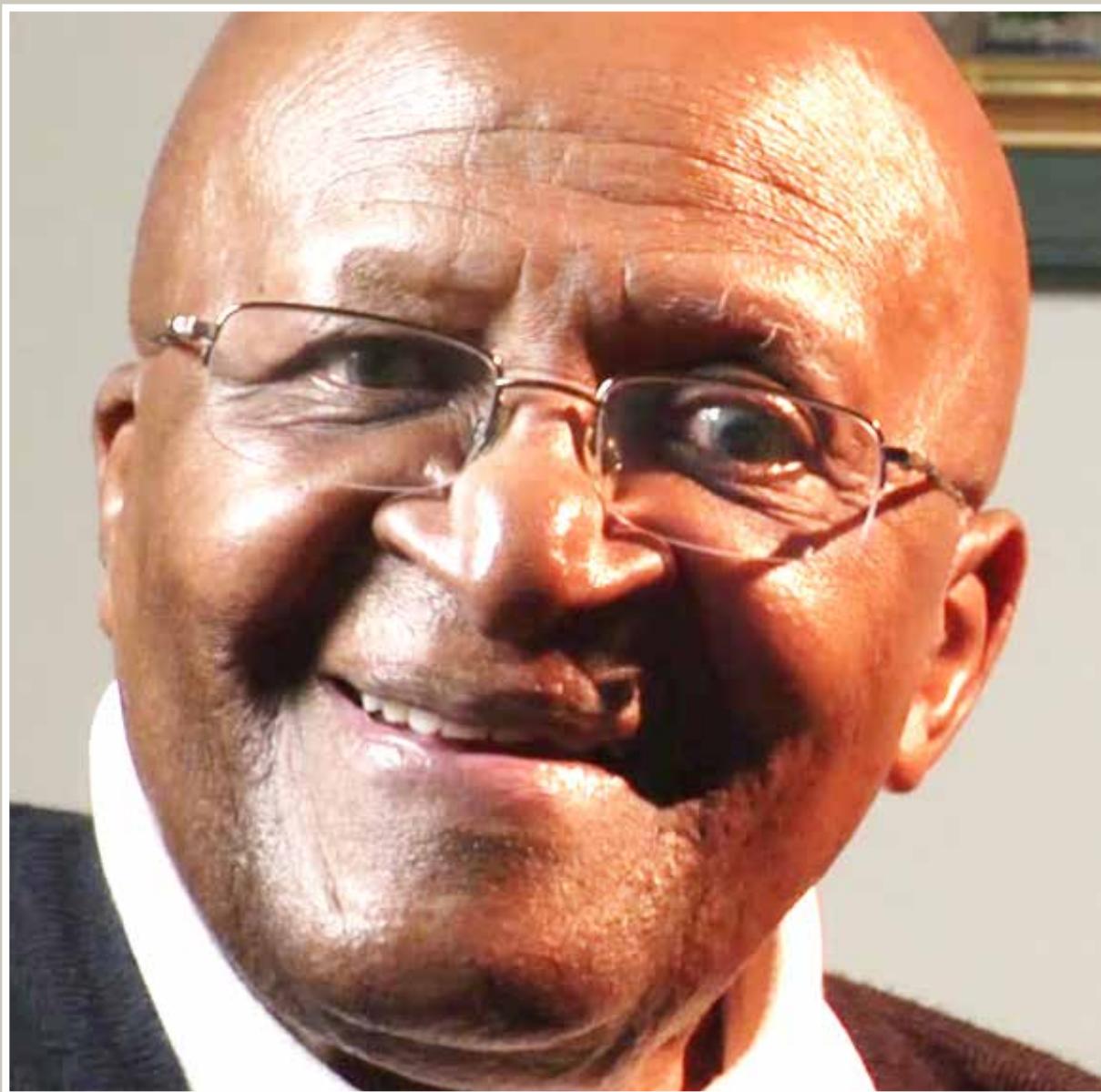
Concerning the NWVC in particular, we thank all local Government officials for their permission and support to carry out Transitional Justice sensitisation and mobilisation activities within their communities; the Justice Law and Order Sector's Secretariat, the Uganda Law Reform Commission, the Uganda Law Society, the Uganda Human Rights Commission, the Amnesty Commission and the International Crimes Division of the High Court (ICD) for helping us design the NWVC and for attending the event, giving presentations, interacting with victims and demonstrating the Government's interest in their fate. Their presence and input as well as those of the Minister of Justice and Constitutional Affairs, the Minister of Internal Affairs, who was represented by the UPDF Political Commissar, Mr. Felix Kulayigye, and the Minister of Health, who was represented by Dr. Isaac Ezati, contributed significantly to lowering the trust deficit of the victims in the Government and thereby facilitated the future success of the Transitional Justice process.

DEVELOPMENT PARTNERS

Several development partners, Uganda's as well as AYINET's, honoured our invitation to attend the NWVC and to obtain a first-hand impression of victims' fears and desires. Special thanks go to the International Criminal Court Uganda, in particular the Trust Fund for Victims, which in the past supported AYINET's health-related work, the Field Outreach Section and the Victims Participation and Reparations Section.

We'd further like to acknowledge the participation of the United Nations (UN) Office of the High Commissioner for Human Rights in Uganda and the UN Development Programme in Uganda, both of which also supported our work in Northern Uganda, the Democratic Governance Facility, Peace Corps Uganda and the American, Austrian, Dutch, French and German embassies and the British High Commission. We hope that their engagement will result in their continuous support of Uganda's development, in particular the furtherance of victims' issues.





“Young people of Uganda, many of you were born into conflict and told who your friends and enemies should be. But you have the ability to bridge the violent past to a prosperous future.” (His Grace Archbishop Desmond Tutu)

PREFACE

His Grace Archbishop Desmond Tutu, the Chairman of South Africa's Truth and Reconciliation Commission, addressed the NWVC participants with the following message:

"Dear participants of the National War Victims' Conference. I send you my warmest greetings from Cape Town. How I wish I could have been with you in person as you gather in Kampala to develop a roadmap for a successful Transitional Justice process in Uganda.

I am deeply honoured to have been asked by the Conference facilitator, the African Youth Initiative Network, to join you at this crucial moment in Uganda's history.

Transitional Justice promises a better future. But in order to create a better future, we must understand our past.

Uganda has a complex history of conflict, beginning in the colonial era. The period since independence in 1962 has been marked by intermittent civil disagreement, skirmishes and war. When people sit down after an argument to plot a peaceful and prosperous future together, the golden rule is for all to accept a share of responsibility for the agonies of the past. Truth is an essential ingredient of reconciliation and recovery. A house built on untrue foundations will inevitably fail.

It is far easier to blame others for our failings than to accept responsibility ourselves. But sometimes we have to be bigger than ourselves. Conflict is a much broader term than the sound of gunfire and bombs. It begins in the minds of people. Instead of regarding those of different ethnicity, culture or political perspective as our sisters and brothers, we came to regard them as others. Guns and machetes follow.

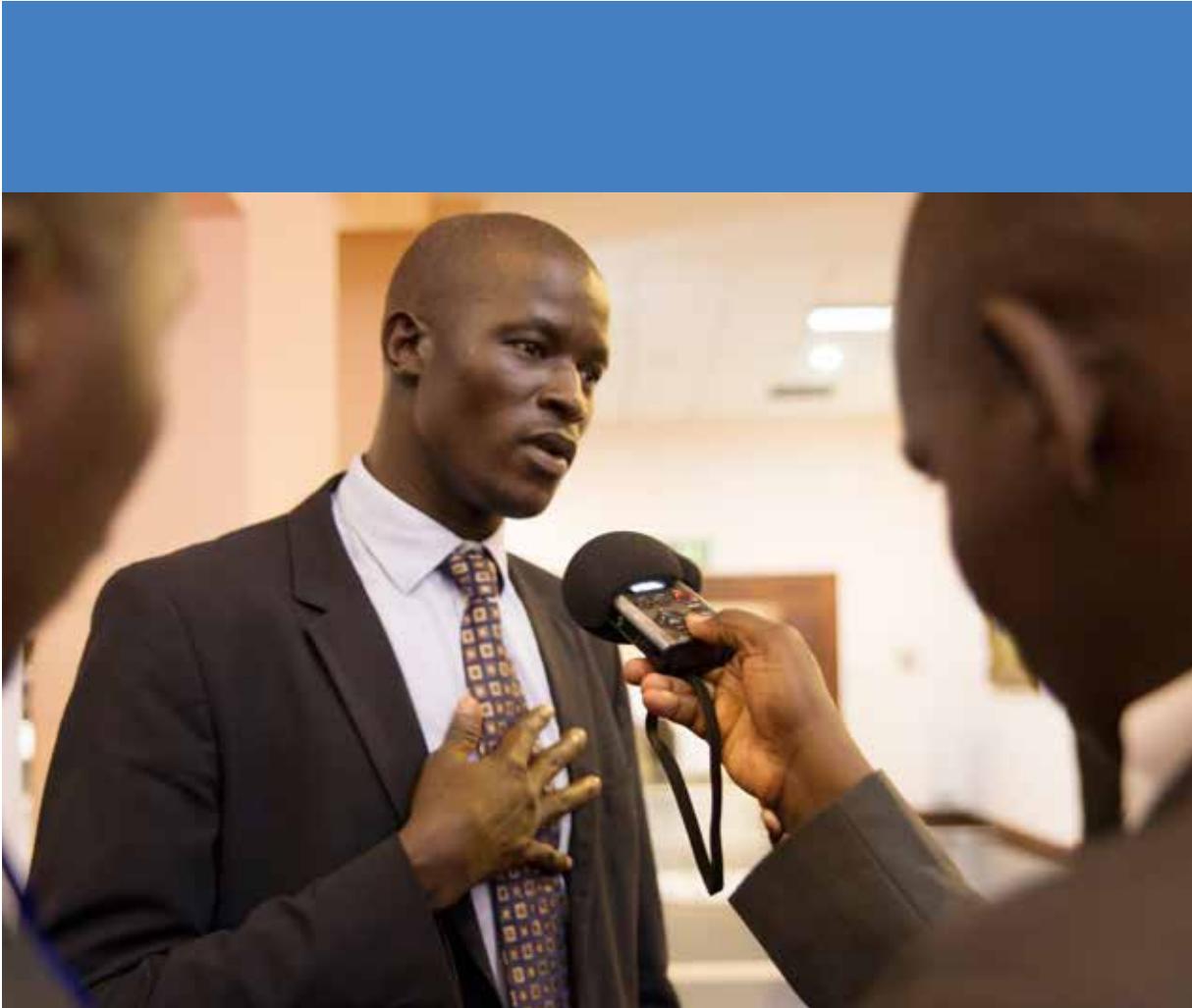
When it came time to heal South Africa, following our first democratic election, we discovered the power of a simple human ingredient we all possess, magnanimity. It was embodied in our President, Nelson Mandela. The newly elected Government established a Truth and Reconciliation Commission as a mechanism to overcome the horrors of our past. Victims and perpetrators of human rights violations were invited to tell their stories on public platforms with perpetrators being granted amnesty in exchange for telling the truth. It was a gruelling process, but one that both victims and perpetrators experienced as healing and liberating. The truth is liberating. Peace is liberating.

I often speak about a South African philosophy called ubuntu. It says: I am because you are and you are because I am; we are because of one another. Dear people of Uganda, you cannot choose your siblings, nor can you wish them away. We are all sisters and brothers of one family, God's family.

Finally, young people, many of you were born into conflict and told who your friends and enemies should be. But you are the vanguard of change. You are the leadership in waiting. You have the ability to bridge the violent past to a prosperous future. We look to you as a generation of peace. Your children will one day marry someone my generation might have regarded as an enemy.

There is much reason for hope.

God bless you."



“For the last fifty years, our country, Uganda, and our continent, Africa, have suffered from the curse of conflict, resulting in visible and heart-breaking tragedies of innocent people. But imagine, just for a moment, if we started working together today, in peace and justice, where could our country and continent be in fifty years from now?” (Victor Ochen, AYINET Director)

FOREWORD

The Government of Uganda has developed an ambitious National Policy on Transitional Justice, the very first of its kind in Africa. In light of the Government's commendable efforts to develop a policy *with* and *for* the victims, we as AYINET are pleased to share the present report, which synthesises many years of engagement with the victims and contributes to ensure that Transitional Justice processes in Uganda will continue to reflect victims' needs and priorities.

The title of the report before you is *The Long Wait*. It contains important insights into Uganda's victims' communities and perspectives on reconciliation and recovery from all crucial stakeholders. Its greatest strength are the numerous first-hand testimonies of victims and survivors from across the country. Their accounts reflect past experiences as well as shy and hopeful opinions about the future. *The Long Wait* offers the stage to the voices so often unheard and the pleas shamelessly ignored. Statements from Government officials and the world's most renowned living icon of peace and reconciliation, His Grace Archbishop Desmond Tutu, further amplify our victims' voices.

The Long Wait acknowledges the continuous struggle of victims and conflict-affected communities. It presents stories of strength and weakness, bravery and defeat, hope and resignation. Even though we could not include every personal struggle into this report, we wish to acknowledge all victims who inspired us with their memories reflecting human strength, sacrifice and goodness in the face of evil.

The Long Wait further stresses that Uganda's past remains lingering in the present. Between 2013 and 2014 we have visited numerous venues and were confronted, over and over, with the undeniable truth that the burden of a history of injustice weighs heavily on communities that share this beautiful and tortured piece on Earth. Pain, anger and resignation are the chaperons of daily life.

Uganda's post-independence history is defined by many conflicts. Even though victims around the country do not share the perpetrator, they share the frustration in the absence of change. In many languages, people express the same bitterness. One victim said: *"We have waited for too long. Elections come with promises to victims, but once politicians secure power, they tell us to wait. There are development and recovery programmes, yet victims with debilitating physical and emotional pain are only given a message, to wait. Donors come with ambitious post-conflict recovery programmes, but when victims ask for assistance, they tell us that our health is not their priority. They tell us to wait."*

At the National War Victims' Conference it became painfully obvious that all of the over two hundred victims present had already heard the magical words, the mantra of the Government and the donors, *wait, please wait. Move on, wait. Reconcile, wait. Forgive, wait.* Waiting, living in pain and sleeping with nightmares, presents a barrier to national healing and reconciliation. A victim asked: *"How long must victims wait before we can receive any meaningful assistance?"* We don't know, yet, we hope, that *The Long Wait* will remind relevant stakeholders that the construction of a road does not heal an open wound, be it a mental or physical one. We hope that *The Long Wait* will prevent further waiting.

The National Policy on Transitional Justice provides a tangible opportunity for the country to turn a new page, to bravely address the shortcomings of the passive years, the degradation that was thus afflicted on victims and post-conflict communities. Only recognition can lead to meaningful action, healing and reconciliation.

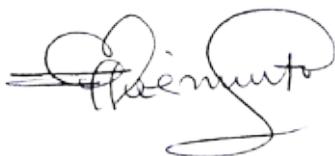
Reconciliation is a big, yet necessary dream. For it to be achieved, leaders need to share the dream of healing with the people and commit to making sensitive political decisions. Donors need to rethink their reluctance to provide direct support to the victims, especially addressing their urgent health-related needs, and all relevant stakeholders need to provide technical assistance to victims in the implementation of *their* initiatives, reflecting their, not foreign priorities. Finally, even though sight of the perpetrators should not be lost, the focus and the resources need to finally pertain to the victims. Chasing rebels does not reconstruct a mutilated face neither does an amnesty allow a mother with a disappeared child to sleep at night.

AYINET's countrywide outreaches and the National War Victims' Conference electrified the nation and awakened the desire for peace and reconciliation. The Conference, in particular, provided a platform for victims' exchange and victims' presentation of their views. The diversity of the participants from around Africa provoked new insights, bread new ideas and invigorated hope. Communities throughout Uganda are prepared and willing to actively participate in the upcoming Transitional Justice processes, knowing that the struggle will be neither easy nor short.

The testimonies in this report carry one message: whatever we do, we cannot tell victims to wait, as time does not heal wounds. Assistance heals wounds! The development partners who attended the National War Victims' Conference had the opportunity to interact with the intended beneficiaries of their programmes face-to-face. We hope that their experience will translate into decision-making which will aim at improving victims' lives directly. Victims are at the mercy of outside assistance and the responsibility that comes with dispersing such mercy should not be taken lightly.

Despite the years of suffering, victims around the country attended our outreaches and were willing to attend the Conference. They demonstrated victims' unity and proudly asked for what should have been given to them long ago by the Government and other stakeholders. They asked for light to chase away the shadow of injustice hovering above their lives once and for all and they asked for light to chase away the shadow of injustice hovering above other victims' lives. Only when meaningful assistance will be given can the country reconcile and enter the era of positive peace. Uncompromised support for the National Policy on Transitional Justice will be a first step in the right direction.

Victims have been told to wait, yet, it is immoral to ask them for more time. The wait has to end, we must act. For them, for Uganda, for Africa!



Victor OCHEN

Executive Director, AYINET

EXECUTIVE SUMMARY

Every society is in transition at all times. Ideally, this transition begins at what we consider to be good and moves toward what we consider to be even better. Sorrowfully, however, many communities transition in the opposite direction, from good to bad, from freedom to oppression, from peace to war. In one way or another, they regress.

A voluntary resignation from a dictator, a revolution or a peace agreement might stop the insanity of gross and systematic human rights violations, yet, after the miracle is done, what do you do when a new dawn breaks the celebratory night?

Different countries have come up with diverse solutions which have attracted attention from intergovernmental organisations and academics alike. They united successful, controversial and futile under the name of Transitional Justice and set out to come up with definitions and catalogue best practice solutions.

However, when a country sits down to make a plan for the future it will do well to seek for solutions in the field, not in books. Domestically developed plans will not only be realistic in setting a success threshold, but also be more sensitive to specificities which elude theoretical scenarios. In the end, Transitional Justice is about finding a “best fit” rather than applying a “best practice” solution. The “best fit” solution might not be unique or new, what matters is that it was identified as appropriate and developed to be viable by the two stakeholders that matter most in a Transitional Justice framework: the victims and their Government.

To date, Uganda is following this recipe for success. The Government has developed a draft Transitional Justice policy, sent copies to civil society organisations around the country to consult with victims and travelled into the field itself in order to present its ideas, answer questions and update the policy with communities’ suggestions.

As part of Uganda’s civil society we see our responsibility in contributing as much as we can to make the high-stakes experiment of Transitional Justice a success. Believing that economic, political and moral prosperity are not possible without understanding victims’ needs, we organised the National War Victims’ Conference and prepared the present report for the primary purpose of amplifying victims’ voices and making them accessible to the wider audience. All information surrounding the victims’ testimonies should be seen as providing context for the purpose of easier reading only. In no way do we attempt to comprehensively engage in Uganda’s history, international law or even the theory of Transitional Justice. These topics are already extensively covered elsewhere.

It is our hope that the report will serve as a reference tool for future work of civil society organisations and the Government and as an inspiration for Uganda’s development partners. The report includes an introductory chapter, four substantive chapters on reparations, truth, justice and reconciliation and a concluding chapter with victims’ recommendations. We are convinced that the collected first-hand contributions demonstrate that victims are beyond ready to end the Long Wait.



Špela Kunej

Transitional Justice Strategist, AYINET



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INTRODUCTION

TRANSITIONAL JUSTICE THROUGH VICTIMS' EYES

"For me, Transitional Justice means that my family will get back 20 cows. The rebels took them from us and we were left without anything. I would like to send all my children to school, but I can only afford tuition for two. I can't write, but I want to give all of my children a future."

"There is a clinic in our village, but there are no doctors, no nurses and no supplies. Where is the Government? We want to see the Government's presence."

"I was abducted when I was in Primary 7. I would like to return to school. I want the Government and the community to support me. I also want the community to accept my son even though his father is a rebel. It's not his fault, it's not my fault."

"I want to find out what happened to my brother. The rebels took him in 2003. If he is dead, I would like to give him a proper burial. That would give me closure."

As Transitional Justice is becoming an elaborate international framework, inviting high-level discussions and academic papers, we must not lose focus that the intended beneficiaries of Transitional Justice are victims of totalitarian regimes and of armed conflict and that the only criterion by which the failure or success of Transitional Justice can be measured is its success in addressing victims' plight on the ground.

Any Government embarking on the path of Transitional Justice will be successful not because its policy will be most elaborate or in conformity with the highest international standards but when its policy will be designed on the basis of consultations with victims and taking into account challenges in their country. A Government does not have to study long definitions of what "reconciliation," "recovery" or "healing" mean to the world, but find out what they mean when they are spoken by its people. Likewise, while it can inform itself about other processes, it must prioritise finding a best-fit approach for its own country, rather than apply a best-practice solution from outside its borders. Victimhood is not generic, neither are *real* solutions which address it.

Ultimately, a Government will be successful if it can supply the authors of the above quotes, who come from Arua, Luweero, Alebtong and Gulu respectively, with twenty heads of cattle, send doctors and supplies to local clinics, support catch-up education of those who have been disadvantaged and if it enables victims to bury their relatives in conformity with local customs. If the latter proves to be impossible, it should not shy away from recognising its inability and offer satisfaction.

With that honest introduction, we may now proceed to give our readers a more general description of Transitional Justice, always bearing in mind that no matter what the theory says, Transitional Justice must always attempt to answer grass-roots appeals of victims.

Transitional Justice attempts to provide answers to moral, political and legal questions, which appear in a country transitioning from a repressive to a democratic regime or from conflict to peace. As a country begins to overcome its brutal legacy, several challenging dilemmas appear. What are we going to do with former perpetrators? How can we reconcile legitimate demands for justice with the need for social and political stability? How do we promote reconciliation? How can we commemorate the past without causing divisions in society?

One of the many definitions of Transitional Justice describes it as a comprehensive response by a society to a legacy of systematic or massive unaddressed violations of human rights, mass crimes, or other forms of trauma, the purpose of which is to recognise victims and advance the objectives of peace, justice, democracy and reconciliation.¹

The former UN Commission on Human Rights defined four essential pillars of Transitional Justice, namely the right to justice, the right to truth, the right to reparations and guarantees of non-repetition.²

The first pillar is the **right to justice**. The primary responsibility to deliver justice and investigate and prosecute violations of human rights and the international law of armed conflict lies with the national State. Joan Kagezi, Head of Prosecution at the ICD, explained:

“The ICC can only deal with a handful of cases, the real responsibility lies with us. International crimes before our division also include other conflicts, for example the ADF conflict; we investigate all these cases, not just the LRA conflict. There is a team of investigators and prosecutors to see that justice is brought to the victims.”

In addition to State institutions, justice can be pursued by international or hybrid criminal tribunals, domestic courts of States which have universal jurisdiction over international crimes and, to some extent, traditional justice mechanisms. Measures which present an obstacle to the pursuit of justice³ should be eliminated as far as possible. The right to justice is primarily addressed within the ‘Justice’ chapter in this report.

The second pillar is the inalienable and imprescriptible **right to truth**.

“Truth will restore your freedom, your dignity and make you citizens with rights within your country,” said a participant from Kenya.

Truth can be sought through truth-telling commissions, commissions of inquiry, public disclosures of facts, opening of archives, communication between victims and perpetrators, official apologies, the excavation of mass graves and the identification of missing persons. The right to truth is primarily addressed within the ‘Truth’ chapter in this report.

The third pillar is the **right to reparations**. The State must offer material and moral reparations for past abuse by providing restitution, compensation or satisfaction, by, for example, building memorials, promote curriculum reforms and facilitate community development programmes. The right to reparations is addressed within the ‘Reparations’ chapter in this report.

“The Government hasn’t done much for us, but it has done something. Let us have one voice as victims. We can’t expect everything to come from the donor community; they have their own interests and restrictions. Reparations are the responsibility of our Government, let’s demand for them,” said a victim-participant at the NWVC.

The fourth pillar includes **guarantees of non-repetition**. In order to prevent a reoccurrence of violence, a State will often have to carry out reforms, including vetting of its military, police

1 Louis Bickford, “Transitional justice,” in Dinah Shelton (ed.), *The Encyclopedia of Genocide and Crimes Against Humanity*, New York, Macmillan, vol. 3, 2004, pages 1045-1047; Draft (4th) National Policy on Transitional Justice (**Draft Policy**), page 10.

2 UN Human Rights Commission, *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, 8 February 2005.

3 These are prescriptions, immunities, amnesties and other forms of clemency.

and other security institutions as well as its judicial institutions. It needs to ensure a complete disarmament and, if possible, the rehabilitation and reintegration of former rebels.

In a broader sense of the word, guarantees of non-repetition include all measures that will prevent repetition of conflict. Many have warned that those who refuse to learn from the past are doomed to repeat it. Uganda, too, is learning, that if it does not implement reparations, truth-telling and support memorialisation, it is inviting history to return with an AK-47 over its shoulder and a machete in its hand.

Guarantees of non-repetition in the narrow sense of the word are addressed at various points in this report, including in the chapters '*Remembrance*,' '*Truth*' and '*Reconciliation*.'



Victims' representatives paying tribute to the victims of the Barlonyo Massacre

All four pillars are intended to ensure public recognition of past abuses by all sectors of society, trust by citizens into State institutions and *vice-versa*, the rule of law, and, ultimately, reconciliation. The latter objective shows that Transitional Justice seeks to achieve nothing less than the regeneration of individuals and a profound political transformation, including pacification and democratisation of the State as such.⁴

It goes without saying that Transitional Justice can only commence and be implemented in a post-war or post-totalitarianism **environment, which is free of violence**. To maintain such an environment, conflict needs to be renounced at the level of the civil society and at the political level.

⁴ UN Council of Human Rights, *Report of the Special Reporter on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Repetition*, Pablo de Greiff, 9 August 2012.

Jackson, a victim from Dokolo, who spoke at the Conference, opined that “every war is due to a struggle for power.” Asked, then, how victims and the civil society can prevent a reoccurrence of conflict, he answered:

“Victims must neither condone nor accept any kind of violence in any kind of circumstances. To become a nation of peacebuilders, we must first reject the idea that violence manifests any kind of normality.”



“Like many other African countries overcoming a history of conflict, Uganda has the opportunity to break the cycle of violence that has for so long created enormous suffering for her citizens.

Peace is possible and all avenues to achieve it must be explored. The value of peace needs to be embedded in all programmes for the young, for women or victims. CSOs and our governments must commit to work together and learn not how to win the next war, but how to prevent it. I believe Uganda’s Transitional Justice policy is a step in this direction.” (Chic Dambach, former President and CEO of the Alliance for Peacebuilding)

While some participants stressed that they are afraid that war might return to Uganda, others believed that the most obvious danger is post-election violence in 2016. Charles F. Dambach, one of the speakers at the Conference, conceded that many elections across Africa were indeed followed by violence, but continued to point out that people no longer accept losers to take up arms. Mr. Dambach referred to a declaration that has been signed recently by political opponents before a popular election in Guinea Bissau, promising that the loser will not resort to violence. Such declarations are not uncommon across Africa. Before the presidential election in Malawi on 20 May 2014, presidential candidates signed the Lilongwe Peace Declaration, declaring that “it is time to take a definitive stand against the possibility of electoral violence, because [...] these acts are detrimental to the peace, welfare and sustained development of the people of Malawi.”

In this spirit, AYINET and the victims appealed to the President to encourage a public commitment by all political parties to refrain from any violence before, during or after the 2016 elections, regardless of the results.⁵ Such a commitment by Uganda's politicians would form part of Guarantees of Non-Repitition. Some assurances of this kind have already been given by Uganda's authorities, including at the NWVC:

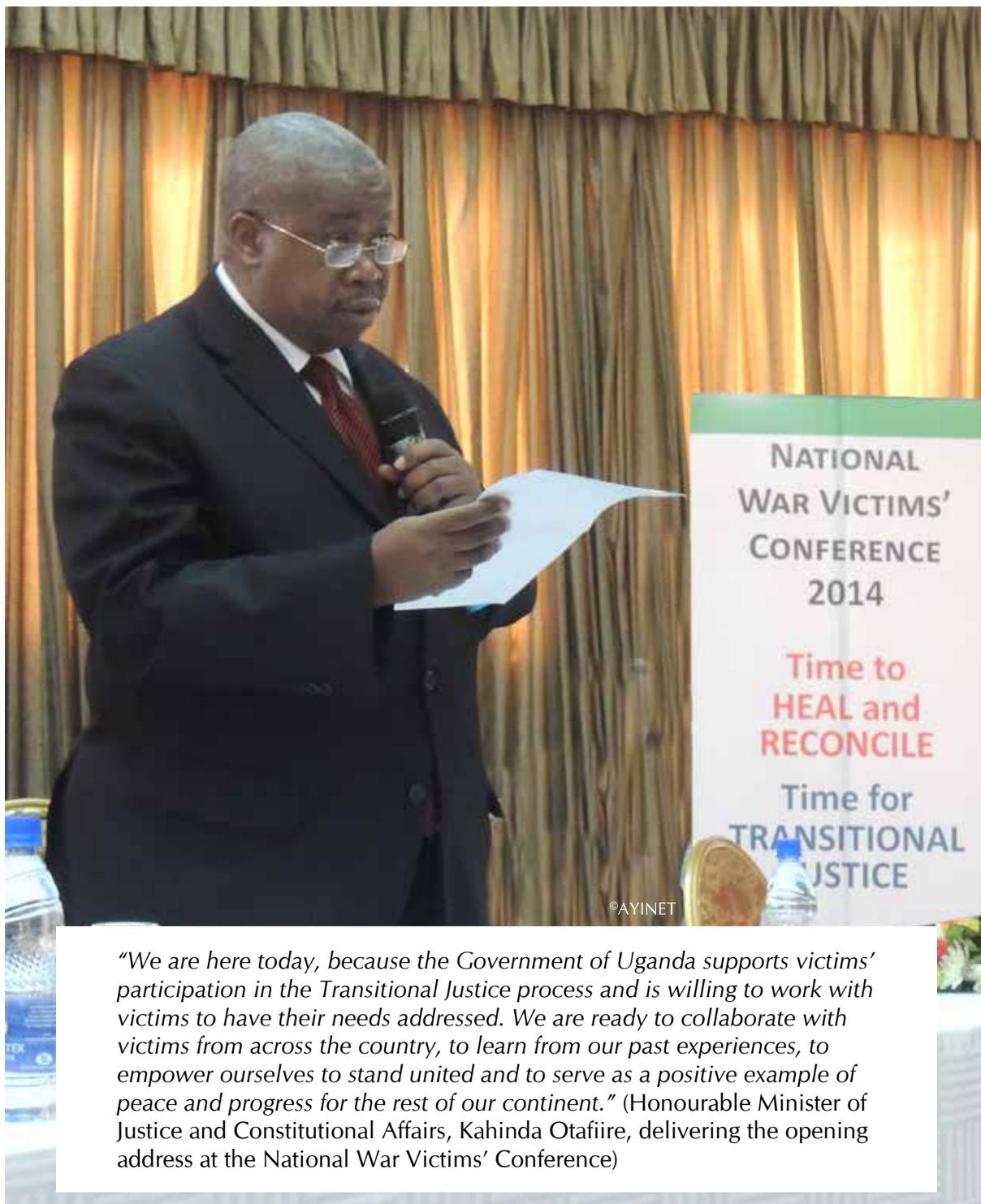
"The Government is committed to peace and security for all Ugandans, and believes that by implementing this National Policy on Transitional Justice we will avoid repeating the mistakes of our past," said Minister of Justice and Constitutional Affairs Kahinda Otafiire as he opened the NWVC.

We encourage politicians to continue giving such guarantees and implement everything within their area of competence to **create an environment in which Transitional Justice will have a tangible opportunity to succeed.**



With Peace, recovery is possible.

⁵ AYINET, *Summary Report of the National War Victims' Conference – Victims' Voices on Transitional Justice*, May 2014, page 4.



“We are here today, because the Government of Uganda supports victims’ participation in the Transitional Justice process and is willing to work with victims to have their needs addressed. We are ready to collaborate with victims from across the country, to learn from our past experiences, to empower ourselves to stand united and to serve as a positive example of peace and progress for the rest of our continent.” (Honourable Minister of Justice and Constitutional Affairs, Kahinda Otafiire, delivering the opening address at the National War Victims’ Conference)

“I would like to thank AYINET for organising and facilitating this ground-breaking event, it is the first of its kind. I see the faces of those most affected: of war victims and survivors from around the country, humanitarian and human rights activists, peacebuilders, media, development partners and representatives of our own Government. As we discuss here today, I can assure you that we have the chance to take hold of this legislation and transform it into an “on the ground tool” that allows us to break the vicious cycle of violence and victimhood in Uganda,” emphasised Honourable Minister Kahinda Otafiire.

THE NEED FOR TRANSITIONAL JUSTICE IN UGANDA

Uganda's post-independence history has been defined by consecutive wars, rebellions and massive human rights violations. Years of violence have harmed development efforts and have severely disintegrated the socio-economic fabric of society. Numerous post-conflict communities suffer from abject poverty and other ills, resulting from limited legitimate opportunities to secure a livelihood.

Studies purporting to understand the consequences of conflict in Uganda have shown that wherever and whenever war hit a region, both sides carelessly and continuously violated the law of armed conflict by targeting civilians. Survivors report of fighters killing civilians, torturing them, raping them, forcibly recruiting them or abducting them. Private property like houses and civilian institutions like schools and clinics were looted, set aflame or otherwise destroyed.

"I know all the wars in Uganda in all regions and the source of the problem is always that both sides are reckless. There is looting, rape, and the rebels are even more ruthless, they kill without asking any questions. For example, in the East, in Mukura, they killed without any real intension or reason. They just killed masses of people," said a survivor from Wobulenzi during our mobilisation.

A blatant disregard of the international law of armed conflict is plainly revealed when the violence ends. Hundreds or thousands of civilians, including children, will have lost their lives, education or health services are disrupted or completely dismantled, and families are left to pick up the pieces of the past.

The stories of Ugandan families are an illustrative, if tragic example. Most of those living in conflict-affected regions have experienced destruction or looting of property, murder, a massacre, severe beating or torture, being set on fire, being seriously wounded by a deliberate or indiscriminate attack, forced recruitment, abduction, sexual slavery, rape, birth of a child born due to rape and being forced to kill or injure another person. Those "lucky" enough not to have been direct victims themselves have witnessed the perpetration of these crimes, which left many with severe emotional trauma.

The Feinstein International Center conservatively estimates that during the war between the Government and the Lord's Resistance Army (LRA) at least 55 per cent of households in Acholi Sub-region experienced one or more serious crimes and at least 28 per cent of households in Lango Sub-region. The actual numbers are probably much higher.

The tangible consequences of the victimisation include increased and continuously deepening poverty, a more difficult access to food, water, health care and education, social stigma, an increased post-war vulnerability to crime and a comparatively greater likelihood of sexual violence.⁶

The entirely overpowering nature of suffering in a post-conflict setting was well illustrated by a victim from Abim District in Karamoja:

"We request the Government and NGOs to come with a programme of restructuring. We should identify affected homes for Government to compensate. They damaged hospital machinery and laboratory equipment and stole some. The Government should replace them."

⁶ Feinstein International Center, *Serious Crimes and Recovery in Northern Uganda*, Presentation at the NWVC, 28 May 2014.

Many women are still traumatised after rape. They need psychosocial support to heal from that torture. A rehabilitation centre should be opened here. Abductions and killing left us with many orphans. Government should open schools for those children, to study so that they can start a new life and overcome their parents' absence.

The only help we can offer each other as families is help in the gardens but we can't do more than that because we can't afford."



AYINET staff talking to victims from Abim during NWVC mobilisation

People's perceptions of the State's measures aimed at enhancing peace, recovery and reconciliation are met with doubt and distrust, which are rooted in conflicting or negative experiences in the past. Many are dissatisfied with the provision of social services and are lacking trust in State institutions.⁷

"Compensation was 1.5 million Ugandan Shillings. That's little, and even then, not all of us got it. Many have still not got any of that money. [...] We are not happy with the Government," a victim from Luweero said during mobilisation.

"After all those wars, no one has ever come to give us any help to recover from any of the effects of the war. After the war, life of suffering continues. All we do is elect the Government to keep it in power, but they have never helped us," lamented a group from Isingiro District, Western Uganda, during AYINET outreach.

Uganda has made a few attempts to address the questions of accountability and reconciliation, however, no conflict has been followed by an overarching Government policy to deal with that conflict's legacy or the *national* legacy of conflict in general. Unaddressed human rights violations and the starkly unequal development of Uganda's regions have left the country suspicious and deeply divided. During the Conference, Pastor Joseph appealed to the Government:

⁷ Draft Policy, page 17.

"I request and appeal to you, the Government, if you have the heart, consider all regions, not only one."

"I have heard about the suffering of the people from the North. I think war has been all over Uganda. There are no victors in war. Because when you calculate the loss incurred by both sides, there is no victory per se," added a victim from Mbarara during mobilisation.

The Draft Policy legitimises its own existence by saying that although the Constitution, regional and international instruments make provision for the realisation of pertinent issues in relation to Transitional Justice, the current legal and policy framework in Uganda do not suffice for the effective implementation of these provisions.⁸ Thus, the National Policy on Transitional Justice will fill an important void in securing Uganda's prosperity.

"I think all of you should be familiar with the situation in my country. I am very grateful to AYINET for remembering us. I must say that you are already on the right path, looking at yesterday and today, even representatives from the Government are here. There is political will on all sides for addressing these issues, that's why the policy exists. To see the Government here is very, very good. As your Government is busy developing a policy which will bring about justice, ours is starting a war" commented Matthias Wani, a NWVC participant from South Sudan.

As the African Union has been actively discussing its role in Transitional Justice processes and as it is aiming to develop an African Policy Framework on Transitional Justice,⁹ Uganda hopes that its own approach to Transitional Justice, and its successful implementation, will serve as an inspiration and model for the entire continent.

Guiding Principles

The guiding principles of the Draft Policy are victim-centredness, gender equality, transparency, accountability, inclusiveness, complementary, confidentiality and neutrality.¹⁰

Victim-centredness means that victims, who will be the main beneficiaries of Transitional Justice, participate in the design, implementation and oversight of Transitional Justice programmes.

"People that usually benefit from the funds are not those that were affected by the war. Policies are made, but they are not implemented. At times funds are received from Government, but always disappear somewhere. Those that will attend the Conference should be part of the implementers of the policy. In the implementation of the policy there should be a member of the victims' association at every level," said a representative of the Landmines Survivors Association from Kasese.

Victim-centredness also means that the Government will not only pay attention to the victims' opinions, but also to their feelings:

⁸ Draft Policy, page 17.

⁹ Draft Policy, page 35.

The Centre for the Study of Violence and Reconciliation, *Briefing Note: Enhancing the Role of the African Union in Transitional Justice in Africa, July, 2013*, <http://www.peaceau.org/uploads/enhancing-the-role-of-the-au-in-transitional-justice-final-july-2013.pdf> <10 November 2014>.

¹⁰ *Ibid.*, pages 24 and 25.

“We want you to be realistic. I don’t think the Government can compensate all losses of the victims; this would go beyond the capacity of the Government. If the Government is too optimistic, it can create an atmosphere where victims will hope for too much. [...] I am asking the Government to use the language that will correspond to what it is actually going to implement. You can only say that you will compensate if you have that capacity,” a victim warned.

Opinions such as this show victims’ insight into their community and the immeasurable value of their participation in all stages of Transitional Justice policy design and implementation. Along with victims, civil society organisations and other stakeholders, including the public at large, will also be solicited to contribute their opinions, which is manifest of the **principle of inclusiveness**. The constant communication between victims, other stakeholders and the envisaged Transitional Justice Commission and other actors will contribute to openness, thus satisfying the **principle of transparency** and facilitating the **principle of accountability**. Grievances like the one recounted by victims from Luweero should become a matter of the past:

“We request the Government to fulfill its promises. They promised to pay fees for the children of the veterans, but it has never been fulfilled. They told us to make a Savings and Credit Cooperative (SACCO) and that they would give us money, but we have never seen the money. People say the leaders in higher authority ate it.”

In order to maximise the productive engagement of as many stakeholders as possible, the Draft Policy champions the **principle of neutrality**, which allows for a broad participation of all stakeholders and all political groups.

“I would love the Government to compensate me. We should unite and work together as one nation. We need to forgive each other as citizens and get united,” said a victim from Biharwe, Mbarara District.

The **principle of complementarity** signifies that national reconciliation and justice will only be achieved if multiple Transitional Justice elements will effectively complement each other.

“We appreciate the recognition, but recognition does not pay my child in school,” commented a victim from Kichwamba, Kabarole District, where in 1998 the Allied Democratic Forces (ADF) set ablaze, killed and kidnapped many students of the Uganda Technical College.

The **principle of gender equality** stresses the Government’s commitment to fully involve women and children into decision-making processes and to consider gender in the design and implementation of all measures. Discriminatory attitudes towards women, like this one, remembered by a victim from Isingiro District, will harm all Transitional Justice efforts:

“They gave our land to [...] Catholic School, because all we had were widowed mothers and women without voices and they were not respected by the Government.”

Finally, the **principle of confidentiality** guarantees that the privacy of victims will be protected.



Participants of the National War Victims' Conference

NATIONAL WAR VICTIMS' CONFERENCE

The Draft Policy, respecting the principle of inclusiveness, foresees the active participation of various stakeholders in the design and implementation of the Transitional Justice process. A crucial stakeholder and partner of the Government are local civil society organisations. We, not only AYINET, but all organisations scattered across Uganda's victims communities, have attempted to reach out to victims and to contribute to their healing and recovery. The relationships and networks we have built are and will be an invaluable asset in the Government's outreach to the victims' communities.

AYINET has been working with victims since our establishment in 2005. We have witnessed the immense suffering of thousands, in particular those who we treated through our medical rehabilitation programme.

"I am happy that I am here at the Conference to talk in front of the public because I've had a difficult past. Without AYINET, you were not going to see me like this. I ask God to give a good heart to the people who are funding them," appealed John Ochola, a victim whose lips, nose, ears and fingers were cut off by the Lord's Resistance Army.

Over the years, all victims, often living in abject poverty, stressed the dire need for outside help, which will improve their livelihood and offer them prospects for a better and prosperous future, including stability and political and national reconciliation.

"The best way to achieve reconciliation is to see that whoever was affected by the war is consolidated to get better a life. When one is poor, they keep grumbling. If only the Government could help us build houses for ourselves," said a victim during our mobilisation in Luweero District.

As the Government embarked on a long Transitional Justice journey in which victims will be treated as equal subjects, not as mere objects, we resolved to contribute our part in victims' organising and empowerment. We initially became involved in the improvement of the third draft of the National Policy on Transitional Justice by conducting a consultation of victims and civilian society organisations in the Lango Sub-region.¹¹ Seeing the positive outcomes of that process, we decided to step up victims' empowerment by creating a potent platform on which victims could speak up *for themselves* without intermediaries.

Against this background, AYINET organised the Greater North War Victims' Conference in November 2013, gathering victims' perspectives on the upcoming Transitional Justice process. The event proved to be a success and a great motivation to go ahead with the planning of a national event, which would bring together victims representing all Ugandan regions and most, if not all, of its conflicts.

Based on the Greater North War Victims' Conference and other consultations carried out throughout Uganda in 2013, we compiled the report *Victims' Voices on Transitional Justice*, which was released in April 2014. The report informed our design of the NWVC, in particular the selection of topics which needed to be discussed by the victims' community. We further involved Government institutions, the United Nations, international and national nongovernmental organisations, and, most importantly, over 150 victims from across Uganda and over 30 victims from other African countries, including Burundi, Democratic Republic of Congo, Ivory Coast, Kenya, Mali, Senegal, Somalia, South Africa and South Sudan.

All participants met between 28 and 30 May 2014 at the Imperial Royale Hotel in Kampala, where presentations were combined with fierce debates and moments of true awe and inspiration. This report offers an overview over this three-day gathering.



Antoine Stomboli and Audrey Eprinard provided interpretation between English and French for participants from the Democratic Republic of the Congo and Ivory Coast

¹¹ AYINET, *Victim and Civil Society Actors' Views on the draft Transitional Justice Policy for Uganda: Lango Sub-Region, Victim and CSO Consultation*, 6 and 7 June 2013.



Survivors of war from the Democratic Republic of the Congo at the National War Victims' Conference



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REPARATIONS

Many deliberated on how the Government intends to compensate for psychological torture, for the loss of a loved one or his or her disappearance.

“There are no victors in war,” said a victim from Mbabara. “Because when you calculate the loss incurred by both sides, there is no victory per se. Even if you talk about compensation, what do you compensate? How do you for example compensate for someone that has suffered psychological torture?”

“I was young, attending Katikamu Secondary School. When rebels saw pregnant women, they would ask: what’s in there? Then they would cut open their bellies. They would force fathers to have sex with their daughters. How can you compensate for that,” asked another.

Even though most people think of reparations in terms of money, the term reaches beyond material goods being handed out to victims. The Draft Policy defines reparations as redress given to victims of gross or serious human rights violations and/or abuses. Reparations reflect an acknowledgement of responsibility and accountability. Reparations can take either a material or symbolic form, and can be individual or collective. Types of reparations include: restitution, compensation, rehabilitation and satisfaction.



Victims participate in dialogue on reparations during AYINET’s Conference mobilisation

Reparations have three basic elements: equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparations mechanisms.¹²

The Draft Policy focuses amply on the **right to an effective remedy** by competent tribunals for acts which violate human rights. The right, which is spelled out in Article 8 of the Universal Declaration of Human Rights (UDHR), Article 2 of the International Covenant on Civil and Political Rights and Article

50 of the Constitution of the Republic of Uganda, is at least *de iure* guaranteed in Uganda. Many people, however, are too poor to access judicial proceedings.

“Women who have returned from the bush should receive legal representation free of charge,” appealed Susan Acan from Empowering Hands.

“The biggest challenge to justice is the issue of poverty. The cost of legal proceedings is high. For someone who is poor getting justice can be too expensive!

Where we come from, people die because of land disputes that no-one can manage, not even the politicians. It would be good to have some firms or lawyers, who would seek redress for victims of war. The Government could pay them,” said Robert from the Teso Sub-region.

¹² The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Remedy and Reparation Guidelines), Guideline 11.

In regard to the second element, the Draft Policy does not dispute that it is Uganda's obligation under international law to provide such **reparation**. It adds that even traditional justice mechanisms will not consider a dispute settled until some compensation is received by the victim or his or her family or community. It says, however, that the existing legal framework does not provide for the award of reparations to victims of crime¹³ and that the Transitional Justice Act will have to provide for such a framework.

Even though the framework is yet to be developed, the Draft Policy has already answered one of the most contentious questions, which is whether the Government will provide reparations to those whose human rights were violated by other perpetrators. The victims and AYINET commend the Draft Policy for not discriminating between victims based on the identity of their perpetrator.¹⁴



"It is not necessary for a perpetrator to be identified or apprehended for a victim to be entitled to redress. Redress can be independent of a criminal justice process," said Jürgen Schurr from REDRESS.

A victim from Kashumba Sub-county pointed out that Government's provision of reparations is not only a friendly gesture, but its obligation:

"Even if my parents were not killed by Government soldiers, the Government was responsible, because they were supposed to protect us."

An inclusive approach to reparations contributes to the overall objectives of the National Policy on Transitional Justice, which include the reintegration of victims into their communities, security, national reconciliation and enhanced confidence in the Government.¹⁵

"We might not have suffered from the same perpetrator, or at the same time, or at the same place, neither to the same extent; but we have all suffered and our suffering has brought us together and now that we are already here, let's go even further," said Mr. Victor Ochen at the beginning of the Conference, affirming the need for victims' unity. *"As we have suffered together, we will heal together."*

Many international participants at the NWVC stressed that Uganda's reparation policy will have to address specific types of victimisation, which continue to violate victims' human rights today or leave them vulnerable to such violations. These victimisation types include children born while their mothers were held captive by armed groups, psychical and psychological harm, including stigmatisation of former abductees, and land conflicts, which occurred as a consequence of conflict.

The Draft Policy does not elaborate on the third element of reparations, which is **access to relevant information**, however, other parts of the Draft Policy can be legitimately interpreted to mean that such access will be assured.

¹³ Draft Policy, page 20.

¹⁴ Many perpetrators, such as the LRA, are neither willing nor capable to provide redress.

¹⁵ Draft Policy, page 22.

Finally, future legislation will need to make clear delimitations of development programmes from reparation programmes. This has been stressed at the NWVC, as well as during earlier country-wide community outreaches.

REPARATIONS AND DEVELOPMENT

Currently there exist several development programmes like the PRDP, meant to address “recovery, development and peace needs of the Northern Uganda affected areas,” or the KIDDP for the Karamoja region.

With the effective implementation of development programmes a Government fulfils its obligation under international law to take steps, to the maximum of its available resources, towards the full realisation of economic and social rights.¹⁶ This obligation, however, is separate from the additional obligation under international law to provide reparations to victims of violations of human rights.

“It is important for the policy to clearly draw a distinction between reparations programmes and Government development programmes,” said victims and civil society organisations during our outreach. *“This is particularly important in the wake of remarks by some Government officials that reparations have already been provided to victims through the PRDP, NUSAF, etc.”*¹⁷

While the distinction between reparations and development is easy to grasp when comparing individual reparations with development, e.g. a fistula repair with the construction of a road, it becomes trickier when the Government builds a school in a post-conflict community. If there has been a school before the war and it is now being rebuilt to resume its earlier operation, its construction can be seen as collective reparation, not development.¹⁸ If a school would likely have been built during the time of war had there been no war, its construction can likewise be seen as reparation. Only if there had never been a school and only if it was unlikely to have been constructed during the time of war can the construction of the school be seen as development.

“I represent Kaberamaido and talk about how the girls are still missing. We want to see to it that the girls are brought back to our secondary school. As for reparations... the classrooms were destroyed and the environment is alarming, it has affected the academic performance of the school,” said a woman from Eastern Uganda.

The reason this distinction is important is because if a Government re-builds a school, it has done nothing yet to fulfil its obligation under international law and the Constitution of Uganda to support development *“through a balanced and equitable approach.”* While it is true that many regions within Uganda are poor and in need of development, it is also true that post-conflict regions would be comparatively less poor had there been no conflict. That means that we need to estimate where a region would be had it lived in peace all along. All measures intended to reach that point are collective reparations and only beyond that point can we speak of development.

“In the school in our village we had twelve classrooms before the war started, but then they destroyed everything,” a survivor recalled. *“In the last years we have rebuilt two classrooms. Is this development?”*

¹⁶ International Covenant on Economic, Social and Cultural Rights, Article 2.

¹⁷ AYINET, *Victim and Civil Society Actors' Views on the draft Transitional Justice Policy for Uganda: Lango Sub-Region, Victim and CSO Consultation*, 6 and 7 June 2013, page 16.

¹⁸ The Remedy and Reparation Guidelines define “victims” as persons who suffered harm “individually or collectively.” That means that an individual person, as well as a collective, i.e. a village, can be a victim.

Beyond re-building social infrastructure, collective reparations programmes will need to support specific post-conflict needs such as specialised catch-up education for children who have lost years of schooling due to conflict, the employment of teachers specialised in teaching traumatised students, or the introduction of universal and free primary and secondary education for adults who dropped out of school for conflict-related reasons.



“Abductions and killings left us with many orphans. The Government should open schools for those children to study so that they can start a new life and overcome their parents’ absence.”

Even though the current development programmes cannot be referred to as reparations programmes, not least because they do not provide any reparations to individuals, their administration and implementation has met with several problems which a future reparations programme can learn from and avoid. First, there were some challenges in fund administration as technical expertise and capacity are still being developed. Second, there has been considerable misappropriation of funds, which is why victims’ groups at the Conference suggested some form of victims’ involvement.

“A commission should be established to undertake the reparation measures. And to prevent corruption, the commission should have victims’ representatives.”

Third, high expectations of the recipient community were not always matched with the development programme. In designing and implementing the reparations programme, the Government will have to be vigilant not to disappoint those, who have already suffered too much, and carefully develop its definition of a victim as well as the required standard of proof, taking into account that many families have lost everything as they were displaced or their properties looted and burned. Stories such as:

“I was hurt to find that all my property here was no more. I live as a person, but the best that can be done for me now is to compensate me what I have lost. I had to begin from zero,” reported by a victim during out mobilisation in Isingiro District, or:

“One way this war affected us as a family is this: my mother used to work with the Ministry of Health. Later she could not trace her pay slip in order to process her retirement benefits and gratuity. She lost them all in the war,” reported by a victim from Mbabara District,

demonstrate that the Government will have to be smart and flexible in gathering evidence and establishing credible accounts of types and extents of victimisation.¹⁹

¹⁹ The definition of a victim under the reparation programme will necessarily have to be broader than the definition of a victim in criminal proceedings.

IMMEDIATE REPARATIONS

"I was hit and I have no leg, I have an artificial leg. AYINET has helped a lot, and along their work there is rehabilitation. There is also psychosocial support. We, as victims, have challenges. First, the psychological torture... the loss of the leg. It is traumatising whenever I think about what I could do if I had my leg. People from other areas are missing many limbs and also have injuries," a victim reported on the dire needs of many of her compatriots from the Kasese District.

Before our report moves to discuss specific reparation measures, it needs to be noted that the victims as well as the Draft Policy suggest that the Government should consider interim, short-term reparations, before and while it starts implementing the broader reparations programme. Thousands of victims live in abject poverty or with acute pain, resulting from war-time injuries and torture. Their needs cannot wait any longer.

In a dialogue defined by opinions such as: *"If we need to wait for Transitional Justice to be implemented, others will have even died by this time,"* Cristian Correa offered some constructive ideas:

"In ICTJ's report Unredressed Legacy: Possible Policy Options and Approaches to Fulfilling Reparations in Uganda we also emphasised the need for an urgent relief program, as the approval and implementation of the TJ policy might take some time and some victims cannot wait anymore. That program should be focused on the following types of victims: victims of sexual violence, those suffering severe psychological trauma, child mothers and the families of the disappeared. The relief should include concrete measures: physical rehabilitation, psychosocial support, education, apologies and memorialisation. [...]"

A balance should be found then between the need for a comprehensive policy with the one of responding to those in urgent necessity. [...] The Government should not be afraid to implement a relief program, as it might be less expensive that they might think it is, and it is urgent and needed for stability and peace."

The academic support for immediate reparations is echoed on the ground:

"Research, research, research. Try not to anger victims. Some of these victims... they need psychological support. When they put your father in a pot and left you there, how can anyone expect you to move on? Some victims are still living with these injuries. I would recommend immediate medical support," appealed a victim from Gulu at the NWVC.



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The Long Wait: A victim displays an extracted bullet from his leg after living with it for over ten years

“For years I lived with severe physical pain resulting from gun wounds. I no longer expected that this bullet would be removed. I looked for help from the Government’s recovery programme, but I was always told: PLEASE WAIT! PLEASE WAIT! I was told that the programmes were meant for rebuilding roads, schools and health centers, but not for treatment of individuals who had been injured by war. However, AYINET provided me with free medical rehabilitation and removed the bullet from my body.” (Testimony of a beneficiary AYINET’s rehabilitation programme)

Jennifer Ober, representing women whose children did not return from the bush, talked about children, who went missing or were born in captivity, but then returned. She pointed out the danger of not paying immediate special attention to these children’s needs.

Beyond sending former abductees to school, many Conference participants stressed the importance of special catch-up education for all children from conflict-affected areas.

“Students in post-conflict communities should be given special attention which will enable them to catch up with other students who live in parts Uganda which have not been scarred by war. But education does not equal education. It is necessary that the focus shifts from providing vocational education to empowering these children to continue formal education and to pursue university degrees,” said a participant from Lira District.

“If they remain uneducated, they may return to the bush and begin fighting.”

Children who were born in the camps have returned to their communities, however, their experiences of violence and traumas present a challenge for a carefree and peaceful life. This

problem is exacerbated by the fact that the war has taken a tremendous toll on the most important social institution: the family. Children, as well as women, are left particularly vulnerable by the fragmented family structures that were and remain the most important and often only pillar of social security.



A majority of children born in the camps, exposed to and traumatised by violence since childhood, have moved back to their communities. They are facing challenges in transitioning to a normal and peaceful life.

“Regardless of the reasons for war, the social and economic impact is the same: untold suffering with loss of life, displaced families and gross human rights violations. Populations pay a price they have not solicited. When war ends, the physical, social, and economic scars remain unattended and fester into deep bitterness, and often with no one taking responsibility, and no one held to account for the atrocities committed against the helpless populations, often preying on defenseless women and children. Not only does this lead to the bitterness culture where life is rendered less valuable in recurring cycles of violence, but it also cultivates a degenerative downward spiral away from the 1963 African promise of freedom, equality, justice and dignity for the African citizen.” (Bishop Malusi, member of Board of Trustees of TrustAfrica)

The first-hand experiences of children are often supplemented by the anger and suffering of their parents, who contextualise the pain within a framework of hatred and historical grievances. As a society, we have failed to deal with the pain of the parents as well as with the transfer of their hatred to younger generations.

It is imperative that this process of teaching and learning to hate is stopped. The Constitution of Uganda includes provisions on assistance to citizens and, in particular, to children, but the Government has struggled to translate the values into practice. “The Government needs to demonstrate leadership based on peace, equality and justice for all. The National Policy on Transitional Justice has the opportunity to guide Uganda’s children, waiting at a crossroads, into the right direction. To secure a better future for all, we depend on their courage and optimism,” said Victor Ochen.



John Ochola (left), whose lips, nose, ears and fingers were cut off by the LRA, and Richard Sankara (middle), who sustained gunshots and continues to live with bullets in his skull, addressed Conference participants together with Dr. Isaac Ezati (right), the Director of Planning and Development at the Ministry of Health, who delivered a message from the then Minister of Health, Dr. Ruhakana Rugunda

MEDICAL AND PSYCHOSOCIAL REHABILITATION

Throughout the Conference, health was a very emotional topic, on which everyone had an opinion and a personal story to share. The victims unanimously agreed that the Government needs to make health one of the top priorities when it starts designing and implementing the reparations programme. Their demand is reasonable as numerous studies demonstrate the severe negative impact health-related problems have on victims' daily lives.

"This war has left me affected to date," a victim from Morulem Sub-county in Abim District told us. "When rebels shot, I went down trying to protect myself and landed on my chest. My chest still pains. I was a school boy when the war began. I now can't dig and my schooling ended there because my guardian thought that I had wrongly used the money, yet it got lost in the water body where I fell trying to rescue myself. It was an ambush, we were many in the car and I am the only one that survived. Right now I have a wife and children, yet I cannot dig. If only I could be given an oxen to plough or be taken back to school so that I can get formal employment and be able to take care of my family, I would be grateful."



Many victims felt that the Government and donors have abandoned them in order to promote other causes. In light of that, they were glad to hear Dr. Isaac Ezati, the Director of Planning and Development at the Ministry of Health, who delivered a message from the then Minister of Health Dr. Ruhakana Rugunda, say:

“When there is war, and when we have injured people, we have to look at them, treat them and rehabilitate and give them this psychosocial support.

There is a deliberate effort by the Government to provide medical support. [...] There is a need to put more health workers into local clinics so that victims’ health needs can be addressed locally. They should not need to travel to Gulu or to Kampala in order for their health needs to be addressed. [...]

Thank you AYINET for convening, bringing everyone together and sharing your experiences, concerns and recommendations. I’ll brief my Minister and we’ll see how to work with AYINET and strengthen the innovations especially in medical, psychosocial and gynaecological needs.”

Many victims often feel that neither the Government nor the donors understand what it means to serve a victims’ community health needs. Simply setting up a community health centre is not enough. A health centre needs to be well equipped and employ nurses and doctors who can handle severe psychological trauma and perform surgeries such as the removal of bullets, fistula

repairs or reconstructions of mutilated body parts. That being said, many health centres around the country provide little but shade, as they lack staff and equipment. A Conference participant from Luweero said:

“They built a health centre in our community, but there is no housing for health workers.”

Another victim from Luweero, who spoke to us during mobilisation, asked: “As a family we gave away part of our land so that a hospital could be built, because people needed medication after the war and because we were far from the health facilities that were available. But to date, there are only two nurses in that health centre and not a single doctor. There are no good hospital facilities like, for example, doctors’ houses. [...] Having given up my land, how have I benefitted?”

The physical and psychological health of victims is one of AYINET’s main areas of intervention. We were very grateful for Dr. Isaac Ezati’s public acknowledgment of and support for our work.

“Thanks to AYINET for the work they have been doing related to the issues of victims of war. Our records at the Ministry show that you have provided surgical assistance to over 5,000 victims. This has the full support of the Ministry! [...] Jointly, we need to develop a deliberate medical programme to provide assistance to victims who still need it.”

AYINET’s Rehabilitation Assistance



Mildred Obong and her daughter Evaline are survivors of LRA’s attack on Abia IDP-camp that killed several of Mildred’s children and hundreds of other internally displaced persons in 2004. They have received several surgeries under AYINET’s medical rehabilitation programmes.

AYINET has been providing surgical and psychological recovery to victims of war since our establishment in 2005. To date, we have provided reconstructive surgeries and follow-up support to over 5,000 victims and psychological support to over 10,000 victims. Our health work continues to be our most challenging and most rewarding engagement.

We are deeply grateful to our donors, who have been facilitating our programmes. They are the Trust Fund for Victims, the United Nations, the Center for Global Health and Peacebuilding and, last and anything but not least the Austrian Development Cooperation, whose grant enabled us to provide fistula repairs and offer psychological support to 35 women, whose reproductive health was damaged by the war.



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Process

Regardless of the donor or the type of injuries a programme will address, facilitating surgeries demands several implementing steps.

Each programme starts with a *mobilisation*. We reach out to local authorities or nongovernmental organisations to direct us towards communities, whose members might need medical assistance, or to help us organise community gatherings, through which these members can be identified.

The victims who need surgeries are either identified by the community or approach us individually. If our budget allows for fewer operations than are necessary, the priorities are decided based on medical need.

The second step includes *sensitisation* of the person who is going to receive the surgery and of his or her immediate family, who will need to support him or her through the process of surgery or multiple surgeries and follow-up treatment. Sensitisation and psychological support before, during and after the surgery are crucial to assure the victims and their families that the surgeries are free of charge and that they are carried out by professional doctors. Both victims and their families also need to be prepared for temporary pain and dependency on family members, which might follow an invasive surgery.



After the *surgery*, the third step, which usually takes place in a surgical camp organised at a hospital in the region, we assure that the victims receive *follow-up treatment* in a nearby health centre, which is the fourth and, if all went well, final step. We cater for all surgery costs, follow-up treatment and psychological counselling, transport, food and accommodation for the victim and an accompanying relative.

Challenges

The major challenge which victims face is that their medical rehabilitation is not a donor priority. Many donors see the medical rehabilitation of victims as an overwhelming project and shy away from it completely. Others prefer to finance so-called development projects. Finally, while substantial grants are designated for the promotion of human rights and justice, many donors do not see the link between a conflict-related human rights violation and its post-conflict redress. This is surprising as the holistic protection for human rights demands respect for human rights as well as redress for violations which have already occurred.²⁰

20 “Any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries” (see: UN Human Rights Commission, *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, 8 February 2005, page 16).



The victims are grateful to donors who opted to support their medical rehabilitation, even when the available funds were limited. An old Jewish wisdom says: “He who saves a single life, saves the world entire.”

“Every stitch, which the doctor made, communicated love, care, healing, recovery and peace,” a beneficiary of AYINET’s health programme said.

While the support AYINET has been able to offer is tangible, tens of thousands are still in need of medical treatment. Their state of

health is usually deteriorating while they are waiting. A Conference participant from Koboko, West Nile, revealed how justice delayed turns into justice denied:

“Personally, I lost two brothers. The impact of that... my parents were so traumatised and died two years after their deaths.”

“We have gone through a lot here. People were killed from the family of this gentleman, a man of the people. He has turned to alcohol to try forget,” reported a community from Kumi District.

The long waiting increases victims’ suffering and puts additional economic pressure on the families, who need to support the often incapacitated relative. Medical bills for the simplest of treatments (e.g. painkillers) can deplete families’ already tight budgets.

“I received referrals to other hospitals, but it required finances which I did not have. I was operated on every few months, but the swelling and endless pain kept recurring. However, when AYINET took me to the hospital for my eighth operation in 2007, the surgery relieved the swelling and the pain. My life has improved since then. I know your help can never undo the injustice done to me, but it has relieved me from struggling with my acceptance in society. As much as the LRA rebels caused unforgettable harms to me, you have given me and other victims from Northern Uganda unforgettable assistance,” said Sophie, a victim, at the Greater North War Victims’ Conference, showing how much one well-implemented programme can achieve.

As the Government often (and correctly) states that it has developed programmes to assist the development of post-war regions, including their health facilities, Jackson Opio, who presented AYINET’s medical work at the NWVC, finished his presentation with a question to the audience: “Should victims’ needs be considered at the same time as other development?” i.e. should the needs of victims with rotting limbs and fistula compete for the money needed to repair the road between Kampala and Lira or Gulu? As so often before, the question was answered in the negative.²¹

²¹ To read more about the need to delimitate development programmes from reparations for victims, see chapter ‘Reparations’ above.

International Assistance towards AYINET's Victims' Rehabilitation



In a small-group discussion Mr. Scott Bartell from the Trust Fund for Victims explained how the Trust Fund assisted thousands of victims from Uganda, the Democratic Republic of the Congo and the Central African Republic

The assistance provided to us by the Trust Fund for Victims came in at the peak of the peace negotiations between the LRA and the Government of Uganda. Its timeliness and victim-centredness should, in our opinion, be followed as a model for immediate post-conflict assistance.

The strength of the TFV was not that it arrived in Northern Uganda with a sophisticated project developed in The Hague, but with the humble willingness to listen to what victims wanted. The medical and psychosocial rehabilitation project, developed by AYINET, looked ambitious and costly. However, the Trust Fund, unlike many potential donors before and after it, trusted that a local organisation could achieve a lot even with modest budgets. As AYINET, we are not only honoured to have been the very first partner organisation, but also, that the success of our pilot project prompted the TFV to replicate it in other locations and, generally, to remain uncompromisingly victim-centred in all its work.

“In September 2007, the Trust Fund for Victims of the International Criminal Court launched its first ever project under its assistance mandate. We did so in collaboration with our local partner, the African Youth Initiative Network.

With support from TFV, AYINET organised surgical camps in hospitals across Northern Uganda and assisted the return and resettlement of former internally displaced persons. The surgical camps provided rehabilitative surgery and psychological assistance to over 1,000 direct victims of torture.

Since then, the Trust Fund for Victims has continued to support several projects in Uganda, the Democratic Republic of the Congo and the Central African Republic, conducting medical repairs of direct victims of serious violations of international humanitarian and human rights law.

It also facilitated resettlement and reintegration of internally displaced persons by strengthening their economic recovery through livelihood projects. Special focus was given to child-headed families, widows and people who were tortured or remained physically deformed. All of the programmes were placed within the broader framework of community rehabilitation.

The only challenge is that TFV cannot support victims from all over Uganda. This is because its mandate is legally limited to the situation in Northern Uganda, which is under the jurisdiction of the ICC,” explained Scott Bartell, the Country Programme Manager of the TFV in Uganda.



In 2013 officials from the UNDP, UNICEF, FAO and UNOHCHR, lead by Mr. Patrice Chiwota from the UN Peacebuilding Fund (PBF), met with beneficiaries of AYINET's medical rehabilitation programme that was financed by the PBF and implemented through the UNDP and UNOHCHR Uganda

"As the UN, we have supported many development programmes in Uganda over the years. It is a rare occurrence to witness a project that has an immediate positive impact on people's lives.

I am glad to say that AYINET's programme 'Medical and Psychosocial Rehabilitation of War Victims in Northern Uganda' is the most successful project implemented under the UN Peacebuilding Programme in Uganda, supported through the UNDP and the UNOHCHR. Seeing, here and today, how the project has contributed to physical healing and transformation of victims, I am very proud of our partnership with AYINET.

If you want to rebuild a post-conflict community, your first efforts need to be directed towards improving the lives of victims and survivors. This is the only way to bring about real change to the people, this is the way to bring about sustainable development and peace," said Mr. Lobegang Motlana, former UNDP Country Director in Uganda.

Many might not link the restoration of physical integrity and dignity of individual victims and survivors with UN's mandate to maintain international peace and security. It is therefore our immense joy that after discussions between AYINET and various UN agencies present in Uganda, the UN acknowledged that a holistic support for human rights includes providing practical assistance to individuals. We remain grateful for UN's continued support and, in particular, the recent endorsement by Ms. Birgit Gerstenberg, Representative of the UNOHCHR in Uganda. Referring to our collaboration in the field of promotion and protection of human rights, she wrote:

"This project stands out as a model for practical approaches aimed at directly ensuring the right to health, right to life, restoring hope and dignity as well as delivering justice for the war wounded." She further acknowledged the immense need that remains.

"While the project has significantly benefitted a wide range of victims, evidence shows that there is still an overwhelming need for extensive support towards victim recovery in the war affected communities. The Office is therefore pleased to recommend AYINET as a strategic partner for such interventions given its track record in empowering local communities."

SEXUAL VIOLENCE IN CONFLICT

Sexual violence in conflict was an infamous and pervasive companion of all wars, which scarred Uganda, and has thus been a theme which resurfaced throughout the Conference.²²

“You also need to consider the victims of the 1979 war, in Bombo the victims were the Nubian community. During the war, there was a lot of looting of shops, rape; it was difficult to leave your home. They would use machetes to cut pregnant women’s bellies and remove the babies, as they said, to find out the sex of the child,” a District Internal Security Officer from Luweero District said during victims’ mobilisation for the Conference.

Sexual violence in conflict came in many forms. While some women were raped and then left behind in their homes, others were abducted by rebels, became forced wives and gave birth to their children. Perpetrators also used rape as a tool of humiliating families by either raping women in the presence of their husbands, fathers or brothers, or by forcing members of the same family to carry out sexual acts with each other.

“If they found a lady they liked, they would have sex with her in her husband’s face. Rape was so prominent,” a victim from Nyimbwa community said during victims’ mobilisation.

Another victim from Kashumba Sub-county, Isingiro District, reported: *“My mum was beaten and raped in my presence.”*

A social worker told us: *“I worked with the International Committee of the Red Cross from 1983 onwards. In 1985, there was a battalion that came towards Luweero. Soldiers forced children in Kasaala Junior School to become their wives. We came with a delegation to rescue them. Many were no older than nine or ten years.”*

Psychological, economic and physical violence against women is not uncommon in Uganda’s male-dominated society. In the opinion of many, victims and experts alike, the discriminatory attitude against women increases the prevalence of sexual violence during conflict and aggravates the forms of violence used (e.g. rape, forced marriage, sexual slavery). General impunity leaves many women at the mercy of physically strong, cruel and armed men in an atmosphere of indiscriminate brutality. Susan Acan, who gave a presentation at the Conference, emphasised that in order to address gender-related dangers, the Government needs to streamline gender equality and children’s rights in all its Transitional Justice elements.

Sexual violence resulted in psychological harm and in physical harm, like vesicovaginal and rectovaginal fistulas. Sexual violence contributed to the spreading of HIV/AIDS, which remains common in all post-conflict communities in Uganda. Infected people often face stigmatisation.

“They would rape us, even those that were HIV-positive or had AIDS, and they would infect us,” reported a victim from Kikyusa Sub-County in Luweero District.

Many victims continue to live with debilitating pain and trauma. A reality for many is that neither their physical, nor their psychological needs have been attended to.

²² The need to integrate gender-based perspectives into Transitional Justice mechanisms is addressed separately in the ‘Reconciliation’ chapter of this report.

“There are victims who we expect to participate in the trials before the International Crimes Division of the High Court. Within the court we work with consultants who identify victims’ needs. We work on psychological support and witness support. This is a particular challenge with victims of gender-based violence. They are often unwilling to participate, because they don’t want to talk about their experiences or because they don’t feel secure enough,” said Joan Kagezi from the ICD and added: *“We need civil society organisations to provide psychological support to our witnesses.”*



Joyce (not her real name) was abducted at the age of 16 years. Seven months pregnant, the LRA accused her of being a wife to a Government soldier. As punishment, she was brutally raped by the LRA. The rebels then cut off her lips, nose, and ears. They wrapped them into banana leaves and made her deliver the package as a New Year’s gift to Uganda’s Government forces. She lived with untreated mutilations for four years before AYINET provided her with plastic surgeries.

Many victims of sexual violence gave birth to children. Children, whose mothers have been raped by multiple men or whose mothers were forced wives, do not know who their fathers are and are often rejected by their mothers’ families and communities. Mothers, too, are often rejected, leaving them vulnerable at a time when they would need most protection and support to cater for themselves and their children.

“Some were abducted before they became mothers. They got pregnant during captivity, not even knowing who impregnated them because they were raped by many men. When they got back, they wanted to lead a normal life and get married, but they were stigmatised. “Why marry a person who has been in the bush,” people would ask,” explained Susan Acan, who works with female war victims.

International and National Law

Rape is an extreme manifestation of gender-based discrimination,²³ and can even constitute an act of torture. As such, it is prohibited by various instruments of international law, including the international law of armed conflict.

The ICCPR prohibits torture in Article 7, saying: *“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”* States cannot derogate from the prohibition of torture.

Common Article 3 of the 1949 Geneva Conventions prohibits any violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture as well as any outrages upon personal dignity, in particular humiliating and degrading treatment, directed against persons taking no active part in hostilities.

Additional Protocol II expands the protection offered by Common Article 3. Paragraph 2 of Article 13 states: *“The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.”*

Rape and other forms of sexual violence constitute a war crime and can be prosecuted by the International Criminal Court (ICC) on the basis of Article 8(2)(c)(i) and 8(2)(c)(ii) and 8(2)(e)(vi) of the Rome Statute. If rape and other forms of sexual violence are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, they also constitute a crime against humanity and can be likewise prosecuted by the ICC under Article 7(1)(g).

Uganda’s Penal Code has an extensive Chapter XIV on Crimes against Morality, prohibiting rape, abduction for the purpose of marriage or sexual intercourse, unlawful detention of a person for the purpose of sexual intercourse or unlawful sexual intercourse with a girl under the age of eighteen, and other crimes attacking the sexual integrity and dignity of a person.

The International Criminal Court Act, adopted in 2010, further states that the Rome Statute has the force of law in Uganda, meaning that any sexual violence, over which the ICC has jurisdiction, is likewise criminal under Ugandan law and can also be prosecuted by domestic authorities.

Although the Draft Policy contemplates both formal and informal justice mechanisms to address crimes, committed during conflicts, caution needs to be exercised in regard to traditional justice mechanisms as some of them do not foresee punishment for rape. Regardless of the mode of integration of traditional justice into Transitional Justice mechanisms, all sexual violence should be, arguably, addressed by formal justice mechanisms, i.e. courts.²⁴

23 We acknowledge that same-sex rape exists and that it even occurred during Ugandan wars. The overwhelming majority of victims, however, have been women.

24 JRP and ASF, Victims’ Views on the Draft Transitional Justice Policy for Uganda: Acholi Sub-Region, Victim Consultation, 5 June 2013, page 9.

International Momentum



US Secretary of State John Kerry addressing participants of the Global Summit in London

The international community has recognised that sexual violence accompanies most armed conflicts in the world today and that it is being increasingly employed as a tactic of war. Beyond traumatising thousands of victims, the systematic use of sexual violence in conflict can exacerbate situations of armed conflict, while “effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security.”²⁵

Shortly after the NWVC concluded in Kampala, the world gathered at the unprecedented Global Summit to End Sexual Violence in Conflict. As AYINET has been working with victims of sexual violence for many years, the director, Mr. Victor Ochen, was invited to London to join over 1,700 delegates from 129 countries in order to discuss how to overcome impunity, change attitudes and support survivors of sexual violence.

“As a war veteran and as a father of two daughters, sexual violence is very personal to me. [...] We will not tolerate any peace agreement that gives amnesties to perpetrators of sexual violence,” United States Secretary of State John Kerry vowed.

“As we help victims come out of shadows of war [...] we must support local NGOs supporting victims,” Mr. John Kerry appealed to the gathering.

We were glad to observe that the attitude of the international community has, over time, aligned with AYINET’s approach of paying considerable attention to victims, trapped in a violent environment, and of offering practical, surgical and psychological support to victims and survivors of sexual violence.

Likewise, we welcome the Rt. Hon. William Hague’s promise to sustain and accelerate the momentum, created by the Summit, as well as the awareness generated by him, Ms. Angelina Jolie, and the delegates.

AYINET particularly appreciates the commitments by various actors, including governments, to better support local nongovernmental organisations, empowering victims of this most gruesome affront against bodily integrity and human dignity. As we have been working with victims of sexual violence for many years, we hope that the momentum and awareness will become more than words and translate into tangible support for victims’ assistance programmes, including AYINET’s.



Ms. Angelina Jolie, UNHCR’s Goodwill Ambassador, and the Rt. Hon. William Hague, UK Foreign Secretary

²⁵ UN Security Council, Resolution 1820, S/RES/1820 (2008)

Working with Victims of Sexual Violence and Conference Voices

“One of the rebels married me and I had to return back with that child who has not been accepted by my family. I have no peace, my child has no home and no peace.”

Victims of sexual violence require support to improve their physical and psychological help. While surgeries like fistula repair can contribute to physical healing, psychological help requires more patience. AYINET has been able to offer surgeries to hundreds of victims of sexual violence, and has offered psychological support to thousands. In the process, we have learned difficult, but pertinent lessons.

First, AYINET’s work has shown that the confessions from women that they have been victims of sexual violence often comes “at the eleventh hour” – after they have been treated for other problems. It happened more than once that a woman, who received a plastic or reconstructive surgery, for example a mutilation repair, confessed to our counsellors, after meeting them for the fourth or fifth time, that she was also a victim of sexual violence. Working with survivors of sexual violence demands strong relationships of trust. Many NWVC participants thus wondered whether the Transitional Justice Act will be sensitive enough.

“The SGBV aspect is not developed enough. We know that women suffered before and during the war. They continue to suffer, which has a significant impact on their ability to participate in post-conflict processes. “Gender” cannot be just another issue of Transitional Justice. If the Government is serious about gender, gender-related questions need to be genuinely integrated into all Transitional Justice processes,” said Susan Acan, who has been working with victims of conflict-related sexual violence for a decade.

Second, victims of sexual violence in conflict often feel ashamed for what has happened to them, instead of putting both the blame and shame on the perpetrator. This is not unreasonable insofar as victims of sexual violence might end up being stigmatised by their communities more than their perpetrators. AYINET agrees with the organisers of the Global Summit that a change in attitudes is needed.

“We must send a message around the world that there is no disgrace in being a survivor of sexual violence,” Ms. Angelina Jolie said in London.

A powerful step towards achieving that victims of sexual violence will feel understood, not denounced, can be made if the responsibility for the prosecution of all sexual violence is clearly laid on criminal courts. Sexual crimes are serious international crimes which should not be handled by traditional dispute resolution mechanisms which lack sensitivity and respect for women.

Third, many women had not only been raped once, but had been abducted by rebels and kept as forced wives for many years. Susan Acan from Empowering Hands emphasised that communities often think that women joined or stayed with the rebels voluntarily, denying them necessary support upon their return. She emphasised that improving the lives of these women necessarily demands raising community awareness on what has happened to these women and that they were not serving rebels voluntarily. Community awareness will also contribute to accepting children of these women, born in captivity. Not knowing your roots is very traumatising in a traditional and patriarchal society like Uganda’s, as is being known to be the child of a criminal.

"They are products of rape. None of them know their parents. They don't have any roots at all," a district health officer in Luweero District told the AYINET team during victims' mobilisation for the Conference.²⁶

Fourth, many women were abducted as young girls. The crimes committed against these girls created severe psychological harms and kept them away from school, preventing them from acquiring an education, with which they could support themselves. Susan Acan stressed that it is imperative to support girls and women, who have returned from the bush, in continuing and finishing their education. She further emphasised that the Government needs to empower these girls to pursue formal education and university degrees and cautioned against any further vocational institutes, teaching hundreds of girls in post-conflict communities to become tailors, a critique echoed by many, especially in Uganda's post-conflict Northern region.

"I want to lead a happy life. I came back from captivity with three children; let these children get an education and medical care. One of the men who raped me... he came back from the bush as well. I have seen him driving a car, with full government support but me and my children, we are not attended to," a victim told us during our mobilisation.

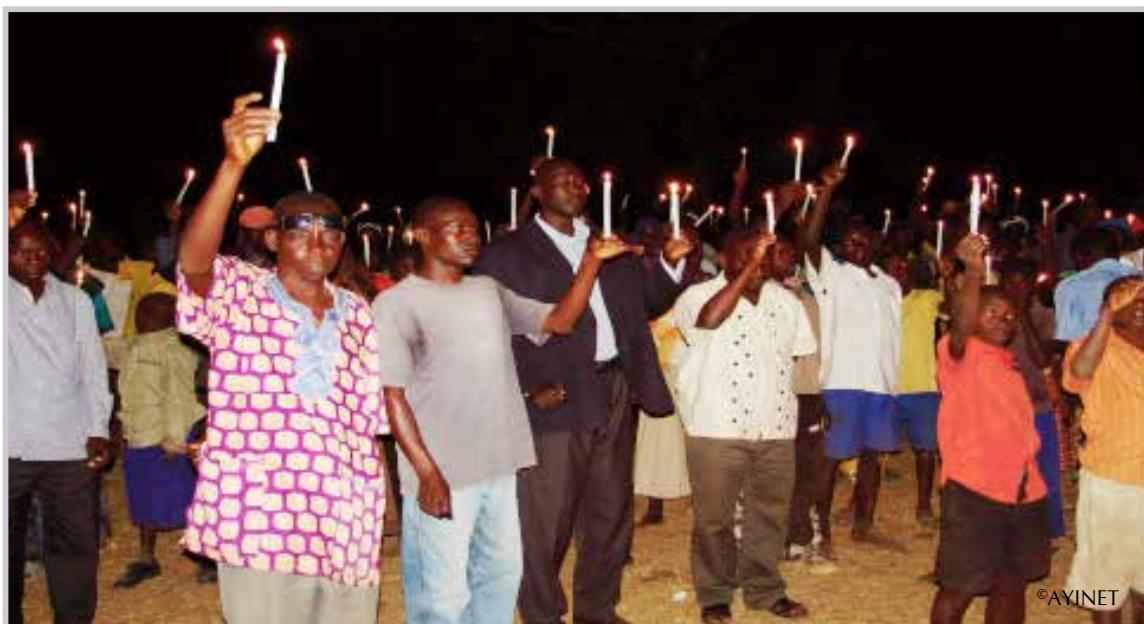
²⁶ AYINET, Report on Victims' Mobilisation for the National War Victims' Conference, April - May 2014, page 13.

REMEMBRANCE

“Transitional Justice promises a better future. But in order to create a better future, we must understand our past,” expressed Archbishop Desmond Tutu during his address to the War Victims’ Conference in Kampala, Uganda.

In honouring the victims’ need to remember, Uganda’s National Policy on Transitional Justice mirrors international law.

“A people’s knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State’s duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments.”²⁷



Victims and survivors from Abia village during the Abia Massacre Memorial Service. The Service takes place every year on 4 February. Like many other communities, Abia has begun its slow process of healing. Official recognition of past atrocities remains crucial.

In order to further remembrance and reconciliation, the Draft Policy foresees the State’s support for burials and the construction of memorial sites.²⁸ AYINET and the victims are calling upon the Government to do three additional things.

²⁷ Updated Set of principles for the protection and promotion of human rights through action to combat impunity, 8 February 2005.

²⁸ Draft Policy, page 7.

First, the Government should reach out to victims' communities who report a higher number of victims of massacres or other atrocities than are inscribed in monuments or recognised by the Government. During our mobilisation and during the NWVC our team was made aware of some examples in which the number of massacre victims inscribed in a monument and recognised by the Government differs significantly from the number given by the victims' community. The Government should examine the source of these differing records and assist the respective victims' communities in acquiring monuments with correct inscriptions.

Second, all levels of Government should keep attending memorial services and commemoration events organised to honour specific group of victims.



President Museveni, UN General Secretary Ban ki-Moon and other dignitaries attended and played in solidarity with the victims at the War Victims' Football Day, organised by AYINET on the eve of the first Review Conference of the Rome Statute in Kampala on 30 May 2010

Third, in order to promote a unified victims' identity as well as in order to draw the attention of the wider public on Uganda's victims, the victims suggest the commemoration of a National War Victims' Day on 30 May. They suggest 30 May because the first War Victims' Football Game was played in Kampala on 30 May 2010, the eve of the first Review Conference of the Rome Statute of the International Criminal Court, and because the NWVC concluded on the same date four years later.

"We need to remember victims of war; there needs to be a victims' day, so that we can remember our parents, our relatives, those who have passed away as a result of war," said a victim from Kasese.



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TRUTH

"Truth is liberating!"

The Oxford dictionary defines truth as *"that which is true or in accordance with fact or reality."* In a Transitional Justice context most people will associate "truth" with truth-telling. Yet while truth-telling is an important component of establishing an accurate historical narrative, it is not the only one. The study of State archives, various documents, photographs or videos, excavations of mass graves and DNA analyses of mortal remains, and even satellite imagery can contribute to a country's accumulation of facts about the past.

In a post-conflict setting where massive human right abuses still define daily life, exposing the truth is as much necessary as it can be inflammatory. Felix Kulayigye, UPDF Chief Political Commissar, speaking on behalf of the Minister of Internal Affairs, frankly asked:

"Are we ready to tell the truth?" He warned that the truth might be dangerous and cautioned: "You will have to prepare yourself for the ugliest truths which you did not expect."

The warning does not dissuade from seeking the truth, it does, however, serve as a motivation to strengthen the citizens' support for the process regardless of the outcomes and *prepare* them for the truth. Satellite imagery might reveal previously unknown locations of mass graves, while the excavation of a mass grave might confirm that a loved one is indeed dead and even that he or she died a violent death. Such discoveries are likely to occur and re-traumatise communities, which are still missing thousands of its members. Truth-telling might uncover a former abductee as the rapist or murderer of another community member or a politician as an accomplice in some atrocities. While truth-telling might discard suspicions such as *"Our neighbours accuse us by saying that our missing ones are responsible for the lives of their people,"* it might also confirm them.

Communities and individuals need to be prepared for what they might find out and assisted to come to understand and accept the new facts. Perpetrators and witnesses need to be supported to participate in truth-telling in a way that guarantees their safety. Political parties and State organs, in particular State security organs, should be encouraged to distance themselves from compromised individuals in order to add credibility to the political process and to increase trust in State institutions. Truth-seeking is not a witch-hunt, yet, for it to be meaningful, it cannot be without consequences for the worst offenders either.

"We lost our properties, we lost our relatives. I can't forget when I am still in a poor state. Some of our perpetrators are very, very rich, and are in the Government and are stealing even money meant for our rehabilitation," said a victim at the Conference.

All Transitional Justice stakeholders are crucial in a country's search for truth. The Government must allow access to relevant State archives or mass graves, it must establish and design a truth-telling process and offer any form of assistance to its participants. Civil society organisations can assist in outreach activities and in offering psychological and other assistance to victims and victims' communities. Development partners can offer technical support as well financial support for costly operations such as the excavation of mass graves and DNA analyses.

Last but not least, a well-designed and financially supported truth-seeking process will build victims' trust in the procedures and ensure their crucial participation.

“My special thanks go to the victims and survivors for having honoured this invitation to participate in this workshop on Victims’ Participation in Transitional Justice. This shall go an extra mile in the maintenance of peace and unity of our country, and I thank AYINET for this commendable initiative. In working together, we emerge stronger than ever before and will be able to achieve total peace and security based on national reconciliation,” said Mr. Aronda Nyakairima in his address to the participants of the Greater North War Victims’ Conference in Lira.



Participants at the Conference echoed the quote of Archbishop Desmond Tutu, (*Truth is liberating!*), acknowledging the redeeming value of truth, and appreciated that the event offered them the opportunity to convene and speak freely. A platform like the NWVC is an excellent first step towards a more rigorous and more organised truth-finding process. We hope that its success inspired and emboldened policy makers and donors to proactively support the victims’ quest for truth.

“Many thanks to AYINET for this gathering. It is the first time that I witness something like this. The victims should use this experience and continue convening. The more they will talk, the more their fear will decrease,” a participant from the Democratic Republic of the Congo suggested.

BUILDING TRUST BEFORE SEEKING THE TRUTH

In Uganda there is a palpable sense of distrust among people and between people and the Government. During our mobilisation as well as during the Conference many victims wondered whose truth Uganda is going to seek. Potential witnesses wondered whether the Government would refrain from censoring their evidence and ensure their safety regardless of their testimony. Others went further and demanded that the Government participate in the truth-telling process and disclose their crimes as well.

“Since 2005, we have had a peace accord and so many victims are beginning to speak about and commemorate their frustrations. Now, we have a bill on a Reconciliation Commission that was signed on 15 May. I am not sure when we will have a truth-telling commission. In the Government there are two main political parties and one of them represents the former rebel movement. The issue is very difficult for us as victims. It is difficult for us to express ourselves, because some of those people who have signed the peace accord are perpetrators and do not allow us to say what has happened to us. We are not protected enough to say what we have seen in our past. But we try our best, and I really appreciate your methodology to organise regional conferences and now a national conference, because it is a kind of bottom-up approach. I am learning about your methodology,” shared a victim from Burundi, emphasising the importance of Government’s comprehensive support for truth-seeking.

To overcome suspicion in society, we invited all groups within Uganda to meet and talk at the Conference in Kampala. Only a truly holistic truth-seeking process, which unites victims, perpetrators and the Government, and which is conducted in a safe environment, can yield results.



“A platform like the one established by AYINET is a wonderful basis for an honest dialogue which can build trust and confidence. If it is honest on all sides, it is a foundation for peace-building. You cannot have peace-building without truth-telling,” said Assitan Diallo, a participant from Mali, West Africa.

Assitan Diallo from Mali, West Africa, speaking at the National War Victims' Conference

MISSING PEOPLE

Kidnappings were common in most wars in Uganda, even though they are often associated with the activities of the LRA only. Tanzanian forces, for example, abducted Ugandans during the Uganda–Tanzania War,²⁹ however, they eventually released most of them. The ADF likewise kidnapped several people. The number of persons who went missing during the various conflicts remains unknown.³⁰

“By then we had twelve parishes, all of them were affected. We had about seven military camps of the enemy here. We have a big mass grave here at Wabusaana. There are about 3,000 skulls there. We don't know whose they are, not for all of them at least. We had so many war victims,” recounted a victim from Kikyusa Sub-county in Luweero District during our mobilisation.

We believe that the whereabouts and the fate of the missing people will be one of the most difficult truths that relatives will have to face. The families want to know if their loved ones are alive or not, however, nobody is willing to come out and speak to them.

The greatest number of missing people can be still attributed to the LRA. During the over 20 years of terror, the LRA abducted tens of thousands of people! In the light of the recent arrest of Dominic Ongwen, victims ask about how much the Government is doing to gather relevant information about the whereabouts of its citizens who were abducted by Ongwen. And how much is it doing to prepare their families for the outcomes of such efforts?

As the LRA is reportedly growing weaker, there is a general concern whether the families of the abductees are being prepared for the possible return of their loved ones or, potentially, the permanence of their absence.

²⁹ Note that any war, which happened prior to 1986, does not fall within the temporal scope of the Draft Policy.

³⁰ Although there are no comprehensive studies on the number of missing persons in Uganda, a study, carried out by FIC, covering the LRA conflict in the Acholi and Lango Sub-regions, conservatively claims that between 64,000 to 99,000 households have one or more missing member.



“If I walk around for fifteen to twenty years with a wound in my arm, it won’t get better until I open it and clean it up; only then will I be able to move on. The same goes for truth-seeking: we can’t continue with cycles of violence if we want to achieve a peaceful and just future.”
 (Jeremy Sarkin, Professor of Law, University of South Africa, former chair and Member of UN Working Group on Enforced or Involuntary Disappearances)

The pursuit of the fate of tens of thousands of missing people will be a major element of Uganda’s Transitional Justice policy; yet, total success is unlikely. No matter how many mass graves we discover and how many dug up bodies can be identified, no matter how many fighters might still return and no matter how successful the Government and the Uganda People’s Defence Forces will be in their dealings with the remnants of the LRA, some people will remain unaccounted for, lost or buried in anonymous locations in Uganda, South Sudan, the Democratic Republic of the Congo and the Central African Republic.

In its pursuit of *this* truth, the Government will have to do more than hunt for rebels and send excavators to mass graves. It will have to reach out to families of missing people and prepare them for the possibility that truth might never come. When doing this, it can rely greatly on local non-governmental organisations, which have known and worked with victims’ communities for very long.

“My parents are haunting me at night because I didn’t give them a proper burial. They say that I don’t respect them, that I have failed them. I guess they are dead, but I don’t know where they are,” a survivor from Kumi District described his life in uncertainty.

Missing persons are either dead or held captive by their abductors. Their families do not have the capacity to establish the fate of their relatives and the Government, even if it developed a comprehensive search and rescue plan, would not be able to find every single person. Regardless of the limitations, there are actions, which the Government could do, as, for example, give full recognition of the scale of abductions, create avenues for relatives of missing people to report them, continue searching for those that are alive and still held by rebels, or create other avenues of ensuring their return, and mapping and excavating mass graves, found in the vicinity of many communities in order to establish the identity of those deceased. Excavations and identifications would also enable families to finally give their loved ones a proper burial, a form of reparation explicitly identified in the Draft Policy.³¹

“There are so many mass graves in our community and there are so many people missing. We’d like to know: who is in these graves,” asked a victim from Luweero.

“We have reported this to the authorities, but if they can’t compile a list of all missing people – there was some negligence somewhere. [...] So what do we need? I think we need support, technical support, to compile these things so we can move on. If there is no or little acknowledgement, you are blocked. We should negotiate

³¹ Draft Policy, page 7. The Remedy and Reparation Guidelines likewise identify the search for the whereabouts of missing people and the facilitation of a proper burial of a formerly missing person as a form of satisfaction, which is one of the many forms reparations can take.

with the captors, so that we can get the ADF and Kony to release these children back to us; the negotiations... we should actively participate, because the way I talk would be different from others," said a survivor and mother of a missing child.

An overwhelming majority of missing persons are missing because a *crime* has been committed against them.³² The victims of these continuous crimes are not only the missing people, but also their relatives, who are forced to cope with the uncertainty related to the fate of the missing person.³³

"If I ask myself, what are the effects on the relatives of the missing ones, I come with the following answers: mental discomfort, we are no longer at peace, life is difficult. Time is wasted.

As Kony is still alive, we are afraid that we might have to go back to the camp. And even worse, our neighbours accuse us by saying that our missing ones are responsible for the lives of their people. More pressure should be put on Kony to quickly end the conflict. If the Government of Uganda can bring stability within days only to South Sudan, and it can work in Congo, what about us," a victim from Abia, Alebtong District, and the father of the missing Innocent Okello, shared his fears and questions.

Many relatives are also stigmatised by and ostracised from their communities, who accuse them of their sons or brothers being ruthless rebels.



"I would want to say that my son, if he is alive, then he is a rebel, and I am the mother of a rebel. You don't wait for people to isolate you, so you isolate yourself on your own accord; you know that persons think your son is responsible. Sometimes you see the age mates of your children and you imagine: mine would be like this," said Fatuma Nora, a mother of a missing boy, who was abducted during the Tanzania-Uganda war. Like other parents of missing children she wondered whether the Uganda People's Defence Forces were looking for her child.

While the phenomenon of missing people is horrific, it is not unique to Uganda. During the Second World War 25 million people went missing, while relatives still wonder what happened to the thousands who went missing during or in the aftermath of the Spanish Civil War, which resulted in General Franco's ascent to power. In the 70's of the past century, disappearances became a systematically perpetrated crime, prompting the response of the international community. In 1992, the UN General Assembly adopted the *Declaration on the Protection of All Persons from Enforced Disappearance*. Fourteen years later, in 2006, countries finally adopted the binding *Convention for the Protection of All Persons from Enforced Disappearance*.

Despite its applicability to the Ugandan context, Uganda is not among the 42 State parties.

³² Domestic legislation prohibits abductions. On the international stage, the Rome Statute criminalises enforced disappearance perpetrated by the State or a political organisation as a possible crime against humanity.

³³ The definition of a victim in the Draft Policy is equally broad, see page 7.



Col. Felix Kulayigye signs the 'Participants' messages and signatures' poster at the National War Victims' Conference. He writes: "Peace is from the heart, so let us spread love for each other and love for our country. We shall have sustainable Peace."

"We need to stop glorifying perpetrators. Attention needs to be with the victims," emphasised Col. Felix Kulayigye during his address to Conference participants.

*"Regarding missing persons, I would like to appeal to Parliament to ratify the Convention so that we have a tool that will help us to move forward on the missing persons," said a victim at the NWVC, understanding that regardless of who abducted the currently missing people, the Government retains the legal obligation to protect the missing people's human rights to life, freedom from torture and the right to be recognised as a person before the law by, *inter alia*, establishing their fate.³⁴*

³⁴ The right to life, freedom from torture and the right to be recognised as a person before the law amount to a right not to be disappeared under human rights law, codified in the ICCPR.

TRUTH-TELLING

The Draft Policy recognises that post-conflict truth-telling has had a prominent role in resolving and preventing conflicts, in establishing unbiased historical narratives and in reconciling perpetrators and victims. As a result, the Draft Policy suggests to the Government to establish and resource a national truth-telling commission.

The need and support for truth-telling were echoed throughout the NWVC. Archbishop Desmond Tutu, the Chair of the South African Truth and Reconciliation Commission and one of the most prominent advocates of truth-telling, said:

“The newly elected Government [in post-apartheid South Africa] established a Truth and Reconciliation Commission as a mechanism to overcome the horrors of our past. Victims and perpetrators of human rights violations were invited to tell their stories on public platforms with perpetrators being granted amnesty in exchange for telling the truth. It was a gruelling process, but one that both victims and perpetrators experienced as healing and liberating. Truth is liberating. Peace is liberating.”

The implementation of a truth-telling process is based on the idea that collective commemoration of the past helps to prevent its recurrence in the future. With truth-telling processes we unveil, admit and explain past violations; we create a culture of accountability and respect for the rule of law; we scrutinise the role and responsibility of institutions and recommend administrative reform; we promote individual and national reconciliation; and, finally, we reduce the risk of misinterpretation of historical events.

The Limits of Truth-Telling

During our country-wide outreaches and the NWVC mobilisation we have found that truth-telling is as prominent as it is misunderstood. The purpose of this chapter is thus to disband some common misperceptions.

First, **truth-telling is not alike a criminal prosecution**. Both are forms of post-conflict accountability, yet they differ significantly. The most important difference is that while criminal prosecutions focus on establishing individual criminal responsibility of alleged perpetrators, truth-telling is a victim-centred process. The aim of the latter is to enable victims to discover, present and, sometimes, reconcile with the past. While victims are on the periphery of a criminal trial, they are central to the truth-telling process.

Second, **truth-telling is not about forgiveness**. In Kasese, Western Uganda, as well as in Mbale, Eastern Uganda, victims expressed a similar fear:

“If someone I know tells me that he killed my son, will I be forced to forgive? How can I be expected to forgive if I don't even know what I am going to hear?”

It is correct that truth, apology and forgiveness often walk hand in hand.

“If they tell the truth, I will forgive,” said a victim at the NWVC.

However, truth and apology are not necessarily followed by forgiveness. Whether or not a person can or will forgive, is entirely dependent upon that person.

Forgiveness should never be forced upon victims nor should it be institutionalised, i.e. given in the victims' name.³⁵

Third, **truth-telling processes will not necessarily lead to a truth everyone will accept.** The purpose of truth-telling is to find a common ground to write a comprehensive national narrative with the help of the Government, the civil society and professional historians, even if such a narrative will necessarily leave open a room for debate. This is not a problem. The positive outcomes of truth-telling, including an individual's catharsis and closure, can sometimes be achieved just by publicly establishing and documenting where the main points of disagreements lie.

Notwithstanding the limitations of a truth-telling process, its importance cannot be doubted. Chantal from Burundi gave it the following relevance:

“Truth-telling is very important to begin all Transitional Justice mechanisms. You cannot prosecute someone if the truth is not known; you can't grant amnesty to someone if you don't know the truth of what he or she did. How can you repay a victim if you don't know how much he or she suffered? How can you design a reparations programme if you don't know what happened? The first thing to do is to know the truth about what happened.”

Chantal Gatore from Burundi, East Africa, participating at the National War Victims' Conference



Challenges and Opportunities

The importance of truth-telling cannot be overstated, which is why it is upon all Transitional Justice stakeholders to approach it responsibly. A well-designed and well-implemented process has the potential to heal the country and establish its certain progress, whereas major errors will not only wipe out the momentum, but might even reverse the modest gains.

This chapter summarises major existing challenges and opportunities. The victims perceive the institutional framework as the major existing challenge to a successful truth-telling process. On the other hand, they see that truth-telling has the potential to establish an atmosphere of accountability, to prevent the formation of transgenerational victims, to offset some of the damage done by Uganda's amnesty legislation and, finally, to galvanise national reconciliation.

³⁵ A South African woman testifying on her husband's murderer before the Truth and Reconciliation Commission was asked whether she was able to forgive. She said:

“No Government can forgive, I alone can forgive, and I'm not ready to forgive.” See: Kora Andrieu, *La Justice Transitionnelle – de l'Afrique du Sud au Rwanda*, Folio Essais, 2012, page 403.

"Connected and actively engaged communities are the best insurance against future conflict. However, only when community members can rely on each other, trust each other, will the community be truly strong. There is no place for suspicion." (Nate Haken, Fund for Peace)



Challenge: Institutional Framework

Transitional Justice takes long. Cristian Correa from the ICTJ said: *"In my country, Chile, we had to wait for 23 years to reach a moment of truth and reconciliation."* To credibly implement a truth-telling process, Uganda will need a strong legal framework and institutional reform, including the creation of an independent body which will be able to give Transitional Justice mechanisms, in particular truth-telling, the necessary credibility. A victim-participant from Burundi asked:

"Are you going to use the domestic judicial system? In other African or Latin American countries, the army and the administrative system have been involved in abusing people. Are you going to use the same system to repay victims? You need institutional reform before you can begin all Transitional Justice and truth-telling processes. You can't use the exact same system that violated human rights to help the victims of its violations."

In order for truth-telling to be successful, its participants must feel that the circumstances, including the institutional structure, will jeopardise neither their safety and security nor peace in the country. This is a particularly valid concern in a country where some fear that truth-telling, designed to prevent recurrence of conflict, might itself lead to conflict. Felix Kulayigye, the Chief Political Commissar of the Uganda People's Defence Forces, asked:

"Are we ready to tell the truth?" As a military man, he is afraid that if the truth is revealed "this country might go up in flames again. [...] If we say the truth, you might not like the consequences. [...] Truth-telling is a very hard thing to do."

To a lesser degree, the uncertainty of what truth might lead to is shared by victims as well.

"If I tell the truth, must then person so and so be prosecuted? If I tell the truth, what will happen," asked a victim.

Some people also fear that they might face stigma by their community once they reveal how they have been victimised. This is particularly true for victims of sexual violence.

"I was raped and became pregnant. I came back with a child. I had left kids I had earlier and had to reunite with these kids. The family of my former husband thinks I was in love with the rebels," said a female victim.



Ms. Jane Frances Adongo from Uganda Law Reform Commission at the NWVC

All questions about the institutional structure and purpose of a truth-telling commission, as well as security concerns, demonstrate, as Ms. Jane Frances Adongo of Uganda Law Reform Commission frankly stated, that:

“A country and its people need to be ready for truth-telling. Otherwise, truth-telling might have no or, even worse, a negative effect. To the victims and the affected communities, I want to assure you that the Government is in the final stages of developing the Transitional Justice policy and the Government needs your full participation in and ownership of the Transitional Justice processes.”

While establishing a credible commission might be a challenge, a well-implemented national truth-telling process can prove the good will of the Government in accepting their responsibility for what happened during wars, which builds domestic and international confidence in State structures.

“Reparations are not handouts or alms for the poor, their purpose is not economic development. They are a right of victims of human rights violations! Giving reparations after a truth-telling process contextualises them in the framework of Government’s accountability. Truth-telling creates the link between the victimisation and the remedy,” explained Cristian Correa from the ICTJ, addressing participants at the National War Victims’ Conference.



In addition, a national truth-telling process can pre-empt the politicisation of victimhood and perpetrator-hood. While politicians might be tempted to promote one victims’ community or protect a group of perpetrators at the expense of another, creating competition among and between victims and perpetrators and, possibly, even reviving conflict, truth-telling mitigates the risk by creating country-wide solidarity among victims and uncovering all perpetrators.

“A very important point is the politicisation of the victims’ needs. The problem is that when you want to make justice, all the people who committed crimes need to be brought to justice. But that is not happening today,” pronounced a participant from the Ivory Coast.

Opportunity: Averting Transgenerational Victimhood

During our mobilisation for the NWVC, we have observed that the way in which young people receive information from their elders is quite worrying. The elders, often direct victims of the most gruesome atrocities, had never received an apology or reparations, and continued their post-conflict lives in abject poverty, aggravated by psychical or psychological war-related suffering. Regardless of the veracity of the messages they pass on to the youth, the messages are often accompanied by hate and a declared wish for revenge. The young absorb the emotions along with the stories.

Children and even grandchildren can grow up with a strong feeling of injustice and a wish for revenge. Truth-telling can cut the transmission of trauma from one generation to the next by illuminating how and why atrocities could happen and by serving as a first step towards meaningful reparations.



Youth from Abim District during Conference mobilisation activities

“Truth-telling is not an end in itself. Think about it as an ice-breaker, which has the potential to expose and remedy what is below the surface.

We need to learn about our failures. We, as community chiefs, as courts, as the police, we need to learn about the decisions and mistakes we made so that we can learn what doesn't work and what does to prevent violence. We need to know these things and a process of truth-telling can help us understand each other. We can, for example, hear a member of the military and comprehend the way he thinks,” said Cristian Correa from the ICTJ.

A victim at the NWVC added: “We need a Truth and Reconciliation Commission to promote truth-telling. At the end of the day, we need reparations after the truth-telling exercise.”

Unredressed trauma can turn into victims' mental torment, however, a lack of redress can negatively affect perpetrators as well. The impunity does not lead to their remorse; in fact, it is more likely to create a sense of pride. The perpetrators become proud of their actions and celebrate their dead as martyrs. An immediate result of this is, again, the creation of transgenerational victims.

"We need to stop glorifying perpetrators. Attention needs to be with the victims," noted Mr. Felix Kulayigye.

We agree. By focusing on victims and giving them the stage in a truth-telling process, we can at least hope to promote their catharsis and curb further transfer of hate and revengefulness from one generation to the other.

Opportunity: Bypassing Amnesties

In Uganda, a truth-telling process may be able to solve some grievances created by the amnesty legislation.

First, **the Amnesty Act 2000 has blurred the line between perpetrator and victim.** Many people who were abducted by the rebels, including women and children, had to obtain an amnesty certificate after escaping from the bush.



"We have an issue with blanket amnesties. Right now, everyone who is returning from the bush needs to apply for it. But what if you were abducted against your will? This is a challenge that the current law will need to address. Some girls stood up and said: 'I will not receive an amnesty.' The law must be revised." (Ms. Margaret Ajok, Justice Law and Order Sector, Ministry of Justice and Constitutional Affairs)

The revision will be of great interest to many, including this mother of a LRA victim:

"They said my daughter needed to apply for an amnesty. She had been abducted, enslaved, she had been raped. What does she need an amnesty for?"

A truth-telling process will enable victims to overcome the taint of the amnesty certificate and clear their name.

Second, **the amnesties given in Uganda since 2000 have been blanket amnesties, meaning that their recipients did not need to give any testimony of their actions before receiving it.** While communities often ask victims to explain what happened to them, perpetrators can remain silent. Even though the country has lost leverage to force perpetrators to participate in truth-telling processes, it can still appeal to their goodness and encourage them to share their stories, levelling out this grave imbalance.

"I don't know who is not telling the truth. The perpetrators, they received an amnesty, they are being supported, they are back in formal education. They have graduated and are driving. How about the young women who were forced into the bush? [...] These young women who have been abducted have been interviewed, they were asked to tell the truth of what happened in the bush. 'I killed a friend, I killed a sister, but I didn't want to.' Haven't they done enough for you, isn't that truth telling," asked Susan Acan, insisting that perpetrators need to speak as well.



While some are suggesting that the application of traditional justice mechanisms could also offset some of the damage created by blanket amnesties, truth-telling seems to have some tangible advantages over traditional justice. It enjoys greater support among victims, it contributes to national reconciliation and all victims benefit from the same process which is independent from conservative or liberal outlooks of a victim's community. The latter consideration is especially important in regard to respecting women's and children's rights as many traditional justice mechanisms reflect the highly patriarchal nature of Uganda's society.

Opportunity: Reconciliation

Reconciliation is a long-term process which requires patience on all sides and acceptance of responsibility by direct perpetrators as well as the State, which, at the very least, failed in its Responsibility to Protect. While reconciliation will not immediately follow a truth-telling process, it is not possible without it.

"Victims are prepared, but we have realised that the Government does not want to accept truth-telling. Who are going to be the referees in the truth-telling process? Both, the Government and the victims must accept the process," said a group of victims.

Cristian Correa from the ICTJ appealed to the victims *"to not get discouraged as time passes"* and he used South Africa and Chile as examples of countries where Transitional Justice processes began long ago, yet reconciliation has not been achieved yet. He said that the Draft Policy is *"good news,"* it is a policy that allows us to have hope. *"Not just having hope, but hope that we can do something,"* he said, meaning that it allows victims to participate in processes leading to reconciliation and peace.



Some injuries, like the one above, are irreparable. *“There is no cure for cut-off ears, for a lost youth, for a missing child. No medicine but truth can bring justice.”* (Victor Ochen, AYINET Director)

With all stakeholders gathered on the truth-telling bandwagon, how exactly does the conversation contribute to national reconciliation?

First, **it brings together victims and allows them to speak to each other.** Reconciliation among victims is crucial, especially in a country like Uganda where ignorance about the others’ suffering is high.

“What you need to do is have a dialogue between the victims, so you can form a uniform voice,” said Matthias Wani from South Sudan.

“This is a platform for over 200 victims’ representatives to share their voices and take ownership of a policy that impacts them above all others. Yes, this is the first ever National War Victims’ Conference for Uganda. This is the way for us to move forward together. Thanks to AYINET for bringing victims together as it creates chance for the country to leave conflicts behind for good,” said Honourable Minister of Justice and Constitutional Affairs Kahinda Otafiire in his opening address.

Second, **it brings together perpetrators, victims and those who might be regarded as both perpetrators and victims.** The inclusiveness of the process allows for a comprehensive discovery into why human rights violations happened and empowers all participants to become agents of peace rather than revenge.

“I know it is difficult for the truth to come out, but as a victim I would like to be empowered. We should speak for ourselves and know the truth. [...] Our issues need to be heard so that those who are responsible apologise. Then we can reconcile,” said Victoria from Northern Uganda.

Third, an open forum, especially if it is being covered in the media, creates public awareness and increases support from members of society which were unaffected by and are often ignorant of their fellow citizens' histories.

"The presence of victims, it is so impressive. They have a very, very, powerful voice. They have legitimacy and credibility," said a Kenyan participant about the presence of Ugandan victims' representatives at the NWVC.

A National Truth-Telling Process

Different regions of Uganda were affected by independent conflicts yet very few people have been left completely unaffected by the violence. As one of the overarching objectives of Transitional Justice is **national reconciliation**, the truth-telling process should be carried out on a national level as well.

"We are talking of healing in war-ravaged areas. I beg that another research is carried out in Luweero, Kapeeka, and so on, so that we get a clear picture and can reconcile. [...] I want to appeal to all who are concerned in this Conference to gather information, so that we can compare and see where there was suffering," said a victim participant, commenting on the comparatively more-researched Greater North region.

A national truth-telling process can include within its scope all parts of the country, to demonstrate to all Ugandans that the entire country suffered. The objective is not to compare or measure suffering of different victims, but to recognise all victims as victims, reject favouritism, prevent politicisation, and promote national solidarity with and among the victims.

One method to empower victims is to unite those who experienced similar types of victimisation. For example, communities which have many missing people can connect with each other. Realising that someone else has experienced a similar fate can make it easier for a person to deal with their own situation.

"Nothing is more powerful than talking to someone who has gone through the same experience as you, so you can share. You can share and relate your feelings and experiences." (Stella Ndirangu, ICJ Kenya)



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Victims' needs include truth-telling processes which are sensitive to their regional and cultural traditions.

“We want everyone in the community to know why these things happened to the children. And that those who returned are not the ones who killed those who have not returned.”

In one case, my organisation came and met with clan leaders, we needed the community to understand that it was not the woman’s interest to stay with the rebels... Truth-telling comes in. If someone comes open to her family and says what she really did, for which reasons, the family should be able to understand. It is difficult to stay in a community if you don’t open up.”

The need for local sensitivity, however, does not clash with the importance of having a national truth-telling process. Local truth-telling processes can either be integrated into a larger truth-telling framework or the national truth-telling commission can be attentive to regional sensitivities. As several victims said:

“There must be a good media strategy so that the process will not be obstructed. Also, the process needs to include culture- and region-sensitive elements, so that it can be a success. But it should be a national process.”

Some female victims went further and outlined not only the benefits of a national process, but also the dangers of having smaller, regional truth-telling commissions.

“In my community, women are not respected. If my clan leader leads a truth-telling commission, I will not be allowed to speak openly. If I defy my tradition, if I speak, I will be blamed for what happened to me. If we don’t make this a national process, I don’t see how it could help me,” said a female victim from Moyo.

The Truth Commission

During the NWVC, participants discussed the structure and mandate of a future truth-telling commission. As discussed above, victims agreed that the territorial jurisdiction of the commission should extend over the entire territory of Uganda. This opinion corresponds with the Draft Policy, so the victims are hopeful that the final process will indeed be a *national* one.

Other topics of discussion lacked this across-the-board unanimity.

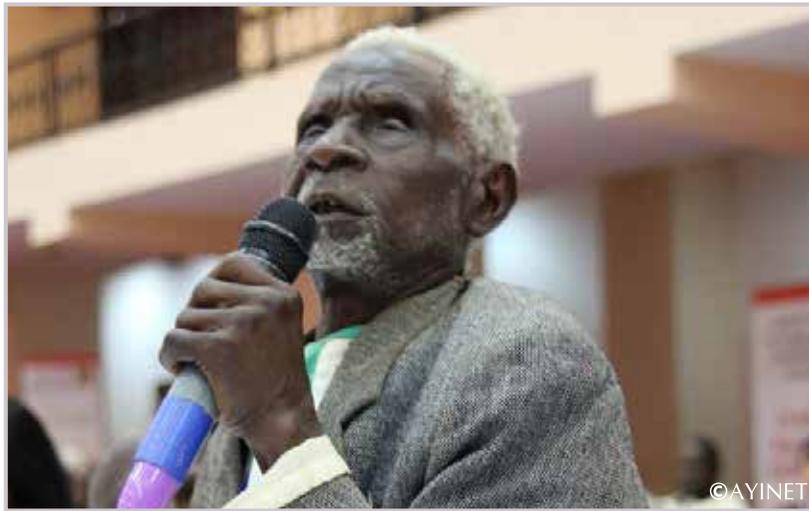
Uganda has a long history of conflict ever since its independence in 1962, however, the Draft Policy plans to limit the commission’s **temporal jurisdiction** and allow it to look only at events which took place after 1986.

The Draft Policy’s justification for the temporal limitation is that there already was a *Commission of Inquiry into Violations of Human Rights*, set up to investigate human rights violations committed between December 1962 and January 1986, and a separate *Commission of Inquiry into the Disappearances of Persons in Uganda between January 1971 and 1974*, which highly implicated State security organs. The report of the latter was never published by Idi Amin’s administration. The report of the earlier was published in 1994, however, it was never implemented. The Draft Policy admits that is not clear whether and how the inquiries contributed to any Transitional Justice objective.³⁶

AYINET understands that a mandate stretching back to 1962 instead of 1986 would require a lot of additional work and financial resources and does not oppose to implement the Draft Policy as it is. It is better if something is done than if nothing is done. However, keeping in mind that the

³⁶ Draft Policy, pages 19, 20 and 30.

NWVC hosted numerous victims from before 1986 and considering that these victims' and their communities' suffering is in no way smaller, we suggest to at least publish the above-mentioned earlier reports and implement their recommendations.



A survivor of the Luweero Triangle Conflict (1980-1986) narrates his painful experience and struggle to cope to fellow victims at the National War Victims' Conference

“War made me blind. I lost five family members including my wife, our property was looted and burned. Our Government should now ensure that we get reparations. We need support. They must also ensure that Uganda will never go through war again. For once, our Government must open their ears and listen to the cry of victims of war,” pleads Sabiti Lubwama.

Participants at the NWVC called for an **independent truth commission whose members should be appointed by the Parliament** rather than by the Government. Apart from the commission being politically independent, it should also be given broad powers to conduct investigations and examinations of victims and perpetrators.

Finally, truth-telling will only be successful when both victims and perpetrators will feel **safe** participating in it. Perpetrators shall be informed clearly about the consequences of their testimonies, while victims need to be assured that their testimonies will not be followed by repercussions or retaliations. Security is paramount! For this reason, the participants at the NWVC appealed to the authorities to expedite the adoption of witness protection legislation. Uganda's wish was echoed by participants from other countries:

“Victims are not telling or expressing their opinion. They are afraid as they are still living among perpetrators. They are not protected and no justice has been done,” said a participant from DRC, commenting on the situation in her country.

“This is a big issue for us. We are not protected enough to say what we have seen in our past,” said a Burundian victim.

“The problem is that victims are not raising their voices, because there is no law that will protect them. One of the most important challenges in a country is the protection of victims and witnesses, because many of the perpetrators are still represented in the Government and in the army,” agreed a participant from the Ivory Coast.



JUSTICE

The term Transitional Justice includes the word *justice* and all post-conflict activities discussed in this report, ranging from medical rehabilitation to reparations, are elements of Transitional Justice.



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“There is Government commitment to bring justice to the victims. National commitment involves all of us. It involves the executive, civil society, religious leaders. We all need to be committed if we are to bring justice to the victims,” said Joan Kagezi, Head of Prosecution of the International Crimes Division, while addressing participants at the National War Victims’ Conference in Kampala.

Justice without a qualifier is, however, understood more narrowly, most usually as the application of formal criminal justice mechanisms to perpetrators of crimes. In times of peace, it is the responsibility of any State to investigate and prosecute *all* crimes that come to its attention. However, a strict and comprehensive application of criminal law in a post-conflict setting might be neither possible nor desirable.

“My sons were abducted when they were ten and twelve. In the LRA, they were forced to kill. I don’t know much about what happened when they were in the bush; they don’t like to talk about those years. It happened to many families in our village. Some boys came back, but not all. Is it right to call our boys criminals? Do you want to put them all into prison? And when you do, are you going to feed their children, are you going to work in our fields?”

In post-conflict settings even Lady Justice will take off its blindfold to consider the circumstances and find a feasible balance between retributive and restorative thinking. The result of her consideration will be a combination of formal criminal trials, traditional rituals and, often, even a system for granting amnesties.

FORMAL JUSTICE

The Draft Policy states, quite boldly, that formal justice is not designed to serve the values of Transitional Justice, namely, reconciliation, restoration, healing.³⁷ While we agree that post-conflict societies differ significantly from societies which have lived in both stability and peace for a long time, we believe that the mere fact that formal justice has not been *designed* to serve the values of Transitional Justice does not mean that it could not actually do so. Thus, even within post-conflict societies there is a role for formal justice to make a significant contribution to reconciliation, restoration and healing. Even various international law instruments explicitly articulate a State’s obligation to carry out independent and impartial investigations and prosecutions against perpetrators of international crimes, no doubt realising that such crimes are often perpetrated on a mass scale the aftermath of which will necessitate some form of Transitional Justice processes as well.

The Draft Policy defines formal justice as criminal prosecutions by national or international organs of the architects and perpetrators of grave human rights violations and abuses.

³⁷ Draft Policy, page 18.

Uganda has had a functioning, if not perfect, justice system ever since the colonial period. Over the years the executive, the legislative and the judiciary branch have attempted to improve the justice system and further changes and improvements are being implemented continuously.³⁸ However, there are still many obstacles to proper administration of justice, as for example, the lack of definitions of key terms like ‘victim’ and ‘reparations;’ the lack of clear rules regarding the participation of victims in criminal proceedings; the lack of rules on the protection of witnesses; the lack of or unclear rules in regard to admissibility of evidence; and the retroactive application of domestic legislation into which international criminal law has been incorporated.³⁹

As AYINET, we would add that there is a lack of procedures aimed at witnesses’ empowerment. It is an area in regard to which we have been in communication with the Prosecution of the ICD and we are looking at opportunities to cooperate, for example, by providing medical (surgical and psychosocial) support to victims which the Prosecution needs to build strong cases against perpetrators of gross violations of human rights. Despite the consuming nature of pain, it is not always easy to talk about it:

“On Wednesday, we saw a missile. We ran away. Three of my sons remained home. They were all shot. You’ve reminded me of the pain. That day was the worst in my life. They told us to come back and I found my boys slaughtered. It is too painful to talk about.”

A particularly vulnerable but crucial group are victims of sexual violence in conflict. Despite the widespread practice of sexual violence in all of the conflicts, which have taken place in Uganda’s post-independence history, there is, at the time of writing, no indictment for conflict-related sexual crimes pending before the ICD.

The Draft Policy includes an explicit suggestion to expedite the adoption of legislation aimed at witnesses’ protection, which will allow witnesses to give testimonies without fear of reproach, and at victims’ participation.⁴⁰ Victims at the NWVC emphasised the pertinent need for security and the ICD explained that it is taking witnesses’ security very seriously even absent a witness protection act.

“There are many problems with the ICD. You told us there is no law on witness protection and yet you are still working. These people, the witnesses, can be killed if they say what they have seen. In my opinion, I would feel that I’m in danger and would not come forward,” a participant said.

Joan Kagezi from the ICD levelled the fear: *“We are not putting our witnesses in danger, there is ad hoc protection. It is in our interest to protect witnesses and our judges are very progressive in this field.”*

The Formal Justice chapter is divided into the following sub-chapters:

³⁸ Draft Policy, page 17.

³⁹ A fundamental principle of criminal law is *nullum crimen, nulla poena sine praevia lege*, which says that there can be no crime and no punishment in the absence of a prior law. When it comes to international crimes, the problem is not due to an uncertainty regarding whether certain acts were prohibited at the time of commission or omission, but rather how to reconcile the international law obligation to prosecute perpetrators of international crimes with the fact that domestic criminal law did not include a prohibition of, say, genocide at the time of perpetration. Since the international criminal trials before the International Military Tribunal at Nuremberg the international community agrees that international law sometimes binds individuals directly, which means that if a clear provision of international customary or treaty law prohibits a certain act as, say, genocide, the principle of *nullum crimen sine lege* is not violated even in the absence of a domestic (or domesticated) prohibition.

⁴⁰ Draft Policy, page 26.

- 'The International Criminal Court and the International Crimes Division' briefly presents the history of the two courts, which both have jurisdiction over war crimes, crimes against humanity and genocide, committed on the territory of Uganda;
- 'Amnesties' discusses, as the title suggests, amnesties within the Ugandan and international context and concludes with statements from participants at the NWVC; and
- 'Trust Fund for Victims,' presents the attempt by the international community to marry formal justice with victims' support.

International Criminal Court and the International Crimes Division

The ICC has been established by the Rome Statute, which entered into effect on 1 July 2002. Uganda became a State Party on 14 June 2002.

One of the avenues through which a situation, usually an armed conflict, comes within the purview of the ICC, is by referral of such a situation by the State Party. Uganda referred the LRA situation to the ICC on 29 January 2004. Subsequent investigations by the Office of the Prosecutor lead to five indictments. The charges against one person, Raska Lukwiya, have been dropped as he was confirmed dead. At the time of writing, three suspects remain at large.⁴¹ Dominic Ongwen has been arrested and is awaiting his confirmation of charges hearing before the ICC.

In July 2008, the ICD was established as a special division of the High Court of Uganda. Although the ICD was established as part of Government's fulfilment of the Juba Agreement on Accountability and Reconciliation, concluded between the Government of Uganda and the LRA, the ICD's competence stretches beyond the war between these two. It has the competence to try alleged perpetrators of war crimes, crimes against humanity, genocide, terrorism, human trafficking, piracy and other international crimes prescribed by law, be they committed by the LRA, another rebel group or anyone else.

In 2010, the International Criminal Court Act 2010 gave full effect to the Rome Statute within Uganda. The late implementation of crimes such as genocide and crimes against humanity into domestic legislation⁴² raised some questions pertaining to the retroactive application of domestic criminal law.⁴³ Apart from the International Criminal Court Act, the ICD uses the 1995 Constitution of the Republic of Uganda, the Geneva Conventions Act of 1964, the Penal Code Act and relevant international law.

41 They are Joseph Kony, Okot Odhiambo and Vincent Otti. It is assumed that only Joseph Kony is still alive.

42 Contrary to genocide and crimes against humanity, war crimes have been largely incorporated into Uganda's criminal law with the Geneva Conventions Act 1964.

43 See footnote no. 39.

Amnesties



"I deeply regret that the current Amnesty Act has not focused on victims. You cannot talk about reconciliation if you do not take into account the needs of victims. I want to see an independent and well-funded body to write a new legislative bill, which would include conditions for amnesties, such as truth telling, provide accountability and protect the rights of victims," said Justice Onega, Chairman of the Amnesty Commission in Uganda.

The Draft Policy identifies amnesties as a component of restorative justice. Apart from amnesty, restorative justice includes mechanisms such as: "acknowledgment and truth telling, reparation, institutional reforms, memorialisation and forgiveness."

Justice Onega confessed: *"The Amnesty Act was meant to last for 6 months and has now lasted for 13 years. When they were advocating for it, it was more of a means to an end, the end being to end the conflict. No one thought about what we are going to do in the long term."*

A Brief Introduction into Amnesty Legislation in Uganda

In response to requests from religious, political and local leaders, especially from the LRA-affected Acholi Sub-region, Uganda adopted the Amnesty Act 2000. Initially meant to expire after six months, the Amnesty Act has been revised two times since and is still in force at the time of writing.⁴⁴ It is due to expire in May 2015.

To date, over 26,000 people have benefited from the amnesty process and about 5,000 people have been reintegrated into their communities.⁴⁵

⁴⁴ February 2015.

⁴⁵ Draft Policy, page 22

Originally, any Ugandan, who engaged in armed rebellion or war against the Government of Uganda at any time since 26 January 1986 was to be immune from prosecution and punishment for any crime committed in the course of such a rebellion or war. In order to receive an amnesty under Part II of the Amnesty Act, it was originally demanded only that the combatant reports to an appropriate military or civil authority and renounces and abandons any "involvement in the war or armed rebellion." In 2000 there were no qualifications (or limitations) as to which combatants were entitled to amnesty (and which not).⁴⁶

The Amnesty Act has been amended twice, once in 2002 and once in 2006. The 2002 Amendment said that you could only receive an amnesty once. If you had received an amnesty and returned to war, amnesty could not be given again, unless the rebel proved exceptional circumstances, such as duress, coercion or undue influence. The 2006 Amendment said that a person "*shall not be eligible for grant of amnesty if he or she is declared not eligible by the Minister of Internal Affairs.*" While an arrangement by which the executive branch discretionarily decides who the country's courts have jurisdiction over is not ideal, the 2006 Amendment was a first step to bring Uganda's amnesty legislation in line with the nascent rule of customary international law, which says that amnesty cannot be granted to perpetrators of international crimes. The verbal change of attitude was followed by a referral of the LRA-war to the ICC in 2004 and the establishment of the ICD in 2008.

Justice Peter Onega, speaking at the NWVC, commented on this change of attitude by remembering the legislative changes in context:

"We tried to persuade those in rebellion [to come back]. We tried to militarily crush those who refused to come back. However, after seeing that amnesty did not put the war to an end, because rebels thought they were still able to win it, the Government began to take victims' needs into consideration."

Commenting on the Amnesty Act today, he added:

"The Act allows for promotion of reconciliation in war-affected areas. The reintegration process needs a reconciliation process to precede it. We can't talk of reconciliation if victims' needs aren't addressed."

The current Amnesty Act expires in May 2015. However, further amnesties are likely to be granted under a new act or under a thoroughly amended Amnesty Act. The Draft Policy clearly states that amnesties can no longer be considered in isolation and based on its practical objectives only, as was the case in 2000, when the Government tried to stop the war against the LRA and to motivate rebels to sit with it behind the negotiating table.⁴⁷ The Draft Policy says: "*Amnesty needs to be contextualised in light of Transitional justice and should be considered as an accountability tool to promote justice, peace and reconciliation.*" Only well-designed conditional amnesties can fulfil all three objectives. "***There shall be no blanket amnesty anymore.***⁴⁸

46 An amnesty certificate is accompanied by modest livelihood support for the returned rebel.

47 Rephrased comments from Justice Peter Onega, made during the NWVC.

48 Draft Policy, page 4.

International Law Perspective

Several countries have made an experience with amnesty. Viewing amnesties from a comparative perspective, it becomes clear that their purposes are essentially two. When Governments offer amnesties to rebels, in order for the latter to renounce their rebellion, the objective is to enable a transition to peace. When Governments offer amnesties to State agents of the former regime, the objective is to consolidate a peaceful transition from an oppressive to a democratic regime. Justice Peter Onega said: *“amnesties can encourage combatants to disarm and come back and authoritarian powers to step down.”*

Not pursuing the noble ideal of justice, amnesties serve practical objectives, i.e. an end to violence. Often they are adopted with short-term results in sight. Justice Peter Onega, commenting on the Amnesty Act 2000, said:

“No one thought about what we are going to do in the long term.”

While sometimes successful in their objectives, amnesties have become a controversial element of post-conflict and post-oppression societies. International law, despite lacking a definite authority on the subject, is not prohibiting all amnesties. Justice Peter Onega said that in his opinion *“international law does not prohibit domestic and international courts to grant limited amnesties to those who are considered “less responsible” for the commission of war crimes.”* However, he added, such amnesties must be associated with measures which facilitate a lasting peace. **Blanket amnesties** do not meet these criteria. A future discussion on what measures would facilitate peace and reconciliation can be based on Cristian Correa’s question at the NWVC:

“How do we account for justice, when the perpetrators are still walking in the communities where the victims are?”⁴⁹

A parallel and positive development has been the growing agreement that there should be **no amnesties for perpetrators of sexual crimes**. The UN Security Council adopted a resolution in 2008 stressing “the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes.”⁵⁰ Speaking at the *Global Summit to End Sexual Violence in Conflict*, US Secretary of State said that the US will not support any agreement between parties of conflict which gives amnesty to perpetrators of sexual violence. The prohibition to give amnesties for sexual crimes in conflict might be yet another rule of nascent rule of customary international law.⁵¹

Amnesty Debate

Justice Peter Onega’s presentation at the NWVC was followed by many questions and a lively debate, demonstrating that this is a sensitive topic. Most participants opposed the current amnesty legislation, even though isolated voices remarked that an amnesty gave them back their lives. A man from Kasese shared his story:

49 The Draft Policy suggests that the conditions for amnesties should be spelled out in a Transitional Justice Act. It offers only one suggestion for a condition, namely, making amnesties subject to a truth-telling process.

50 UN Security Council Resolution 1820, S/RES/1820 (2008).

51 A rule has the quality of customary law when two elements are fulfilled: (1) practice and (2) *opinio iuris*. In the case at hand, the first element will be fulfilled when countries will no longer include amnesties in cease-fire and peace agreements or will, at least, face stark international criticism when doing so. The second element will be fulfilled when the countries will no longer conclude such agreements (or condemn their conclusion), believing that it is their *legal* obligation under international law to do so.

"I want to thank the President of Uganda for putting in place the amnesty as it helps people. I am one of the abductees of the ADF, I've spent 3 years in the bush. Then one day God helped me to go and look for food. When I went, I reached a place where there was cassava. God made a miracle that day. In that plantation, I came across a paper which said 'that everyone who was in the bush and had been abducted can come back to the country,' Uganda had put some provision to forgive us and reconcile us with the community. I picked up the paper, I hid it in my trousers and continued on my way as instructed. Then we reached Kiyembe, near the border of DRC. We stepped into the river and I disappeared from the team I was walking with. I went to a place called Ataco and found the Chairman LCI and reported myself. He took me to the LCII, I went through a process and I was reintegrated with my family and was eventually asked to join the UPDF. I was recruited into the reserve forces."

Amnesties might serve positive practical objectives, however, a lack of accountability has the potential to backfire. A man from Abim said that his community was affected by many consecutive wars and he thinks that the perpetrators' **lack of accountability is responsible for their repeated victimisation:**

"We have suffered for long. War started way back in 1957. In 1958, the warriors started taking away the cattle. In 1966, there was an attack in which people were displaced. The most painful one was during the reign of Obote 2. The militias attacked, houses were burned, and people were killed. In 1998, the LRA war came. My request to the Government concerns the fact that the war victims seem to not be able to reach people who can attend to them. They are lagging behind. There has been no follow-up until now. Due to lack of accountability, the most painful thing now is the land conflict that has followed."

A female participant added:

"We all know that the Amnesty Act is denying victims' rights. Because of it, they cannot seek justice in the courts today. It was said that the amnesty was a necessary tool, however, amnesty was supposed to come to an end; that has not yet happened. You [the Amnesty Commission] acknowledge that you were aware of the challenges, however, it is the first time we hear that you were in fact aware of this."

In future, if Transitional Justice truly wants to be victim-responsive, victims' considerations will need to inform any future amnesty legislation design. Justice Peter Onega echoed this opinion by saying:

"Future amendments must be carefully designed. We are aware of the needs of our country, of our international obligations that we have and of the treaties that we have signed. [...] Amnesty has to be combined with selective and legitimate prosecution. [...] [In the new legislation], victims and their communities will need to be specifically provided for."

One major problem, outlined by the participants, was that **current amnesty legislation only pays consideration to the perpetrators**. A male participant from Moyo said:

“In West Nile there was a lot of disunity when we gave perpetrators pangas, hoes, money. The victims have seen this, thinking: ‘These are the perpetrators, they are the ones who caused us harm.’ This meant that other people said that ‘it is better if I go to the bush, so I can return, be given an amnesty and also some items.’”

A female victim wondered:

“How is it possible that some of the perpetrators are now being paid a salary, when the girls they abducted are going without anything? The amnesty was made in a way so that a large number of people from the bush could come back, but now there are big challenges of psychosocial support and livelihood.”

Justice Peter Onega responded: *“We put amnesties in place so that people would come back. [...] They return without anything and people in communities might not accept them. If thousands of such people were thrown into the community, that would have made matters worse, they could have become a very big disturbance to community. Resettlement means to help someone to start a new life. [...]*

The poverty encountered upon return can motivate people to return to the bush. Many feel helpless as they are unable to secure a legitimate source of income. A modest livelihood package, which comes along with amnesty certificates, can mitigate such risk.”

In addition to the existing pro-perpetrator bias, participants also voiced concerns about the potential **pro-Government bias of any future amnesty legislation**. A victim from Gulu asked:

“How are you going to ensure independence of an amendment of the amnesty legislation, when the Government itself is a suspect?”

Justice Peter Onega replied: *“I developed a relationship with the rebel groups, as well as maintained a relationship with my Government. This means that the Amnesty Commission is a neutral and independent body and can go hand in hand with Transitional Justice mechanisms and comply with Uganda’s national and international obligations. The Parliament should be in a position to make an amendment of the law even if the State is to be prosecuted. The Government should be the first to obey the law, the first to bring accountability.”*

One of the big challenges raised by victims during the Conference were the **special needs of women and children**.

“The rebels were using me at night, I was raped, became pregnant, one of the rebels married me and I came back with a child. I had children before I was abducted and had to unite these children; the family of the former husband thinks I was in love with the rebels. There are so many women like me that were left behind,” a female victim said and asked for future amendments to take into account women like her.

In Uganda, many people joined the rebels, while many others were simply abducted. The Amnesty Act provides for across-the-board amnesties for any person who returned from the bush, even those that never took up arms and committed a crime.

“I think what has been disturbing my mind so much will be addressed today. Why

should there be a blanket amnesty for someone who was abducted, when we well know that it was the responsibility of the State to protect them... yet, we are the ones to ask for an amnesty. I don't know why to seek apologies," a formerly abducted female victim said.

Susan Akullo from Northern Uganda asked what happens to **returnees who refuse to sign amnesty certificates** as they are not perpetrators:



"I was abducted from my school and spent five years in the bush. I have a question: the female abductees who came back home and did not sign the amnesty certificates, what are you going to do with those girls," asked Susan Akullo from Northern Uganda.

Justice Peter Onega replied: *"As a starting point, an abducted person is considered innocent, particularly when he or she is a child. When an abducted person took part in criminal actions, the question becomes whether that was done as result of brainwash or coercion, or if these people were aware that they were doing something wrong. If prosecution was to happen, the former persons [who did not engage in criminal activity or did so as the result of any illegitimate influence] would be protected."*

Hellen Acham from the Northern Uganda Transitional Justice Working Group authoritatively concluded the debate by saying:

"The current state of amnesty is obsolete. It doesn't cater for victims' needs at all. It came in place based on a dire need of families whose children were in captivity to have their children back. It should be amended to conform to international standards."

TRADITIONAL JUSTICE

The Draft Policy defines traditional justice as “localised approaches by communities to attain justice and reconciliation.”⁵²

The Draft Policy observes that in post-conflict environments formal justice systems are often inoperative or inaccessible, the latter a consequence of both general circumstances as well as the poverty of post-conflict communities and its people. It then states that in such conditions traditional justice plays an invaluable function in dispute resolution.⁵³

Accepting this reasoning pertaining to post-conflict societies we believe that traditional justice should, if at all, play a subsidiary, not a complementary, role to formal justice.⁵⁴ We believe that traditional justice, despite benefits, is best understood as a means of last resort.

Writing under the assumption that a clear need for the application of traditional justice mechanisms has been established, AYINET agrees with the Draft Policy’s suggestion to the legislator that traditional justice mechanisms need to be given formal recognition and be systematically implemented into criminal, land and other legislation.

Traditional justice mechanisms (TJMs) are to-date still widely applied in Uganda and often enjoy greater respect than formal law in many communities, among other reasons, because of the advantages associated with it such as speed, accessibility and cost effectiveness. However, the application of traditional justice mechanisms also presents considerable challenges and should thus be considered with great care. Two major aspects to be taken into account are the gender aspect and the non-critical belief of some that traditional justice mechanisms are unobjectionably accepted across the board.

Traditional Justice and Gender

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) obliges States Parties to discourage all practices which discriminate against women, including practices embedded into the culture fabric of traditional societies.

Traditional justice mechanisms, however, largely mirror the patriarchal structure of Uganda’s communities and thus provide little if any room for women as decision makers or dispute resolution process facilitators. While the Draft Policy recognises the discriminatory nature of traditional justice mechanisms, it does not explain how this should be considered when incorporating traditional justice into the larger framework of post-conflict justice administration. It just habitually states that the Government is committed to mainstream gender considerations into all components of Transitional Justice, including the “*full involvement and participation of women and children in decision making and conflict prevention and resolution.*”

AYINET believes that most if not all traditional justice mechanisms would need to be altered to ensure full respect for the rights of women and children, and generally respect everyone’s human rights, and that the non-discriminatory administration of traditional justice would have to be continuously monitored by the State.

52 The Draft Policy is inspired, in part, by the Juba Agreement on Accountability and Reconciliation of 2007, in which the future application of four forms of traditional justice was envisaged: *Ailuc*, performed by the Iteso, *Kayo Cuk*, performed by the Langi, *Mato Oput*, performed by the Acholi and *Tony Ci Koka*, performed by the Madi. The agreement also mentions *Culo Kwor* which refers to compensation to atone for homicide and is practised in Lango and Acholi.

53 Draft Policy, page 18.

54 The Draft Policy speaks of complementarity.

In the absence of such changes and supervision, we believe that it is not responsible to further promote traditional justice. AYINET recognises that traditional institutions and structures have bridged the justice gap in relation to selected community issues such as land justice or communal and family conflicts and that they have, in the case of Northern Uganda, contributed to the process of reintegration and reconciliation between the formerly abducted persons and their communities. However, we have also seen that, as they have done all of the above, they have continued to mirror a patriarchal society and excluded women and children from the processes. In the long term, a mechanism which side-lines half of the population cannot ensure peace and justice for all.



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JUSTICE

"I suffered in the hands of the LRA for reasons that remain unknown. For long, I have heard some mutter about traditional justice. Implying that my suffering will be addressed by traditional justice mechanisms is nothing but an insult that can only be uttered by people who have never experienced this pain or are simply indifferent to my suffering. As I struggle with my pain day-to-day, I hope that one day those rebels who cut my lips, my ears and who killed my husband, will face me and tell me what I did to deserve their cruelty. The LRA did not have mercy on me when I cried the loudest in my life, imploring them to spare me. Now, who has the courage to ask me to forgive them? Justice is justice, there is no alternative to justice," said Sophia Apio, a victim of LRA atrocities.



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RECONCILIATION

"We want reconciliation, we all want to live in peace as one country. Timo-kica! Etimonoros! Tuturahamwe! Tusonyuwaganye!"

The Draft Policy defines reconciliation as *"the process that yields restoration of broken relationships through acknowledgment, repentance and forgiveness by parties to a conflict."* Looking at Uganda, there were many parties to the conflict and reconciliation needs to encompass all of them.

"Victims, reconcile with others of Uganda, with the Government and with perpetrators," said Thomas from Gulu.

Looking at post-apartheid South Africa or post-genocide Rwanda, one cannot ignore the endless human ability to forgive. Ugandans carry within them this same ability. A victim who once attended a community event at which one of Idi Amin's sons was present recalled:

"There was one of Idi Amin's sons, he had to take responsibility. People apologised and forgave."

Reconciliation is by no means simple. Looking around the continent and the world we see that it can face many challenges and, almost as a rule, takes long.

"In my country we had to wait 23 years before we reached a moment of truth and reconciliation. [...] This is not good news, but try not to get discouraged as time passes," said Cristian Correa from ICTJ.

While individuals will or will not, can or cannot forgive, the reconciliation between communities demands a genuine transformation of society as a whole.⁵⁵ The Constitution of Uganda tasks the people of Uganda as well as the State with the obligation to promote national unity, peace and stability.



"Reconciliation needs to be at different levels: at the individual, community and national level. It has to take the shape of a national process," pointed out Christ Ongom from UVF.

VICTIMS' VIEWS ON RECONCILIATION

Victor Ochen, who delivered the opening address on behalf of AYINET, stressed that national reconciliation can only be achieved through **acknowledgement and knowledge**.

"Remind your communities of violations which you or your fellows have experienced and remind them that violations need to be acknowledged before forgiveness and reconciliation will be possible. Demand accountability as only a truthful narrative of history will allow you to not repeat it. Use the aftermath of the Conference to demand that your human rights are respected, as well as the rights of every other victim and of every other fellow countryman. As division breeds conflict, understanding and unity breed peace and prosperity."

⁵⁵ Draft Policy, page 3.

He also stressed the importance of **victims' unity** and urged victims to support each other as a means of achieving national reconciliation.

"It is not only in our interest that we are here, but also in the interest of every single individual who has remained behind in the community and who shares the values of this Conference. The participants of this Conference today come from different regions; you speak different languages and maybe you practice different customs. But something that we have in common among all of us is the experience of conflict. This means that beyond our differences, we are one community. We are representing a community larger than just us. The community which we are representing here has suffered from war; we have all experienced the bitter taste of conflict. Today we are convening here to learn, plan and rebuild our lives together."

Victims from across Uganda recognised that their suffering compares to suffering in other parts of the country. A participant from Luweero admitted:

"The atrocities of the North match those of Luweero."



During a community dialogue in preparation for the National War Victims' Conference, war victims and survivors from Mukura in Teso stressed the urgent need for truth and reconciliation in Uganda

"In Teso, the victims are very committed to reconciliation. [...] We are ready, we are all sensitised. We have written letters to the press, the ministers, but no answers. Most of these politicians run around looking for votes, yet the need is to reconcile," said a victim from Teso.

Participants echoed the need and, equally important, their **readiness for apologies and reconciliation**.

"Ugandans, I'm a cultural leader in West Nile, please forgive the people of West Nile the actions that we knew were committed during the atrocities in 1979! Forgive us and let us come back as Ugandans."

"Reconciliation should be at the top of our list. Margaret Ajok has talked of restoration of justice for victims, of acknowledgment, of truth telling. The Government should continue in this way because it is the only way that will create harmony and peace in the country. [...] I am also committed to reconciliation so that sustainability continues to be fostered in this country," said Eric from Mbarara.



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“The success of the reconciliation process will be determined by how we address victims’ needs and priorities. If we force victims to forgive and let the people who made them suffer walk free, we will not progress. Above all, the current state of amnesty is obsolete. It doesn’t cater for victims’ needs at all.” (Ms. Hellen Acham, Chairperson of Northern Uganda Transitional Justice Working Group)



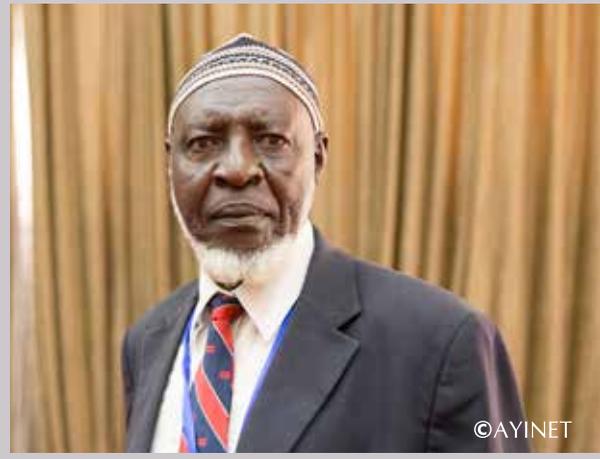
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“For the first time, war victims are brought together and given a platform to voice their concerns. Victims need to be enabled to speak for themselves so that their needs and views are not misrepresented.” (Victoria Nyanjura, a former Aboke Girl, abducted by the LRA and kept in captivity for eight years)



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“The National War Victims’ Conference has brought together victims from across Uganda and other African countries. This means that none of us is alone. We must reconcile and heal together as a country and as a continent.” (Nbyomugenyi Portal, survivor of the Uganda Technical College Massacre in Kichwamba)



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“Uganda’s reconciliation will not come from the North, not from West, East or South, the reconciliation will come from all Ugandans, those at home and those living abroad. All we need is to open up the process, just like AYINET has started by reaching out to all corners and engaging all people. We are today talking to each other in a forum that has never before happened in the history of Uganda. It is a huge step forward.” (Mzee Ssebi Longa from West Nile, Chairperson of Moyo War Victims Association)

During our mobilisation, a victim from Luweero admitted: “We love the message of reconciliation that you’ve come with. If there is to be reconciliation, we will easily forgive each other as Ugandans, but politicians keep us divided.”



“For long we, the victims and survivors from Luweero and central Uganda, wanted to reconcile with our brothers and sisters from Northern Uganda, but politicians have always denied us the opportunity. They have used our differences for their political gains. An initiative like the one AYINET has started, an initiative that brings together victims from all over the country, provides the best opportunity for us to reconcile among ourselves, as victims. We need to heal the wounds of the past that keep dividing us,” emphasised victims from Luweero during our community mobilisation for the NWVC.

While everyone agreed on the need to reconcile, some also pointed out challenges and obstacles that need to be addressed. Professor Sarkin said that any reconciliation efforts are only able to bear fruit if **human rights violations of the past are unequivocally recognised**:

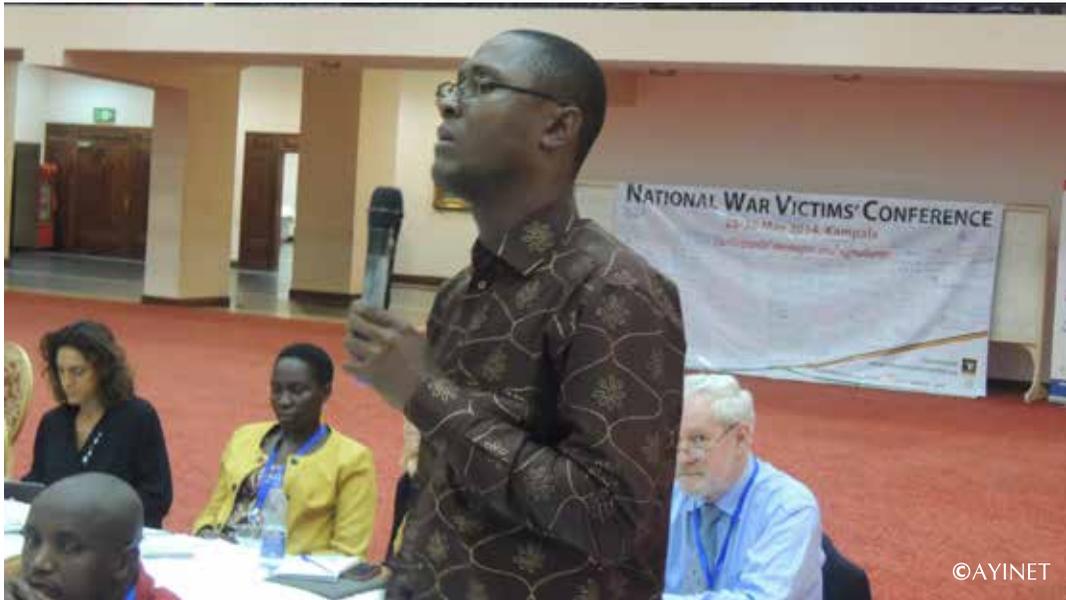
“Peace is very fragile. And fragile things break easily. Not dealing with human rights violations will ruin any chance of reconciliation. To achieve reconciliation, it is critical to develop a long-term strategy, built on human rights and other important legal norms. This is a framework that Uganda legally needs to comply with.”

Victims echoed this view. As reconciliation is tightly intertwined into the web of Transitional Justice, it will undoubtedly fail if the rest of the web is ignored.

“What about the ICC, can it motivate the ADF or Kony to release our children? If we involve an international peace body, can it offer a solution to the missing persons? If we develop an international pressure group, will it help? We are talking about reparations, healing, reconciliation. But first things need to come first. I know we have a reparations policy that is on-going, but I don’t know whether it captures the interest of people who are missing. If we don’t get answers, how will we reconcile, how will we move on? Our minds should be put to rest and then we can begin the process of reconciliation,” wondered Fatuma Nora.

Professor Sarkin’s and Fatuma Nora’s comments were supplemented by perspectives from the Ivory Coast. The participant took a step further back and demonstrated that even before the truth is recognised, **victims need to feel secure to speak**.

“It has been three years since a ‘truth, dialogue and reconciliation commission’ was established. But by now, victims have lost hope. A very important point is the politicisation of the victims’ needs. The problem is that when you want to make justice, all the people who committed crimes need to be brought to justice. But today that is not happening. Some were part of the rebellion and are now in power. The problem is that victims are not raising their voices, because there is no law that will protect them,” added Eric from the Ivory Coast.



A participant from the Ivory Coast at the NWVC

Justice Peter Onega pointed out that reconciliation will not be possible until **victims’ needs are recognised and catered for** as well:

“We can’t talk of reconciliation if the victims’ needs aren’t addressed. [...] A fund should be created to make reparations to people who were affected... then reconciliation can easily be promoted.”

With his opinions, Justice Peter Onega echoed the perspectives of AYINET. Our work, in particular work aimed at physical rehabilitation, is aimed to facilitate reconciliation, for how can you reconcile if your body is still aching, if the injuries have not been treated, if there are bullets retained in your arms and legs? How can you even ask someone who is still living in debilitating pain to forgive and move on?

While reconciliation is the final aim, we must not forget that reaching it is a complex process and that many efforts, including reparations, truth-telling, guarantees of non-repetition, and others, will need to be implemented for the desired results to be achieved.

RECONCILIATION OF THE GENDERS

As is sadly true for most wars today, the conflicts in Uganda have not spared the civilian population and have, additionally, caused disproportionate harm and suffering to women and children. Among the factors for the immense suffering of women and children is that they are weaker than men and that tradition in Uganda sees their role as subordinate, if not inferior, to that of men.

The Constitution of Uganda recognises the role of women in society and Article 33 specifically emphasises the rights of women and prohibits laws, cultures, customs or traditions, which are against the dignity, welfare or interest of women or which undermine their status. In line with this constitutional framework, the Draft Policy reaffirms the role of women in post-conflict development and suggests mainstreaming gender considerations into all Transitional Justice processes. This corresponds to growing international awareness that women can contribute significantly to peacebuilding processes and that their full participation therein must therefore be assured, and that effective steps to (prevent and) respond to acts of sexual violence are central to maintaining international peace and security.

“From this National War Victims’ Conference, we can all hear the victims’ appeal loud and clear: they are pleading for reparations. Some victims are saying that they will not accept money as payment for the blood of their sons and daughters. This means that reparations reach beyond just monetary compensation. The victims need urgent medical care, education and improved livelihood opportunities. Together we should focus on a victim-centred approach to reparations and ensure their gender sensitivity. Engaging civil society organisations that enjoy the trust of the victims will open the door to families’ healing and communities’ reconciliation. Above all, genuine victims’ needs and priorities will be addressed.” (Teddy Atim, Feinstein International Center)



We hope that the future Transitional Justice Act will include such a provision, recognising the role of women, and further, that it will include a provision stipulating measures promoting the “physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse, torture, or any other form of cruel, inhuman or degrading treatment or punishment, or armed conflict,” in accordance with Article 39 of the Convention on the Rights of the Child and, also, Article 34 of the Constitution of Uganda, which requires special protection for orphans and other vulnerable children.

“Abductions and killing left us with many orphans. The Government should open vocational schools for those children to study so that they can start a new life and overcome their parents’ absence.”

Gender-Based Perspectives on Post-Conflict Recovery

Susan Acan from Empowering Hands made a presentation on the topic of “Gender-based perspectives on post-conflict recovery and Transitional Justice.”

Susan Acan pointed out that despite the horrific victimisation many women have experienced, they are not necessarily welcomed back into the community with open arms. Many people suspect that formerly abducted women have either joined or stayed with the rebels voluntarily, adding insult to injury. They caution their sons against marrying such women, asking:

“Why do you want to marry someone from the bush?”

Susan emphasised that *“communities need to understand that they [the women] did not go into the bush voluntarily.”* Only an increased awareness will help communities accept the women and their children, many of them born in captivity. That such acceptance is crucial for women’s recovery is not disputed. Mugisha John Chris Anywar from Gulu said: *“We have to accept all of them.”*

Continuing on the topic of collective measures dealing with post-abduction, Susan Acan opined that there need to be schools for abducted children or children born in captivity, which can cater for their specific needs. Mugisha remarked that there is such a boarding school for children, traumatised by the LRA War, in Gulu.⁵⁶ Some say that more schools like that are needed, while others believe that specialised schools increase stigmatisation of formerly abducted children and caution against it. The latter cite the Rachelle Rehabilitation Centre, a school in Lira, which initially only accepted formerly abducted children. The school transitioned to accepting everyone, regardless of their personal histories, lifting the “stigma of the bush” from its students. Despite the different approaches in supporting formerly abducted children, all participants agreed that there need to be pro-active measures to support the education of children who have been either abducted to or have been born in the bush. Everyone likewise agreed that children, who have returned from the bush, have specific needs, which need to be catered for, regardless of the kind of school they are attending.

Susan emphasised that apart from community acceptance of formerly abducted women and mothers and apart from State encouragement of children’s education, women, who have been forced to become wives, who have been raped, often by many men, and forcefully impregnated, need reparations, addressed specifically at them. They need medical and psychological support (eg. fistula repair, counselling), livelihood support, legal aid⁵⁷ and encouragement and support to continue or finish their education.

“Some have hands, mouth or breasts which have been cut off. There should be a specific programme for them. There should also be legal representation free of charge for women who have returned, they have a legal right to get support from former husbands.”

56 See, for example: UGANDA: *Belgium to build school for traumatised children in the north*, 7 July 2004, <http://www.irinnews.org/report/50527/uganda-belgium-to-build-school-for-traumatised-children-in-the-north> <12 June 2014>.

57 Many women who have returned from the bush have been left by their former husbands, however, legally they are entitled to receive alimonies from them. Susan Acan said that women need to be given free legal representation to enable them to enforce the payment of alimony, if need be, through a court of law.

Susan warned that women need to be empowered to participate in formal education and that vocational training for every woman in Northern Uganda is not enough.

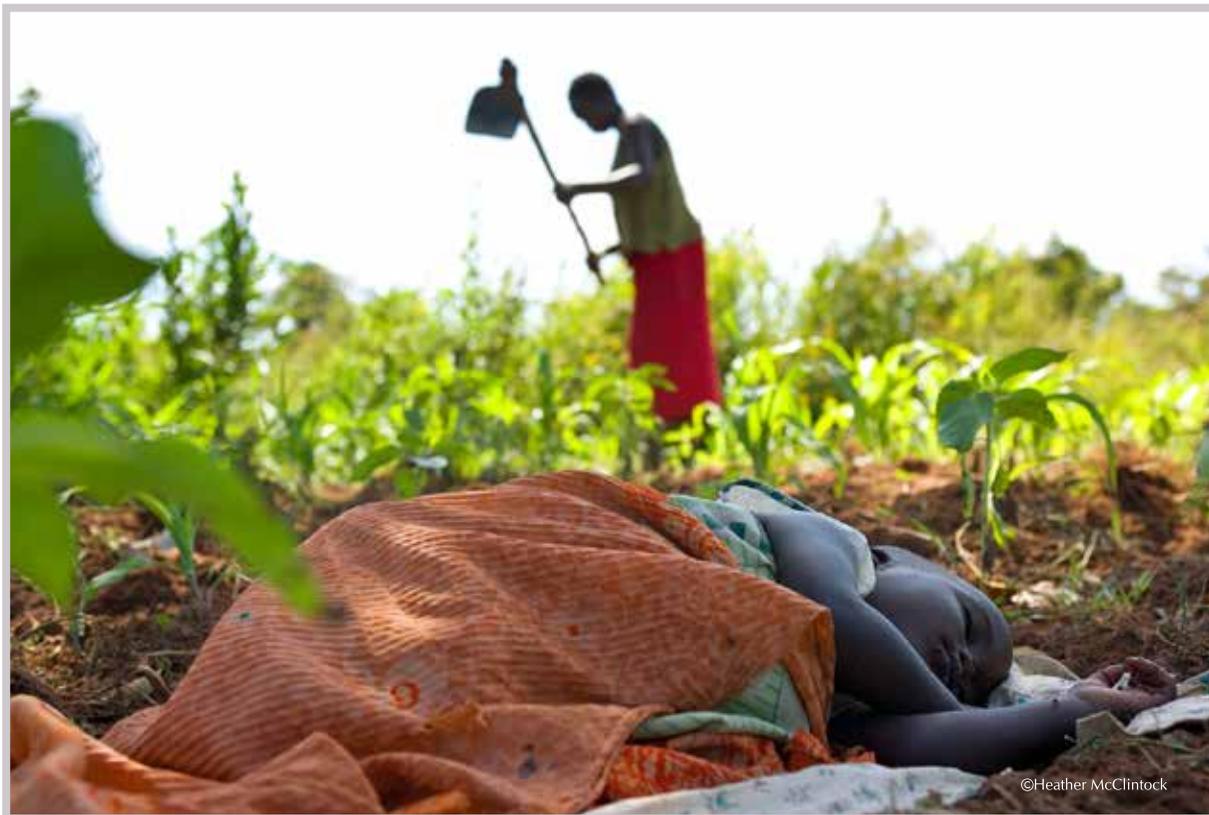
“The Government needs to support education for women who have returned. There should be an allowance that would facilitate women to pursue formal education. If everyone trains to become a tailor, who are we going to sell our clothes to?”

Throughout her presentation Susan Acan stressed the need for the gender-aspect to be more holistically integrated into the National Policy on Transitional Justice. She also said that women need to be empowered to speak out as no-one but they will represent their interests.

“Women, we should talk about our feelings, we need to speak out. We know what is good for us and we can do everything a man can do. Yet, we know that if there is no secure environment, women cannot participate. And without our participation, our concerns will be left unaddressed. Our Government, we need a safe environment to talk.”



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“Gender” cannot be just another issue of Transitional Justice. If the Government is serious about gender, gender-related questions need to be genuinely integrated into all Transitional Justice processes. (Susan Acan, Empowering Hands)



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VICTIMS' APPEALS

During the National War Victims' Conference, the victims articulated several priorities on which Transitional Justice should focus. The following appeals, categorised in 10 topics, summarise and crystallise these priorities. Even though the implementation of some appeals, in particular those related to health, is, in our opinion, comparatively more urgent, the topics are not arranged in any hierarchical order, as we believe that it would be most beneficial if all measures were implemented simultaneously. This would allow the measures to reinforce each other's positive effects. Victims are addressing their appeals to the Government and at development partners, and are curiously anticipating the outcomes of the upcoming National Policy on Transitional Justice.

HEALTH

Thousands of victims of grave human rights violations in Uganda need immediate medical assistance. They suffered from torture, gender-based violence, were shot or gravely injured and they remain living with untreated wounds and illnesses. They are unproductive while their families' resources are being further depleted to cater for their medical bills. Without physical and psychological healing, recovery and reconciliation are not possible.

- **Victims appeal to the Government and development partners to make medical support of victims their priority by, for example, allocating resources towards AYINET's plan to provide, in collaboration with technical units at the Ministry of Health and other development partners, surgeries to 20,000 victims of war before the end of 2016.**

Apart from physical injuries, many female and male victims of sexual violence, who have been stripped of their dignity, are suffering from psychological trauma.

AYINET's experience working in this area has shown that even years after the experience, SGBV prevents victims from leading a fulfilling life. Special attention needs to be given to formerly abducted mothers and their children, whose fathers are rebels, and who are often marginalised from community life.

- **Victims appeal to the Government and other development partners to support specialised SGBV-related programmes, aimed at the psychological recovery of direct and indirect victims.**

Although many victims did not suffer physical or SBVG-related violence, the impacts of violent experience of conflict have resulted in deep psychological trauma. Countless persons have had horrific experiences, which today manifest themselves in alienation, numbness, hopelessness and a general lack of trust, violent personalities, alcohol abuse or domestic violence, to name but a few. These consequences harm the individual and, additionally, put the peaceful existence of entire communities and our nation at risk.

- **Victims appeal to the Government and other development partners to support counselling programmes aimed at psychosocial healing of all war victims and post-conflict communities.**

MISSING PERSONS

Tens of thousands of people are still missing as a result of war. Their families know neither where they are nor whether they are dead or alive. Apart from suffering from an uncertainty as to the

fate of the missing, many surviving relatives are, additionally, blamed by and marginalised from their communities, who believe that their missing persons are brutal rebels. Others, suspecting their next of kin are dead, are haunted by their inability to give them a proper burial. Suffering of this kind is aggravated by a lack of hope, stemming from a lack of programmes addressing this problem.

- **Victims appeal to the Government and development partners to set up a comprehensive national database of missing Ugandans and their families and to collaborate with organisations, who already work with post-conflict communities, in order to provide immediate psychological support for these families.**
- **Victims appeal to the Government to continue looking for missing persons and to pursue other avenues that could bring back those that are still alive.**

Many communities, which have missing people, also know that there are mass graves in their surroundings, not knowing who is buried there.

- **Victims appeal to the Government to visit and map out communities, which report having mass graves in their vicinity, and, with the financial and technical support of development partners, to excavate those graves and conduct forensic examinations of human remains to establish the identity of the deceased.**

NATIONAL UNITY AND RECONCILIATION

Victims acknowledged that all Ugandans have suffered from different wars and that they need to unite in solidarity. Only by forming a uniform victims' identity will we be able to diminish blame and reconcile as a country. The Conference inspired victims to create victims' and survivors' support groups in their local, district and regional communities, they inquired about ways to use their knowledge and energy to help others, as well as about the feasibility of country-wide victims' collaboration.

- **Victims appeal to the Government and development partners to support AYINET's Conference follow-up initiatives of creating a victims' network and facilitating nationwide victims' exchange programmes. Victims further appeal to the Government and development partners to support victims-driven grassroots initiatives aimed at intra- and inter-community and intra- and inter-tribe reconciliation, such as discussion groups, joint prayers, recreational activities or sport events.**

Many victims have voiced that they continue to suffer due to political struggles and disagreements based on ethnic, regional or historical differences. Citing past experiences, they have also expressed the fear that the next election might lead to violence. The fear has been summarised with these words: "Without reconciliation, no-one will be able to manage Uganda."

- **Victims appeal to the President to take lead in promoting political reform based on political reconciliation before the next election in 2016 and to promote an environment which enables peaceful political processes and transitions. In particular, victims appeal to the President to encourage a public commitment by all political parties to refrain from any violence before, during or after the 2016 elections, regardless of the results, and to sign a joint declaration to this effect.**

MEMORY

Remembrance and memorialisation are important to victims' healing and coming to terms with their past. They are also an important reminder of atrocities and struggles of the past and a powerful warning to not repeat the mistakes. There are many small remembrance events throughout the year and throughout the country, however, they are necessarily local and focus on specific groups of victims or specific events only. While important, such little and usually scarcely funded events do not contribute to building national solidarity among and for the victims.

- **Victims appeal to the Government and the Parliament to support remembrance and memorialisation by giving greater publicity to ongoing events and, further, by declaring 30 May as the National War Victims' Day.**

TRUTH-TELLING

Conference participants agreed that truth-telling is an essential element of Transitional Justice, as it ensures accountability, serves justice and contributes to the State fulfilling its guarantee of non-repetition. Victims appreciate that truth-telling is foreseen in the upcoming National Policy on Transitional Justice. There was a consensus among victims that there needs to be a truth-telling process, even though the question of "how" remains pending.

- **Victims appeal to the Government to reaffirm its support for a national truth-telling process, to develop a comprehensive implementation strategy, which addresses victims' safety concerns, to sensitise the victims' population to the process and ensure its implementation.**

AMNESTIES

Victims do not support any further unconditional amnesties. Their perspective was echoed by many, who said that unconditional amnesties do not create justice for the victims. Unconditional amnesties bypass victims' right to truth and recovery and stand in the way of healing. Any amnesty necessarily harms justice for the victims; however, it is imperative that we adopt approaches, which minimise such harm.

- **Victims appeal to the Government to tie any future amnesties to conditions, such as the satisfactory outcome of a truth-telling process.**

WITNESSES' EMPOWERMENT

Criminal accountability is not possible without criminal trials and no criminal trial is possible without incriminating witnesses. However, not all witnesses are capable or willing to participate in criminal trials against their perpetrators. Many are suffering from injuries and mental anguish, preventing them from travelling, others are afraid or ashamed to speak, especially victims of sexual violence. If criminal justice is to contribute meaningfully to Transitional Justice, victims need to be empowered to provide evidence before the International Crimes Division (ICD) of the High Court. While rules of procedure can make trials more victim-friendly and prevent dangerous exposure of victims, victims need to be counselled and supported to become witnesses.

- **Victims appeal to the Government to support ICD's collaboration with nongovernmental organisations, like AYINET, who have experience in victims' counselling and psychosocial support.**

VICTIMS' PARTICIPATION IN TRANSITIONAL JUSTICE

Transitional Justice will be most successful if victims will be fully involved in all aspects of the process, at all levels and in all stages. To be able to meaningfully participate and speak with a unified voice, it is imperative that they are given comprehensive, easily understandable, accurate and timely information from coordinated sources. The State can take a pro-active role in coordinating the dissemination of information between the Government and nongovernmental organisations in order for the victims to receive accurate and non-biased information. Any dissemination of information in communities which is accompanied by a representative of the Government will demonstrate to people that the State is actively engaging victims in Transitional Justice processes. This will build the necessary confidence in Government structures and activities.

- **Victims appeal to the Government to facilitate a platform and develop comprehensive outreach programmes in partnership with civil society organisations for coordinated awareness creation around Transitional Justice mechanisms and for coordinated documentation of relevant information.**

REPARATIONS

Reparations are necessary for individual victims' recovery and for community reconciliation and it is expected that they will be provided. The victims are aware that reparations are costly and that it is not likely that groups like the LRA or ADF will be able to pay them. It is for these reasons that the victims are particularly glad to see that the Government is nevertheless committed to finding ways to provide reparations.

- **Victims appeal to the Government to think of innovative ways to raise money for a reparations fund (for example by allocating to it a fixed percentage of proceeds from natural resources), to ensure the fund's proper management and to install measures, which will prevent its misappropriation.**

While individual reparations will be a vast and expensive undertaking, many reparation measures can be implemented immediately. Many victims' communities continue to be marginalised by destroyed health, education and transport infrastructure, waiting to be rebuilt.

- **Victims appeal to the Government to immediately invest additional funds into infrastructure repairs and the provision of specialised catch-up education in marginalised post-conflict communities.**

Many categories of people have had their education interrupted (eg. abducted girls), others, among them orphans and children born in captivity, have not been able to commence or continue their education.

- **Victims appeal to the Government to enable the school enrolment of all victims and victims' children, even if they currently cannot afford to do so. Victims' further appeal to the Government to support additional education opportunities for those whose education was interrupted; these programmes should promote formal and not merely vocational education.**

UGANDA AS A ROLE MODEL FOR TRANSITIONAL JUSTICE

Uganda is at a crossroads. The victims are enthusiastic about the upcoming Transitional Justice policy and the Government is committed to fulfil their hope. This combination presents a historical opportunity for the country to overcome her curse of armed conflict and violent political transition.

- **Victims appeal to Uganda's political leadership that from now on Uganda's political environment will remain stable and peaceful, and that it will continue to be unacceptable for political interests to be advanced by the use of force.**

A successful Transitional Justice process will not only offer stability and prosperity to Uganda, but create a model for other African countries to study and be inspired by. As Ugandans, we want to help our neighbours, our brothers and sisters, to build peaceful communities around us and across the continent.

- **Victims appeal to the President and the Government to embrace this historic opportunity for a successful Transitional Justice process in Uganda, which will present a new model for African success.**

A FINAL GLIMPSE



(L-R) Mr. Paul Sully, Peace Corps Director of Programming and Training, Ms. Sarah Powell, AYINET's Peace Corps Volunteer, Mr. Victor Ochen, AYINET Director, and Mr. Chic Dambach, former President and member of the Alliance for Peacebuilding and the United States Peace Corps Association



(L-R) A participant and Ms. Penny Mbabazi, Foundation for Human Rights Initiative



(L-R) Ms. Susan Acan from Empowering Hands and Ms. Sarah Mokri, French Embassy, Uganda

OF THE CONFERENCE



Dr. Thom R. Feroah, President of CGHPB (left) and Dr. Tendai Murisa, Executive Director of TrustAfrica



Ms. Kamila Krygier, John Paul II Justice & Peace Centre, Uganda



Ms. Angela Naggaga, TrustAfrica



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(L-R) Ms. Špela Kunej, AYINET, Ms. Sarah Kihika, ICTJ, Uganda and Ms. Joyce Apio, Parliamentarians for Global Action



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(L-R) Ms. Hellen Acham, NUTJWG, Mr. Santos Labeja, Gideon Foundation Against Child Sacrifice, and Ms. Judi Emorut, UCICC



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(L-R) Mr. Cristian Correa, ICTJ, and Ms. Tania Bernath



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Ms. Florence Nakazibwe, National Legal Officer, Office of the United Nations High Commissioner for Human Rights, Uganda



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(L-R) Ms. Gabriela Gonzalez, ICC Uganda, Ms. Špela Kunej, AYINET Transitional Justice Strategist, and Mr. Scott, TFV Director Uganda



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Mr. Lydro Komake, Refugee Law Project



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Mr. James Feroah, CGHPB



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Mr. Ochola John (victim) and Ms. Saghar Birjandian, GAPS Uganda

GLOSSARY

Additional Protocol II refers to the Protocol Additional to the Geneva Conventions of 1949, relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977.

An **amnesty** is a pardon or forgiveness for the commission or omissions of acts or crimes.

Common Article 3 refers to Article 3 of all four Geneva Conventions of 12 August 1949. It contains legal provisions of the law of armed conflict for conflicts not of an international character.

Compensations are a type of reparations. Compensation should be provided for any economically assessable damage, moral damage, costs for legal assistance and medical, psychological and social services.

Crimes against humanity are specific crimes such as murder or rape when committed as part of a widespread or systematic attack directed against the civilian population, with knowledge of the attack.

Personal **immunities** and functional **immunities** limit the personal or functional jurisdiction of courts, i.e. they exclude certain persons or acts from their reach. As a rule, statutes of international tribunals state that the official capacity of a person has no bearing on their jurisdiction.

A **kraal** is an enclosure for cattle or other livestock, typically found within an African village.

The **Mukura Massacre** concerns 69 people who suffocated to death after being rounded up by the 106th battalion of the National Resistance Army and incarcerated into a train wagon.

Prescription is a legal institute that prevents the public prosecutor in criminal and a private person in civil proceeding from initiating a legal procedure after a statutory defined period of time has passed.

Rehabilitation is a type of reparation. It includes medical and psychological care as well as legal and social services.

Restitution is a type of reparation. It aims at restoring the victims to the original situation that existed before the violation of their human rights. Insofar as restitution is impossible, other types of reparations should be given.

The **Rome Statute of the International Criminal Court** is an international treaty, concluded in 1998 and effective since 2002, which establishes the International Criminal Court.

Satisfaction is a type of reparation. Satisfaction includes disclosures of truth, public acknowledgements and apologies, changes in school curricula to reflect the victims' experience, searches for missing people, determination of identities of exhumed bodies, facilitation of burials, and others.

A **truth-telling commission** is an institution established by the government with the mandate to contribute to Transitional Justice efforts by soliciting the truth from those who were perpetrators and victims during past wars or oppressive regimes.

Universal jurisdiction is a State's jurisdiction over a crime that has neither happened on that State's territory, neither are its perpetrator or victim citizens of that State.

After the end of an oppressive regime, a **vetting process** seeks to determine which public officials contributed to human rights violations of the previous regime with the aim to exclude some or all of them from public service positions in the future.

The **victims of the Luweero Triangle** are civilians who were persecuted and killed in Luweero District and neighbouring districts during the war between Milton Obote's second regime and the National Resistance Army in the early 1980s.

War crimes are crimes violating the international law of armed conflict, most notably the so-called Geneva Law.

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AYINET's Health Story

The story of how AYINET got involved in victims' medical rehabilitation...

In 2005, when AYINET was founded, the war between the Lord's Resistance Army (LRA) and the Government of Uganda was yet to start winding down. The peace talks in Juba would begin in 2006 and eventually succeed in pushing the LRA out of the country. AYINET's team saw that the two-decade long conflict in Northern Uganda has left the region and its people devastated. The rebels looted and burned houses and kraals, sometimes they destroyed entire villages. They did not shy away from attacking people either: they hurt, tortured and murdered adult and young civilians alike. Thousands were taken captive, while the number of internally displaced people reached over 2.8 million at its peak.

After the war was over, many have returned from IDP-camps and calm has returned. However, until today, victims, survivors, witnesses and forced perpetrators, struggle to cope with their daily lives amid continuing pain and economic stagnation. Many victims have sustained injuries, which have culminated in chronic conditions and their bodies are full of retained substances, like bullets and shrapnel. Others have been physically disfigured due to deliberate mutilations or burn scar contracture among other causes. The physical harm is frequently accompanied by mental distress, however, even in the absence of physical injury, hundreds of thousands of victims and survivors suffer from post-traumatic stress disorder, anxiety, depression or other psychosomatic conditions.

Even before the end of the war between the Government of Uganda and the LRA, the Government referred the LRA-situation to the Prosecutor of the International Criminal Court under Article 14 of the Rome Statute of the International Criminal Court.

The Office of the Prosecutor travelled to Uganda to begin their investigations. Among other investigative tools, the Office of the Prosecutor wanted to reach out to victims to collect evidence and disseminate information about their mandate and work, however, they needed the help of local partners to help them access the communities. After a meeting organised by the ICC Field Office and attended by a member of AYINET staff, the ICC travelled to the North and attempted to get the support of local partners to help them raise awareness about the ICC among victims. Many local and international organisations refused to cooperate with the ICC, as they perceived it to be an obstacle to peace in Northern Uganda. In particular, they feared that the presence of the ICC would jeopardise the conclusion of a peace agreement with the LRA, whose infamous leader Joseph Kony insisted that the peace agreement was subject to adopting the traditional justice mechanism mato oput to deal with war-time crimes.

AYINET, however, agreed to assist the ICC, since it was the only institution that was capable of cutting across North's political and ethnic divide, which kept jeopardising any prospects for peace. Further, it became clear that the ICC was successful in assuring that the Government of Uganda stepped up its efforts to effectively protect the civilian population and that it might also make a decisive contribution in pushing the LRA out of Uganda for good. AYINET's latter estimation proved to be correct.

As AYINET began doing more and more outreaches across the North in 2006, it became very soon obvious, that the population was not only poor, but that many people sustained injuries during the war, which incapacitated them in their daily lives. Retained bullets, mutilations, burn scar contractures, fistulas and other concerns, all of them not attended to, demonstrated that while the war was over, its legacy was yet to be addressed.

While raising awareness on ICC's mandate was important, AYINET began questioning the ICC: how can we deliver justice to the victims in a very local and less legalistic understanding of the word? How do we help them heal? The ICC Team began making similar observations on the state of Uganda's victims and started addressing their concerns to The Hague.

In parallel, Victor Ochen, the Director of newly established AYINET, who was at the time also still working for Straight Talk in Kampala, met several victims with critical injuries, when travelling across Northern Uganda in 2006 in order to conduct radio outreach programmes and interviews with residents of the then still existing internally displaced persons camps. A visit to Kitgum in early 2007 proved to be of significance. Victor, together with an American photographer, came to Kitgum to take photos of several victims. One of the persons they met was John Ochola, a LRA-survivor, whose nose, ears and hands were cut off by the rebels. While visiting a local hospital, Victor met a small girl of seven months, who was the only survivor of an ambush that killed her mother and other family members. The baby had a retained bullet in her arm. After seven days of no treatment, the arm was starting to rot, yet her grandmother could not afford the necessary treatment. Using his per diems, he paid for the treatment of the girl, however, as he did so, more and more people began to approach, telling him of their various ills. First there were tens, then hundreds. The gravity of the atrocities, tragically embodied in John Ochola, and their extent, made it clear that extensive work will need to be done in the area of medical recovery of victims.

The photo of John Ochola was sent to the BBC, who sent a journalist to Uganda four months later. The cooperation between BBC's Robyn Hunter and Victor Ochen resulted in an article with the title: Counting the cost of Uganda's war, published on BBC in May 2007. The article summarises the mapping of Apungu village, one of 24 villages in Abia Parish in Northern Uganda's Alebtong District. The village is a cluster of 15 compounds spread over one square kilometre (1 km²). Most of its residents were forced to internally displaced persons camps

during the war and began returning in December 2006, most of them from the nearby internally displaced persons camp located on the border between the villages Akaoidibe and Abia Central (known as Abia IDP-camp). Upon return, villagers saw that no household was unaffected by the two-decade long conflict. Most households were missing several family members of all ages, who have been abducted by the LRA. Many people were killed, others died from outbreaks of preventable or curable diseases, which were common in all IDP-camps, and included diseases like Ebola, cholera, hepatitis B, syphilis, measles, malaria, diarrhoea, and scabies. All Apungi-households had a family member who was injured, burned, mutilated or sexually abused by the armed groups.

The story and its many numerous gruesome details captured the attention of the ICC, which has been already sensitised by the appeals of its Uganda Field Office. AYINET got a call from The Hague. They said that they wanted to launch the Trust Fund for Victims, but were lacking leverage in their negotiations with the Rome Statute States Parties. AYINET allowed them to use the BBC-article and helped The Hague gather more evidence on the dire state of victims in Uganda in order to justify the need for a trust fund. ICC's team visited Uganda in October 2007 and the first surgery, sponsored by the Trust Fund for Victims, happened a month later.

Between 2007 and 2010, the Trust Fund for Victims facilitated further surgeries and psychological support for victims. In the years 2011 and 2012 we were able to continue our work with the support of the United Nations and the Center for Global Health and Peacebuilding. In 2013, the Austrian Development Cooperation facilitated gynaecological repairs for female victims whose reproductive health was damaged by the war. Rehabilitation assistance for victims of war continues to be a building block of the majority of our programmes.

STAFF



Victor OCHEN



Joseph AKWENYU



Spela KUNEJ



Denis ODWAR



Becky NYATIMA



Steve R NAMANYA



Diana AKELLO



Antoine STOMBOLI



Doreen MUHUMURE



Martin OENEN



Richard ONEN



Anna AONYO



Jackson OPIO



Scovia AUMA



Sarah POWEL



Winnifred AUMA



Stephen OKELLO



Isaac OWINY



Augustin OTIM



Peter OCEN



African Youth Initiative Network

Plot 68/70, Police Road, P. O. Box 981, Lira-Uganda
Office Tel: +256 473660170, Cell: +256772539879
Email: uganda@africanyouthinitiative.org

www.africanyouthinitiative.org