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**AN OVERVIEW OF THE DEVELOPMENT AND REALIZATION OF TRANSITIONAL JUSTICE GOALS IN
UGANDA**

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AN OVERVIEW OF THE DEVELOPMENT AND REALIZATION OF TRANSITIONAL JUSTICE GOALS IN UGANDA

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ABSTRACT

Most societies in the aftermath of serious human rights violations try to come to terms with these violations through various means or mechanisms. One of the modern means is pursuing Transitional justice mechanisms. Loosely defined transitional justice means the mechanisms through which a society comes to terms with its violent past. Uganda as country has seen a lot of human rights violation before and after 1962 when she became an independent country. The country has tried various ways to reconcile with its pasts and transitional justice has become one of the ways to do so. This paper traces the history of transitional justice in Uganda highlighting what has worked and failed in the quest for social cohesion.

1.0 INTRODUCTION

“Uganda will not recover as a state if it does not confront the demons that have tortured it for decades”

—Prof. Makau Mutua¹

In the aftermath of a mass atrocity, human rights violations and insurgencies, the priority of a society becomes restoration of peace, livelihoods and search

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¹ Makerere University, Faculty of Law, ‘Stakeholders’ Dialogue, Beyond Juba: Building Consensus on a Sustainable Peace process for Uganda’ December 1-3,2006

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for justice and accountability. Mass atrocities and turbulence have been part of Uganda since its independence in 1962. There is no meaningful transition to speak about since the end of colonial rule in 1962; instead, what we have is that each regime that transitions piled victims of its atrocities in what has become a pattern of transitional injustices.

Transitional Justice (TJ) refers to ways countries emerging from periods of conflict and repression address large-scale or systematic human rights violations.² TJ is also understood as the full range of processes through which a community or country attempts to come to terms with past gross human rights abuses and armed conflict. These procedures involve both legal and extralegal elements, such as accountability, truth-telling commissions, criminal prosecutions, and restitution.³

Truth commissions are official, time limited fact-finding bodies generally charged with examining the roots, facts, patterns and consequence of armed conflict or dictatorship and presenting a report and recommendations to avoid recurrence.⁴ They are intended to promote acknowledgment and speaking the truth. As a result, it is considered to support the goals of encouraging justice, advancing social and psychological healing, creating reconciliation, and preventing further crimes.⁵

Reparations, on the other hand, serve to acknowledge the legal obligation of a state or group to repair the effects of violations that were directly committed by them or that they were bystanders to the effect of failing to prevent the conflict.

² International Centre for Transitional Justice, “What is Transitional Justice?” available at <www.ictj.org> [Accessed on 31 August 2022]

³ Stephen Oola, “Uganda’s Transitional Justice Policy: Better late than never”, New vision, July 5, 2019, available at <<https://www.newvision.co.ug/news/1502988/>> [Accessed on 28 August 2022]

⁴ Priscilla Hayner, “Unspeakable Truths: Confronting State Terror and Atrocity” (New York: Routledge, 2000).

⁵ Beyond Juba, Building Consensus on Sustainable Peace in Uganda “Why being Able to Return Home should be part of transitional justice: Urban IDPs in Kampala and their quest for a Durable solution” Working Paper No.2 March 2010 available at <<https://www.peaceinsight.org/>> [Accessed on 28 August 2022]

They are meant to recognise and address the harms suffered and acknowledge wrongdoing.⁶ Reparations can be material or symbolic, and they are frequently the most obvious signs that a state recognises the rights and dignity of victims and is committed to not committing the same wrongs again.⁷

As a result, transitional justice works to advance procedures for determining the origins of violence, holding those responsible for abuses accountable, compensating victims, and encouraging institutional and structural changes meant to address any structural injustices that may have contributed to the conflict.⁸ One can infer from the foregoing that Uganda actually requires and/or needs these processes. Many untold human rights violations happened in the colonial era in Uganda.

After attaining independence in 1962, Uganda got embroiled in civil strife for over two decades under Milton Obote (1964-1971), Idi Amin (1971-1979), and Milton Obote (1980-1985) with 300,000 estimated deaths and various human rights violations documented.⁹ Each dictatorship that came into power piled its victims of human rights crimes on the lists of the prior regimes. Under Yoweri K. Museveni's administration, Uganda had a number of military conflicts from 1986 to 2006. Of these, the Lord's Resistance Army (LRA) insurgency in Northern Uganda, which lasted for two decades, is prominent.

The LRA insurgency is infamous for the untold violations levelled against the civilian population in Northern Uganda by both the LRA and the government soldiers. Formal transitional justice discussions began at the Juba Peace talks between the government of the Republic of Uganda and the LRA. There, the

⁶ ICTJ, "Reparations and Transitional Justice" , available at <<https://www.ictj.org/our-work/transitional-justice-issues/reparations>> [Accessed on 28 August 2022]

⁷ Laura A and Naomi R, "Social Reconstruction as a Local Process" p161, *The International Journal of Transitional Justice* Volume 2, Issue 2, July 2008

⁸ Beyond Juba, *ibid* at n (5)

⁹ Refugee Law Project (RLP) (2014b) "Compendium of Conflicts in Uganda: Findings of the National Reconciliation and Transitional Justice Audit". Kampala: Refugee Law project, School of Law, Makerere University

Agenda Item No.3 on Accountability and Reconciliation was signed, aimed at preventing impunity and promoting redress in accordance with the Constitution and international obligations.

The road to transitional justice in Uganda has been bumpy because of various challenges complicated by the nature of the conflicts in Uganda. This article traces the development of transitional justice in Uganda, focusing on its several pillars and evaluating what has been done thus far in light of what has worked and what has not, as well as the reasons behind each. It is segmented into different sections starting with a brief history and nature of conflicts in Uganda, transitional justice mechanisms employed before the promulgation of the 1995 Constitution, focus on the LRA conflict with emphasis on the juba peace talks and the processes thereafter. Logical conclusion is therefore drawn citing lack of political will as the greatest obstacle to the realization of TJ in the Uganda.

2.0 THE NATURE OF CONFLICTS IN UGANDA

The sheer complexity of Uganda's conflicts has led to a large number of victims seeking retribution to this day. The Refugee Law Project in 2014 documented 125 major conflicts in Uganda, ranging from colonial era to the latest war in northern Uganda out of a National Reconciliation and Transitional Justice (NRTJ) Audit conducted across 20 districts.¹⁰ The history of Uganda and the lives of its people were forever changed by these conflicts. The scale of these conflicts is different from the religious disputes between Catholics and Protestants in Buganda in 1892, or the political conflicts in 1964 and 1966, when many Baganda were slaughtered in an attack on the Kabaka's palace in Lubiri. During Obote's rule, violations influenced by tribalism were also reported against the Buganda and other tribes.¹¹

¹⁰ *ibid*

¹¹ Phares Mutibwa, *Uganda since Independence: A Story of Unfulfilled Hopes*, Africa World Press, 1992

When Idi Amin overthrew Obote in a coup in 1971, a new wave of human rights abuses began in earnest. Undocumented numbers went missing and thousands were brutally killed, including prominent members of the society like Chief Justice Ben Kiwanuka, Archbishop Janani Luwum. The regime also targeted and killed the Langi and Acholi soldiers in the Army. The rich and the merchant Indians were targeted and expelled from Uganda with their property confiscated unconstitutionally.¹² After eight years of many human rights crimes, the dictatorship was ousted in 1979 with the assistance of Tanzanian soldiers and Ugandan exiles.

Many human rights violations were also recorded thereafter with the return of Obote in 1980. In retaliation for being targeted by Amin's army, the Langi also attacked Amin's ancestral home of West Nile. Following the contentious 1980 elections, Yoweri K. Museveni led a second lengthy uprising, which lasted until Tito Okello's dictatorship was overthrown in the Luwero triangle, which resulted in the deaths of many people.¹³ Upon assuming power in 1986, the NRM government faced off with over 23 rebel insurgents most notable of which are the UNBF, Allied Democratic Forces (ADF), Lord's Resistance Army (LRA) among others.

All these rebel groups left serious human rights violations in the areas of their operations and the government soldiers are also implicated on various violations. To this end we can see that the conflicts in Uganda are complicated in nature. It can be exceedingly challenging to distinguish between offenders and victims in most conflicts since victims of earlier violations frequently go on to commit subsequent violations, and vice versa.¹⁴ As was stated at the outset, Uganda's recent regime upheavals have left nothing but "transitional injustices" to discuss.

¹² *ibid*

¹³ *ibid*

¹⁴ This can be seen from the Langi and Acholi who were targeted by Amin who later revenged on the people of West Nile after his overthrow thereby becoming perpetrators of violence. See also Dominic Ongwen who was convicted for war crimes at ICC, he was a victim as a child abducted but later became a commander in the LRA becoming a perpetrator of various violations.

Understanding the disputes gives us the chance to evaluate the efforts made to bring about justice and healing.

3.0 TRANSITIONAL JUSTICE IN UGANDA BEFORE THE 1995 CONSTITUTION: ASSESSMENT OF THE TRUTH COMMISSIONS SET UP IN UGANDA BEFORE 1995

Formal TJ debates started in the early 1990s in the lead towards the formation of the Truth and Reconciliation Commission of South Africa. However, the TJ processes like truth seeking or telling were already in place. The human rights violations and the unexplained disappearance of Ugandan Citizens prompted the government of Idi Amin to setup a committee to investigate the disappearance of these people. Through Legal Notice No.2 of 1974, the Commission of Inquiry into the Disappearances of People of Uganda was setup with a mandate, inter alia, to inquire into whether these people died or were living and the circumstances under which they met their death.¹⁵

This commission recorded 308 cases of disappearances between 1971 and 1974 with 529 witnesses appearing before it. Although the hearing procedures were open to the public, the commission's findings were never published, and Idi Amin received a confidential report instead. Because they were allegedly the ones responsible for the disappearances, the Commission recommended that the police and armed forces be reformed and schooled in human rights norms.¹⁶ Although it is regarded as the first attempt to bring TJ to Uganda, not much was accomplished.

The commissioners themselves were targets of retaliation to the extent that the main judge was forced into exile. The administration also limited hearings on the disappearance of people of Asian descent, which deprived the panel of the crucial

¹⁵ United States Institute of Peace, "Commission of Inquiry into the Disappearance of People in Uganda since 25 January, 1971: Charter" available at <www.usip.org> [Accessed on 2 September 2022]

¹⁶ USIP available at <<https://www.usip.org/>> [Accessed on 2 September 2022]

independence. As a result, the regime never acted on the Commission's recommendations, which created a negative precedent for TJ and Truth Commissions in Uganda.

In 1986 when the NRA/M took power, President Museveni established the Commission of Inquiry into the Violations of Human Rights to investigate all aspects of human rights abuses from the past governments from October 1962 to January 25, 1986, with emphasis on arbitrary arrests, detentions and killings.¹⁷ The Commission, led by Supreme Court Justice Oder, published its report in 1994 after eight years of investigations. It struggled with inadequate financing and did not completely cover the nation, particularly the north where there was a raging rebellion.

Many human rights violations were documented, and victims were able to learn the truth about the offenders or the people who had hurt their loved ones. However, save for the recommendation of setting up a Human Rights Commission which was incorporated into the 1995 Constitution,¹⁸ all the recommendations of the report were not implemented.¹⁹ The majority of victims found this discouraging because they went before the panel expecting to receive justice and recompense if they testified there.²⁰ Even though it was published, the report was only circulated around the elite circles, not widely enough to advance the conversation on transitional justice. The commission had limited resources, including capacity, time, money, and political will.²¹

These two Truth Commissions (TC) can be credited for setting up the pace for future TJ mechanisms in the country albeit they were not able to achieve the ultimate goals of TJ and bring justice to the victims of the past violations. There are lessons to be learned from these two commissions for future entrenchment

¹⁷ The Commission of Inquiry Act, Legal Notice No.5(May,16,1986) Cap .56

¹⁸ Article 51 of the 1995 Constitution of Uganda

¹⁹ Joanna R. Quinn, "Constraints: The Un-Doing of the Ugandan Truth Commission", *Human Rights Quarterly* 26(2004), The John Hopkins University Press

²⁰ *ibid*

²¹ *ibid*

of TJ. It is essential for TC to be independent from the government in order to reduce interferences as seen with the TC of 1974. This can be achieved by adequately funding the commission and unbiased selection of commissioners from all walks of life.

Future commissions should be victim-centered and mindful of the gender dynamics of conflicts. In order to improve inclusivity, the Commission's creation and mandate should be codified in law.

4.0 POST 1995 CONSTITUTION TRANSITIONAL JUSTICE MECHANISMS

By the time the 1995 Constitution was ratified, a protracted conflict between the LRA and the government of Uganda was raging in the nation's north. Unimaginable horrors were witnessed and experienced by the local civilian population. A battle that was launched with the intention of overthrowing the NRM government and restoring the Ten Commandments instead had a terrible impact on the populace.

The people were robbed of their lives, body parts, livelihoods and peace.²² In an effort to protect the populace, the government forcibly relocated them into "protected villages" (internally displaced camps), where they lost their culture and their way of life.²³ Children were in the process abducted and served as child soldiers in the LRA. With very many massacre sites perpetrated by both LRA and the government, the victims of this war are trying to come to terms with this turbulent past. During this era, Ugandans began to argue the use of TJ, as will be addressed later. The Amnesty Act of 2000, the ICC, the Juba Peace Agreement, and the locally driven transitional justice systems are discussed in the following section.

²² Chris Dolan, *Social Torture: The Case of Northern Uganda, 1986-2006*. New York: Berghahn Books, 2009.

²³ Chris Dolan, "Collapsing Masculinities and Weak States: The case of Northern Uganda" in *Masculinities Matter! Men, Gender and Development*, ed. Francis Cleaver (Zed Books, London) at p 64.

5.0 THE AMNESTY ACT 2000 AND TRANSITIONAL JUSTICE IN UGANDA.

The Amnesty Act was passed in response to the various rebel groups operating against the government of Uganda, targeting those who had taken arms since 1986 when the new government came in place.²⁴ It was an implementation of the Disarmament, Demobilization and Reintegration process. According to the Amnesty Act, “Amnesty” means a pardon, forgiveness, exemption or discharge from criminal prosecution or any other form of punishment.²⁵

The Act was widely criticized by international law activists, as it was looked at as breeding the culture of impunity with the argument that the amnesty was blanket. Around 13,000 LRA soldiers benefitted from this process and were able to be reintegrated into the society.²⁶ Reconciliation is the goal of transitional justice, as was previously mentioned, and this statute paved the road for it. Many of the returnees were welcomed back into the society after performance of the traditional justice mechanisms like *Mato Oput* (drinking of the bitter root) and *Nyono tong Gweno* (stepping on the egg). Thus, the Amnesty Law greatly contributed to the TJ processes in Uganda.

The Rome Statute of the International Criminal Court (Rome Statute), which forbade amnesty for those who commit war crimes and crimes against humanity, sparked most of the controversy surrounding the law. This saw the denial of Amnesty to Thomas Kwoyelo, a former LRA Commander currently being tried at the International Crimes Division of the High Court of Uganda. Justice Bart Katurebe in *Uganda v Thomas Kwoyelo*, reasoned that Amnesty Act only covers crimes that are committed in furtherance of or cause of war or armed rebellion and does not include attacks on civilians.²⁷

²⁴ Amnesty Act 2000 Cap 294, Laws of Uganda.

²⁵ Section 1(a) of the Amnesty Act 2000

²⁶ IRN, Uganda: Amnesty or prosecution for war criminals?, available at: <<https://www.reforld.org>> [Accessed on 3 September 2022]

²⁷ Uganda v Thomas Kwoyelo, Constitutional Appeal NO.1 of 2012 available at <<https://www.right2info.org>> [Accessed on 3 September 2022]

It should be emphasized that Ceasor Acellam, a prominent LRA leader, received amnesty, causing a discussion on selective justice. Surprisingly, the justices concluded that it is irrelevant whether a person with a comparable situation was granted amnesty, asserting that the DPP has the discretion to decide.²⁸

In conclusion, the Amnesty Act, despite being divisive, made a significant contribution to the integration, accountability, and reconciliation of roughly 13,000 combatants, which is a commendable accomplishment in the area of transitional justice. The majority of returnees were able to participate in local truth-telling, recognition, and integration activities, which are important TJ tenets. In 2022, the Act is still in use to reintegrate ADF personnel who are presently serving in the Congo.

6.0 THE JUBA PEACE TALKS (2006-2008) AND TRANSITIONAL JUSTICE IN UGANDA

After violent clashes and fruitless peace negotiations, the LRA and the government of Uganda gathered once more in Juba, South Sudan, in 2006 to try to end the conflict. The parties were able to sign three agenda items: an agreement on accountability and reconciliation, a comprehensive solution to the conflict, and the cessation of hostilities (AAR). Agenda Item No.3, AAR was very instrumental in the development of TJ in Uganda.²⁹

As stated in the preamble, the parties committed themselves to preventing impunity and advancing redress in line with the Constitution and international commitments and were aware of the major crimes, human rights violations, and negative socioeconomic and political effects of the conflict. They also recognized

²⁸ *Ibid*

²⁹ Agreement on Accountability and Reconciliation between Government of Uganda and the Lord's Resistance Army, available at <<https://peacemaker.un.org>> [Accessed on 3 September 2022]

the need to adopt appropriate justice mechanisms, including customary processes of accountability.³⁰

This agreement detailed the various pillars of TJ to be harnessed in Uganda, including accountability, legal and institutional reforms, informal justice processes, formal justice processes, memorialization, reconciliation and reparations.³¹ The agreement called for gender-sensitive implementation, understanding the conflict's complexity. Even though the negotiations failed, the Ugandan government decided to carry out the agreed-upon agenda items, which helped TJ gain support in the north and throughout Uganda. The Government, in fulfilment of the above, set up a transitional justice working Group under the Justice Law and Order sector in 2008 to come up with a TJ policy which was passed in June 2019 after many years of consultation as will be discussed later.³²

7.0 ASSESSMENT OF THE IMPLEMENTATION OF TRANSITIONAL PILLARS IN UGANDA

We will now look at the implementation of the different pillars of TJ and the clauses in the AAR. It should however be noted that most of the TJ processes are being initiated and taken up by the civil society organizations with limited government involvement.

7.1 Reparations

Reparations can be material or symbolic and are often the most visible manifestations of States recognition of victims' dignity and rights, and of its commitment not to repeat past wrongs.³³ Clause 9 of the AAR stated that reparations may include rehabilitation, restitution, compensation, guarantees of

³⁰ *Ibid*

³¹ See the different clauses of the agreement

³² Stephen Oola, "Uganda's Transitional Justice Policy: Better late than never", *New vision*, July 5, 2019 available at <<https://www.newvision.co.ug> [Accessed on 28 August 2022]

³³ Laura A and Naomi R, "Social Reconstruction as a Local Process" p161, *The International Journal of Transitional Justice* Volume 2, Issue 2, July 2008

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non-recurrence and other symbolic measures like apologies, memorials and commemorations. These processes were partially performed in the region enhancing TJ.

The government, in partnership with international bodies, was able to rehabilitate various infrastructures that were destroyed during the war including roads, hospitals, schools and others. Various programs to restore livelihood in the regions were rolled out, including Northern Uganda Social Action Fund (NUSAF), Peace Recovery and Development plan (PRDP) which has seen rehabilitation and restoration of livelihoods. However, some victims expected more than infrastructures and do not consider these steps taken as reparations, they wanted household items because to them justice can only be achieved when there is economic justice.³⁴

Through the Acholi War Debt claimant's organization, some of the victims who lost their livestock during the war were able to receive compensation from the government.³⁵ The government also compensated some victims of the Luwero Triangle. Many people view the compensation as a positive step toward transitional justice, but the process was plagued by corruption, and many condemned the government for turning to a private company to carry out such initiatives.³⁶

The reparations clause identified memorials and commemorations, and under Clause 8.3 victims were granted the right to acquire pertinent information about their experiences as well as to remember and honour earlier events that had an impact on them. The process of commemoration has been largely led by CSOs and has proved to be a very instrumental aspect of TJ in Uganda.

³⁴ Refugee Law Project, School of Law, Makerere University; "Thrown Along the Way: Community perspectives on Conflict Drivers in the Implementation of the Peace Recovery and Development Plan (PRDP) for Northern Uganda" page 11, November 2012

³⁵ Arnest Tumwesige, "Acholi War Compensation: claimant numbers reduce", New Vision, April 27, 2016 available at <<https://www.newvision.co.ug>> [Accessed on 3 September 2022]

³⁶ *ibid*

In Uganda, numerous massacre locations have been identified. Every year, victims meet to offer yearly prayers that are healing in nature and promote reconciliation. To support memorials and commemorations around the country, the the Refugee Law Project of Makerere established the National Memory and Peace Documentation Centre museum in Kitgum.³⁷

7.2 Formal Justice Processes

Criminal prosecution is one of the strong pillars of TJ aimed at deterring impunity. Clause 6 of the AAR recognized the necessity for formal judicial processes as well as changes to the national legal system to promote integrated justice and accountability. The criminal prosecution has been a two-pronged approach with the involvement of the ICC and the ICD based in Uganda. Five commanders of the LRA were indicted by the ICC and arrest warrants issued for them.

The Ocampo five included Joseph Kony, who is currently at large, Vincent Otti (dead), Okot Odiambo (death), Raska Lukwiya (deceased), and Dominic Ongwen, who was convicted of war crimes and crimes against humanity in 2021 at the International Criminal Court.³⁸ The indictment came after the state of Uganda opted for self-referrals in a bid to pile pressure on the LRA and became the first country to refer cases to the ICC.

Dominic Ongwen, a child soldier turned commander, faced 70 counts of war crimes and crimes against humanity at The Hague.³⁹ His trial therefore fits within the narrative of TJ through criminal prosecutions. Many victims were engaged as witnesses and back home victims and survivors are able to follow proceedings in organized community streaming. They feel that that justice is

³⁷ For more on NMPC visit < www.refugeelawproject.org >

³⁸ BBC, “Court moves against Uganda rebels”, October 7, 2005 available at <<https://news.bbc.uk/2/hi/africa/4317852.stm>> [Accessed on 3 September 2022]

³⁹ International Criminal Court, Ongwen Case: Prosecutor v. Dominic Ongwen, ICC-02/04-01/15 available at <<https://www.icc-cpi.int/uganda/ognwen>> [Accessed on 3 September 2022]

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being seen to be done. However, some victims and survivors feel the prosecution is useless and opt for Ongwen return to face traditional justice and reconciliation.⁴⁰

Others believe the ICC will not provide the justice they deserve, given Ongwen's luxurious existence in The Hague while they are impoverished here.⁴¹ This argument is consistent with Brian Kagoro's assessment that, "what will criminal prosecutions of serious human right abusers benefit those who are impoverished?"⁴² In fulfillment of the AAR, the government of Uganda established the International Crimes Division of the High Court as parallel court to the ICC to try war crimes and crimes against humanity internally.

Since its inception, the court has only tried two major cases of Thomas Kwoyelo junior commander of the LRA and Jamil Mukulu the former commander of the ADF.⁴³ The trials are seen as viable because the victims and survivors of these violations are able to physically attend and own the process. A case in point is the trial of Kwoyelo, which is being done in Gulu city which was the epicenter of the LRA violations. These trials are instrumental to the realization of TJ in Uganda as they seek to provide justice and deter impunity, which is the greatest assurance of non-recurrence.

One could argue that these trials are selected and, to some extent, unbiased. Many TJ practitioners have pointed out that human rights violations and crimes were committed not only by rebels but also by government soldiers, and there is evidence to support up such charges, some of which have been admitted by the

⁴⁰ Amani Institute Uganda, Perceptions of Trial Justice in the Case of the Prosecutor vs Dominic Ongwen, A Survey Report by Amani Institute Uganda. February 2021.

⁴¹ *ibid*

⁴² Brain Kagoro, "The paradox of alien Knowledge, narrative and praxis: transitional justice and the politics of agenda setting in Africa." *Where Law Meets Reality: Forging African Transitional Justice*. Cape Town: Pambzuka, 2012. 1-49 print

⁴³ Grace Matsiko, "12 years on, Uganda's International crimes Division has Little to show" March 09, 2020, JUSTICEINFO.NET, available at <<https://www.justiceinfo.net>> [Accessed on 3 September 2022]

government.⁴⁴ No government soldier, however, has been brought before these courts to answer for their crimes, not even in court martial. This creates a gap in the execution of TJ, which becomes selective and dilutes the necessary healing in society by creating a culture of impunity.

Col Abiriga, a former MP, was recognized by a community in Kitgum as the commander of an attack on their hamlet; he never apologized, and efforts to bring him to justice were ineffective; the community later applauded when he was assassinated in 2018. As a result, the legal system should be made impartial in order for all victims of violations to receive justice.

7.3 The National Transitional Justice Policy 2019

In order to assist Uganda's execution of the Juba Peace Agreement, a Transitional Justice working group was formed in 2008 to develop a TJ policy and law.⁴⁵ The working group, after wide consultations drafted a TJ policy which was presented before cabinet and was finally adopted in 2019 after the victims and survivors had lost hope.⁴⁶ Uganda is the first state in Africa to adopt a TJ Policy after a similar policy was adopted by the African Union.⁴⁷

The NTJP is comprehensive in nature and generally victim centered, upon its adoption many TJ practitioners hailed it as a light at the end of the tunnel for victims and survivors of the various human rights violation. The adoption showed the commitment of the government to redress the wrongs of the past and maintain a peaceful Uganda. A look at the policy offers a great insight into the perceived TJ processes in Uganda with the inclusion of women and children as participants in TJ.

⁴⁴ Chris Dolan, *Social Torture: The Case of Northern Uganda, 1986-2006*. New York: Berghahn Books, 2009

⁴⁵ Transitional Justice Working Group works under The Justice Law and Order Sector

⁴⁶ Ministry of Internal Affairs, "The National Transitional Justice Policy ,June 2019", available at <<https://drive.google.com>> [Accessed on 29 August 2022]

⁴⁷ African Union , "Launch of the Transitional Justice policy", available at <<https://au.int/en/pressreleases/>> [Accessed on 28 August 2022]

The policy also effectively defines reparations which had often been misunderstood by many as only limited to monetary handouts to include government development programs. However, for the policy to bear the much-needed impact, it must be tabled as a bill before parliament and passed as Law which has not been done ever since its adoption. The NTJP adoption, I believe will guide the realization of TJ in Uganda and cure the anomalies that existed before.

7.4 Informal Justice Mechanisms

Traditional processes in Uganda have been integral to TJ and, thus far, the most effective mechanism in attaining reconciliation and accountability, both of which are critical pillars of TJ. The Juba Agreement on Accountability and Reconciliation recognized the role of traditional mechanisms on reconciliation. It identified; *mato oput*, *gomo tong*, *kayo ocok*, *riyo tal* as those practices to be embraced.⁴⁸ Uganda is home to numerous tribes with diverse cultures, the majority of which have dispute settlement procedures.

These traditional dispute resolution mechanisms helped in the reintegration of many combatants into the society and encouraged reconciliation. It worked perfectly in northern Uganda, where around 13,000 combatants were reconciled with their clans, enemies, abductors among others. It was also these rituals that cleansed them of the “*cen*” associated with spirits of those killed by the combatants.

Ceremonies like *Nyono Tong Gweno* welcomed members who had been in the bush back into the society, *gomo tong* in Alur helped in cessation of hostilities between parties, *mato oput* and *culu kwor (compensation)* worked in Northern Uganda to end the bad blood between the family or clan of the perpetrator and

⁴⁸ Clause 3.1 of the Agreement on Accountability and Reconciliation between the Government of Uganda and LRA

those of the victims.⁴⁹ It is imperative to note that before these mechanisms are practiced, the perpetrator is often tasked to do truth telling and acknowledge the crimes committed by him or her and hence achieving truth telling and accountability in the process.⁵⁰

These traditional processes were initially designed for small-scale crimes such as homicide, where the perpetrators and victims knew each other, but not for gross human rights violations such as those committed by the LRA, where there are many actors, or complex crimes such as sexual abuse in a conflict setting.⁵¹ This has been the bedrock of arguments against traditional mechanisms citing it as irrelevant in the TJ process by many actors.

The arguments were also adopted in the case of *Kanyamunyu Mathew v Uganda*, where the learned judge Stephen Mubiru refused to halt the trial for the parties to pursue Mato Oput.⁵² It has also been labelled as falling short of the international legal standards in deterring impunity.⁵³ All the above assertions are true but they cannot relegate traditional mechanisms to the point of irrelevancy. The mechanisms have worked in those where the perpetrators and victims are known and the advocates for traditional mechanisms also advocate for the formal justice system to address the complex crimes like massacres, sexual abuse among others. On the universality of the mechanisms, each community is encouraged to practice their own to avoid imposition of culture on others.

8.0 CONCLUSION

⁴⁹ Lyandro Komakech, "Traditional Justice as a form of adjudication in Uganda." *Where Law Meets Reality: Forging African Transitional Justice*. Cape Town: Pambzuka, 2012. Page 73 print

⁵⁰ *ibid*

⁵¹ Brian Kagoro *Supra*

⁵² Courage Ssewanyana (2021) "The Interface between the Traditional and Criminal Justice Systems: A Review of the High Court's Decision in *Kanyamunyu Mathew Muyogoma v Uganda*" Volume 21 Issue 4, *Makerere Law Journal* pp 298-318

⁵³ *Ibid*

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With the adoption of the NTJP, a lot of opportunities to effectively pursue TJ lie in Uganda. It should be noted that there are a lot of pending issues in Uganda, which have not been addressed for decades. These sensitive topics, if left untreated, risk returning Uganda to its violent pasts; thus, we should seize the opportunity and begin engaging in national debate to build Uganda's future and right the wrongs of the past. Using the lessons learned from previous truth commissions, a more independent and inclusive panel can be constituted to investigate human rights violations even under Museveni's administration.

Most of the TJ debates and policies are dominated with ideas from the West; it is time TJ in Uganda becomes locally owned with ideas originating from here. As previously said, criminal or civil prosecution is an important pillar of TJ; yet, problems have been identified in the pursuit of the same. The trial of Thomas Kwoyelo has lasted over a decade, with the ICD experiencing budget issues and a continual turnover of justices on the bench. As the proverb says, "delayed justice is denied justice," and this has had an impact on the achievement of justice.

To address these shortfalls, ICD's finances and operations should be enhanced. The concept of selective justice is also restricting full implementation of TJ in Uganda, as UPDF soldiers who committed atrocities are still at large and little acknowledgements have been made. Finally, the TJ process in Uganda is on the right road; all that is required is strong political will on the part of the government, which should collaborate with Civil Society Actors to accomplish complete realization of TJ in Uganda.

LIST OF REFERENCES

Amani Institute Uganda, Perceptions of Trial Justice in the Case of the Prosecutor vs Dominic Ongwen, A Survey Report by Amani Institute Uganda. February 2021

Brain Kagoro, “The paradox of alien Knowledge, narrative and praxis: transitional justice and the politics of agenda setting in Africa.” *Where Law Meets Reality: Forging African Transitional Justice*. Cape Town: Pambzuka, 2012.1-49 print

Chris Dolan, “*Collapsing Masculinities and Weak States: The case of Northern Uganda*” in *Masculinities Matter! Men, Gender and Development*, ed. Francis Cleaver (Zed Books, London)

Chris Dolan, *Social Torture: The Case of Northern Uganda, 1986-2006*. New York: Berghahn Books, 2009

Courage Ssewanyana (2021) “The Interface between the Traditional and Criminal Justice Systems: A Review of the High Court’s Decision in *Kanyamunyu Mathew Muyogoma v Uganda*” Volume 21 Issue 4, *Makerere Law Journal* pp 298-318

International Criminal Court, Ongwen Case: Prosecutor v. Dominic Ongwen, ICC-02/04-01/15 available at <<https://www.icc-cpi.int/uganda/ognwen>> [Accessed on 3 September 2022]

Joanna R. Quinn, “Constraints: The Un-Doing of the Ugandan Truth Commission”, *Human Rights Quarterly* 26(2004), The John Hopkins University Press

Laura A and Naomi R, “Social Reconstruction as a Local Process” p161, *The International Journal of Transitional Justice* Volume 2, Issue 2, July 2008

Lyandro Komakech, “Traditional Justice as a form of adjudication in Uganda.” *Where Law Meets Reality: Forging African Transitional Justice*. Cape Town: Pambzuka, 2012.

An Overview of the Development and Realization of Transitional Justice Goals in
Uganda

Phares Mutibwa, *Uganda since Independence: A Story of Unfulfilled Hopes*,
Africa Word Press, 1992

Priscilla Hayner, “Unspeakable Truths: Confronting State Terror and Atrocity”
(New York: Routledge, 2000)

Refugee Law Project (RLP) (2014b) “Compendium of Conflicts in Uganda.
Findings of the National Reconciliation and Transitional Justice Audit”.
Kampala: Refugee Law project, School of Law, Makerere University

Refugee Law Project, School of Law, Makerere University;” *Thrown Along the
Way: Community perspectives on Conflict Drivers in the Implementation of the
Peace Recovery and Development Plan (PRDP) for Northern Uganda*”, November
2012

Uganda v Thomas Kwoyelo, Constitutional Appeal NO.1 of 2012 available at
<<https://www.right2info.org/>> [Accessed on 3 September 2022]