



One-Day Civil Society Dialogue with JLOS on TJ in Uganda

MEETING SUMMARY

Organized by the International Center for Transitional Justice (ICTJ),
The Justice and Reconciliation Project (JRP),
& Uganda Victims Foundation (UVF)

Dates: Friday, May 20, 2011
Venue: Gracious Palace Hotel, Lira
Participants: 42 (See attached list)

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Executive Summary

On Friday, May 20, 2011, the International Center for Transitional Justice (ICTJ), the Justice and Reconciliation Project (JRP), and the Uganda Victims Foundation (UVF), organized a one-day dialogue between representatives of the Justice, Law and Order Sector (JLOS) and civil society from northern Uganda. The event was held in Lira Town and was attended by 42 representatives, including His Worship Tadeo Asiimwe—Registrar of the War Crimes Division—and Ms. Rachel Odoi-Musoke—of the JLOS Secretariat.

The dialogue provided an opportunity for the two JLOS representatives to share updates and developments on TJ in Uganda, and more specifically the work of the JLOS Transitional Justice Working Group and the War Crimes Division (WCD), soon to be renamed the International Crimes Division (ICD). It also provided space for the various civil society representatives to ask questions and share comments on the processes involved and how these could impact their communities.

This event coincided with national community consultations by JLOS to gain perspectives on truth-seeking, traditional justice and reparations, and followed a consultative meeting organized by ICTJ and JRP on April 21st in Gulu with civil society on an outreach strategy for the WCD (report available upon request).

This report summarizes the discussions that took place during the dialogue and makes specific recommendations for JLOS based on reactions from civil society representatives. Discussions and findings from the dialogue will reportedly be used to supplement JLOS's consultations for developing policy frameworks in these areas.

Purpose

The ICTJ Head of Office for Uganda, Mr. Michael Otim, led the opening session of the dialogue and highlighted the purposes and objectives of the meeting. The event was opened by a prayer from Rt. Rev. Bishop Macleod Baker Ochola II and self-introductions from participants.

According to Otim, this meeting came about after previous consultations with civil society revealed the need to have face-to-face interaction with JLOS officials on updates of the implementation of transitional justice (TJ) in Uganda. Therefore, the meeting aimed to raise awareness on developments within JLOS and also build ownership among civil society and victims' communities on the proposed TJ processes. The civil society representatives present were purposefully invited because they were seen as very important stakeholders in the implementation TJ processes. Otim emphasized this in saying that the success of what is being done at the national level depends on local-level cooperation and support.

He continued that the process of engagement (between civil society, affected communities and JLOS) is one that must continue, opening a path of dialogue and consultation among affected communities. This meeting was not intended to resolve all of the intricate and technical details of implementing transitional justice, but rather to contribute ideas for developing policy frameworks that are relevant to victims' needs. Otim implored participants to listen carefully to what the representatives from JLOS were to share and provide useful feedback that will help all move the process for TJ in Uganda forward.

Updates on TJ in Uganda

Present to provide information on transitional justice in Uganda was Ms. Rachel Odoi-Musoke of the JLOS Secretariat. Odoi thanked the organizers for creating the dialogue and giving JLOS the opportunity to explain the work they are doing. Her presentation highlighted the ongoing activities of JLOS, and emphasized mainly the Transitional Justice Working Group, and areas that did not deal with the prosecution because the Registrar was to provide those updates later in the meeting. Her presentation was guided by a PowerPoint presentation that is available upon request. The following updates were provided in her presentation:

JLOS History

The Justice, Law and Order Sector (JLOS) is a sector of government formed after government decided to partition its institutions into sectors based on their areas of expertise and mandates. The JLOS sector is one that brings together all the institutions responsible for the maintenance of law and order and the administration

of justice. It implements a reform process of those institutions to improve service delivery. The sector emphasizes what they call the 3 C's: communication, coordination and cooperation, both within JLOS and among partners within government and civil society.

JLOS Members

There are 15 member institutions within JLOS, led by the Ministry of Justice and Constitutional Affairs, which represents the sector in Cabinet and presents the sector budget and ministerial policy statements before Parliament. Other members of JLOS include: The Ministry of Internal Affairs, the Ugandan Police, the Ugandan Prison Service, the Judicial Service Provision, the Directorate of Public Prosecutions, the Uganda Law Reform Commission, the Ministry of Local Government (only the local council courts), the Ministry of Gender, Labour and Social Development (only probation services and the juvenile justice component), the Uganda Human Rights Commission, the Law Development Sector, the Center for Arbitration and Dispute Resolution, the Tax Appeals Tribunal, the Uganda Law Society, and the Judiciary.

JLOS Working Groups

The sector liaises with different stakeholders, including other government agencies from other sectors, semi-autonomous bodies, the private sector and civil society on a day-to-day basis. The sector is composed of different working groups. The topmost committee is the Leadership Committee, chaired by the Chief Justice. In addition, there is a Steering Committee, chaired by the Solicitor General and the Director of Public Prosecutions as an alternate; the Technical Committee, made up of heads of departments and the technical heads of the different institutions; and the sector working groups, dealing with the different focus areas. The sector has six main focus areas/working groups: land justice, commercial justice, criminal justice, family justice, anti-corruption, and transitional justice. (For the purpose of the discussion, her presentation then explored in depth the Transitional Justice Working Group.)

Transitional Justice Working Group History

In February 2008, the Government of Uganda and the Lord's Resistance Army/Movement signed various agreements, including the Annexure to the Juba Peace Agreement on Accountability and Reconciliation. Under that annexure, the government committed itself to expeditiously developing the necessary legislation and modalities for implementing a framework for investigations and prosecutions, for trial within the formal justice system, for reparations and for alternative justice measures.

As a sector, JLOS commissioned a study in 2008 to provide information on what specific obligations rest within the sector. Following that study in 2008, JLOS held a national JLOS Forum which focused on transitional justice and recommended the establishment of a transitional justice working group to implement the obligations under Agenda Item 3 on Accountability and Reconciliation from Juba. Initially, the working group was chaired by the then-Principal Judge, Justice Ogoola, who has since retired. The current Principal Judge, Justice Bamwine, has taken over the chairmanship of the Transitional Justice Working Group.

Transitional Justice Working Group Structure

The Transitional Justice Working Group is a much higher-level working group than the others in that it is chaired by the Honorable Principal Judge and its members are the heads of many of the member institutions, including the Law Reform Commission, the Human Rights Commission, the Director of Public Prosecutions, the Inspector General of Police and the Inspector General of Prisons. In addition, it has technical officers to provide a technical input. The Working Group has been divided into five sub-committees: formal criminal justice, traditional justice, truth-telling and national reconciliation, integrated systems, and sustainable funding.

Transitional Justice Working Group Consultations

The working group's terms of reference are to provide expertise and to develop a shared approach to the implementation process. The Working Group has benefited from technical input from the sector institutions, lawyers, sociologists, economists, and through consultations. After holding consultations and researching specific issues, the Working Group presents specific issues to the overall working group to make specific recommendations for action. The sub-committees work on specific, in-depth issues, engaging experts and research assistants, producing working documents, and carrying out study tours to establish best practices. The process of study tours and best practices has been supported by ICTJ and other partners in civil society. The Working Group also holds consultations to provide feedback to stakeholders and civil society leaders. At the time of this dialogue, JLOS had been in Lango for about a week and expected to be there for another two weeks to carry out consultations on truth-telling processes. In total, JLOS representatives are carrying out similar consultations in eight regions, so they can present concrete proposals to the Joint Leadership Steering

Committee for their consideration. Their recommendations are then presented to Cabinet and to Parliament for a decision.

Criminal Justice Sub-Committee (WCD) History

The Working Group was asked to clarify the jurisdiction of formal criminal justice mechanisms in regard to war crimes and examine whether the existing system was equipped in handling these cases. In addition, the Working Group was asked to suggest a legal framework for the effective operation of these mechanisms and to suggest sentencing options that promote reconciliation and rehabilitation in Uganda. The Penal Code Act and Geneva Conventions were deemed capable of handling some of these crimes, although they were found to be outdated and in need of improvement. In addition, the Working Group considered commitments of Uganda, such as the ratification of the Rome Statute of the ICC, and carried out consultations on domesticating the Statute, including discussions on appropriate penalties, who could be prosecuted, amnesty, and child soldiering. These recommendations were integrated into the International Criminal Court Act of 2010, which carries a maximum sentence of life imprisonment. After making proposals for suitable institutions arrangements, the Judiciary established the War Crimes Division of the High Court. To support the WCD, the War Crimes Unit in the Directorate of Public Prosecutions and the Ugandan Police Force was set up to specifically investigate and prosecute crimes recognized under the WCD.

Outstanding Issues

Amnesty is still an issue that is being widely discussed in the sector. Other issues that need further clarification or updating include the Geneva Conventions Act which was passed in 1964 and doesn't consider protocols Uganda has ratified dealing with child soldiers, conflicts of non-international character, etc.

War Crimes Division Investigation Processes

The War Crimes Unit and the War Crimes Division work together in prosecution-led investigations. The prosecution guides the investigations and participates in the process, jointly coming up with the details for the prosecution which are taken to court. JLOS has been carrying out extensive training for them in international criminal law and other areas, like "softer" prosecution skills which include: counseling skills, psychosocial skills, how to interview witnesses who have been traumatized (both victims and accused persons), allowing them to carry out investigations and trials in a more humane manner.

War Crimes Division Trainings

JLOS is also trying to build skills of other institutions like the Government Clinical Laboratory, which does the forensic work of the investigations, so they can support the War Crimes Unit. They have also provided training to the Uganda Law Society, so there can be a pool of potential defense lawyers to provide legal aid. Legal aid is a requirement under the law for anyone charged with a capital offense, and it's a requirement that the state provide that person with a lawyer. These potential defense lawyers are getting a similar training to what the prosecution is getting, so they are adequately prepared to handle cases when and if they are called upon. Lastly, JLOS is looking at ways of enhancing witness protection programmes, which have been very weak in Uganda's criminal justice system. They realize it's a very sensitive area in war crimes cases and have been working to prepare appropriate witness protection and to provide mechanisms for victims to participate in the trial processes.

Traditional Justice Sub-Committee & Consultations

This sub-committee is interested in clarifying the role and scope of traditional justice mechanisms in promoting accountability and reconciliation in Uganda. It is currently identifying the types of crimes and violations that should be subject to traditional justice processes. JLOS has developed a working document on the topic after consulting with several organizations and meeting with traditional leaders. The sub-committee is not so much interested in legislating traditional processes, but rather setting up structures that enable traditional justice to operate effectively and in conjunction with formal justice processes, perhaps through a two-way referral process. The sub-committee is looking at technical issues of such complementarity, for example if someone who has gone through one process should/could go through the other. Currently the eight regional consultation teams are exploring this more in depth, so as to receive a national perspective. This will help the resulting mechanism in supporting justice processes for persons regardless of regional origin.

Truth-telling and National Reconciliation Consultations

The other issue that JLOS is looking at in terms of consultations is truth-telling and national reconciliation. The sub-committee on these topics was asked to assess the relevance of truth-telling and national reconciliation mechanisms in promoting accountability and to identify the role, mandate, and scope of truth-telling mechanisms/a national reconciliation institution and propose how far back in time the work of this particular

body should go. The sector is comparing other jurisdictions (i.e. South Africa, Sierra Leone, Liberia) to assess what can be learned from their processes and how relevant they are to the Uganda context. The consultations JLOS are currently carrying out will inform the Working Group, so they can develop an appropriate framework for handling truth-telling or reconciliation, including structures, appointments and procedures, and guidelines on how the institution will link to other TJ mechanisms, particularly the courts, traditional justice and other institutions with a similar role like the Uganda Human Rights Commission and the Amnesty Commission. There will also be discussions on whether those bodies will play a role in truth-telling or national reconciliation processes. So far the sub-committee has done initial desk research and comparative analysis, held roundtable discussions, and consulted with persons involved in other truth-telling processes.

Intended TJ Policies

JLOS is currently consulting the above-mentioned consultations aimed at informing the development of policies for truth-telling, national reconciliation, victims' protection, support and reparations.

Nationwide Consultations and Way Forward

The abovementioned consultations will be carried out for the remainder of the month of May and the beginning of June, after which JLOS shall begin a process of report writing and preparing policy proposals. The policy proposals will be discussed very widely and include consultative meetings with different stakeholders groups and a large national consultation to agree on a consensus position. This consensus position will be presented to the Leadership Committee and later on to the Cabinet for its consideration. At the end, JLOS expects to have a policy by government on truth-telling and national reconciliation, and on reparations. Basing on the policy, the Working Group will draft appropriate legislation and begin the implementation process. The draft policy should be completed by the end of July. Reportedly, this is something that has been highly anticipated by the community, government and the private sector.

Specifically, the consultations are looking at the relevance of truth-telling bodies (whether they are relevant to justice delivery and what period of time they should cover), local dynamics of conflict resolution (how people resolve their conflicts), how these processes can be linked to the formal justice process, the continued role of amnesty, and the needs of victims and witnesses in a truth-telling process. The consultations are also aimed at helping government to better understand the expectations of communities. JLOS is cautious to not promise too much at this point, however, as there are some limitations to what the government can provide.

Integrated Systems Sub-Committee

The Integrated Systems Sub-Committee is a technical committee which looks at the proposals from the other sub-committees and tries to bring them together into a comprehensive report and deal with linkages.

Sustainable Funding Sub-Committee

The fifth sub-committee on sustainable funding deals with budget issues and tries to find sustainable options. Much of the process thus far has been supported by Uganda's development partners, but JLOS knows these are government commitments and that government needs to find sustainable options for funding these programs on its own. In addition, there are some programs in particular that are not likely to be supported by development partners, mainly reparations. So as the other sub-committees make recommendations, the sustainable funding sub-committee considers the sustainability of proposals and suggests ways they can be adjusted to be more realistic.

Developments at the War Crimes Division

Present to provide updates on the War Crimes Division was His Worship Tadeo Asiiimwe. The following updates were provided in his presentation:

WCD Overview

The War Crimes Division is different from any other court in Uganda, is alive and kicking, and was started in 2008. However, it is called the War Crimes Division of the High Court of Uganda because it is not a special court or tribunal, but rather a branch of a system that already exists in every region in Uganda. The High Courts sit in every region, so the WCD could realistically come to Lira to try cases and occupy High Court buildings here.

WCD Judges

A panel of the War Crimes Division is formed when three appointed judges sit three in a quorum. People are interested in know how balanced the court is. Right now the court is comprised of 5 judges from across Uganda and is headed by Justice Akiiki-Kiiza from Fort Portal. The Deputy Head of the court is Lady Justice

Elizabeth Ibanda Mhamya, a Musoga. Other judges include: Justice Ezekiel Muhanguzi from Western Uganda, Justice Alfonse Owiny Dollo from Agago, and Justice Anup Singh Choudry, an Indian-Ugandan. The transfer of Justice Owiny Dollo came after people from the northern region questioned why no sons or daughters “of the soil” were present in the division.

There is no limit on the judges who can be in the court, and the principal judge can add or reduce the number based on needs.

WCD Jurisdiction

The WCD is not only for LRA, but for all Ugandans who have committed offenses which qualify. It is a specialized court that tries cases like any other court. Right now the court is located in Kololo on Mapua Road near the Kololo Airstrip. It is on the same premises as the Anti-Corruption Court.

WCD Detention

The first case before the WCD has not yet been tried, and people are concerned that the first suspect has overstayed in detention. This is somehow a valid point, but one has to understand that in Uganda today, all the courts are grappling with the problem of case backlog. The number of judges are not enough to handle the number of cases. The Registrar and others are appealing to the government that more judges be appointed to the High Courts. Under ideal conditions, the current suspect should either be serving a sentence or be back in the community by now.

Court Trials

Kwoyelo will be tried. The court will not go away because it has been permanently created and is based on agreements made during Juba by the government. This court is in place to complement the work of the ICC, as the ICC only goes for the top-most criminals. People are asking why we have charged one and not the other. We cannot determine which cases come to court, and courts do not go looking for cases. Prevention is better and the court comes in at the end after a problem has already occurred. We cannot allow impunity to continue. The maximum sentence we can give is life in prison.

The trials can take place anywhere there is a division of the High Court of Uganda. For Kwoyelo, the court has decided to try him in Gulu. Trials were supposed to start today, but the rules and guidelines on how the court will run have not been gazette. His trial has also not started because the judiciary has deployed all judges to deal with election petitions in two months.

We are expecting the first trials to now start in July. The prosecution is currently finding and talking with witnesses.

From War Crimes Division to International Crimes Division

To do away with the notion that this court is just a court of rebellion, we are changing the name from the War Crimes Division to the International Crimes Division. When the name changes, it will also try cases to do with piracy, human trafficking, and slavery. The notice of the name change will be made public.

Laws Used in the WCD

The War Crimes Division is expected to use the International Criminal Court Act, the Geneva Conventions Act and the Penal Code Act. Once the trial for Kwoyelo begins, his charge sheet will be released to the public. Kwoyelo has been delivered a copy of the charge sheet, though. Currently, the court is looking at addressing offenses like willful killing, torture, willfully causing suffering, extensive destruction of property, etc. (A longer list is available on the WCD brochure). Also, offenses like discriminating based on regional or tribal affiliations are going to be considered.

The beauty of criminal law is that it knows no time limit. In Rwanda people are still being tried for what happened in the genocide. Our prosecution is currently talking to people like women who were raped during the conflict to get them to participate in the court.

The WCD is in the same building as the DPP and he interacts with the judges on a daily basis. We are told the DPP is investigating over 100 files. For us, we are waiting. The WCD does not operate like other international courts who say go and bring so-and-so. This court will follow all of the procedures as you know them. There is no trial which is going to proceed without an accused person being defended. All fair trial procedures as you know them will be there.

Reactions from Participants + Responses from JLOS

The following questions and comments highlight the interests and concerns of the civil society representatives present at the dialogue. Although they were spoken during the course of the meeting, they have been compiled together into one section and include answers from the JLOS representatives where possible.

Question 1 (Victim Preparation for Participation):

What is JLOS doing to prepare victims for participation in these processes? At this point, the sector seems to be looking more at government institutions. Victims also need to be prepared in one way or another

Answer- Rachel: We have trained officers who will engage with victims and witnesses so the only people who meet with victims are the people investigating, and we have tried to help them deal with them in appropriate ways. The Law Reform Commission is looking specifically on how victims can participate and working with civil society already working in the community with victims as victim groups. What we may have to do leading up the trials is to have direct engagement with those who are going to be involved. One of the things I didn't mention is we are working on an outreach process, so the community understands how they work and should deal with those who will be involved in the process. But it's definitely something we need to look at in more detail.

Question 2 (Truth, National Reconciliation, Government Will):

The most important element of truth-telling is that there are no denials, lies or deception. How are you going to ensure this is truth because the natural human reaction to a situation is to deny it? Secondly, Are people willing to go through truth-telling, to confess? Because if we do not get this right, we will never have national reconciliation. Lastly, is the government willing to come up with policies for victim protection, support and reparations, because without it victims will remain with a lot of pain in their hearts. Perpetrators must be willing to accept responsibility so the victims can forgive.

Answer- Rachel: In terms of the truth-telling and how we are going to balance the requirement for truth, it is something we are grappling with. We have to know how willing people are to participate. You can't force someone. We are first gauging how willing people are to participate, and we have seen that people are willing, but these may not be people who have very serious things to say. Our concern is people who have committed crimes. How successful will this process be in getting out the truth? There are some comments that it shouldn't be a public process and we should just have a historical record. But for some, the process won't be complete until there is public acknowledgement. So we're trying to balance those views so we can come up with an appropriate process. We recognize it must be a national process. How can we bring people back together? One of things we're looking at is how far back will the truth go and whether it should look at experiences of Uganda as a country.

On the question of compensation, we had initially looked at it as something that requires separate attention. At the beginning of this meeting, someone mentioned suing the government for failing to protect life and property. There has to be some kind of support to rectify the damage and loss suffered. It's a very key aspect and we hope to have a standalone policy. It's also something the Office of the Prime Minister is looking at. It's something there's willingness to address. What we need to find is the balance between what the community wants and what government can reasonably provide. There are questions on whether government will stop with PRDP and NUSAF because those were really designed as development programmes. Reparations must also go with acknowledgement, and they are not simply development projects. I know people will have a lot of ideas on what should be done, but from our perspective, we have to be realistic with what government can actually achieve.

Question 3 (Police and CMI Involvement):

Will truth-telling be in the police unit and will it work independently from CMI?

Answer- Rachel: The truth-telling process does not link to the War Crimes Unit and process directly. The War Crimes Unit will not be handling the truth-telling. One of the question we're looking at is how in some countries people gone through the process and then were arrested for what they said. It has been recommended that when contribute to provide information, it should come with a guarantee. It goes back to the question of amnesty, and whether a person should be guaranteed amnesty. How do you protect a person who willingly comes for a truth-telling process, or should you protect them? The War Crimes Unit is a unit of police within CID. It doesn't work with CMI. They are guided by the DPP

and the War Crimes Unit of the DPP. It is not under CMI. Police would not handle truth-telling processes. So although we are consulting on who is best to handle truth-telling process, I don't think it will be under the police.

Question 4 (Victim Protection):

After truth-telling, what next? Are there measures put forward to protect the victims and witnesses?

Comment 5 (Amnesty):

I am praying that situation is dealt with because we are looking at serious crimes of humanity. My prayer is that you rescue victims of the country from amnesty.

Answer- Rachel: At the time amnesty came into place, there was a reason. It was a time to encourage peace and peace talks and people to come to the table. The circumstances have changed a lot. The question is should that option still be there. It's something that we have to consider as a sector because it has direct implications on trials and on the reconciliation of communities. Are people satisfied with the granting of amnesty? So we are looking at the Amnesty Act to make recommendations on whether it should continue to exist. Should there be conditions? Should you be required to make public declarations? I have also taken down views here and will take them back to my colleagues as part of issues to be considered.

Question 6 (Amnesty and Stigma):

Some of the key concepts are being used interchangeably in a crushing manner that is actually offending. What is amnesty? Who should seek for amnesty? A child who was abducted and forced to commit atrocities, should that person be granted amnesty? We have scenarios in different regions which no one has classified where abductees are treated as rebels and are isolated. We have a scenario in Teso where a boy was arrested, was called a rebel in custody, and now he was disappeared. Most of our policies pre-determine someone a criminal, even if you haven't done anything. It's an attitudinal issue that needs to be addressed because when dealing with issues of justice, it becomes a problem.

Answer- Rachel: I know amnesty is a big concern. I think when going back to amnesty, I will ask them to rephrase it just like that. Just a casual look at people who received amnesty will reveal that they were abducted and then received amnesty. You rarely find someone who was a rebel willingly and got amnesty. That is the problem with the way the law was designed, that anyone who was involved in the rebellion could get amnesty. Yet, when you capture someone who chose to continue fighting, the first they want to do is ask for amnesty. It's a problem for those of us in the justice sector, and that is why we're looking at making amnesty conditional. Initially when we started with our consultations in 2006-7, we found that communities were in strong support of amnesty. It's interesting that now, most of you are speaking against amnesty.

There was an issue on children who returned and police investigations. I don't know if it's a general police issue. With regard to the specific case, I suggest you take it up with the UHRC there so they can look into it. Alternatively, we have the district coordination committees, usually chaired by the chief magistrate. They're designed to check each other. If there is a problem with one institution misbehaving, you can raise it there. Generally, when it comes to investigating crimes before the WCD, CID officers who have been trained are involved. If there is an issue, we can still raise it. On issues of continued branding of rebels, it is something to look into.

Answer- Registrar: This problem of amnesty is being aggravated by the suspects themselves. The suspect sees it as his only option of gaining liberty. If you don't go for amnesty you will stay on remand for several years. If there is going to be anything fruitful then believing in the system in place is very important.

Question 7 (Amnesty):

Can someone who is granted amnesty be convicted or sentenced in the future?

Answer- Rachel: No. They can be tried for ordinary crimes but not for anything related to the rebellion. The amnesty is absolute. It is finished. They will walk about the streets and never be tried.

Question 8 (Amnesty and Incentives for Truth-telling Participation):

How is JLOS making this whole undertaking something that can be sustained in the community over time? How is the whole process taking into consideration root causes and not just addressing violations? If we could redefine victimhood to include all children forcibly abducted and maltreated during captivity, then we would not need amnesty anymore. We asked children who were abducted to sign amnesty sheets and this was a continued abuse on them. Finally, on truth-telling, what is the incentive for participation and how will we ensure that evidence won't be used against them in the future?

Answer- Rachel: Looking at root causes is partly what we're doing because when we deal with prosecution, we're dealing with people leading certain processes. In truth-telling, we try to see how it can lead to lasting processes. But have we addressed what is leading people to do what they're doing? This is not unique to northern Uganda. Part of truth-telling is aimed at looking at root dimensions of conflict, so we can know how far back we need to go.

You can identify who was abducted and who was not. I think maybe we should reconsider whether these people need to be handled under an amnesty process or not.

On truth-telling and whether it will be used in the future, you cannot expect someone to tell the truth when police are standing behind that person. Is amnesty the solution or should it be some other kind of check in the law to protect the truth-telling from the prosecution process? What is the incentive? That is the fundamental question. The concept of truth-telling is something that came up in the peace processes. People need to have some reason for doing it. Many people have said they want that process because helps them to get things off their chest and to hear that acknowledgement of suffering. If they come and explain how much they suffered, some people expressed a desire for reparations. But some are not asking for huge sums of money, not millions and millions of shillings. We'll look at what are the most appropriate reparation packages and what would be the best way to get full participation. Many people are suffering quietly and want the opportunity to speak.

Question 9 (CSO Engagement, Consultations, Government Will):

What has been the nature of engagement of the TJ Working Group in regard to preparation for the consultations? Were CSOs involved in developing methodologies? Who have been the key target groups? On what scale is TJ a priority in Uganda? As members of civil society, it is our key interests to ensure that TJ process are placed as key government priorities.

Answer- Rachel: We are trying to consult at many levels. We have involved some civil society groups in discussions. I think with civil society there is still a lot that needs to be done. I think it's something we need to improve on a lot. There has been some representation from different organizations. What we need to strengthen is involvement of CBOs and district-level civil society. We need something more regular. On involving civil society in consultative process, we have a task force which provides advice and gave comments and input. We will meet them again. It can broaden to include more people. We targeted key groups at different levels, targeting individuals in communities and community leaders (i.e. clan, administrative, sub-county chiefs, former camp leaders, religious and traditional leaders, civil society and community-based groups and a few other technical people).

TJ is quite a high priority issue. It was specifically identified as a standalone issue. It could have been handled under any other institution, but it was decided that it should be given special attention. We have programmes under JLOS, the Office of the Prime Minister, the Parliament. It's a high priority issue. We have been put under pressure to finish the work as quickly as possible, but you can't rush certain things. At the same time, you don't want TJ to be isolated from general reform process because it risks becoming a big reform process on its own which people just want to finish. We are looking to integrate some of the TJ issues, for example traditional justice, looking at it as a method of dealing with conflict but at same time, considering looking at traditional justice and restorative justice as alternatives to criminal justice and how can integrate them with the formal justice system. In some places it's done very successfully, where some issues are handled by the community and they file monthly returns to the magistrate, who only checks that those processes don't violate human rights. The idea is to allow those processes to operate the way there were designed to operate and handled by the people who always handled them. We're looking to integrate. In Karamoja there is already a lot of uses of traditional justice where communities value the systems.

Comment 10 (Reparations):

The UPDF absorbed many rebels in the process of return, and the victims seem these people still in uniform, being paid and supported by the government. When we visit these victims, they don't seem to see any of the activities introduced by the government as addressing any of their problems. We have a case in Barlonyo where the government had an idea to build a memorial vocational school, but it has never materialized. The procedures we have in the conventional justice system are not addressing these problems. So I think JLOS is doing something that can address the problems of our people, and I consider reparations as the best method.

Answer- Rachel: Medical care, reintegration, counseling, these are all needs of communities. Not just money. I think it's very important that if we reintegrate, that those who need special care have access to that.

Question 11 (Traditional Justice):

On double jeopardy, is there a system where traditional justice can refer to a certain level and is there room for referral?

Comment 12 (Systemic Reform):

These problems cannot only be dealt with through reparations. There is need to reform, so people can go through institutions which understand them. These institutions are not there.

Comment 13 (Amnesty, Fairness):

Some people think amnesty is meant for the northern region only, but according to an amnesty official, amnesty is for everybody. So far there have existed about 24-28 rebel groups and 26,000 amnesties granted in Uganda. We have to appreciate some systems. When it comes to a post-conflict situation, there arises a political dilemma. Uganda has obligations towards certain instruments and the international community has made it clear. With Kwoyelo, we are informed Kwoyelo is also a victim. With truth-telling, it is helpful that both sides be accountable to telling the truth and not just one side. People believe the other side committed atrocities. The same problem facing the ICC will also face this truth commission if it is just one sided.

Answer- Rachel: Amnesty is for everybody, but we have to recognize the position internationally as you rightfully mentioned that amnesty is not recognized as an option for many of these cases. Much as we had these laws, they came into law under certain circumstances and we have to think whether those circumstances are there still there. One of the resolutions at the ICC Review Conference was clear opposition to amnesty. I think you're right to say it's something we have to look at.

Question 14 (Amnesty, Children in Captivity):

In the last meeting, amidst us were parents yearning to receive children still in captivity. What will happen to abductees still in captivity who are not in commanding positions? Those in captivity fear to come back. Has JLOS come up with levels of trial or punishment for these people? Because those in captivity should know who will be tried and who will not, so those who are yearning for their children can see them come back. How is JLOS putting this into consideration?

Answer- Rachel: On parents of children who are still in captivity, I will leave that to His Worship.

Question 15 (Root Causes and Dates):

I am worried about how we are willing to understand the conflict and how far we want to go back in addressing the root causes. One tries to address issues to the best of his or her benefit. As you look at 1966 forward, conflicts are connected to what took place then.

Answer- Rachel: We have also been trying to look at some of those issues. Are these conflicts isolated or related? Do we need to look at them all together? Did other inquiries address issues entirely? It's something we still have to look at in a lot of detail. You raised concerns on whether or not there is the interest or commitment in raising causes. Issues of lost counties have come out strongly. Bunyoro, etc. How do we see Uganda as a country? You have people from outside a region settling in another and then there are fears about losing their land. The issue of Bunyoro is very prominent when it comes to dealing with land conflicts. We have a huge land problem there, in northern Uganda, in Buganda. It's important for us to have these views from the community, from the people. If we are to go back and tell policy-makers to start examining from 1962, they'll ask us why. And we have to justify why we are proposing that date. Also, the study is a country-wide study. We are not focusing on the northern region alone, although there is a lot of emphasis here because, as we discovered in initial consultations, they mentioned that it's not an isolated issue.

Comment 16 (Amnesty):

Amnesty was not meant to exonerate those who committed serious crimes against humanity. The second point I want to make is that abducted children were forced to kill, eat flesh or drink blood of human beings. Their humanity was no longer there. It was just like the gun. When court is taking the case of these children who have been abducted, they were already dead humanely speaking.

Comment 17 (Women):

As civil society, we have an interest to see success in these trials because if we don't, the victims we work for/with will be disappointed. In particular, for those working with women you have a role. When conflicts happen, it's mostly women and children who bear the greatest brunt. So when you look at UN Resolution 1325 on the participation of women in peace building and 1894 and 1820 on issues of violence and rape as tools of war, these are issues you should take up to make sure their involvement.

Question 18 (Independence of the Court):

I have worked with victims in many situations and this challenge has been there. Many ask, how independent is this court? What systems are in place to protect the victims and witnesses? These are key issues from victims who would willingly participate in the court. What systems are in place to ensure that the court is independent? How will you protect witnesses? Even for the intermediaries, civil society, how will you protect them?

Answer- Registrar: Witness protection is now a very big elephant as we move towards these trials. These are serious crimes with serious expectations and consequences. We are looking at different protection levels before, during and after trials. In absence of government policies, we are doing the best we can as a court. In Gulu, we will buy screens and put the public in tents outside to follow the proceedings. We may send images where the witnesses face and voice is distorted so the public cannot identify the person. We tried to do the trial in-camera but that offended the rules. In the future, we are thinking of masking witnesses. We will also have witnesses and victims come to court using different routes so we do not have scenes of intimidation.

The DPP is doing his own protection with the police. We have advised them to identify witnesses and keep them in hotels until the trials end, but there are high budgetary implications in that. So when we go to JLOS we keep harassing Rachel with our budgets. How are we going to get witnesses from Amuru to Gulu? Even protection after trials is terrible. We have thought of relocating witnesses to other parts of the country, but that means likely won't work. Civil society can do its part to tell people to not refuse to leave the court because it refuses to pay you for coming. We have put aside 80 million for the Kwoyelo trial but that is not even a quarter of our budget. To have a judge travel from Kampala and sleep in a hotel room in Gulu for 40 nights means paying the judge, driver and bodyguard.

On the independence of court, when you look at the quorum, what are the chances they will make a unanimous decision? At first they disagree then agree to disagree. Secondly, I don't think government put in place a court just to play around, no. This court has full support of government and the whole international community is monitoring it. For your information, if we don't pass the test of doing things according to the ICC, they will take off. The whole world will be monitoring us. Until we pass the test, they will not say this is a court. It should operate as near as possible to ICC standards.

Question 19 (Victim Participation):

How informed are the communities so they can participate in this process and make it meaningful for them? Because seeing is believing. They would be in a position to heal from the process if it's real, but they have been suspicious that it will be interrupted.

Answer- Registrar: Myself, I intend to move on radios and talk a bit. I want to find out whether there are councilors here. I want to find out how often council meetings sit, so I can move everywhere and attend them. The clerks to councils know the activities. Outreach is the only way you can reach the community.

Question 20 (Genocide):

I would like to know how many people must be killed before an act is called genocide because in late 1996-7 the LRA many people in northern Uganda when they were going to the IDP camps. The government gave

people 24 hours to relocate and those who delayed were bombed. Is that act genocide by LRA or government or is it pending?

Answer- Registrar: The wordings in the law are very clear.

Question 21 (Victim Involvement and Outreach):

Most people don't know about the WCD and the court. Those of us in civil society face a lot of questions that are not easy to respond to. We see the WCD as a crafty, corrupt institution benefitting people in the judiciary. Why are you not holding endless consultations [with us]? There needs to be more known to get people in the communities informed. I feel a lot money is being wasted but that it's not achieving anything.

Answer- Registrar: When JLOS says we have money, our activities happen. When they don't, the activities don't. The same applies to reparations. What am I going to get at the end of a trial? When you sentence someone to life in prison, but what am I going home with? Courts are mandated to award compensation at the end of every trial, but if have you 1000 victims against one perpetrator, it isn't realistic. We want to ensure that we tell victims to come to help fight impunity, not earning. Otherwise, they will come the first day and not the second.

Question 22 (Registrar Role and Evidentiary Requirements):

I'd like to know more about your role as registrar. In other courts, it's the Registrar's Office that is responsible or coming up with mechanisms to promote participation and victim protection. I would also like to know more on the evidentiary rules in the court. What procedural and evidentiary requirements will be waived since some evidence may have been destroyed during the war?

Answer- Registrar: We have not introduced a new breed of court, and this one is going to be the same as others in Uganda. We will instead add on what is missing from an international perspective. The evidence act however will be the same. The existing rules in Uganda will be the same.

Question 23 (Backlog, Autonomy and War Causes):

You said there is a backlog of the courts because of lack of judges, but it's known that courts sometimes fail to meet expectations because of lack of logistics or sufficient budgets. I can observe that changing the court to cover many crimes may bring a backlog. Secondly, the community feels that the court seems to lean toward the executive arm of government and lacks the autonomy required. How are you going to make sure that when the court starts that the hearing continued to build the confidence of citizens? The cause of these wars emanates from inadequate sharing of resources and dissatisfaction of leadership. How will JLOS ensure that there are not future occurrences of war?

Answer- Registrar: Some people are worried that about the withering mandate of WCD to bring in so many other cases. Can we allow cases to be tried by other courts? Aren't we creating backlog? Actually, that's not correct because these cases we are bringing in are being tried by other courts. We're saying bring some of your plate so we can share on this side. Because as we talk now, will we be fighting all the time? We are planning for the future, not for today. Also, courts are not supposed to lean on any side. There can be many perceptions though.

We operate under tight budgets. That is partly what contributes to case backlogs. Do you know how much a judge needs to sit for 30 days to hear 30 cases? He needs 40 million. So until we secure money, we will not send a judge to hear cases. Maybe when we get oil some of these problems will go away.

Answer- Rachel: This is definitely a challenge and why the court was designed the way it was. We could have had UN systems, but we realized they're not a sustainable process for us and not what was agreed upon in Juba. Resources that are available to the High Court are available for WCD. The staff of the court, staff of High Court, are more sustainable and more in the means of the judiciary. But we realize these cases have peculiar needs. Witness protection alone is an extremely costly venture. It starts the moment the police start investigating a case. Because once police arrive to collect a statement, everyone knows you're going to testify. All these need to be taken into consideration. There is a huge amount of interest in this case and we need facilities for the public to participate at a venue and other forms of outreach. It's extremely expensive. We're trying to do that as a sector. We've included these in our budgets to Parliament and to our sector partners. We're trying to provide resources.

Question 24 (Witness Protection):

How shall the identity of witnesses be concealed and how can we make sure they are not exposed out to the public? And what if people want to go back to the records of these cases in the future. Will we deny giving an opportunity to look at the records to protect people?

Answer- Registrar: On how particulars will be safeguarded, they can be written with numbers or letters instead of full names.

Question 25 (Court Users Committee, Investigations, Death Penalty, Amnesty):

What is the Court Users Committee and are they going to play a role in the outreach? DPP is investigating 100 files. Can you tell us more information on that? Why can't the death penalty be applied if the penal code applies in the court? Why didn't Kwoyelo get amnesty when he applied?

Answer- Registrar: On amnesty for Kwoyelo, I don't know if he applied. If he applied for amnesty after he was already charged, the standards are different. It is not automatic. When you apply after a charge was read, the standards are different. According to the Amnesty Act, the DPP has to consent. There is a provision under Section 3.3-3.4. For Kwoyelo, the DPP has said no. And that's why he's not getting amnesty. So people should not complain.

On the death penalty, it doesn't apply under the ICC Act, and the division does not only apply the ICC Act. Right now the death penalty is not mandatory anymore. Under the ICC Act and the Geneva Conventions Act, there is no death penalty. This is after careful consultations. Now, there is a contradiction between people charged for international crimes and people charged under ordinary criminal law. This is a contradiction that needs to be regulated by legislature and taken up by Members of Parliament.

I don't know who the DPP is investigating. The DPP is in a better position to answer. We have it as general information like that. On the Court Users Committee, in the new law coming, there is a Court Users Committee comprising of so many people. It will have the head of international crimes division, judges, the attorney general, DPP, DCID, registrar, not more than 7 members of the public and more.

Question 26 (Perpetrators):

In the brochure of the WCD, it says the court will try perpetrators, "including commanders of LRA and other rebel groups." But in the communities, we have evidence of the UPDF committing atrocities. This is the question on the ground: Will the UPDF be tried by the WCD?

Answer- Registrar: I can assure you that if a UPDF officer appears, he will be tried. The court is not limited to a section, group or tribe. And the court is permanent. If someone is protected by his friend today and tomorrow the friend is not there, why are you scared? People are saying no one will touch the UPDF because their boss is still with them, but if you bring them, they will be tried. The court is for all of us. Jurisdiction of the High Court is unlimited.

Answer- Rachel: There is nothing to stop the trying of UPDF because the Court has jurisdiction legally. However, you know that in Juba it was generally agreed that UPDF would be handled by courts martial. So it was a negotiated position. So where cases arise, we expect court martial to handle cases. But the High Court has a right to handle cases, too.

Question 27 (Jurisdiction):

During the presentation, you said the establishment of the WCD was as a result of the LRA conflict. Why don't we just look at issues of the LRA because otherwise, WCD will leave other issues of other courts redundant? Now will "Walk to Work" truth-telling be at a national perspective or will it also be handled by you?

Answer- Registrar: Walk to Work, Black Mamba, these are very serious questions. For a civil servant like me, with Walk to Work, the principle is have you committed an offense under this law? The court is ready to try any case which comes. Each one of us has our roles.

Question 28 (Reparations, Government Liability, Outreach):

When we discuss these trials, the questions we get from the communities pertain to whether or not those who failed to protect them can be held liable. There were people who were responsible for protection and they

didn't do anything, so will they place the role of providing reparations? Also, can crimes like child trafficking and forced prostitution be tried in other courts using the ICC Act. Lastly, it would be good to distribute the ICC Act to civil society and also kindly write down the things you have said today so we can use it as a reference. And use simple English so we can use this and share.

Answer- Registrar: That the Presidential Advisor registered so many people in expectation of payment and that the money is not coming...I think this is where we go wrong. For example, let me ask you, does an RDC control the findings of government? When they go to the level of making a list and attaching how much is going to be paid, you'll be surprised that list is never reaching the desk of the president. The person is making the point that he or she is helping the community but he or she is not. Those are not the kind of reparations we are interested in. It's the equivalent of me giving you an envelope. It's not sustainable. Our consultations are geared towards having durable structures.

Courts are going to find people responsible for acts. If the act was omission, the DPP shall tell us. We can have this court be more meaningful in taking on extra work and not just LRA. Otherwise, someone will say establish a court for ADF, for Lakwena, etc. We haven't reached a level of backlog in WCD so there is no reason to fear.

Answer- Rachel: Some of the cases like trafficking of persons are recognized as international crimes. Forced prostitution and rape in the context of conflict are also international crimes. We're not saying every rape case will not be tried by the WCD. But if it's done in context of conflict, it is a case that falls under the ICC jurisdiction. Sexual and gender-based violence in war are under jurisdiction of the court.

Question 29 (Women):

There has been an increase of violence, especially violence against women and children that is believed to be a result of trauma the community experiences. As WCD, how are you going to rescue our people from this?

Answer- Registrar: Our primitive and conservative culture condones bad behaviors and wife and children beating by men. (*Further elaboration had on the Domestic Violence Act.*)

Question 30 (Psychosocial Support and CSO Involvement):

I want to know if there is a psychosocial arrangement in place to assist witnesses and victims who testify. From a psychological perspective, there needs to be a serious component of psychosocial support in WCD, especially if it's about to start soon. Also, what is your strategy to get civil society involved in outreach? Most of civil society is community-based and we need to involve them more than the city-based civil society. Is there a mechanism to invite them to interact with the registry and learn more about these processes and better inform the communities?

Answer- Rachel: As a sector we are working on a document referred to as "Asked Questions." We are providing answers to those questions in a written form that we hope to share. We shall continue to share and see how to include additional questions, so then you can go back to the communities and have responses on hand. We want more direct interaction, too, and will build on more dialogues of this nature and trainings.

Question 31 (Police, Unity):

At this point, police in this country are even questionable. How are you going to ensure they don't undermine processes? It should not be who killed who, but what is killing Ugandans. It's a lack of national unity, poor governance, etc. We are not here to stand up and say we care for the North. Let's not lose this opportunity to unite as a nation.

Question 32 (Investigations):

The state is using operatives to get witnesses, and they're being influenced by someone to answer in courts. Government security organs are the ones going to reach witnesses in Pabbo. Will this not affect fair hearings in court?

Answer- Registrar: We have a lot to do in outreach. That's what I've gotten from this. Somebody is worried that we will get into problems if state operatives are going around gathering witness testimony. First of all, I don't want to agree with that. You might be seeing them around you. But as a court, we don't get evidence from them. They don't want to be known. If you come to testify in court

and don't want to say who you are, then it will mean nothing. If we find a case investigated by CMI, they fail. A trained police officer is the one we expect to investigate these cases. In our case, I would be surprised to see these kinds of people because they would mess up the case. What I know is that the investigations are done by police through its CID. Some have been moving around from team of DPP trying to get in touch with these witnesses. Of course, you won't get to know them because they are in civilian clothing like you and me.

Way Forward

In the way forward, Michael Otim emphasized that this is not the end, but rather just the beginning. He said to the senior officials, the representatives present are keen to advance the obtainment of justice for these victims and are willing to work to support the TJ processes in place or being proposed. We expressed hope at these interactions will continue. Lastly, he encouraged all to support the JLOS institutions, stating that they might not be perfect but it's important to nurture them and make them the best institutions they can be so victims see a sense of justice.

At that point, Rachel Odoi-Musoke provided the closing statements, thanking ICTJ, JRP and UVF for organizing the meeting and inviting all those present to take part in it. She requested that the information gathered from the dialogue be permitted to contribute towards the ongoing JLOS consultations. She also stated that the Lango team is still around and would be happy to meet with some participants individually and hear more about their experiences. She also expressed desire within the sector to build more on the outreach activities and to meet the community on a regular basis to get feedback on JLOS' performance.

Lastly, she pledged to make more materials available so that civil society has updates, including policy frameworks to be presented to the Cabinet and Parliament.

She closed by thanking everyone for their participation and vowing to take issues raised to others in JLOS not represented at the meeting.

Contact Us

For more information on this report or the meeting, please contact:

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