



Overview

Contributors

Written by Erin Jessee, Sylvia Opinia, Katherine Alexander and Boniface Ojok and edited by Oryem Nyeko.

Erin Jessee is a Lecturer (assistant professor) affiliated with the Scottish Oral History Centre (Department of History) at the University of Strathclyde in Glasgow, Scotland.

Sylvia Opinia is the Team Leader Community Mobilisation at the Justice and Reconciliation Project and has been at the forefront in the design and implementation of the missing person's project.

Katherine Alexander is a humanitarian and human rights professional with field research experience in Bosnia and Uganda.

Boniface Ojok is a visiting scholar at the Institute for Justice and Reconciliation and currently a student of International Peace Studies at the University of Notre Dame, USA. He helped initiate and design the missing persons project.

The authors are grateful to the community members and their leaders who participated during this pilot study in Palabek Gem and Kal and to the JRP team for providing useful feedback. Much appreciation to Boniface Ojok who continues to provide technical advice to this project

This policy brief is published with support from the Royal Norwegian Embassy, Kampala.

Increasingly, the missing victims of mass atrocities around the world are being formally recognised as a key impediment to genuine social repair and transitional justice. A recent conference organised by the International Commission on Missing Persons (ICMP) found that where a concerted effort was made to locate and identify the missing victims of mass atrocities some of these impediments were overcome.¹ Going forward, the international community now recognises that the missing victims of past and ongoing mass atrocities are an urgent global concern that warrants a structured and sustained response that works in tandem with local government and civil society organisations. As such, the Government of Uganda and Ugandan civil society organisations, in collaboration with relevant sectors within the international community, have a legal and moral obligation to address the missing victims of Uganda's recent civil war in order to promote genuine social repair and transitional justice in northern Uganda.

In line with these international developments, and building upon its history of working with families affected by the recent civil war, the Justice and Reconciliation Project (JRP), in collaboration with the families of the missing, launched the "Right to Know" campaign in 2012 to promote awareness of the plight of the missing and the anguish of their families. JRP has since completed a pilot study in Palabek Kal and Palabek Gem sub-counties in Lamwo District that establishes the circumstances under which people disappeared, examines past and present coping strategies used by the affected communities, evaluates surviving families' needs, and provides recommendations for civil society organisations, the Ugandan government and international actors.

This policy brief communicates the findings of this pilot study, drawing upon individual interviews and focus group discussions with families of the missing, formerly abducted persons, cultural leaders and local government leaders. These categories of participants were chosen to gain a multidimensional understanding of the lingering challenges faced by northern Ugandans whose lives have been intimately impacted by their missing relatives. Specifically: the needs of the surviving families, their sources of information on the

¹ For more information on this conference, see: <http://www.ic-mp.org/international-conference/the-missing-an-agenda-for-the-future>.

missing, the impact of their search for information on the community, and any cultural or governmental processes that have allowed them to move forward while living with ambiguous loss. It then draws upon outreaches conducted by JRP in communities across northern Uganda to gain a better grasp of the situation.

Key recommendations

This policy brief recommends that the Government of Uganda, in collaboration with the international community and civil society organisations (CSOs) in northern Uganda, should take the following actions:

- **Formally and publicly acknowledge the missing victims of war and related atrocities in northern Uganda as a prominent obstacle to social repair;**
- **Ensure a comprehensive transitional justice policy framework** and subsequent legislation that reaffirms forced disappearance as a crime against humanity and, within this legal prohibition, formally recognises the rights of the missing and their surviving families;
- **Establish an independent commission on missing persons** to collaborate with surviving families to generate a centralised database and oversee search efforts;
- **Provide economic support and skills training for the families of the missing** so they can better overcome their unique economic burdens; and
- **Support ongoing research in northern Uganda** beyond Palabek toward identifying regional particularities related to the needs of families of the missing.

Introduction

It is difficult to determine how many civilians were abducted or separated from their families and went missing as a result of the 1986-2006 conflict in northern Uganda between the infamous rebel force, the Lord's Resistance Army (LRA), and the armed forces of the Government of Uganda, the National Resistance Army (NRA). The LRA relied on a strategy of abducting children for use as child soldiers in order to maintain their military strength and terrorise the civilian population, while the NRA is accused of various forms of brutality including such acts as abduction, forceful recruitment, rape, torture and child soldiering during the earlier years of the war.² Reports estimate that 24,000 to 38,000 children have been abducted and forcibly recruited as child soldiers by the LRA alone across northern Uganda.³ By 2007, 22,759 children and adults had registered through the reception centres in the region as returned abductees.⁴ The fates of the remaining thousands of abductees, both children and adults, are unknown.

The circumstances surrounding enforced disappearances in northern Uganda are further complicated by the fact that the LRA was not alone in perpetrating enforced disappearances. It is scantily reported that the NRA abducted mainly girls for use as wives or sex slaves. For example, in Burcoro, after four days of brutally torturing the local community, the NRA's 22nd

2 *Uprooted and Forgotten. Impunity and Human Rights Abuses in Northern Uganda*; Human Rights Watch; September 2005 Vol. 17, No. 12(A)

3 Pham, Phuong, Vinck, Patrick, & Stover, Eric. (2007). *Abducted: The Lord's Resistance Army and Forced Conscription in Northern Uganda*. UC Berkeley: Human Rights Center.

4. Pham, Phuong et al. Above.

A family member displays a picture of a missing person in Palabek, Lamwo District.



Battalion abducted thirty to fifty women, and three men. Most of those abducted are still missing.⁵ Unfortunately, the exact number of abductions carried out by the NRA is unknown. Additionally, families of the missing who blame the NRA for abductions do not know where to turn to report the missing and they fear government persecution if they do.

JRP's 2012 transitional justice monitoring survey found that 56% of the families interviewed in the Acholi sub-region have at least one family member missing as a result of the conflict.⁶ In Gulu District, 1,036 persons abducted during the war are still missing.⁷ That number accounts for 29.5% of the total number of the estimated abductions by the LRA in Gulu District alone but does not account for the children born in LRA captivity who may still be with the LRA or perhaps with another army.⁸

To this end, the missing are not the only victims of enforced disappearance. Their families are victims too, not just because of the grief associated with the disappearance of a loved one, but because of the economic, social, and psychological harm they endure even decades later. Combined with the other harms inflicted upon the people of northern Uganda during the conflict, including physical violence, destruction of property, forced migration, and distrust toward the government, enforced disappearances contribute to a political climate in which social repair and reconciliation face formidable and deeply rooted obstacles.

Under these circumstances, the Government of Uganda is obligated to address the widespread harms resulting from enforced disappearances, ideally through the transitional justice policy framework generated by its Justice, Law and Order Sector (JLOS). This mandate gives it a legal obligation to address the legacy of enforced disappearances arising from the fact that international law recognises enforced disappearances as a crime against humanity when conducted in a widespread and systematic manner, as was the case during the recent conflict in northern Uganda. If the Ugandan government fails to meet these obligations, the various needs of the families of the missing - from the need to acquire information about their missing loved ones, to the need to receive aid to overcome the economic, psychological, legal, social and administrative challenges of a missing relative - will remain a key impediment to long-term stability and peace in northern Uganda.

This policy brief includes an overview of its underlying methodology, followed by a discussion of the various challenges facing the families of the missing in northern Uganda, and some of the community-based initiatives

5 *The Beasts at Burcoro: Recounting Atrocities by the NRA's 22nd Battalion in Burcoro Village in April 1991*. Justice and Reconciliation Project. 2013.

6 *UG Reconciliation Barometer: a 2012 Transitional Justice Monitoring Survey*. Justice and Reconciliation Project. 2012. http://justiceandreconciliation.com/wp-content/uploads/2012/11/UG_Barometer_Report_Final-2012-11-16.pdf

7 *For Their Name & In Their Name: Documenting & Paying Homage To The Children Who Lost Their Lives Or Who Are Still Missing In Northern Uganda's War (Gulu District)*. Children and Youth as Peace Builders. 2012. <http://www.childrenyouthaspeacebuilders.ca/pdfs/For%20Their%20Name/Introductory%20Section.pdf>

8 It has been widely rumoured that, in exchange for safe haven in southern Sudan, the leader of the LRA, Joseph Kony, offered to supply child soldiers for Sudan's civil war against the cessation forces in South Sudan.

being used to help families determine the fates of their missing loved ones and address the social, economic and psychological harms impacting their post-conflict lives. Next, we summarise Uganda's legal obligations to the victims of enforced disappearance under international law, with particular emphasis placed on the rights of the missing and their surviving families. Finally, we articulate the key findings of our consultations with the families of the missing in northern Uganda, and conclude with a series of policy recommendations for JLOS, the Government of Uganda, and civil society organisations in northern Uganda toward resolving the negative legacy of the government's failure to adequately recognise and address the myriad harms facing civilians as a result of nearly two decades of conflict, marked by enforced disappearances on a massive scale.

Methodology

During JRP's research and work with victims and survivors of conflict in West Nile, Acholi, Lango, and Teso regions stories have emerged that speak of loved ones who disappeared during the height of the conflict in northern Uganda. Amidst immense post-conflict challenges, the families of the missing seek answers regarding their loved ones' whereabouts. To date, there is no formal provision of information on the number of missing, and only community-based initiatives offer families support in their efforts to learn their missing loved ones' fates. Additionally, there has been a dearth of studies that look at the issue of disappearances during the conflict, their impact on the families of the missing, and the implications for transitional justice discourse in Uganda. This lack of research has prevented a civil society working group, formed by JRP, from addressing the missing persons issue by engaging in informed advocacy with and on behalf of the missing and their families. This policy brief works to fill that void.

While disappearances have occurred in the whole of northern Uganda, this policy brief emerges from a pilot project that has been restricted to a single region. The results will be used to generate a model for undertaking similar but more extensive research across northern Uganda. It draws mainly on qualitative data as an action-oriented research process that engages and empowers civilians while simultaneously contributing to policy debates. The research underlying this policy brief emerges from a review of both international and national humanitarian legal provisions as they relate to the missing victims of enforced disappearance.

In July 2013, extensive fieldwork was conducted, consisting of individual interviews and focus group discussions in Palabek Gem and Kal sub-counties in Lamwo District. Key respondents included formerly abducted persons, religious and community leaders, families of the missing, and local government leaders. These interactions were guided by structured questionnaires. In total, we conducted interviews with forty three relatives of missing persons, twenty five formerly abducted persons, eighteen local government leaders, and four cultural leaders. All interviews and group discussions were conducted in Luo, recorded, and later translated and transcribed by JRP researchers into English to facilitate analysis. These interviews and group discussions allowed respondents to

share personal information and memories of 143 missing persons.

“I need to find out if he is still alive or dead. Right now, I don’t know what to do. If he was dead, I would perform a ritual for him. Because no one has yet said he is dead, I am still waiting for him.”

Addressing enforced disappearances in northern Uganda

This report works to begin to address an important gap in current policies in Uganda, as to date there has been no national initiative to find the missing victims of the recent conflict or provide formal support to their families.⁹ Because there is no national research on the topic there is a massive gap in existing knowledge about the magnitude of the problem represented, and faced, by the missing and their surviving families. As such, their plight has not made it to the national agenda in any forum, official statement, or policy. This oversight compounds the grief experienced by the families of the missing: the government of Uganda has left them to fend for themselves.

Given current circumstances, the families of the missing face a labyrinth of obstacles to learning the fates of their missing loved ones. There are at once emotional, economic, social, and administrative challenges they must navigate, but with no guidance apart from the advice and support of families in the same situation.

Emotional distress

A key source of emotional distress faced by families of the missing relates to the abduction and subsequent lingering absence of loved ones. Families of the missing often find it difficult to move forward with their lives without feeling that they are leaving family members behind. This is “ambiguous loss”, which is characterised by not knowing what kind of loss has been suffered.¹⁰ For families of the

⁹ The National Police Force of Uganda has a protocol for reporting people who go missing during periods of peace, but it does not apply to people who go missing as a result of the recent conflict or related mass atrocities.

¹⁰ Justice and Reconciliation Project. Simon Robins. “Missing Persons: Towards a Victim Centered Approach” *Voices* 3 Dec. 2012: n.3 pag.

¹¹ www.justiceandreconciliation.com. Web. 24 June 2013; and Boss, Pauline. (2002). “Ambiguous loss: Working with families of the missing.” *Family Process* 41(1): 14-17.

missing, it means years of worry, a situation perhaps best exemplified by a mother of the missing, interviewed by JRP, who has been waiting for the return of her son since his abduction by the LRA in 1999. When asked what her priority was for her post-conflict life, she responded: “I need to find out if [my son] is still alive or dead. Right now, I don’t know what to do, because if he was dead, I would perform a ritual for him, and because no one has yet said he is dead, I am still waiting for him.”¹¹

This kind of paralysis is common among families of the missing who have not yet received confirmation regarding the fate of their missing. In another example, a woman’s husband and son also went missing in 1997. Her husband has since been confirmed dead, but her son is alleged to be alive in captivity with the LRA. When asked about the impact her son’s disappearance has had on her life, she responded: “I still worry too much about my missing son. Each time I think about him and where he could be, I start crying.”¹²

The resulting sorrow creates ruptures within families and communities, and can influence many to make decisions that leave them socially isolated, or place them in danger. For example, one man interviewed was abandoned by his wife and child because they could not stand to stay in a home that is full of memories of their missing.¹³ In another instance, a woman risked her life when her hope of seeing her missing son among the invading rebels led her to stay in the community as everyone else fled.¹⁴ Several respondents purposefully avoid their missing children’s age-mates, as the memories such encounters evoke prove too painful. For example, one mother with a missing son remarked:

When I see the age-mates of my sons taking good care of their families and helping their parents with farming activities, I feel very sad and start thinking my own son could have been a great help if he had not been abducted by LRA rebels ... I try to avoid the age-mates of my son so that I don’t worry much about my own son.¹⁵

Similarly, a father whose son is missing recalled: “[W]hen I see the age-mates of my son who are educated supporting their family, I feel so sad and start thinking if my son was not abducted, he would be supporting me.”¹⁶

In another instance, one couple reported being stigmatised by their community, with community members saying “you lost your child” as an insult, while other heads of families, who went from having plenty of food to struggling to survive, are laughed at.¹⁷ One woman JRP interviewed, who lost two sons during the conflict, noted: “Neighbours laugh at me because I used to do well, and now I have

¹¹ Family member of the missing, interviewed in Palabek on 25 July 2013.

¹² Family member of the missing, interviewed in Palabek on 24 July 2013.

¹³ Family member of the missing, interviewed in Palabek on 27 July 2013.

¹⁴ Family member of the missing, interviewed in Palabek on 26 July 2013.

¹⁵ Family member of the missing, interviewed in Palabek on 24 July 2013.

¹⁶ Formerly abducted person and family member of the missing, interviewed in Palabek on 24 July 2013.

¹⁷ Formerly abducted person, interviewed in Palabek on 27 July 2013.

little to eat.”¹⁸

Economic burdens

Economically, there are additional struggles that can overwhelm the families of the missing. Left with at least one less pair of hands, and often taking in young relatives who were orphaned in the war, families of the missing now have more economic burdens and fewer resources with which to meet them. For example, in 1997 a young man was abducted by the LRA with his four brothers. He was the only one to escape, and in the aftermath, was burdened with supporting his remaining family alone.

I have been left with a lot of responsibilities to take care of the other siblings alone. Our parents already died so I have to ensure there is food and school fees for them, yet I am a subsistence farmer and I don't have any source of income.¹⁹

Likewise, the disappearance of one woman's husband and two sons in 1995 caused her great economic harm. She stated:

There is no one to help me with farming activities. My husband and sons used to do the farming, and we had enough to eat, but now I have to look for ways to feed the remaining children ... I find it so difficult to raise my children and also my sons' children because I only depend on food from the garden and sometimes there is no food in some seasons when the crops don't do well.²⁰

Education and guidance toward becoming an adult was another primary concern among families of the missing. Among the Acholi, this is the role of parents, uncles, aunts and other elders in the community. For example, one woman, another formerly abducted person, was negatively impacted by the loss of her uncle in 1997. She recalled: “His children are suffering because there is no one to pay for their school fees and no one to guide them on what to do, and guide them as a parent.”²¹

Community leaders have identified other challenges endured by families of the missing. According to one focus group of cultural leaders:

[The challenge] is that sometimes the young people were taken, leaving their old parents who do not have the energy to grow food to feed them, and so the children who were left behind by the missing cannot go to school but stay at home to help their grandparents and consequently they end up being drunkards, and drug dealers, engaging in fighting, and for girls they end up going for prostitution as they were not given chance to go to school.²²

Of the families JRP interviewed, none had received any

¹⁸ Family member of the missing, interviewed in Palabek on 25 July 2013.

¹⁹ Formerly abducted person, interviewed in Palabek on 24 July 2013.

²⁰ Family member of the missing interviewed in Palabek on 24 July 2013.

²¹ Formerly abducted person, interviewed in Palabek on 26 July 2013.

²² Focus group discussion of cultural leaders, interviewed in Palabek on 26 July 2013.

economic assistance from the Ugandan government to address their needs. A civil society round table meeting organised by JRP on 26 March 2013 also revealed that very few, if any CSOs have interventions in place in the region directed to families of the missing, which often leads to their exclusion from crucial programmes. Most CSO programmes target other categories of war victims, including formerly abducted persons, widows, and victims of sexual abuse.

Community-based coping strategies

The emotional and economic distress often translates into unprecedented burdens for families of the missing. To cope, some families to seek support through informal community-based support groups, or turn to the *ajwaka* (spirit medium), to look for answers. Others leave everything to prayer and throw themselves into work and supporting the children left in their care. Finally, returnees, also referred to as formerly abducted persons, can be an important source of information on the missing.

Community-based support groups

Emotional and economic distress is compounded by the lack of social services to support families of the missing, and has led some to seek comfort in informal community-based support groups. Talking with others in the same circumstances allows families of the missing to find comfort, share advice and form bonds within their communities. Even those who have given up hope often find consolation in these informal communities of families with missing relatives.

Without being prompted, nearly half of those interviewed by JRP agreed that sharing their experiences, troubles and hopes with families and friends in the same circumstances helped them to forget and/or feel consoled. Several women, who later said they had given up hope, described how they had surrendered the fate of the missing to God. Several men mentioned work or starting a business as a way to move forward and keep themselves occupied. The only persons who mentioned counselling from non-governmental organisations (NGOs) as a coping strategy were formerly abducted persons, who received counselling primarily in that capacity.

When asked specifically if it helps to have contact with other people in their same circumstances, everyone interviewed agreed that it is helpful. They perceive it as a form of emotional support that helps them stay connected as a group. It helps them forget the past, share experiences and comfort each other because they have similar obstacles. They also remind each other, often, that worry does nothing - that it is all God's plan. In the words of one 80-year old woman whose son is missing: “As families of the missing, we are many in this area and what we normally do is pray together, advise and encourage each other not to keep on thinking a lot about the missing, after all, who knows when they will be back.”

Overall, families find that sharing their experiences in a

group helps them to know they are cared for and helps them avoid the feeling of being isolated by their communities, because they share not just their experiences, but ideas, hopes and encouragement. However, not all families are ready to participate in that kind of open exchange. Some families are described as being too sad to come together in these kind of support groups. Thus, while some families turn to prayer for support, others turn to community-based search initiatives and rituals.

Community-based search initiatives

The cornerstone of the rights of missing persons and their families is the right to search and recovery, but the government has made no indication that it intends to begin such a search.²³ Families have tried to fill that gap, but their ability to search for the missing is limited by economic resources, and dwindling sources of reliable information on rebels and the missing.

Few family members have the resources to search for the missing themselves. And, even when they do, there is little information on how or where to search. Straddled by increased economic burden and lessened economic resources due to their missing relatives, most families of the missing are already struggling to survive without additional costs of conducting an intensive search for their missing loved ones. Those whose missing relatives have been found describe it as a fortuitous accident, as in this case of a father whose daughter was abducted and later recovered:

I reported the matter to the LCI and LCII [local government leaders] and I went to the sub-county to register the names of my missing children. I kept looking for my children but one day the women who had gone to collect shea nuts found my daughter lying in the bush with swollen legs and [she] could not walk anymore, so I came and carried her home.²⁴

Families who are not so fortunate often cannot rely on other resources to aid their search. Many have reported their missing relatives to NGOs or the government, but have not received information from these sources. Instead, families are singularly dependent on information from formerly abducted persons, or returnees. Other methods of finding information were more common during the conflict, such as radio announcements, but with rebel activity having moved into South Sudan, the Central African Republic (CAR) and the Democratic Republic of Congo (DRC), less information is being received and radio announcements are no longer being used to broadcast that information.

Rituals aiding the search for the missing and closure for families

With few sources of reliable information on rebels and the missing, many families turn to the *ajwaka*, a traditional

spirit medium, to determine the fate of their missing relatives and to put the spirits of those confirmed dead to rest within the home. As a result, the *ajwaka* is a key source of information and closure for many Acholi families of the missing. There is no consensus on when families should turn to *ajwaka* for answers. More than half of those interviewed by JRP said they would turn to the *ajwaka* to discover if their missing relative was dead or alive, while others said you should not turn to the *ajwaka* until the missing person was confirmed dead.

Those families who turned to the *ajwaka* to discover the fate of their missing loved ones would have the *ajwaka* perform *lwongo tipu*, a ritual that involves calling the spirit of the missing person into their home. If the spirit speaks, their missing relative has died. If the spirit is silent, they are still alive. If the person has died, funeral rites can then be performed, with the approval of the elders.²⁵ If approved, the *ajwaka* then calls the spirit home, places it in a vessel – in most cases a pot that is kept in the home and honoured by the family.

For those who believe in the *ajwaka*, calling the spirit home prevents the spirit from haunting and harming the family. But among those who believe in these rituals, many cannot afford them due to the costs associated with the animal sacrifices, the *ajwaka* themselves, and the funeral rites, which involves feeding and taking care of those who attend the funeral for several days.²⁶ Still others will not perform these rituals because they feel it is ineffective at reuniting them with their missing, or because their religious faith prevents them from consulting a spirit medium, no matter how desperately they want closure.

Returnees as a source of information on the missing

Since formal avenues to gain information on the missing have not been helpful to the families JRP has interviewed, and traditional rituals are not universally trusted, returnees are widely viewed as the sole sources of reliable information. Information that comes from returnees is considered 'confirmed' and grants families of the missing a modicum of closure. Once a returnee has confirmed the death of a missing person, the surviving family may then perform *lwongo tipu*.

Returnees know they have a responsibility to their communities, and most have accepted it with grace. Some are unable to give information right away, owing to mental and physical exhaustion from war. However, upon returning from internally displaced persons (IDP) camps and/or counselling centres to their pre-conflict communities, they would share news, good and bad, with the families of the missing, even as they were still recovering. As one formerly abducted woman described:

Before, I was weak and afraid to give information. But, when I recovered, I told them how we were

23 ICRC and Inter-Parliamentary Union. "Missing Persons: A Handbook for Parliamentarians". New York: International Committee for the Red Cross, 2009. Print. http://www.icrc.org/eng/assets/files/other/icrc_002_1117.pdf

24 Family member of the missing interviewed in Palabek on 26 July 2013.

25 The funeral rites last three days if the deceased is male, and four days if the deceased is female. During those days the family of the missing feeds and gives shelter to extended family and members of the community who knew the missing.

26 Family member of the missing, interviewed in Palabek on 25 July 2013.

treated in the bush and those people who had died I told their parents and those who were still alive, I also told their parents.²⁷

However, there are challenges associated with gathering information from returnees. One returnee described how it was hard to be close to anyone in the rebel camps:

It was hard to know who we saw die in the bush because, if you got close to someone, the LRA might kill you. You stayed separate from those you knew, and didn't come close with anyone you didn't know. So, those we did see killed, we either told their families, or, we didn't know the families of those we saw killed.²⁸

Returnees also acknowledge the need to prepare families to receive news about the death of their relatives during captivity. One formerly abducted person admitted:

Sometimes I did give information about those who have died and their relatives would feel devastated and wish they would have returned like the others have but at times I simply keep quiet even after knowing that their relatives are dead.²⁹

Another returnee recalled: "I was scared of telling people that their children had been killed or they had died because of harsh conditions but after when I told their parents, they cried."³⁰

“Before, I was weak and afraid to give information. But when I recovered, I told them how we were treated in the bush and those people who had died I told their parents and those who were still alive, I also told their parents.”

Returnees have further revealed a significant circumstance of disappearance: those who escaped from the LRA, including children born in captivity, but for one reason or the other did not manage to make it home. There are claims that some hostile groups within South Sudan, DRC and CAR, including unscrupulous persons within Uganda, may have kidnapped them, as evidenced by the following

statements from a formerly abducted person:

There is a girl called Amal who escaped but did not reach home. Although at some point it was rumoured that she was kidnapped by a certain man who was living with her in Gulu but when her brothers went to look for her she wasn't found. So to date nobody knows her fate.³¹

Returnees have a very different perspective on the missing than families of the missing, due to their experiences in the bush and the psychosocial support they received when they returned. They are the first to suggest that families of the missing should receive counselling, a resource returnees had access to through a myriad of NGOs that offered reception facilities, but which has not been made formally available to families of the missing. Even though returnees recommend social and emotional support for families of the missing, they do not necessarily share the hopes of the families of the missing. The returnees' experiences in the bush have made them pessimistic about the possibility of return, reflecting a reality for which families of the missing may not be prepared. Despite their desire for information regarding the fates of their missing relatives, families of the missing may not be prepared to learn that their missing relatives will not be coming home.

A priority for Uganda: the right to know

Given the enormous challenges faced by the families of the missing in post-conflict northern Uganda, it is no surprise that they advocate for increased support in their search for their missing loved ones and in their everyday lives. They want, above all else, to reunite with the missing, living or deceased, to permit themselves some degree of closure and to allow them to begin rebuilding their communities and their lives. Sustained support from the international community, the Ugandan government and civil society organisations will be essential for making this a reality, yet to date little is being done to address the needs of the missing and their surviving family members. As a result, the challenges faced by these families is compounded by a general lack of international and domestic political will to investigate the missing and ensure that their rights, and the rights of their families, are being adequately recognised in the post-conflict period.

This is not to say that the necessary legal framework does not exist. Conversely, there are a range of international and domestic legal conventions and prohibitions that clearly identify the rights of the missing and their families. The following sections will discuss the main prohibitions that articulate the rights of the missing and their families in international humanitarian law and Ugandan national law, with the purpose of demonstrating the government of Uganda's legal obligation to begin addressing the needs of the missing and their families in a sustained and comprehensive manner in keeping with current trajectories in transitional justice discourse.

²⁷ Formerly abducted person interviewed in Palabek on 25 July 2013.
²⁸ Formerly abducted person interviewed in Palabek on 25 July 2013.
²⁹ Formerly abducted person interviewed in Palabek on 25 July 2013.
³⁰ Formerly abducted person interviewed in Palabek on 26 July 2013.

³¹ Formerly abducted person interviewed in Palabek on 25 July 2013.



A family member displays the school report card of a missing person in Pablabeek, Lamwo District.

Enforced disappearances and the missing in International Humanitarian Law

Enforced disappearances as a crime against humanity is first identified in the Geneva Conventions, but it has evolved over time with each new international and regional tribunal created to address mass atrocities. As such, its perpetration and prosecution has no statute of limitations, and states are obligated to prosecute perpetrators of enforced disappearance, even when national legislation comes after the crime was committed. Of particular importance, the 2002 Rome Statute of the International Criminal Court defines enforced disappearance as:

[T]he arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.³²

This definition has been enhanced by the 2012 International Convention for the Protection of All Persons from Forced Disappearance (ICPAPED). ICPAPED restricts the perpetrators of enforced disappearance to state entities or bodies authorised by the state, and removes the Rome Statute requirement that convictions related to enforced disappearances first demonstrate individual criminal intent

³² Rome Statute of the International Criminal Court (ICC), Article 7, paragraph 2(i).

to remove the abducted from the protection of law for a prolonged period of time.³³

Uganda ratified the Rome Statute in 2002, becoming the 68th state party to the Statute's definitions and State obligations.³⁴ While Uganda is a signatory to the ICPAPED, it has not ratified the convention. Therefore, the definition of enforced disappearance in the Rome Statute is in force in Uganda today. As such, the Ugandan government is legally required to recognise the following inalienable rights attributed to the missing: the right to recognition as a person before the law, the right to liberty and security of the person, the right to a fair trial, the right to an effective remedy, the right to know the truth regarding the circumstances of their disappearance, and the right to an identity, as well as the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, and the right to life.³⁵

In addition, the missing have certain rights within international humanitarian law independent of whether they were victims of enforced disappearance. The foremost right of any missing person is to search and recovery, and states are obligated to realise that right, whether the disappearance was committed by state agents or by non-state actors. International customary law, legally binding expectations of continued state behaviour based on past state practice, holds that each party to a

³³ International Convention for the Protection of All Persons from Enforced Disappearance, Article 24.

³⁴ Coalition for the International Criminal Court, "Uganda". Web. N.d. <http://www.iccnw.org/?mod=country&iduct=181>

³⁵ United Nations High Commissioner for Human Rights. "Enforced or Involuntary Disappearances," Fact Sheet No. 6 Rev. 3. No date.

conflict “must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction”.³⁶

Furthermore, as victims of conflict, the missing have the right to reparations, which covers material and moral damages. Reparations are divided into four categories: (a) restitution for associated injuries or losses; (b) rehabilitation, including access to programs aimed at enabling victims to reclaim a useful place in society; (c) compensation and satisfaction, including restoration of dignity and reputation; and (d) guarantees of non-repetition.³⁷

The Ugandan government is legally required to recognise rights attributed to the missing, including: the right to liberty and security of the person, the right to an effective remedy, the right to know the truth regarding the circumstances of their disappearance, and the right to an identity.

The families of the missing in international law

The forcibly abducted or missing are not the sole victims of enforced disappearance. As previously discussed, families of the missing are also intimately affected by the disappearance of loved ones. In addition to the emotional distress of not knowing the fates of the missing, they suffer undue economic and social harms, no matter the age or relation of the missing person.³⁸ The Rome Statute drafters intended that the broad definition of victim contained in the statute would include immediate family members, consistent with international standards.³⁹

36 For this and other definitions of customary international humanitarian laws, see International Committee for the Red Cross (ICRC). “Missing persons international law - ICRC.” International Committee of the Red Cross - ICRC. N.d. Web. 26 June 2013. <http://www.icrc.org/eng/war-and-law/protected-persons/missing-persons/index.jsp>.

37 REDRESS, What is reparation? Web. <http://www.redress.org/what-is-reparation/what-is-reparation>

38 See “Addressing Enforced Disappearances in Northern Uganda”, above.

39 Rome Statute, Rule 85 defines victim as “natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court”.

Article 24 of ICPAPED represents the first codified instance where the term “victim” of enforced disappearance was defined as “the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.”⁴⁰ This has important ramifications for international humanitarian law and the families of the missing because it conveys rights upon surviving families and communities, including: the right to protection and assistance to the family, the right to an adequate standard of living, the right to health, and the right to an education.⁴¹

In addition to the right to reparations, there is building international humanitarian law and jurisprudence around the right of families to petition the state to learn the fate of their missing relatives. The laws surrounding the right to know include, but are not limited to, the UN Updated Principles of Impunity, ICPAPED, the Rome Statute, Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights and Serious Violations of Humanitarian Law, and UN Commission on Human Rights Resolution 2005/66.⁴²

These instruments talk about “the right to the truth so as to contribute to ending impunity”, and detail how “every person has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes”.⁴³ ICPAPED specifies that “[e]ach victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person”.⁴⁴

The International Center for Transitional Justice reports that a holding by the Inter-American Commission on Human Rights found that “the right to truth can be found in the right to a fair trial, the right to freedom of expression, and the right to judicial protection”. The African Convention on Human and People’s Rights similarly “subsumes the right to truth under the right to an ‘effective remedy,’ which includes access to justice and reparation for harm suffered” and as such “promises victims of violations ‘access to the factual information concerning the violations’”.⁴⁵

The missing and their families in Ugandan national law

While international humanitarian law has begun to address the rights of the missing and their families, national law

40 International Convention for the Protection of All Persons from Enforced Disappearance, Article 24.

41 Conventions protecting these rights include: International Convention on Civil and Political Rights, UN Convention on the Rights of the Child, African Charter on Human and Peoples’ Rights, UN Convention on Elimination of Discrimination Against Women, and UN Declaration on Human Rights, among others.

42 International Center for Transitional Justice (ICTJ), “Confronting the Past: Truth Telling and Reconciliation in Uganda”. ICTJ Uganda. September 2012. <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Uganda-Confronting-Past-2012-English.pdf>

43 UN Commission on Human Rights Resolution 2005/66 and the UN Updated Principles of Impunity, Principle 2, respectively.

44 International Convention for the Protection of All Persons against Enforced Disappearances, Article 24.

45 International Center for Transitional Justice (ICTJ). *ICTJ Briefing: Confronting the Past: Truth Telling and Reconciliation in Uganda*. September 2012. <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Uganda-Confronting-Past-2012-English.pdf>

and practice is often lagging behind in many conflicted or transitional states, largely due to the lack of an official 'missing persons' status. This means that a woman whose husband is missing and is left unsure if she is a wife or widow and does not have access to governmental or NGO resources that aid only 'official' victims, such as returnees or widows. Children are often in dire circumstances as custody questions go unanswered. They may find themselves living with relatives who lack the economic resources to continue their education. Furthermore, the children of the missing may be ineligible for scholarships otherwise available to orphans because the status of the child's parents as either living or dead is unknown.

It should be noted, however, that Ugandan national law is in the process of evolving to address these needs, in accordance with Uganda's obligation as signatories to a host of conventions and legal prohibitions aimed at recognising the rights of the missing and their families. Uganda's Constitution reflects the priorities and binding standards of international law on enforced disappearances.⁴⁶ Ugandan national law also addresses one of the legal and administrative needs of families of the missing: property transfer. The Estate of Missing Persons (Management) Act of 1973 secures the right of dependants of the missing to apply to the court to manage the estate of their missing relative, once he/she has been missing for six months.

In spite of this, a more comprehensive transitional justice policy framework is still needed to address the needs of the families of the missing in northern Uganda. The Juba peace talks, mediated by the Government of South Sudan beginning June 2006, laid fertile ground for discussions on transitional justice in Uganda as well as addressing the issue of missing persons. In particular, the signing of the agreement on Accountability and Reconciliation was an important step toward addressing serious crimes and human rights violations arising from the conflict.

Following the Juba peace talks, in 2008 JLOS established a Transitional Justice Working Group, consisting of different government institutions, with the mandate of overseeing the development and implementation of a transitional justice framework to establish an accountability architecture comprised of criminal prosecutions, informal justice mechanisms and a quasi-judicial truth and reconciliation process. The Ugandan government also established the International Crimes Division (ICD), which has been mandated to prosecute serious international crimes, such as genocide, crimes against humanity, and war crimes. In May 2010, the government passed the International Criminal Court Act, legislation that domesticates the Rome Statute and gives legal backing for the operations of the ICD.

More recently, JLOS has begun drafting a transitional justice policy. The May 2013 draft lists guiding principles and an overview of the relevant national, regional and international legal frameworks. However, definitions of the

⁴⁶ Chapter 4 of the Constitution of Uganda provides for the protection of life, personal liberty and the right to a fair hearing. International case law has determined that right subsumes the right to be protected from enforced disappearance, as a disappeared person is hidden from the protections of the law.

crimes over which the transitional justice mechanism will have jurisdiction, as well as the definition of 'victim' that will be used, are not addressed in the draft policy. The policy does, however, reference several international and regional instruments with definitions of 'victim' that encompass family members, and definitions of international crimes that oblige the State to bring the offenders to justice. These instruments, which include the Rome Statute, will provide a foundation for the operation of the transitional justice policy generally, and as regards missing persons.⁴⁷

Years after the Juba peace talks and subsequent transitional justice developments in Uganda, many families still do not know what has become of their missing loved ones. Not only is this distressing, it dampens efforts aimed at achieving reintegration, reconciliation and an enduring peace. Furthermore, it does little to restore their faith in the Government of Uganda and its commitment to promoting genuine social repair in the post-conflict period. While many families interviewed by JRP may have lacked an understanding of the rights of the missing and their rights as families of the missing in these specific terms, there was nonetheless a widespread understanding that the Government should be doing more to support their search efforts and provide them with economic assistance.

The role of Ugandan civil society organisations

Because families of the missing have received no direct assistance from the Government of Uganda to aid their search Ugandan civil society organisations can do more to provide support to them. In the words of one father of a missing child:

I reported the matter to the LCI and to the parish chief [local leaders] and then I was asked to write down their names ... this process has not been helpful because apart from writing down their names the LCI did not do anything.⁴⁸

His experience is echoed in the sentiments of other family members of the missing interviewed by JRP. These families are thus appealing to civil society organisations to work with them and the Government to find the missing.

Many families of the missing would like to claim their right to reparations and see some kind of economic support. They need scholarships for children 'orphaned' by the conflict, whose parents may or may not still be alive. Parents whose children are missing need to have homes built for them and to receive economic support as they age, a responsibility that the missing child would have carried. Many others need other economic support: seeds, oxen, ox ploughs, help on their farms, or skills training are among the most requested types of economic support.

Building the capacity of the government to conduct the

⁴⁷ The Rome Statute could play a particularly powerful role in the transitional justice policy due to the principle of complementarity, which states that the ICC will intervene if a State is "unable or unwilling" to prosecute heinous crimes of war. This would apply to enforced disappearances since the Rome Statute lists the crime among crimes against humanity.

⁴⁸ Family member of the missing, interviewed in Palabek on 27 July 2013.

search, keep families informed, support families of the missing, as well as elevating the voices of the families of the missing to the national agenda must be among the primary concerns of civil society organisations. It must be kept in mind that short-term interventions without long-term strategies and exit plans may compound the distress endured by these families.

Furthermore, civil society organisations can provide support to the families of the missing by ensuring their voices and needs are heard within and beyond Uganda. The Government of Uganda may have the role of defining and carrying out justice for the atrocities committed during the conflict, but it remains accountable in those tasks to the victims of those atrocities. These victims often have their own definitions of justice and reparations, perpetrator and victim, that the Government must take into account when developing its own, official definitions that will be used to achieve justice and reconciliation.

The transitional justice policy by JLOS must be implemented at the local level, or have a significant outreach component, so families of the missing can be active agents in the reconciliation effort, and receive closure from it.

Families of the missing define 'justice'

In defining justice, there is a split amongst the returnees, families of the missing, cultural leaders and government leaders that JRP interviewed. Respondents were perfectly divided between wanting LRA leaders to be killed, forgiven and subjected to non-violent punishment, including capture and prosecution of perpetrators, and/or compensation from the perpetrators to the victims for their losses. Conversely, six others made suggestions that would require amnesty, even if the respondent did not mention amnesty specifically, such as: rebels should come home, counselling for the rebels, and/or training them in other ways to survive.

This division suggests that the transitional justice policy generated by JLOS must be implemented at the local level, or have a significant outreach component, so families of the missing can be active agents in the reconciliation effort, and receive closure from it, regardless of any divergence of their definition of justice from the justice

carried out by Uganda's transitional justice policy. These families and their needs must be included in the policy and implementation of transitional justice for reconciliation to be achieved at the local level, and for these families to feel at peace, even if their loss remains ambiguous. Civil society organisations are essential for making sure the voices of the people most affected by the recent conflict are heard and acknowledged.

Conclusion

The narratives and experiences that people shared with JRP during the pilot study in Palabek Kal and Gem sub-counties in Lamwo District allows JRP to offer five key policy recommendations, which should be undertaken by the Government of Uganda, in collaboration with the international community and civil society organisations in northern Uganda.

First, we recommend that these institutions formally and publicly acknowledge the missing victims of war and related atrocities in northern Uganda to be a prominent obstacle to social repair. As discussed above surviving communities endure substantial levels of emotional distress, as well as disproportionate economic burdens, which are not being adequately addressed by existing community-based coping strategies. As a result, reconciliation and social repair remains elusive.

To better promote social repair, we recommend creating a comprehensive transitional justice policy framework under JLOS that reaffirms enforced disappearance as a crime against humanity, and within this legal prohibition, formally recognises the rights of the missing and their surviving families. As part of this framework, an independent commission on missing persons should be established to work with civil society organisations formerly abducted persons and the families of the missing to create a centralised database through which formal searches could be organised across northern Uganda. Doing so would help the Ugandan government demonstrate its commitments to moving past the recent conflict and promoting social repair in northern Uganda by providing the families of the missing with a much needed resource to aid their search efforts.

We also recommend providing specific economic support and skills training for the families of the missing so that they can better meet their unique economic burdens. In particular, the families of the missing should receive priority access to skills training, scholarships, micro-credit loans, and related initiatives. Children who have lost one or more parents due to the conflict should be eligible for scholarships to allow them to complete their elementary, high school, and college or university educations.

Thus far, JRP has conducted extensive fieldwork in Palabek sub-county in Lamwo District but additional research is necessary to determine the extent to which the particular experiences of the people of Palabek can represent other communities in northern Uganda. JRP intends to expand documentation for the Right to Know campaign into other regions of northern Uganda in 2015. Evaluating and developing practical policy recommendations toward alleviating the social suffering stemming from missing

persons that continues to impact the post-conflict lives of northern Ugandans is a massive task and one which demands the support of other civil society organisations, the international community, and the Government of Uganda. Therefore, we recommend providing ongoing financial support to civil society organisations in northern Uganda to conduct additional research into the state of social repair and the long-term suffering endured by formerly abducted persons and families of the missing in the region. Should these institutions fail to address the lack of social repair in the region the risk of future conflict in the region will increase.

About the Justice and Reconciliation Project

The Justice and Reconciliation Project (JRP) was established to understand and explain the interests, needs, concerns and views of communities affected by conflict and to promote sustainable peace through the active involvement of war-affected communities in research and advocacy.

P.O. Box 1216, Gulu, Uganda • 256 (0) 47143008
• www.justiceandreconciliation.com • Email: info@justiceandreconciliation.com

© The Justice and Reconciliation Project 2014. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without full attribution.



Center: "[Joseph] Kony release our children so that they can return home". Families of the missing participate in a march in Gulu, Uganda on the International Day Against Enforced Disappearances, 30 August 2013.