

BERICHTE / REPORTS

Ensuring Justice, Reparations and Truth through a Truth Commission and Other Processes in Uganda

By *Jeremy Sarkin**

Abstract: *This article reviews issues concerning the way that Uganda ought to be dealing with its past. It examines what a transitional justice process ought to look like, and what its component parts should be. The article examines the rights to justice, truth and reparations in international law, to examine why dealing with these rights are a necessity in Uganda, as well as why they are desirable. The article also reviews what ought to be implemented to ensure that the best approach is adopted.*

A. Introduction

Because of Uganda's violent history,¹ and the numerous gross human rights violations committed against hundreds of thousands of its people, especially over the last 25 years, few doubt that the country needs to deal with its past.² The Ugandan government has not been willing to do that for a variety of reasons, including its own involvement in human rights violations. Still, the nature of a transition (or lack thereof in the case of Uganda) plays a major role in determining how human rights violations of the past will be approached.

Generally, states make choices about what transitional justice model, amongst many to choose from, to encourage the establishment of a stable democracy and a human rights culture.³ The fact that Uganda has not had an overthrow or had to compromise with those in conflict with the state, will mean that there is no dramatic or discernable transition process.

* B.A. LL.B. (Natal), LL.M. (Harvard), LL.D. (UWC); Attorney in South Africa, Attorney in New York, USA; Professor of Law, University of South Africa; former Chair-Rapporteur, UN Working Group on Enforced or Involuntary Disappearances. Email: JSarkin@post.harvard.edu.

- 1 See for example *Alicia C. Decker*, 'Sometime You May Leave Your Husband In Karuma Falls Or In The Forest There': A Gendered History of Disappearance in Idi Amin's Uganda, *Journal of Eastern African Studies* 7.1 (2013) p. 125.
- 2 *Ronald Atkinson*, *The Realists in Juba? An Analysis of the Juba Peace Talks*, in: Tim Allen/Koen Vlassenroot (eds.), *The Lord's Resistance Army: Myth and Reality*, London 2010, p. 205.
- 3 *Laura K. Taylor, Alexander Dukalskis*, *Old Truths and New Politics: Does Truth Commission 'Publicness' Impact Democratization?*, *Journal of Peace Research* 49.5 (2012) p. 671.

Thus, the transitional justice model will largely follow what other countries that have been reformist have done. Consequently there will not be a large number of prosecutions. In fact, it is likely that there will be very few trials. Even less likely are many, if any, prosecutions of government officials (especially senior ones) or state security forces, who have committed violations.⁴ It is more likely that processes of reconciliation and reparations will be developed. It is less likely that there will be extensive processes to achieve justice and truth or putting in place mechanisms to achieve non-recurrence of the past. It must be remembered that President Museveni and his political party have been in power since 1986, and dealing with the past has much to do with their roles over the last 30 years.⁵ It will also be difficult to deal with the issues as the political opposition is very wary of the government, and is often unwilling to cooperate with it.⁶ This is compounded by the fact that opposition politicians have been intimidated, harassed and imprisoned. Getting all stakeholders to participate will be critical to the success of a transitional justice project. Much will need to be done to obtain the buy in from the various stakeholders.

This article reviews issues concerning the way that Uganda ought to be dealing with its past. It examines what a transitional justice process ought to look like, and what its component parts should be. The article examines the rights to justice, truth and reparations in international law, to examine why dealing with these rights are a necessity in Uganda, as well as why they are desirable. The article also reviews what ought to be implemented to ensure that the best approach is adopted.

B. A transitional justice process for Uganda

A Ugandan transitional justice process needs to cover all aspects of truth, justice, reconciliation, reparations and guarantees of non-repetition. Because Uganda is a relatively poor country such a process needs to be designed to maximize resources.⁷ Resources could be obtained from a variety of international donors, while internally resources could be obtained from savings from government spending in less needed fiscal areas. Resources need to be stretched by, for example, using existing institutions rather than creating new ones, and by prioritising community reparations over individual ones. Symbolic reparations should also play a key part rather than only material reparations. The process should not be too complex for people to understand, otherwise it will appear foreign to them. If this is the case, those who should be interested in its work may not want to or be able to access it.

4 See further *Hun Joon Kim*, Structural Determinants of Human Rights Prosecutions After Democratic Transition, *Journal of Peace Research* 49.2 (2012) p. 305.

5 *Robert Senath Esuruku*, Horizons of Peace and Development in Northern Uganda, *African Journal on Conflict Resolution* 11 (3) (2011), p. 111.

6 *Phillip Kasajja Apuuli*, The Prospect of Establishing a Truth-Telling and Reconciliation Commission in Uganda, *US-China Law Review* 10 (2013), p. 597.

7 See *Lisa J. Laplante*, The Plural Justice Aims of Reparations, in: Buckley-Zistel/Beck/Braun/Mieth (eds.), *Transitional Justice Theories*, New York 2013, p. 66.

Thus, the process should not be difficult to understand and its role and functions ought to be clearly disseminated. Thus, the process must have an education component that educates people about the system and how to access it.

The intricacies of various processes need to be carefully and comparatively researched.⁸ The research must include ways of ensuring equity, non-discrimination, and ways to ensure access by all victims in all areas of the country. This must be done to ensure that it does not replicate the problems that other processes have suffered. However, not too much time should pass before the process is set in motion and before reparations are paid, especially to those in dire need of urgent reparations to cover medical and other immediate needs.⁹ However, it must be recognised that victims have already been waiting many years and making them wait much longer will further undermine the process. Further delays will have an adverse impact on the eventual acceptance of such mechanisms.

How the process is rolled out and implemented is a key to its success. The hiring of competent, skilled, enthusiastic staff is essential to the success of the process. Timing and sequencing are important, too.¹⁰ They are essential to ensure that the process is rolled out systematically, in a viable fashion, and in a way that avoids logistical problems as far as possible. The time lag between the conclusion of the process and the implementation of its recommendations should also not be too long. In some places there have been long gaps between recommendations and implementation. This can have major adverse effects by raising expectations and causing anxiety amongst the populace.

C. Justice

A state has duties to prosecute and punish perpetrators of human rights and humanitarian law violations.¹¹ This is linked to the right to a remedy, including the right to an effective investigation, verification of the facts, and the disclosure of the truth. In this regard the United Nations Human Rights Commission noted that “state parties should also take specific and effective measures to prevent the disappearance of individuals and establish effective facilities and procedures to investigate thoroughly, by an appropriate and impartial body, cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.”¹²

8 See *Joanna R. Quinn*, ‘Dealing with a Legacy of Mass Atrocity: Truth Commissions in Uganda and Chile’, *Netherlands Quarterly on Human Rights* 23 (2001) p. 383.

9 See *Max Du Plessis and Steve Pete*, *Repairing the Past? International Perspectives on Reparations for Gross Human Rights Abuses*, Antwerp 2007, p. 57.

10 *Joanna R Quinn*, *Chicken and Egg? Sequencing in Transitional Justice: The Case of Uganda*, *International Law Journal of Peace Studies* vol. 14 no. 2 (2008), p. 35.

11 *Jean-Marie Henckaerts, Louise Doswald-Beck*, *Customary International Humanitarian Law: Rules*, Cambridge 2005, p. 342.

12 *Laureano v. Peru*, U.N. GAOR, Human Rights Committee, 56th Session, P8.3, U.N. Doc. CCPR/C/56/D/540/1993 (1996).

The European Court of Human Rights¹³ has held that a state's failure to conduct an effective investigation "aimed at clarifying the whereabouts and fate" of "missing persons who disappeared in life-threatening circumstances" constitutes a continuing violation of its procedural obligation to protect the right to life under Article 2 of the Convention.¹⁴ In this regard, the comments of the UN Working Group on Enforced or Involuntary Disappearances, in their General Comment on the Right to the Truth in Relation to Enforced Disappearances in 2010, are important. The Working Group noted that "the relatives of the victims should be closely associated with an investigation into a case of enforced disappearance. The refusal to provide information is a limitation on the right to the truth."¹⁵ As a result of the myriad of developments, in recent decades, there has been a rise in international criminal tribunals, truth commissions and other bodies, on both the international level and within specific states, which focus on human rights abuses.

Uganda's issues concerning justice and amnesty are complicated.¹⁶ It is complicated by the fact that thousands of rebels have been given amnesty, and the fact that the ICC is seized with the Ugandan situation and has issued arrest warrants for five senior commanders of the the Lords Resistance Army (LRA), one of whom is now in their custody. He handed himself over to United States forces, who handed him over to the ICC. It is further complicated by the fact that Uganda's own security forces have committed violations. This has seen calls for justice on all sides, and thus a reluctance by the Government to prosecute anyone. Even though Uganda has established a special division of the High Court, now called the International Crimes Division, it has only one such case. That case has been going on for years because of the constitutional issues concerning amnesty.

D. Giving effect to the right to the truth in Uganda

The right to the truth has recently become a right recognised fully in international law. It is both an individual and collective right. While the community as a whole is entitled to know what was done to them, each victim has the right to know the truth about the violations that were perpetrated against them specifically. As Naqvi notes:

For victims and family, the right entails an obligation for the state to provide specific information about the circumstances in which the serious violation of the victim's human rights occurred, as well as the fate of the victim. For society in general, the right to the truth imposes an obligation on the state to disclose information about the cir-

13 See also *Nikola Kyriakou*, *Enforced Disappearances in Cyprus: Problems and Prospects of the Case Law of the European Court of Human Rights*, *European Human Rights Law Review* 2 (2011), p. 190.

14 *Cyprus v. Turkey* (Applic. no. 25781/94), ECHR Judgment (10 May 2001), para. 136.

15 Paragraph 3.

16 *Michael Otim, Marieke Wierda*, *Justice at Juba: International Obligations and Local Demands in Northern Uganda*, in: Nicholas Waddell/Phil Clark (eds.), *Courting Conflict? Justice, Peace and the ICC in Africa*, London 2008, p. 21.

*cumstances and reasons that led to 'massive or systematic violations', and to do so by taking appropriate action, which may include non-judicial measures.*¹⁷

Truth is important to deal with denials,¹⁸ manipulations and myths surrounding a conflict. Greater truth assists in knowing who the perpetrators were, who, and how many victims there were, and what was done to the victims by the perpetrators.¹⁹ Individual families want to know what happened,²⁰ but the society as a whole also has a right to know the truth. The truth is a fundamental aspect in ensuring a historical record. Processes of truth recovery can assist in dealing with those who deny what happened or their role.²¹ Certainly, truth recovery processes are useful, but are not substitutes for the search, recovery and identification of missing persons. In this regard Michael Ignatieff has noted that "all a Truth Commission can achieve is to reduce the number of lies that can be circulated unchallenged in public discourse." In Argentina, its work has made it impossible to claim, for example, that the military did not throw half-dead victims in the sea from helicopters. In Chile, it is no longer permissible to assert in public that the Pinochet regime did not despatch thousands of entirely innocent people."²² Thus, where the forensic evidence exists, there is much more certainty about what occurred than through a general truth examination process, such as a truth commission. Forensic analysis also provides in many cases, where DNA and other examinations are performed, specific and verifiable information about specific missing persons, where they are and what happened to them. In this way the right to the truth has become much more accessible for the families of the missing.

A process of public truth telling in Uganda should be an essential component of any attempt at healing and reconciliation.²³ There is discussion today in Uganda about the need to establish such a process.²⁴ The process ought to be supported in every possible way and all recommendations of the TRC ought to be speedily implemented. There are however

- 17 *Yasmin Naqvi*, The Right to the Truth in International Law: Fact or Fiction?, *International Review of the Red Cross* 88 (862) (2006), p. 260.
- 18 See *Margriet Blaauw, Virpi Lähteenmäki*, 'Denial and Silence' Or 'Acknowledgement and Disclosure', *International Review of the Red Cross* 84 (848) (2002) p. 767.
- 19 On the need to engage with these issues in general see: *Lars Waldorf*, Anticipating the Past Transitional Justice and Socio-Economic Wrongs, *Social and Legal Studies* 21 (2) (2012), p. 171.
- 20 *Pauline Boss*, Loss, Trauma, and Resilience: Therapeutic Work With Ambiguous Loss, New York 2006; see also *George A. Bonanno*, Loss, Trauma, and Human Resilience: Have We Underestimated the Human Capacity to Thrive After Extremely Aversive Events?, *American Psychologist*, 59 (1) (2004), p. 20.
- 21 *Melanie Klinkner*, Proving Genocide? Forensic Expertise and the ICTY, *Journal of International Criminal Justice* 6.3 (2008), p. 447.
- 22 *Michael Ignatieff*, 'Articles of Faith', *Index on Censorship* (5) 1996, p. 113.
- 23 *Tristan Borer*, Truth Telling as a Peace-Building Activity: A Theoretical Overview, in: *Tristan Borer* (ed.), Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies, Notre Dame 2006, p. 1.
- 24 *Kasajja Phillip Apuuli*, The Prospect of Establishing a Truth-Telling and Reconciliation Commission in Uganda, *US-China Law Review* 10 (2013), p. 598.

many people, particularly in government, but also in civilian life, that do not favor a truth telling process. They are seemingly concerned about the consequences of such a process. They fear what may emerge from it. This is particularly true of those in government. However, hiding the truth at the macro-level, and also for individual victims, will have a long-term negative effect. It will also affect individuals adversely. While peace and stability may exist in the country now and in the short-term future, the way to ensure that this continues for the long term is to deal effectively and holistically with the past.²⁵

It is not surprising that more than 50 such processes have been established around the world over the last 25 years or so. Many countries have established processes and institutions which address the truth about the past. About a third of all the Commissions that have been established, have occurred in Africa. Despite the many models that have been established they have not always been effective. It is clear that many of them have suffered a lack of resources and their establishment was not always done in the best way for the circumstances that existed in their countries. Some of them were more effective than others.

Where truth-telling processes have been implemented, victims across the political spectrum have had a credible forum through which to reclaim their human worth and dignity. Such a process can facilitate a national catharsis. Failure to establish this kind of process disregards the rights and views of victims, denies the need for a healing process, prevents recovery of the past, imagines that forgiveness can take place without full knowledge of whom and what to forgive, and fails to establish human rights values as the core standard for the future.

In this context, the discovery of the truth destroys that element which, while not useful in itself for eradicating impunity, fulfills at least a dual role. First, it is useful for society to learn, objectively, what happened in its midst, which translates into a sort of collective catharsis. Second, it contributes to create a collective conscience as to the need to impede the repetition of similar acts. It shows those capable of doing so that even if they may escape justice, they are not immune from being publicly recognized as the persons responsible for very grave attacks against other human beings. In this regard, even though these processes do not constitute punitive mechanisms, they may perform a preventive function that is highly useful in a process of building peace and the transition to democracy.²⁶ This has utmost relevance for Uganda, where few investigations have occurred, and fewer prosecutions, in spite of the fact that Uganda has international obligations to prosecute and punish perpetrators of human rights and humanitarian law violations.

Truth is an essential component of allowing a society to move on. However, it is unlikely that such a process will reveal all the 'truth'. Such processes should at least highlight the broad trends within the time frame and the available resources. It should provide a plat-

25 *Makau Mutua*, *Beyond Juba: Does Uganda need a National Truth and Reconciliation Process?* East African Journal of Peace and Human Rights 13 (2007) p. 142.

26 *Kimberly Hanlon*, *Peace or Justice? Now that the Peace is being Negotiated in Uganda, will the ICC still Pursue Justice?*, *Tulsa Journal of Comparative and International Law* 14 (2) (2007), p. 295.

form for those individuals who want to come forward and participate. It is important to have an insight into the past mistakes so that recommendations can be made effectively to deal with the causes of the conflict. It is essential to put into place mechanisms, institutions and processes in order to avoid such conflict issues again.

Truth discovery at the macro level will allow the society at large and communities all over Uganda to learn about the bigger picture - what was done; by whom was it done; to whom was it done; and why it was done.²⁷ This will allow victims and their family members to know more about what happened. Truth telling through hearings might bring victims and perpetrators together, through their testimonies. Truth telling and the creation of human rights abuse narratives could also be an essential means for showing who was responsible for past human rights violations.²⁸ Thus, these mechanisms should play important roles in providing different types of truth as well as acknowledging what occurred. Officially sanctioned knowledge should become part of the public conscience and acquire a higher status than mere truth.

The work of the truth commissions ought to be sanctioned fact finding with its main function being to establish an accurate record of the country's past, and thus help to provide a fair record of the country's history and its governments much disputed acts.²⁹

If a TRC can operate independently and has the resources to achieve its goals, it should allow an accurate historical record to be produced of what occurred, the causes of the conflict, and what can be done to rectify the mistakes of the past. This will be useful for the society as whole, but very beneficial for individual victims who will benefit from the cathartic effects of the process.³⁰ Victims should receive public acknowledgement³¹ about their suffering.³² By attaining official recognition of what has happened to them, victims should be able to have their legal status issues addressed and other problems resolved.³³

- 27 *Cecily Rose*, Looking Beyond Amnesty and Traditional Justice and Reconciliation Mechanism in Northern Uganda: A Proposal for Truth-Telling and Reparations, *Boston College Third World Law Journal* 28 (2) (2008), p. 345.
- 28 *Ayreh Neier, Jose Zalaquett, Adam Michnik*, Why Deal with the Past, in: *Boraine/Levy/Scheffer* (eds.), *Dealing with the Past: Truth and Reconciliation in South Africa* (second edition), Cape Town 1997, p. 6.
- 29 *Priscilla Hayner*, Fifteen Truth Commissions 1974-1993: A Comparative Study, in: *Neil Kritz* (ed.), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, Vol. I: *General Considerations*, Washington D.C. 1995, p. 227.
- 30 *Kevin Avruch*, Truth and Reconciliation Commissions: Problems in Transitional Justice and the Reconstruction of Identity, *Transcultural Psychiatry* 47.1 (2010), p. 33.
- 31 See generally *David Lyons*, Rights and Recognition, *Social Theory and Practice* 32 (2006), p. 1.
- 32 *Julie M. Mazzei*, Finding Shame In Truth: The Importance of Public Engagement in Truth Commissions, *Human Rights Quarterly* 33.2 (2011), p. 431.
- 33 *Dyan Mazurana, Christopher Carlson*, Reparations as a Means for Recognizing and Addressing Crimes and Grave Rights Violations against Girls and Boys during Situations of Armed Conflicts and Under Authoritarian and Dictatorial Regimes, in: *Ruth Rubio-Marín* (ed.), *The Gender of Reparations*, Cambridge 2009, p. 162.

Truth in its wide, or in its narrow form, should also benefit from such a process. Thus, a historical narrative should be drawn up which allows for a fuller version of the history to be reclaimed and settled. At the same time, smaller accounts of what occurred to individuals must be collected³⁴ to paint the macro version of what occurred. A public report, drafted by credible, legitimate and diverse commissioners can be a long term benefit to Uganda and help to prevent future violence and rebuild the state. However, if the process is tainted by perceptions of bias, lack of representivity, or an understanding that the process is not thorough or insufficient in any way, this will negatively affect the process.³⁵

A truth telling process, possibly a truth and reconciliation commission in Uganda, should be an independent, credible and legitimate process aimed at uncovering truth, publicly acknowledging the violent past and furthering national unity and reconciliation.³⁶ If such a process succeeds in being inclusive, the society as a whole would be able to promote acknowledgement and initiate the healing process that ultimately leads to a national reconciliation. Some of the benefits resulting of such a process in Uganda initiated by a truth and reconciliation commission could be the following: a public and collective acknowledgement of the violent past through the establishment of as complete as possible public record of the nature and extent of gross violations of human rights as well as the names and fates of the victims; the furthering of a healing process by opening communication channels between the different groups in society and thereby installing an outlet for feelings such as pain, resentment, hatred and revenge. The assistance to victims in their personal recovery and restoration of their dignity by offering them the opportunity to tell their story and publicly acknowledging their suffering would be beneficial to all individuals and the society as a whole. Thus, the TRC should provide opportunities to survivors who are willing to explore and explain their own feelings and experiences. The exchange should culminate in a permanent record of the public historic experience of the nation³⁷ and the private emotional experience of the people. A truth and reconciliation process could also provide for a mechanism that would facilitate confession of crimes. It would help to deal with the problems surrounding amnesties within the country.

There also needs to be a process to find those missing as a result of the conflict, including the means to locate, identify and repatriate the remains of those found to their families.³⁸ Dealing with the missing needs to be a critical aspect of a transitional justice pro-

34 *Nneoma V. Nwogu*, When And Why It Started: Deconstructing Victim-Centered Truth Commissions in the Context of Ethnicity-Based Conflict, *International Journal of Transitional Justice* 4.2 (2010), p. 275.

35 See further *Avruch*, note 30, p. 33.

36 See *Mutua*, note 25, p. 142.

37 On the value and role of public information see: *Howard Schuman, Amy D. Corning*, Collective Knowledge of Public Events: The Soviet Era from the Great Purge to Glasnost, *American Journal of Sociology* 105 (4) (2000), p. 913.

38 *Erin Jessee*, Promoting Reconciliation Through Exhuming and Identifying Victims in the 1994 Rwandan Genocide, *AfricaInitiative policy brief no. 2* (2012), p. 5.

gramme. It is vital for the families waiting for information about their loved ones. Not dealing with these issues could have long term harmful consequences. It may be necessary therefore, to have a process dealing specifically with the missing and the needs of their families. An institution dealing with this issue specifically may be helpful, as has occurred in a number of other countries. This will be taken as a sign of government commitment to deal with the issue. Consulting victims on such a process and its design are essential.

E. Reparations

The provision of reparations is crucial in Uganda. Many victims have suffered severely and need to be given reparations. In addition, victims in both domestic and international law have the right to reparations.³⁹ The right to reparations has recently come to the fore. The right is delineated in the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law”.⁴⁰

Reparations are crucial as they go “to the very heart of human protection – it has been recognized as a vital process in the acknowledgment of the wrong to the victim, and a key component in addressing the complex needs of victims in the aftermath of violations of international human rights and humanitarian law”.⁴¹ In a 2004 report by the United Nations Secretary-General to the Security Council entitled: ‘The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies: Report of the Secretary-General’, it was noted that:

“States have the obligation to act not only against perpetrators, but also on behalf of victims – including through the provision of reparations. Programmes to provide reparations to victims for harm suffered can be effective and expeditious through complements to the contributions of tribunals and truth commissions by providing concrete remedies, promoting reconciliation and restoring victims’ confidence in the State.”⁴²

39 On the right to reparations in international law see: *Christine Evans*, *The Right to Reparation in International Law for Victims of Armed Conflict*, Cambridge 2012, p. 7; and *Carla Ferstman et al.*, *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity*, Leiden 2009, p. 89.

40 On these issues in Bosnia and Herzegovina see: *Eric Rostand*, *The Right to Compensation in Bosnia: An Unfulfilled Promise and a Challenge to International Law*, *Cornell International Law Journal* 33 (2000), p. 113.

41 ‘Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law’.

42 UN Security Council, ‘The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies: Report of the Secretary-General’, UN document S/2004/616, New York 2004, paras. 54-55.

Measures to satisfy victims, such as revealing the truth, holding perpetrators accountable, and ceasing on-going violations, can also have a reparative effect.⁴³ Thus, steps to prevent non-recurrence should accompany reparations, as this offers reassurance to victims that reparation is not an empty promise or a temporary stopgap. Reparations however cannot be a substitute for justice and prosecution. They need to be part of any transitional justice strategy together with strategies to obtain truth, justice and reconciliation. A comprehensive and workable process has component parts of each. They are mutually supporting and often overlap.⁴⁴

Critically, the process in Uganda must not be too cumbersome or onerous. There must be an easily accessible method to receive reparations with common measures. It must be a fair process and be perceived by the victims as reparative. Many victims have suffered severely and their plight is urgent. Many have critical needs, especially as far as their health needs are concerned. While NGOs and others such as the ICC Trust Fund are playing an important role in addressing some of the needs, many victims are not being attended to. Doing so, especially for those in need of urgent immediate attention, is crucial. Long term issues are also important to deal with; otherwise peace and stability will continue to evade Uganda in the future.

The process of providing reparations will be complex and difficult. These processes are difficult to set up and run. There are many challenges that will need to be overcome.⁴⁵ There are many issues to be considered including both procedural and substantive matters in the implementation of these processes. All of them are important and the process needs to be implemented carefully and with a great deal of consideration. Sequencing is critical, but so are issues including the process, ensuring sufficient research and mapping, the type and source of funding, the type of reparations to be granted, the type of institution and the registration process, what categories of victims ought to be covered, and the time period to be covered by reparations. Also to be considered is how the process ought to be victim centred, why a gender focus is necessary, why traditional mechanisms need to be a part of the process and why there must not be discrimination in the process.

A transitional justice policy incorporating a reparations programme cannot be designed without researching the scope of the problem and the extent of the needs of victims.⁴⁶ Without proper research, problems can arise including raising expectations of victims which are

43 See *Rama Mani*, *Reparation as a Component of Transitional Justice*, in: De Feyter/Parmentier/Bossuyt/Lemmens (eds.), *Out of the Ashes: Reparation for Victims of Gross and Systematic Human Rights Violations*, Antwerp 2006, p. 54.

44 *Ibid.*, p. 67.

45 *Rianne M. Letschert, Theo van Boven*, *Providing Reparation in Situations of Mass Victimization: Key Challenges Involved*, in: Letschert/Haverman/de Brouwer/Pemberton (eds.), *Victimological Approaches of International Crimes*, Antwerp 2011, p. 155.

46 See *Thomas Craemer*, 'Framing Reparations,' *The Policy Studies Journal* 37 (2) (2009), 275-298.

not then met.⁴⁷ This is also critical to ensure that all victims and categories of victims are addressed and taken into account.

A mapping exercise is essential in Uganda to understand what has happened, who the victims are, what are the categories, how many people fit in each category and what are the needs. It is also essential to know which programs are already in place in the country and what is being offered already. Thus, examining what programmes are already on offer, to whom and where it has been rolled out, is important to coordinate all existing processes. It is also important to know what the government is doing and planning for future, with regard to building infrastructure in conflict-affected areas. It must be understood what resources are available for the process. This is fundamental, so that a proposed policy does not raise expectations unnecessarily, which often leads to difficulties. Thus, there ought to be a process established to engage with the government to determine what resources may be put on the table and what type of systems the government may be willing to support.

It is also essential to know what other role players, including donors, and the other players engaged in Uganda, including the ICC Trust Fund for Victims, are doing and are planning to do in the future.⁴⁸ This is important as donors may be willing to support the process and engaging with them early would be useful to avoid duplication. As far as the ICC Trust Fund is concerned, it is important to remember that the ICC Trust Fund has already been playing a role, and will continue to remain engaged. The Trust Fund is set up by Article 79 of the Rome Statute⁴⁹ which states that: “A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.” This means that the awards received by the victims of gross human rights violations via orders made by the ICC are monitored and administered by the ICC, in the best interest of those victims.⁵⁰ Moreover, since the Trust Fund operates on a separate budget from that of the ICC, voluntary contributions by states, international organizations, NGOs and civil society are important for the Fund’s effective functioning.⁵¹

47 *Martien Schotsmans*, Victims’ Expectations, Needs And Perspectives After Gross And Systematic Human Rights Violations, in: de Feyter/Parmentier/Bossuyt/Lemmens (eds.), *Out of the Ashes: Reparations for Victims of Gross and Systematic Human Rights Violations*, Antwerp 2005, p. 105.

48 See *Adrian Di Giovanni*, The Prospect of ICC Reparations in the Case Concerning Northern Uganda: On a Collision Course with Incoherence, *Journal of International Law and International Relations* 2 (2005-06), p. 25.

49 Rome Statute of the International Criminal Court, 1998.

50 *Anne-Marie de Brouwer*, Reparation to Victims of Sexual Violence: Possibilities at the International Criminal Court and at the Trust Fund for Victims and Their Families, *Leiden Journal of International Law* 20 (2007), p. 207.

51 *Ibid.*, p. 207.

F. Conclusion

At some point in the future, Uganda will have to face the tensions between justice, truth, and reconciliation. These pillars of transitional justice can be incompatible with one another if not dealt with in a manner relevant to the circumstances. If they are applied methodically and independently⁵² they should be mutually supporting. If used in a manner appropriate to the circumstances they should have a positive and useful effect.

This article has argued that it is essential that truth mechanism(s) and other transitional justice mechanisms are established in the country. While Uganda has had such processes before, they were not successful for a variety of reasons, primarily because it was not considered open, transparent, credible, accepted or able to play the role that such bodies ought to. It is maintained that the right to the truth is an accepted right, and a version of the accepted truth ought to emerge as a part of a broader transitional justice approach, and specifically as a component of reparations.

The chances for more justice in Uganda are remote. Thus, dealing with impunity is seemingly off the table. A change in government is probably the only way for this to change.

Critically, the other components of transitional justice, reconciliation and guarantees of non-repetition, must also be implemented. It is also crucial to embark on a constitutional and legal reform, which must include the reform of state institutions. New institutions also need to be formed to promote democratic norms as well as greater accountability.

52 *Rani Mani*, *Conflict Resolution, Justice and the Law: Rebuilding the Rule of Law in the Aftermath of Complex Political Emergencies*, *International Peacekeeping* 5 (1998), p. 8.