

## The International Crimes Division of Uganda and Reparations for Victims of Sexual Violence in Northern Uganda

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### Introduction

This article is an attempt to explore whether the establishment of the International Crimes Division (ICD) in the High Court of Uganda will lead to any meaningful reparations packages for victims of sexual crimes committed during armed conflict (hereafter referred to as war sexual crimes) between the Ugandan Government and the Lord's Resistance Army (LRA) in Northern Uganda. The paper examines the different challenges at various levels that is to say: societal level factors, gaps in the domestic justice system and structural gaps in international criminal law and the ICC which may impact on the operations of the ICD in the prosecution of war sexual crimes. The main policy argument arising from the discussion in this paper is that it is imperative that the Government of

Uganda invests more resources in the Justice, Law and Order Sector (JLOS) to facilitate the ICD expedite justice to the survivors of war sexual crimes since the operations of the ICD are highly influenced by the level of effectiveness of the services offered by other key JLOS institutions.

### War Sexual Crimes

Sexual violence is rampant in armed conflicts and it manifests in different ways ranging from rape, defilement, gang rape, sexual slavery, forced impregnation, intentional HIV transmission to forced prostitution. Crimes of sexual violence recognised under the ICC as contained in the Elements of Crimes Annex and the Rome Statute 2002 include; rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization. Within the framework of the ICC, intentional HIV transmission is not stipulated as a sexual crime.

Although the majority of victims of war sexual violence are women and girls, men and boys are also increasingly victims of sexual violence in war situations. Recent studies done in war affected areas reveal that men and boy children, are increasingly being targeted for sexual violence as a specific gender category (UN Report of the Secretary General on Children and Armed Conflict, 2011 April; Carpenter, 2006). Male victims are mostly subjected to rape in form of anal sex and genital mutilation. Nonetheless, for each gender category whether female or male, the main intentions of the violence are to destroy their sexuality since this largely defines womanhood or manhood, the dignity of the men in the enemy community and ethnic cleansing.

### The Nature and Magnitude of Sexual Crimes during the LRA War in Northern Uganda

Northern Uganda experienced high incidences of sexual violence during the 20-year war waged by the Lord's Resistance Army (LRA) against the National Resistance Government (ISIS WICCE, 2001; Reproductive Health Matters, 2008; Ministry of Health, 2007; Action Aid, 2007). During the war, sexual crimes manifested in form of rape, gang rape, defilement, forced marriages, abduction for sexual slavery, forced pregnancy and intentional HIV transmission and the majority of the victims were women and girls. Some men and male children also experienced acts of sexual violence mainly physical abuse directed towards the genitals and male rape. While these acts are alleged to have been committed by both the LRA and the Government forces- Uganda Peoples Defence Forces (UPDF), Police and other security agencies, acts like forced marriages, forced pregnancies and sexual slavery were predominantly perpetrated by the LRA

(Ministry of Health, 2007; Concern Worldwide, 2008; UNICEF, 2007). The Humanitarian Action Report (UNICEF, 2007) estimates that since the late 1980s nearly 25,000 children had been abducted for use as child soldiers and sex slaves, including almost 7,500 girls, out of whom, 1,000 returned from LRA captivity having given birth to children. These statistics depict a high prevalence of acts of sexual violence perpetrated against women and girls during the war.

### International Legal Framework for Redressing Sexual Violence in Armed Conflict

In this section, I highlight the international legal regime for redressing sexual violence in armed conflict and in so doing I discuss the background to the criminalization of sexual acts in armed conflict under the Rome Statute 2002, from which domestic legislation on international crimes is derived. The key international and regional human rights instruments that protect women's rights against sexual violence include the following:

- Convention on the Elimination for all Forms of Discrimination against Women (CEDAW) 1979
- The Convention on the Rights of the Child 1989
- Declaration on the Elimination of Violence against Women (DEVAW) 1993
- Beijing Platform of Action on Women 1995

### UN Security Council Resolutions 1325 (2000) and 1820 (2008)

The UN Security Council Resolutions constitute international human rights instruments that protect women and girls against gender-based violence in armed conflict and promote the participation of women in conflict resolution and peace building. These instruments enshrine specific obligations to be met by the international community, state parties and fighting groups to protect the rights of women and girls during armed hostilities. The most relevant to the discussions in this paper are:

- All parties to armed conflict should take special measure to protect women and girls from gender-based violence.
- Recognize that sexual violence is used as a weapon of war.
- Rape and other forms of sexual violence are recognized as war crimes.

- Sexual violence should be excluded from amnesty provisions.
- Train armed forces on acts that constitute sexual violence.
- Governments should strengthen mechanisms to respond to sexual violence effectively.

### African Union Convention on IDPs 2012

- Article 7 (4) Members of Armed groups shall be held criminally responsible for their acts which violate the rights of internally displaced persons under international law and national law.
- Article 7 (5)f. Members of armed groups shall be prohibited from forcibly recruiting persons, kidnapping, abduction or hostage taking, engaging in sexual slavery and trafficking in persons especially women and children.

While the above human rights instruments have good provisions that condemn sexual violence, these have not been used effectively under the domestic legal framework to provide justice to the survivors of sexual crimes.

### International Criminal Court (ICC)

The establishment of the ICC was an attempt to create an international legal framework that could end impunity and more effectively administer justice to victims of international crimes including war sexual crimes. The Court has a mandate, derived from the Rome Statute (2002) to prosecute perpetrators of war crimes and crimes against humanity such as genocide and massive acts of sexual violence in war situations.

### The International Crimes Division of the High Court of Uganda

Uganda has a strong legal framework for securing accountability for acts of sexual violence committed during armed conflict. The Government of Uganda has introduced a number of mechanisms to address human rights violations including sexual and gender-based violence committed during the LRA conflict. In July 2008, the Government established the then War Crimes Division now the International Crimes Division of the High Court of Uganda, a specialized division with jurisdiction over international crimes including crimes against humanity and war crimes. The ICD was established in fulfillment of the

Government of Uganda's commitment to the actualization of the Juba Agreement on Accountability and Reconciliation (Agenda item 3 on Accountability and Reconciliation), also to fulfill the country's obligations of complementarity under Part 9 Article 88 of the Rome Statute. The mandate of the Division is to decide cases involving war crimes, crimes against humanity and genocide that may include acts amounting to sexual violence. In another move to strengthen the capacity of the country to expedite justice for victims of international crimes, in May 2010, the Government of Uganda adopted the ICC Act, which demonstrated its commitment to investigate and prosecute international crimes in Uganda's domestic courts. The Act allows Ugandan courts to try crimes against humanity, war crimes and genocide defined under the Rome Statute, which provides the most comprehensive framework for prosecuting gender based crimes under international law.

### Reparations for Victims of War Sexual Crimes in the Context of Transitional Justice in Uganda

Reparations are measures adopted by states that are intended to repair past harms, in particular the systematic violation of human rights associated with armed conflict or repression. The right to such redress is enshrined in international human rights instruments (OHCHR, 2008b). There are two broad categories of reparations; one type involves reparations from one state, usually a defeated state to another state, and the second type is the situation where a state pays reparations to non-state parties and individual victims of mass atrocities.

Reparations are intended to redress the damage caused to the injured party. Under international law, reparations must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation, which would, in all probability, have existed if that act had not been committed.<sup>1</sup> This involves wiping out all the consequences of the act. An authoritative source of basis and reference for reparations is the UN Draft Basic Principles on the right to Remedy and Reparation for Victims of Gross violations of International Human rights and serious violations of Humanitarian Law. Reparations may take the form of restitution, compensation, rehabilitation as well as satisfaction and guarantees of non-repetition. Reparations programmes can be put in place by governments for a large group of victims and may include individual compensation, pensions,

<sup>1</sup> Article 1 of the draft Articles on State Responsibility adopted by the International Law Commission in 2001: Every internationally wrongful act of a state entails the international responsibility of the state. (UN Doc. A/CN.4/L.602/Rev.1, 26 July 2001)

opportunities for education and training, access to health and psychological rehabilitation and measures of collective reparations. Other forms of reparations that constitute measures of satisfaction may include search for the disappeared, administrative or judicial sanctions against perpetrators disclosure of the truth, memorials, official/public apologies or other symbolic measures like commemorations (JLOS, 2009: 27). The purpose of reparations is to provide acknowledgement of violations, a reassertion of the violations of the survivors and practical means to redress the impact of crimes (UN Women, 2011). Reparations impact on both the individual victim and the wider societies and communities affected. By focusing on restorative and retributive actions, reparations for mass atrocities play a big role in rebuilding war-torn societies through advancing truth and acknowledging the gravity of the crimes committed.

### Reparations for Victims of Sexual Crimes in the Context of Transitional Justice in Uganda

Transitional justice means a range of approaches that societies undertake to reckon with legacies of widespread or systematic human rights abuse as they move from a period of violent conflict or oppression toward peace, democracy, rule of law, and respect for individual and collective rights (JLOS, 2009). There are two basic approaches to transitional justice. The first one is restorative justice, which deals with the socio-economic recovery of victims of mass human rights violations and perpetrators while retributive justice is mainly concerned with bringing to book the perpetrators of gross human rights violations, thus focusing on prosecutions.

One of the major challenges of communities emerging out of conflict is poverty, which takes a big toll on transitional justice mechanisms in these communities. The impact of transitional justice mechanisms may not be realized as long as reparative measures that address the economic and social consequences of human rights violations are neglected. Uganda, like other countries emerging out of war is facing some challenges in establishing transitional justice mechanisms in the war torn areas in Northern Uganda. The strong link between transitional justice mechanisms and poverty reduction demonstrate the need to balance a variety of interests and objectives. It is imperative that an approach that combines accountability and justice mechanisms with reparative measures for war victims is adopted. In this context, for transitional justice to be meaningful to women in northern Uganda, the victims of sexual violence should be able to get a remedy in terms of reparations for the gross human rights abuses they suffered during the conflict. However, due to lack of a comprehensive reparations program in the country, survivors of sexual crimes during the war in Northern Uganda have not

yet received any reparations. The existing law on reparations in the Penal Code has limitations. It provides for only compensation and civil remedies granted by courts arising from civil suits but cannot be used as a basis to grant reparations for the victims of the massive human rights violations committed during the war (Accord, 2011; 2010). In a bid to make good for post conflict communities in various parts of the country, the Government of Uganda has made efforts in some parts of the country as for instance, through the development of the Peace Recovery and Development Plan (PRDP), to address needs of the Northern region and "LRA war affected areas". The government was also extensively involved in resettlement exercises during which it issues the affected communities with resettlement packages. There have also been adhoc directives by the executive in the form of monetary compensation for victims of the Mukura massacre in Teso sub region. The issue remains however, whether these reparations were cognizant of the needs of victims of war sexual crimes. In order to address the gaps in the law in respect to reparations for war victims, the Government of Uganda through the Justice Law and Order Sector initiated a process to develop legislation to administer reparations programs for war sexual crimes survivors.

### Challenges in Instituting Reparations Programs for Victims of War Sexual Crimes in Uganda

Although the International Crimes Division of the High Court of Uganda has jurisdiction to try war sexual crimes committed during the war in Northern Uganda and to expedite justice to the survivors, this has not yet been realized due to some challenges discussed in this section. The challenges can be categorized into three sub themes; societal level factors, gaps in the domestic justice system, such as the existence under Ugandan law of a blanket amnesty and the limitations of the ICD arising from the structural gaps in International Criminal Law and the ICC.

#### Societal Level Factors

Societal level factors include barriers to access to justice for survivors deeply embedded in socio-cultural perceptions and practices that influence GBV dynamics in the prevention and redress interventions.

The mismatch between conceptualization of sexual violence in armed conflict as per the Rome Statute (2002) and its actual manifestations in communities affected by war brought about by the social connotation of sexual violence plays a big role in determining the number of cases that are reported to the

formal justice system. In most communities especially in Africa, Uganda inclusive, sex is a taboo subject and due to limited legal awareness among the public, for instance, many people do not regard forced or early marriages as criminal acts (Accord, 2011; MGLDS, 2011; Concern Worldwide, 2008). The communities have their understanding of some sexual crimes, which they use in settling the cases out of the formal justice system. For instance, defilement, which is widespread in armed conflict, has both a legal meaning and a social understanding within the communities. According to the Ugandan law, the Penal Code (amendment) 2007 stipulates that defilement means performing a sexual act with another person who is below the age of eighteen years and it is categorized under simple defilement, aggravated defilement and child-to-child defilement. On the other hand, within the community, defilement is distinguished between two forms; consensual sex and forced sex with girls below 18 years of age. In this context, the community has different mechanisms to deal with each of these acts of defilement, but which are contrary to the provisions of the law. Cases of consensual sex and some involving forced sex with under-age girls are settled through negotiations between the families of the victims and the perpetrators as opposed to pursuing legal redress. Therefore, challenges in the formal justice system are not adequate to explain complexities surrounding expediting justice to victims of sexual crimes. An inquiry into the socio-cultural dynamics that determine use of the existing institutions in the formal justice system is necessary in understanding why the ICD has not yet been utilized to demand for reparations by the survivors.

Secondly, the absence of a comprehensive Government policy to address reparations needs of affected communities also poses a major challenge as it augments the lack of a basis on which to determine who can be eligible to benefit from the reparations program and in what form, considering that different victims suffered different forms of sexual violence during the war.

Although reparations are arguably the most victim-centred measure among the available transitional justice mechanisms and the most significant means of making a difference in the lives of the victims, implementing reparations for survivors of war sexual crimes is problematic. There are some questions critical to the management of reparations programmes but that do not seem to have clear answers as yet. For instance, how to determine who among the survivors deserves reparations. What kind of reparations package should be given out? Should reparations be distributed to individuals or on group basis in terms of basic services? What would constitute the reparations package? There is also the issue of period for reparations; how far into the future should it run? This is coupled with the lack of database for the intended beneficiaries, which leaves the affected communities dissatisfied with the available development programs.

## Conclusion

The existence of a legal structure to try war crimes including sexual violence is a positive move towards the protection of rights of those who suffered grave violations during the war. It is a manifestation that there is a strong will to end impunity for war crimes particularly those related to all forms of sexual violence. However, the discussion on the ICD and reparations for victims of war sexual crimes in Northern Uganda in this paper demonstrates that the search for a comprehensive framework to end impunity to these crimes is complex. Due to the diversity and multiplicity of sexual crimes in armed conflict, effective legal redress requires a multi-sectoral and holistic framework that has strong synergies with other services to meet the unique needs of the survivors. It is therefore, vital that the Government of Uganda provides tangible support as reparation to the survivors of war sexual crimes as both an issue of justice as well as a strategy to restore them to a situation where they can sustain themselves.

## Policy Recommendations

There is urgent need to speed up the law reform process to have relevant laws in the domestic legal regime to redress the needs of victims of war sexual crimes in Uganda.

With support from government and humanitarian agencies, Feminist legal activists in conflict affected countries should explore setting up women's courts to offer space for the survivors of sexual violence to recount their testimonies. Such structures should also have facilities to meet the specific needs of child survivors. The information gathered should be used to demand for justice for the survivors from both the domestic legal regime and the ICC.

The high social stigma that surrounds sexual violence makes reintegration of survivors into their communities a complicated process unless specific strategies are adopted to prepare both the survivors and the communities for this challenge. The government should integrate strategies to meet the legal, health and psychosocial needs of the survivors of sexual crimes in the reconstruction framework during the post conflict period. Special strategies should be put in place to ensure that child survivors are able to access the services offered.

Redressing war sexual violence as an international crime is complex and requires a multi-sectoral approach. The ICD should consider involving other professionals such as medical workers, gender activists, counselors, psychologists among others, to pool expertise and resources. This would lead to better investigative processes, improve victim protection and support but also create a positive attitude towards the work of the ICD at community level in relation to prosecution of war sexual crimes.

Because successful prosecution of cases by the ICD depends on the effectiveness of other institutions within the justice sector namely the Police and the Directorate of Public Prosecution among others, government should invest more resources in these institutions in the justice sector whose services are critical to prosecution of suspects of war sexual crimes.

The participation of women in the security sector should be encouraged both at national and international levels so as to increase the responsiveness of security organs to acts of sexual violence in armed conflict. Measures to increase the proportion of women in the security sector should include gender-sensitive recruitment and retention strategies, and should be accompanied by the development of an organizational culture that promotes gender equality within security organs. Security organs should have the ability to effectively identify and respond to the vulnerable positioning of women and girls that could increase their risk to sexual violence during armed conflict. Developing protocols and procedures for assisting and supporting victims of sexual violence is critical in this respect.

Sexual violence against men and boys in war situations is largely under reported and therefore survivors rarely seek redress. To increase protection and access to justice for male survivors of war sexual crimes, advocacy efforts to increase the responsiveness of security organs to acts of sexual violence against men and male children in armed conflict should be strengthened at both national and international levels. Preventive and response interventions to war sexual crimes against men and male children must be carefully tailored to meet their specific needs.

Inclusion of children's concerns and their voices in programming for the security sector so as to increase its responsiveness to acts of sexual violence perpetrated against children during armed conflict is critical in accounting for war sexual crimes. Youth leaders in political leadership, religious / traditional institutions and the educational sector should be given space to participate more effectively in peace building processes to advocate for increased access to justice for child survivors.

It has been widely acknowledged that traditional justice mechanisms (TJM) play a critical role in the resolution of conflicts in war affected communities and in so doing provide considerable relief to the formal justice system (JLOS, 2012,). In this regard, traditional justice systems have provided a quick justice remedy for sexual violence in post-conflict settings as opposed to the formal legal system. Although TJMs are by design restorative, have a component on reparations, promote reconciliation and employ a victim centred approach, sexual crimes committed during armed conflict should not be tried under TJM, war related

sexual violence constitute war crimes and crimes against humanity as provided for in the ICC (Rome Statute) to which Uganda is a signatory and therefore, cannot be subjected to traditional justice procedures whose methods concentrate on reconciliation, in contravention of the punitive regime under the ICC system.

While it is crucial to harmonise formal law with traditional law in the context of transitional justice, there is need to ensure that the survivors of sexual crimes receive justice within the traditional justice framework. Any efforts towards developing a comprehensive national reconciliation process should take care of the needs and concerns of the survivors of sexual crimes committed during conflict. Recent research (JLOS, 2008; 2012) indicates that there is a strong need for a Truth and Reconciliation Commission to create an impartial historical record of the atrocities communities suffered during the war, to address impunity, promote healing and reconciliation, respond to the needs of the victims and to prevent a repetition of the abuses suffered. For such a Commission to redress the needs and concerns of survivors of sexual violence meaningfully, mechanisms to create a conducive environment for female survivors of sexual crimes to come out and share their experiences should be established within its structures.

The UN Security Council Resolutions on Gender-based Violence (1325 and 1820) should be revised to have explicit provisions that protect men and boys against sexual violence in armed conflict and similar reflections made under Ugandan law, particularly under the ICD legal regime.

Intentional HIV transmission should also be recognized as a sexual crime in armed conflict that constitute war crimes and crimes against humanity and therefore punishable under the ICC mandate.

Multi-disciplinary research should be done to gather information on the experiences of the survivors of war sexual crimes. The strengths and challenges of current redress approaches should also be documented to provide a basis for future programming for the work of the ICD in this field.

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