

The Ugandan Context on Victim and Witness Protection: The Contextual analysis of risks inherent in the Ugandan TJ Context

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1. Introduction:

Northern Uganda experienced two decades of violent conflict after President Yoweri Museveni took power in 1986 by overthrowing a military regime dominated by northerners mainly Acholi army officers. In the wake of this overthrow and amidst fear of political, social and economic marginalization, several rebel groups emerged to challenge the newly established leadership. Out of these groups the Lord's Resistance Army (LRA) rebels infamously known for its brutal methods against civilians remained the most active and people suffered grave human rights violations from warfare between the Ugandan army and the rebels. The consequences of the conflict led to the following;

- Massive displacement, abductions of mainly young girls and boys, amputation, killings and other forms of violations took place.
- Increased resentment by the civilians towards the Government of Uganda for perceived failure to end the conflict.
- LRA attacks were characterized by kidnapping of relatives and children of victim population
- Drawing Line between victims and perpetrators have become blurred since most of children were abducted and forced to commit crimes against their will.
- Views on how to end the conflict was often divided between north where the conflict was often playing out and rest of the country which was largely prospering
- Parliament passed into law the Amnesty Act 2000 to facilitate acceptance of ex-combatants into their communities. (Blanket Amnesty) and never required any form of accountability
- Ex-LRA combatants who received amnesty continue to face stigma and resentment from communities in the context of return. Due to distrust for returnees resentment at times manifest in other forms of conflict i.e land issues
- The ICC intervened in 2003 and after investigations issued arrest warrants for 5 top leaders of the LRA 3 of who survive to date.
- Peace talks were held between the government and the LRA in Juba between July 2006 to April 2008 to try and end the conflict through negotiations.

- The parties signed the Agenda Item 3 Accountability and Reconciliation which established the framework to pursue transitional justice in post conflict northern Uganda
- The Judiciary established the War Crimes Division of High Court of Uganda in 2008 now renamed International Crimes Division to try serious crimes.
- Consultation by JLOS for establishment of other TJ mechanisms i.e truth seeking, reparations and role of traditional justice on-going.

2. Protection

Often understood include measures aimed at the provision of physical safety and security to witnesses and could include support measures to address medical and psychosocial needs of witnesses

Not every context is the same and protection measures ought to be implemented based on an *Assessed level of Risk (Risk Assessment)* to be used as a risk management strategy to protect witnesses from threats, acts of violence and retaliation

3. Need Assessment Mission for JLOS November 2010

- Requested by JLOS and assisted by Public International Law and Policy Group (PILPG) and the International Center for Transitional Justice (ICTJ), the aim was to assess the readiness of justice-sector institutions for national war-crimes proceedings and for transitional-justice outreach. Both JLOS institutions and civil society were consulted during the visits by the 5 experts to the mission.
- The immediate backdrop to the request was the then impending filing by the Directorate of Public Prosecutions (DPP) of Uganda's first war-crimes indictment, against Mr Thomas Kwoyelo, an alleged former Lord's Resistance Army (LRA) commander who has been in custody since early 2010, and his planned trial before the International Crimes Division of the High Court of Uganda

4. Potentials risks based on political, social economic context of victims

The following were identified as some of the potential risks following the assessment mission in the context of Uganda:

- Potential witnesses to assist in any TJ measures include ex-LRA abductees, combatants and other victims. Most these people live in the same locations with close proximity in remote areas with closely knit family and social ties hence keeping confidentiality for investigations with due respect to rights could pose a challenge
- Some witnesses are highly traumatized and at risk of re-traumatization during investigative interviews. This is especially with regard to ex-combatants and former child soldiers and who may not wish their testimony to be known by their communities

- Ex-LRA trying to reintegrate, fear assisting war crimes investigations because it could draw unnecessary attention to their past and those of other former LRA members and undermine reintegration
- Others think that providing testimony or their refusal to provide assistance may affect their amnesty while others think the ICC could get hold of information provided and decide to institute proceedings against them.
- Some potential witnesses have been interviewed many times by other agencies and they suffer interview fatigue and hence affecting willingness to assist with future investigations or war crimes proceedings.
- Ex-LRA members may fear being implicated during prosecutions or defense case and some could potentially threaten or harm potential or actual witnesses.
- Current legislative, policy, institutional and administrative framework for protection and support for witnesses in war crimes proceedings is still lacking.
- Historical mistrust between the conflict affected population and the government, could by extension affect the relationship with JLOS institutions involved in war crimes proceedings for instance some institutions i.e the Police are not perceived by some victims as impartial and this has implications for the design protection systems.
- There is still limited information about the ICD. Most people in the affected regions still do not understand what the trials mean and some think that it's the ICC carrying out trials
- In the absence of any reparative measures, it's not clear how potential witnesses will respond since they may not be entitled to any remedy after providing testimony

5. Way forward

The NAM recommends the following with regard to witness protection issues:

- JLOS immediately commissions an *independent baseline risk assessment* and well as *psychosocial vulnerability assessment* for potential prosecution and defense witnesses in the Thomas Kwoyelo case or future planned war crimes cases. This will help all those involved have a better understanding of the witness vulnerability with a view of developing an effective protection strategy.
- Develop and clearly communicate the prosecution's case-selection strategy, and a message on the consequences of cooperation and non-cooperation with investigations and prosecutions. This should also provide a clear and credible message on the category of individuals that may be investigated and prosecuted for war crimes and that will not receive amnesty could remove many witness-protection concerns. NB The experts during the assessment understood that the amnesty is a very sensitive issue, requiring a political decision, and that it may have major implications for peace and reconciliation
- It is of paramount importance to put in place an interim protection measure where these have not been done as the safety of potential witnesses with on-going trials.
- Communicate with affected communities that there is nothing wrong with assisting defense in war crimes proceedings.

- Organize trainings on protection and support issues and how to work with vulnerable witnesses for investigators, prosecutors, judges, defense, registry staff and other JLOS personnel who will potentially come into contact or will be involved with witnesses.