

ICTJ Uganda

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Confronting the Past: Truth Telling and Reconciliation in Uganda

Introduction

Truth telling is recognized as one of the important transitional justice measures for redressing the legacies of abuse and responding to human rights violations and harms that occur during repression or conflict. Other measures that can serve justice, promote the rule of law, and achieve reconciliation include criminal prosecutions, reparations, and institutional reform.¹ These measures should be implemented in a holistic, mutually reinforcing manner.

Truth telling plays a critical role in acknowledging the wrongs suffered by victims, fostering reconciliation, community healing, and preventing the recurrence of the past abuses in post-conflict societies. Establishing the truth about past violations will not only help determine the most appropriate remedies to be offered to victims, but it will also help identify the necessary reforms that can prevent such violations from happening again.

Right to Truth

Truth telling originates in the right to truth, which is an evolving legal concept in international law.² The right to truth imposes an obligation on states to provide victims and society at large with information about the violations and abuses that took place during conflict. It also requires the state to preserve information for public memory. The right to truth has its historical roots in the struggles of families of the disappeared in Latin America that sought to compel the authorities to disclose information about the fate of their relatives.³

Under international law, the right to truth is enshrined in a number of international instruments and nonbinding resolutions like the UN Updated Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (Updated Principles on Impunity). Principle 2 stipulates that “[e]very person has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the

¹ United Nations Security Council, Report of the Secretary General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), (August, 3, 2004) paragraph 8

² UN Commission on Human Rights, Human Rights Resolution 2005/66: Right to the Truth, E/CN.4/RES/2005/66 (April, 20, 2005)

³ Report of OHCHR on Promotion and Protection of Human Rights Study on the Right to the Truth, E/CN.4/2006/91, (February 8, 2006)

perpetration of those crimes.”⁴ Furthermore, the International Convention for the Protection of All Persons from Enforced Disappearances upholds the right to know in situations of disappearance.⁵ Article 24, (2), stipulates that victims have 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; and state parties have an obligation to take appropriate measures in this regard. The UN Commission on Human Rights in its resolution 2005/66 “[r]ecognizes the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights.” Principle 24 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of Humanitarian Law (Basic Principles) provides that the right to reparations of the victim includes “verification of the facts and full and public disclosure of the truth.”⁶

At a regional level, the Inter-American Commission held 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 protections.⁷ The African Convention on Human and People’s Rights subsumes the right to truth under the right to an “effective remedy,” which includes access to justice and reparation for harm suffered. The convention promises victims of violations “access to the factual information concerning the violations.”

Mechanisms to Implement Right to Truth

Truth seeking can be achieved through a wide range of approaches, namely commissions of inquiry, fact-finding missions, ad hoc parliamentary committee hearings, exhumation processes, Criminal justice processes and documentation.

Criminal Justice Processes

Criminal justice is one means of upholding the right to truth.⁸ During a criminal trial, contested facts are rigorously scrutinized using established evidentiary and procedural standards to establish the truth. However, truth telling through criminal processes may not always satisfy a victim’s right to truth because courts seek may only seek to establish a microscopic truth to prove certain elements of crime, and prosecutors could omit facts, which are relevant to victims yet are regarded as irrelevant and inadmissible under the rules of evidence.

Truth Commissions and Commissions of Inquiry

At a national level, truth commissions and commissions of inquiry which are non judicial fact-finding bodies could be established to investigate past human rights abuses that occurred during a specified time.⁹ A conventional commission of inquiry is essentially a mechanism through which a head of state can obtain information and advice. The functions of a commission are to determine facts underlying serious problems, abuses, or controversies, and to advise the executive and/or legislative branches on how to address them.

⁴ The UN Updated Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity E/CN.4/2005/102/Add.1 (February 18, 2005)

⁵ International Convention for the Protection of All Persons from Enforced Disappearance General Assembly Resolution A/61/177, (December 20, 2006)

⁶ CHR Resolution 2005/35, April 19, 2005; ECOSOC Resolution 2005/35, (July 25, 2005), Principle 24

⁷ *Velásquez Rodríguez, Vs. Honduras* Inter-American Commission, Ct. H.R., (Ser. C) No. 4, 77 (1988)

⁸ Report of OHCHR on Promotion and Protection of Human Rights Study on the Right to the Truth. E/CN.4/2006/91.

⁹ Pricilla Hayner, “Fifteen Truth Commissions 1974-1994: a Comparative Study,” *Human Rights Quarterly*, Vol. 16, No. 4 (November 1994): 597–665.

A truth commission is also a commission of inquiry, but it does substantially more. A truth commission is required not only to establish an accurate, impartial account of the past, but also to address the needs of victims and recommend measures to prevent the repetition of conflict. A truth commission is expected to initiate the important tasks of restoring shattered lives and rebuilding destroyed and discredited institutions.

Usually they pursue their mandate by conducting investigations, research, and holding public hearings into atrocities of the past that include abuses of power as well as economic crimes. Unlike criminal trials, truth commissions enjoy a wider mandate that enables them to delve into the underlying causes of the conflict.

Establishing a truth commission requires significant planning and wide stakeholder participation to ensure credibility and legitimacy. This can be done by consulting with stakeholders to achieve a consensus on the commission's legal framework. The enabling law should ensure that the commission is independent and immune from political manipulation. A good way to establish credibility is to appoint commissioners who are above reproach and considered as fair and impartial. Truth commissions should have sufficient accessible resources to carry out their mandate, and they should have the power to compel the production of evidence as well as necessary witness testimony. Commissions must insist on procedural fairness to ensure a just outcome. Procedural rights that should be respected include the right to be heard, the right against self-incrimination, and the right to legal representation.

Unofficial Truth-Seeking Processes

When political will is lacking, unofficial truth seeking can be pursued in place of official processes at the community level.

This approach might closely resemble official truth seeking. It is characterized by a focus on investigating systematic human rights abuses, giving a voice to victims, and securing the enthusiastic involvement of civil society. These groups can undertake investigations, document human rights abuses, publish reports, hold community meetings, and pursue community-led memorials such as those held annually to commemorate massacres in the northern Ugandan communities of Barlonyo, Atiak, and Lukodi.

Role of Civil Society

Civil society input can help determine the mandate of the truth seeking, the periods to be covered and the types of violations to be investigated. For instance, civil society in Sierra Leone was involved in many aspects of the truth commission: lobbying for its creation during the Lome peace process; organizing consultations on the draft legislation; conducting studies on the relationship between traditional justice and the truth commission; devising awareness-raising programs; taking statements; providing support to victims; giving input into the final recommendations; publicizing the final report; and creating awareness on its findings and recommendations.

Pursuing Right to Truth in Uganda

The debate on truth telling in Uganda potentially goes far beyond the 2006-2008 Juba negotiations between the government and rebels of the Lord's Resistance Army (LRA). At issue is Uganda's exceptionally violent history since independence, a history that itself has been influenced by pre-independence factors. Coups, oppressive regimes, and armed rebellions led to mass killings, the disappearance of hundreds of thousands of people, and

widespread destruction of property. In the past two decades alone, Uganda has experienced more than twenty armed conflicts in different parts of the country. The most protracted and bloodiest raged for two decades in northern Uganda between the government and the LRA; thousands of people were killed, abducted, raped, mutilated, and displaced.

Uganda has made previous attempts to address the gross of human rights violations and disappearances. The first was through the 1974 Commission of Inquiry into the Disappearances of People in Uganda, which Idi Amin established to investigate the disappearances of people during the formative years of his regime.¹⁰ However political interference and intimidation prevented the implementation of the recommendations contained in the commission's report.

When President Yoweri Museveni came into power in 1986, he established the Commission of Inquiry into the Violation of Human Rights to investigate human rights violations under past regimes and to establish a path towards national healing.¹¹ Like the 1974 commission, this commission faced a challenge of lack of required political will and resources to execute its mandate effectively, and its recommendations were never fully implemented.¹² As a consequence, most of the perpetrators remain at large and have never been held accountable for alleged crimes, and many victims have never been recognized nor received justice. Neither of these two commissions had any significant impact.

To comprehensively address the legacies of mass human rights abuse and violations, Uganda needs to courageously confront the underlying causes behind its bloody past through an objective, independent, inclusive, and transformational national process.

The rationale for truth telling in Uganda would revolve around the need to find lasting solutions to the root causes of conflict by recommending the necessary political, economic, and social reforms. A truth-seeking process would need to identify ways of entrenching the rule of law and respect for human rights—two fundamental pillars of a democratic society.

However, the big question is which model of truth telling process should Uganda adopt? Until now, there does not appear to be much political will or appetite for a full South African model of a truth commission, at least at the official level. Conversely, public opinion and studies have repeatedly indicated that the desire for truth seeking in Uganda is strong and that it is seen as a real priority by people in the regions affected by conflict.¹³

The Juba agreement on accountability and reconciliation and its annexure proposes the establishment of a “body” whose mandate shall be to inquire “into the past and related matters.” It avoids the term “commission,” although many of the listed functions remarkably resemble those ordinarily assigned to truth commissions. The Refugee Law Project (RLP), as part of its Beyond Juba project, has for some time been working on a national reconciliation bill that similarly avoids the suggestion of a truth commission, and instead refers to a “forum” that would coordinate bodies charged with implementing comprehensive solutions and accountability and reconciliation in Uganda.¹⁴ The bill goes

¹⁰ Commission of Inquiry into the Disappearances of People in Uganda, Legal Notice No. 2 of 1974, (June 30, 1974)

¹¹The Commission of Inquiry Act Legal Notice No. 5 of 1986. Report of the Commission of Inquiry into Violations of Human Rights (Kampala: UPPC, 1994), 3-4.

¹² The Commission of Inquiry into the Disappearances of People in Uganda. Legal Notice No. 2 of 1974. (June 30, 1974)

¹³ Phuong Pham et al. “*When the War Ends: A Population-Based Survey on Attitudes about Peace, Justice and Social Reconstruction in Northern Uganda*” Human Rights Center at the University of California at Berkeley, Payson Center for International Development at Tulane University, and ICTJ, December 2007. See also “*Making Peace Our Own: Victims’ Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda*”, OHCHR, 2007.

¹⁴ National Reconciliation Bill Draft, 2008.

into some detail on the structures that would be put into place, and it is part of an ongoing discussion that needs to be expanded.

Victims and members of affected communities in northern Uganda have repeatedly called for a truth-telling process that they believe would illuminate the root causes of the conflict, publicly acknowledge the plight of victims, and provide access to appropriate redress and reconciliation with perpetrators. They also believe that truth telling can contribute to the moral rehabilitation of perpetrators.

A report by Uganda government's Justice Law and Order Sector on traditional justice mechanisms, truth telling, and national reconciliation, notes that communities affected by conflict preferred a "community based truth telling" process led by institutions at the local level to address the intercommunity and inter-tribal conflicts that have taken place across the country.¹⁵ The report further suggests that cultural and religious institutions could spearhead these processes because they are trusted and have previously played a critical role in promoting peace and reconciliation when state authorities were absent.

Victims also suggested that community documentation projects need to be pursued alongside commemoration ceremonies and mediation and reconciliation processes currently being conducted by some community structures like the District Reconciliation Peace Teams. They would like these efforts linked to a national truth-telling process so their suffering would be acknowledged at a national level.¹⁶

Uganda should not necessarily seek to follow any of the models that have been adopted in other countries. One of the most attractive aspects of truth-seeking processes is their relative flexibility in design. Truth telling should be adapted to a country's circumstances.

Pending formal truth seeking, unofficial truth seeking should be pursued. One area that could be very important to explore is the potential for truth seeking through traditional justice ceremonies and how facts gathered through traditional ceremonies can be compiled and centralized.¹⁷

In conclusion, national healing and reconciliation in Uganda requires a multilayered truth-telling process comprised of community and national processes that are mutually reinforcing and should not be mutually exclusive, as proposed by the JLOS report. A national truth-telling body should address issues of state responsibility. Importantly a national truth-telling process would be in a strong position to solicit and consider submissions for institutional reforms and reparations proposed by community-based processes throughout Uganda. Additionally it could recommend the necessary measures to redress the suffering of victims and prevent the reoccurrence of conflict and abuse.



The International Center for Transitional Justice works to redress and prevent the most severe violations of human rights by confronting legacies of mass abuse. ICTJ seeks holistic solutions to promote accountability and create just and peaceful societies. To learn more, visit www.ictj.org

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¹⁵ "Study report on Traditional Justice, Truth telling and National Reconciliation Uganda", Justice Law and Order Sector Kampala: July 2012.

¹⁶ Participants' comments during the civil society dialogue on truth seeking in Gulu, March 29 2012.

¹⁷ "The Cooling of Hearts: Community Truth-Telling in Acholiland". The Justice and Reconciliation Project: July 2007.