



**VICTIM AND CIVIL SOCIETY ACTORS' VIEWS ON THE DRAFT
TRANSITIONAL JUSTICE POLICY FOR UGANDA:
LANGO SUB-REGION**

Victim & CSO Consultation on June 6-7, 2013

Facilitators/Organizers

Avocats Sans Frontières & African Youth Initiative Network

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About the Organizers

African Youth Initiative Network (AYINET) is a national NGO based in Lira, Uganda. AYINET works in three critical areas: medical rehabilitation of those who have suffered serious violations, accountability and commemoration for war victims; and the building and promoting of responsible youth leadership. In the area of medical rehabilitation, AYINET provides physical and psychosocial rehabilitation in northern Uganda for victims of brutalities suffered during armed conflict as well as those seriously injured in the post-conflict. AYINET's medical work is aimed at providing a more effective response to these victims, with an emphasis on women and children; building safe, peaceful and healthy communities through victim empowerment; and strengthening a human rights culture. AYINET regularly carries out outreach to victims, assesses their needs, screens them and facilitates reconstructive surgeries (plastic and general), provides follow-up care, and offers psychosocial support. AYINET is actively involved at the national level in promoting the rights of victims of war, including their right to remedy and reparation, which includes within it the remembrance and proper treatment of those killed during the war. AYINET also works with youth in northern Uganda and internationally to address sexual and gender-based violence, promote active citizenship, and build peace

Avocats Sans Frontières (ASF) is a non-governmental organization committed to enhancing access to justice for the most vulnerable persons in society. The primary goal of ASF is to contribute to the establishment of institutions and mechanisms that allow for access to independent and impartial justice, and which are capable of guaranteeing the protection of fundamental rights. ASF has worked in Uganda for several years and focused its activities on promoting access to justice for vulnerable communities, supporting the transitional justice process in Uganda and promoting the application of international justice principles and obligations. ASF is a victim-oriented organization that promotes and defends victims' rights in conflict situations. As such, ASF is committed to supporting victim communities, and enhancing their voice and agency in policy and lawmaking processes.

Acronyms

AYINET	African Youth Initiative Network
ASF	Avocats Sans Frontières
CSO	Civil Society Organization
GoU	Government of Uganda
JLOS	Justice Law and Order Sector
LRA	Lord's Resistance Army
NUSAF	Northern Uganda Social Action Fund
NGO	Non-Governmental Organization
PRDP	Peace Recovery and Development Program
TJ	Transitional Justice
TJWG	Transitional Justice Working Group
UPDF	Uganda People's Defence Force

1. Executive Summary

Between June 6th -7th 2013, Avocats Sans Frontières, an international non-governmental organisation committed to enhancing access to justice for the most vulnerable, partnered with the African Youth Initiative Network (AYINET), a national NGO based in Lira District and working in the Greater North to assist victims with psycho-social and physical rehabilitation support, to organise consultations on the draft transitional justice policy with victim communities and key civil society actors in the Lango sub-region of Northern Uganda.

The consultative meeting was intended to seek the views of victims on the Justice, Law and Order Sector's (JLOS) draft Transitional Justice (TJ) Policy, which was shared with stakeholders on May 21st 2013 to seek their input in the draft. JLOS invited CSOs and others to channel their feedback on the draft by June 12th 2013 in an effort to ensure the policy is a product of broad consultations and participation by key stakeholders.

In light of the policy's aim to be victim-centered, ASF and AYINET organized discussions with victims and war affected communities in Lira and Alebtong in an effort to share the draft with them and seek their views and expectations for the policy.

This report is a reflection of the victims' views on the policy. It must however be noted that this report highlights the views of only a select group of victims and civil society actors from the Lango sub-region and is not necessarily representative of all victims in the affected areas.

ASF and AYINET served as facilitators in the process of channeling victims' views to JLOS for consideration in the final draft of the policy; as such, the views contained in this report are solely of the victims, and not the official position of ASF and AYINET.

The victim community meetings were held in Barlonyo and Abia. Barlonyo was severely affected by LRA atrocities in Northern Uganda, and Abia, a community which suffered massive atrocities from Karimojong cattle rustlers, Alice Lakwena's rebellion and the massive attacks by the LRA which massacred the civilian population in 2004.

Abia became the command point for LRA operations in Lango, Teso and nearby Acholi given its strategic location and hide-outs at Gulu-Goi cave. The community meetings were attended by direct victims of the different conflicts-including mature adult men and women, youth, former camp leaders, ex-combatants, former abductees, elders, opinion leaders, teachers, retired civil servants, religious and cultural leaders among others.

The consultation in Barlonyo was attended by approximately 70 persons while the one in Abia was attended by approximately 60 persons.

A strategic consultation with key civil society actors in the Lango sub-region was also held at the AYINET offices in Lira town on June 7th 2013. It was attended by 15 local CSO representatives from the Lango sub-region.

Overall, the goal of the meetings was to provide victims with a basic understanding of the key aspects of the draft transitional justice policy and seek their input and recommendations on the policy.

During the meeting, facilitators from both organizations shared and explained the key aspects of the draft policy and ascertained victims' views on the provisions for formal justice, traditional justice, truth-telling, reparations and amnesty therein contained.

There was an overwhelming consensus that the transitional justice process and policy needs to be adapted to the needs of victims, and that the participation of victims should be encouraged and facilitated throughout.

2. Introduction

ASF partnered with AYINET, a victim oriented national NGO based in Lira District hold two day consultative meetings with victim communities and civil society actors respectively. It provided an opportunity to disseminate the draft policy to victims and explain key aspects of the policy to ascertain their views, impressions, expectations and desires regarding the key issues:

- Formal justice & criminal prosecutions
- Traditional justice
- Truth-telling
- Amnesty
- Reparations

2.1. Objectives

The following objectives of the meeting were met:

- The draft TJ policy was disseminated to victims and the key aspects were explained to provide them with a comprehensive understanding and encourage them to provide feedback;
- Discussions were generated with victims on the key aspects of the policy; and,
- Victims' views and expectations were documented by AYINET and ASF and are now summarized in this report for JLOS' consideration.

2.2. Outcomes

The following were achieved:

- The participants are now aware of the national TJ policy drafting process;
- Victims were able to communicate their opinions, concerns and suggestions on key aspects of the TJ policy to JLOS for consideration in the final draft;
- JLOS can include and/or incorporate the views of victims in line with the policy's 'victim-centered' principle; and,

- The agency of victims was enhanced and they were encouraged to stay engaged in the process.

3. Victims' Views and Recommendations

A lecture model was adopted by the facilitators from ASF and AYINET respectively to disseminate the position of the policy to the victims on the following key issues:

- Formal justice & criminal prosecutions
- Traditional justice
- Truth-telling
- Amnesty
- Reparations

The victims were given an opportunity to discuss their views on the five aspects and make recommendations.

3.1 Formal Justice

The victims expressed their willingness and readiness to participate in the formal justice processes since they have suffered the atrocities and their individual cases may never be heard.

3.1.1 Victim Participation

The participants both at the community meetings and in the civil society meeting noted that victim participation will go a long way in giving the court process a more legitimate and inclusive outlook.

Participants also view the innovative proposal to involve victims in the court process as a form of outreach for the courts of law since victims who participate in the processes may possibly be able to relay such information to their counterparts who for one reason or another are not direct participants in the formal justice process.

Proposals were made on the modalities to allow for effective victim participation. The victims acknowledged that direct participation in the courtroom process will not be possible for all of the affected persons. To this end, proposals were made that victims themselves should be given the opportunity to select who among them should represent the rest in the formal justice process.

Still in line with facilitating effective victim representation, it was proposed that victims who appear in court should be availed with assistance of counsel. The expectation is that the legal representative selected will play more of an intermediary role between the court and the victim and the actual duty to give testimony on the crimes suffered will be by the victim.

The civil society representatives consulted on issues of victim participation noted that there is need for victims who give testimony in the courtroom to be prepared psychologically for this process. This will require a more dynamic formal court process that involves experts that can provide counseling for trauma management working alongside a prosecutorial team that can handle the purely legalistic matters. The victims, therefore, need to be made aware of the purpose of their testimony.

Proposals were also made on the need for victims to be able to physically access the court where trials are taking place. To this extent, they proposed that trials of the nature envisaged in the policy take place in the areas where the crimes actually happened so that victims are able to follow the process. In the same vein, there should be consistent efforts to inform them regularly on the progress of such cases before the Courts. In their opinion, select non-governmental organizations can provide them with reliable feedback on these processes.

The victims and civil society organizations consulted noted that one of the main challenges of the formal justice process that is likely to curtail victim participation is the undue delay in the trial process. There were fears that formal justice in Uganda can easily culminate into an open-ended process. *They, therefore, need the policy to set timelines so as to receive timely and effective justice;* otherwise considering the age bracket of some of the victims, their physical and emotional needs, and livelihood status, there is a possibility that many might not live to see justice or a remedy for harms suffered. An expeditious court process was, therefore, proposed.

3.1.2 Witness Protection

The participants acknowledged the critical importance of adopting witness protection measures in the formal justice process. Proposals were made to use advanced technology that can hide the identity of witnesses/victims testifying before Courts of law since many of the cases likely to be heard are highly sensitive and can put witnesses at risk of threats and reprisals.

Questions on the modalities of witness protection were raised in the meeting. Proposals were made at the CSO meeting for a paralegal body to play a role in the witness protection process.

3.1.3 Victim-Perpetrator Dilemma

The victim-perpetrator dual character of some perpetrators was one of the complex issues in the formal justice discourse and there was agreement that the policy should provide direction and guidance on the treatment of this category of persons. The majority of the participants in this consultation proposed that persons who assume leadership roles in the offensives should be tried by the formal court processes whereas the others should be handled by other transitional justice mechanisms. The other proposal that came out at the consultations was that persons with the dual victim-perpetrator status should not be allowed to give testimony as victims in the court process since this undermines the “victim-hood” of the rest of the members of the community.

3.1.4 Outstanding Challenges

There were misgivings expressed on the extent to which the Government is willing to actively support the process of victims participating in the formal justice process since some of the testimonies may reveal atrocities committed by the Government itself. It is for that reason that a section of members of the communities consulted were skeptical about the sanctity of the formal justice process.

3.2 Traditional Justice Mechanisms

The victim communities and civil society actors consulted embraced the idea of using traditional means in the process of conflict resolution.

3.2.1 Involvement of women and children

It was noted that the traditional means of resolving conflict are often patriarchal in nature and, to that extent, often do not take into account the interests of women and children. It was therefore proposed that the guidelines to be developed by JLOS on the use of traditional justice mechanisms include aspects on *gender and age friendly traditional justice tools and processes*.

3.2.2 Role of Traditional Justice in Conflict Resolution

Communities and civil society actors strongly affirmed that traditional justice must neither be a replacement nor an obstacle to the formal justice process. It should essentially focus on peace building, reconciliation and reintegration. Individuals should, therefore, only participate in the traditional justice process after participating in the formal justice or truth telling process.

In this regard, it was proposed that prior to a perpetrator participating in the traditional justice process, he or she must have:

- a) Participated in the formal trial or truth telling process;
- b) Compensated the victims (alternatively, the Government could do this);
- c) Admitted to the commission of the crimes and apologized to the victims;
- d) Served the penalty for the crime committed; and
- e) Expressed desire to reconcile with the victims.

Still in relation to the role of traditional justice mechanisms in conflict resolution, participants proposed that traditional means of conflict resolution should not be referred to as “traditional justice mechanisms” as the word, “justice” used in this

context is misleading. According to the Lango culture, these tools are “reconciliatory tools” rather than “justice tools.”

3.2.3 Guiding Principles

The proposal to develop guiding principles on the jurisdiction of traditional justice mechanisms was embraced albeit with some level of difficulty for sections of the victim communities because of the divergent cultural backgrounds across Uganda.

At the civil society meeting, it was recommended that these guiding principles address human rights issues such as participation of women and children and other human rights issues such as the right of one to choose whether or not to engage in the traditional justice process. Participants noted that in the era of modernization and spiritual evolvment, a section of society may not be willing to embrace or even appreciate the use of traditional justice mechanisms.

3.2.4 Recognition of Traditional Justice Mechanisms

In the opinion of the civil society actors consulted on the draft transitional justice policy, it was recommended that all cultural systems be given an opportunity to submit and register their respective cultural rules and procedures to be used in conflict resolution processes. This is particularly critical because of the need to have a semblance of organization in conflict resolution processes.

3.2.5 Outstanding Challenges

Questions were raised on the possibility of involving the Government in the traditional justice processes since a section of the victim community believe that the Government was a key player in the conflict.

3.3 Truth-telling

According to the victims, *truth-telling is a major pillar in the transitional justice discourse and should be the main tool* from which the other tools derive their relevance.

3.3.1 Participants in the Truth-Telling Process

The majority agreed that victims and perpetrators alike should participate in the truth telling process. Persons consulted emphasized that the policy should emphasize that the truth telling process will involve all persons and bodies-the Government inclusive.

3.3.2 Role of Truth-Telling Processes

The consensus at the meetings was that truth telling is the first transitional justice mechanism that should be kick-started. The Truth Commission should hear testimony, gather and assess information and then recommend persons who should be amnestied, make referrals to the traditional justice systems, recommend persons who should be investigated by the formal justice system and also make recommendations on reparation awards-interim and final.

3.3.3 Protection in the Truth Telling Process

As is the case in the formal justice process, the identity of persons who testify before a truth telling body should be protected. This will give people an opportunity to speak the truth without fear of retaliation. It was noted that this protection will be particularly important where people testify against the Government before the Truth Telling Commission.

Proposals were, therefore, made for the Government to proactively show support for the truth telling process prior to the commencement of the work of the Commission. This could be through an apology to affected communities to instill a sense of protection and confidence in the truth telling process.

The other form of protection that should be offered to victims participating in the truth telling process is trauma management since a truth telling process of any nature is likely to unearth wounds. It is, therefore, imperative that prior to the commencement of any truth telling process, victim communities and others that participate in this process are psychologically prepared to handle the possible trauma that might be triggered by this process.

3.3.4 Composition of the Truth Telling Body

The composition of the truth telling body was seen a critical issue by the participants. It was proposed that the body should be composed of eminent men and women from all walks of life. These may be nationals and foreigners to create the much needed balance in adjudication of issues. Other key factors that should be taken into account in the selection of persons to sit on the truth commission include age, religious affinity, regional representation, victim representation and also inclusion of persons who have not directly or indirectly been involved in the conflict et cetera.

3.3.5 National or Regional Truth Telling Body

The participants embraced the idea of having a national truth telling body to carry out an inquiry into the past. The findings of this body can then inform truth telling processes at a regional level. Still in relation to this, proposals were made for a truth telling body to hold its hearings in the places where the crimes occurred so that people are able to attend and witness the process.

3.4 Amnesty

On the question of amnesty, victim communities and civil society actors overwhelmingly supported the JLOS proposal on abolishing blanket amnesties.

3.4.1 Blanket Amnesty vis-à-vis Conditional Amnesty

Questions were raised on the recently renewed blanket amnesty under the Amnesty Act 2000 with the victim communities accusing the Government of betraying them by prioritizing the interests of perpetrators over victims. It was further alleged that the campaign to renew the current blanket amnesty was purely motivated by ethnic rather than national interests. The communities requested that the Government come out to clearly explain why the blanket amnesty was renewed.

In their opinion, there are more pertinent victim needs such as reparations rather than the focus on amnesty.

Considering the positive contribution of amnesty to peace in the recent past, the communities proposed that prior to being granted amnesty; a person should participate in a truth telling process and also reparations should be provided to the victims affected by such a person's conduct.

3.4.2 Linkage of Amnesty to Traditional Justice

Victims agreed with the proposed conditional amnesty in the transitional justice policy but advocated for a de-linking of the amnesty process from traditional justice. In their view, no other tool can be applied after the use of traditional justice. *They, therefore, recommended an amendment of Paragraph 65. A) i) to state that amnesties can only be considered after a truth telling process.*

3.4.3 Persons to be granted amnesty

Proposals were made that persons who were abducted should be granted amnesty. However those who took up commandeering positions and/or were captured in the course of an offensive should not be granted amnesty. In addition, the magnitude of crimes committed should determine who should be granted amnesty and who should be prosecuted.

3.5 Reparations

In the eyes of the majority of victim communities and civil society actors working closely with victims, are perhaps the most important of the transitional justice mechanisms.

3.5.1 Interim Reparation Programs

The victims expressed the need for an interim reparations program that can benefit affected communities even before the finalization of the transitional justice policy. Some of the urgent needs that should be addressed include provisions for physical and psychological rehabilitation and education for children. Commemoration should also be a priority in an interim reparations program. In the opinion of the victim communities, the different victims including war-orphans, war-widows, and the disabled all have divergent urgent needs that need to be taken care of within the shortest timeframe possible.

3.5.2 Distinction between Reparation Programs and Government Development Programs

According to the victims and civil society organizations consulted, it is important for the policy to clearly draw a distinction between reparations programs and Government development programs. This is particularly important in the wake of remarks by some Government officials that reparations have already been provided to victims through the PRDP, NUSAF, etc.

3.5.3 Proposed Mapping Exercise

Regarding the proposal to carry out a mapping exercise to identify victims of violations, it was noted that many are exhausted with such processes since studies have been undertaken by so many actors over the years. Victims have, therefore, been waiting for assistance to be delivered for a very long time. The proposal was, therefore, that an intermediate reparations program be informed by research studies that have already been undertaken by key actors such as UNOHCHR in their comprehensive report, "The Dust Has Not Yet Settled". A detailed mapping exercise can then be undertaken at a point when victims have received this intermediate assistance and will, therefore, support this process.

3.5.4 Reparations Process

Victims proposed that assistance be transmitted through trusted NGOs who have their interests at heart and not through Government institutions or through the districts who are often burdened by bureaucracy. The reparations processes should be simple and easy to allow access to the funds and other reparation measures.

3.5.5 Form of Reparations

Individual reparations were preferred as the first step in the reparations process in order to allow victims to take care of their immediate needs. There should be equal distribution of individual reparations. Collective reparations should only be provided after the award of individual reparations when individuals are empowered enough to have the impetus to appreciate communal growth. In summary, despite the fact that many people in different communities suffered the consequences of atrocities, there is a need to adopt a combined individual-collective reparations model.

4. Victims' General Recommendations

The victims' general recommendations were as follows:

- a) Establish a dynamic formal justice process that also caters for victims' psycho-social needs.
- b) Provide protection to victims/witnesses participating in the formal justice and truth telling process.
- c) Traditional Justice Mechanisms should only be used for purposes of reconciliation and reintegration.
- d) Immediate assistance should be provided to victims to take care of their medical, economic and psycho-social needs.
- e) Amnesties should be conditional on participation in the truth telling process.
- f) The Government and CSOs should immediately initiate programs to prepare victim communities for their participation in the TJ process. This should include provisions for psycho-social support, identification of missing persons and timely feedback on the process.