



Refugee Law Project



## Beyond Juba: Building Consensus on a Sustainable Peace Process for Uganda

*A transitional justice project of the Faculty of Law, the Refugee Law Project and Human Rights and Peace Centre*

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### **Prosecuting Crimes or Righting Wrongs: Where is Uganda heading to?**

Following on from the Juba peace talks between the Government of Uganda and the Lord's Resistance Army (LRA), Uganda's Justice Law and Order Sector (JLOS) is actively developing a transitional justice process for Uganda. Last Friday it concluded two weeks of nation-wide consultations about domesticating the Rome Statute and setting up a War Crimes/International Crimes Division of the High Court. While the exact name of the division has yet to be decided, its first objective will be to investigate and prosecute the top leadership of the LRA. Resources are already flowing into this nascent institution: in her recent budget, the Minister of Finance allocated nearly \$5 million dollars towards its establishment.

As these developments progress apace, a crucial question remains: *Will the prosecution of a handful of perpetrators of crimes be at the cost of a broader program of reparations and compensation for the wrongs done to their victims?* If the experience of Sierra Leone is anything to go by, the answer is a depressing yes.

While JLOS would do well to take note of a key feature of the Special Court for Sierra Leone, namely that this hybrid of national and international judges can try anybody alleged to have committed war atrocities, *whatever side they were on*, they also need to reflect on the financial cost of such prosecutions. Since it was established nearly seven years ago, the Special Court in Sierra Leone has concluded the trials of only nine people. This has been at the staggering cost of US \$300 million. That is to say, a hefty \$31 million dollars per perpetrator.

This amount is one hundred times greater than the monies available for reparations to victims. Ten years after the war which devastated the country and its people came to an end, Sierra Leone's National Commission for Social Action (NaCSA) has only just begun work. So far, less than 30,000 people have been registered. Of these only 18,700 are set to receive any form of benefit in the first year of the Commission's operation. That's because NaCSA, which covers the whole country (estimated population somewhere over 5 million people), has received only \$3.1 million from donors with which to execute its work in the first year. This amounts to a mere 1% of that spent on prosecutions to date. Even if all those who were registered are taken into account, that would amount to less than \$100 per person. Such is the financial squeeze that while many Sierra Leoneans would argue that in their war, everybody was a victim, NaCSA has been obliged to restrict its attentions to very narrowly defined categories of victim (amputees, war widows, women survivors of sexual violence, war orphans, and war wounded). The vast majority of the population will receive no reparations at all. Apart from symbolic gestures, no community reparations are envisaged.

Confronted with the gross disparity between resources allocated to the prosecution of perpetrators, and monies available to support those perpetrators' victims, the standard response is that reparations are complicated and in some instances involve recurrent expenditures such as pensions. Donors apparently do not like recurrent expenditures, they prefer once-off projects.

Are we headed down the Sierra Leone route? Signs are that Uganda is prioritizing prosecutions over reparations; while monies are allocated to the recruitment of judges, there is no reparations scheme in place. We need to emphasize that the Peace Recovery and Development Plan is not a form of reparations. At time of writing JLOS' Transitional Justice Working Group does not have a separate sub-committee on reparations, though the issue is under discussion within a different sub-committee.

Does favouring prosecutions over reparations really address impunity or does it instead reinforce it? At the most basic level, if a country's transitional justice process spends \$100 per victim, and \$31 million per perpetrator, what conclusions are people supposed to draw about which behaviours get rewarded? Unsurprisingly, most people, whether in Sierra Leone or Uganda, do not regard this kind of approach as justice at all. Ask your average Sierra Leonean what they think about prosecutions, and they simply shrug with indifference and say they are trying to get on with rebuilding their lives – untouched by the massive investment in addressing 'impunity' using a hybrid tribunal. For them, while there is something paradoxical about the fact that perpetrators are the object of so much more financial attention than the victims (in terms of investments in reintegration of ex-combatants, in terms of prosecutions of the perpetrators), there is nothing surprising; these kind of paradoxes are the stuff of international interventions in places such as Sierra Leone. This war-torn country has provided only one of several African playgrounds in which the politics of international justice is being played out. One of the reasons the Special Court is believed to have been so well funded was that the United States (which consistently tried to block the development of the International Criminal Court) invested heavily in the hybrid tribunal simply to try and prove that the ICC was not necessary.

Whereas advocates of prosecution like to present it as an absolute, the reality is that, like beauty, justice resides—at least in part—in the eye of the beholder, and what people understand by 'justice' differs widely. If people do not see justice to have been done, then it is unlikely that any of the benefits which are supposed to flow from justice having been seen to be done, will in fact materialise. In some Ugandan languages, there are no direct translations for the words 'crime' or 'punishments'. More readily translatable are the concepts of 'wrong' and 'righting a wrong'. In this world view, reparations figure large when it comes to righting a wrong; prosecutions do not.

It is perhaps important to point out here that under ordinary prosecutorial systems, the only victims who benefit from reparations are those who testify. In a situation such as Sierra Leone (or northern Uganda) that means that only those victims who can show a direct relationship between their victimhood and one of the handful of perpetrators being tried, are likely to see any kind of material reparation – and it is closer to payment for testifying than an acknowledgement of the wrong that was done to them. While the International Criminal Court has in principle taken an important step in establishing a victims' participation and reparations scheme, their participation is at the discretion of the judges and reparations are only accessible after prosecution of perpetrators is complete.

Can Uganda really afford to pass over all its victims, and their need to see past wrongs righted, in the interests of replicating the ICC model of prosecutorial justice? How can it possibly be the case that prosecutions of a handful of perpetrators are one hundred times more important than reparations for thousands of victims? A better balance needs to be struck between the different aspects of transitional justice. For a start, it would help to establish some kind of guiding ratio for spending on prosecution relative to reparations: Instead of 100:1, how about 50:50?

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