



A LEGAL ANALYSIS OF THE TRANSITIONAL JUSTICE BILL, 2019

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(as at April 2019)

Justice Access Point

About Justice Access Point (JAP)

Justice Access Point (JAP) was established in 2018 and is duly registered with the National Bureau for Non-Government Organisations in Uganda. JAP is mandated to operate nation-wide to prevent atrocity crimes; countering hate speech and violent extremism; prevention of statelessness; and promotion of rule of law and human rights.

Our Vision

A society where every citizen is able to access and benefit from Justice

Our Mission

A one stop Justice center of excellence, enabling citizens and citizen organizations in fragile and post-conflict communities in Uganda to effectively and efficiently access and utilize the available justice mechanisms and meet their justice needs.

Our Objectives

- a) To support the realization of the National targets towards the Global Sustainable Development Goals, especially programmes relevant to Access to Justice, Human Rights, Peace and security in Uganda;
- b) To popularize and encourage civil society engagement with the Peace and Justice Architecture within the East African Community, International Conference of the Great Lakes Region, African Union, and the United Nations;
- c) To advocate for State ratification and full Domestication of treaties relevant to prevention of and Accountability for International crimes and mass atrocities;
- d) To advocate for a conducive policy and legal framework for transitional justice for the war affected communities in Uganda;
- e) To build the capacity of citizens, civic groups and citizen organizations in the utilization of the available domestic, regional and international justice mechanism to meet the justice needs of citizenry in fragile and post-conflict communities;

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LIST OF ACRONYMS AND ABBREVIATIONS

AUTJP	African Union Transitional Justice Policy
DPP	Director of Public Prosecutions
ICC	International Criminal Court
ICD	International Crimes Division
NTJP	National Transitional Justice Policy
TJ	Transitional Justice

FOREWORD

The analysis of the Transitional Justice Bill comes as a worthy step aimed at improving the draft legislation geared at harmonizing the justice system of Uganda's approach to resolve past conflicts and achieving the policy objectives in the adopted transitional justice policy 2019.

The legal analysis points out the gaps and offers recommendations for the improvement of the draft Transitional Justice Bill. Hopefully, it will be an invaluable resource to the different stake holders seeking to establish a sound bed rock for transitional justice.

The Transitional Justice Bill is aimed at facilitating the harmonization of justice systems in Uganda's approach to resolving past conflicts towards non-reoccurrence. It is also seen as the next step in achieving the policy objectives highlighted in the recently adopted Transitional Justice Policy.

The journey for the Government of Uganda to develop a Transitional Justice law has been a long one with the National Transitional Justice Policy (NTJP) taking over a decade to be finalised. The NTJP addresses the legal and institutional framework for investigations, prosecutions, trials within the formal system, reparations, and alternative justice approaches which are divided into 5 categories i.e. formal justice, traditional justice, nation building and reconciliation, amnesty and reparations. Ultimately, the NTJP will pave the way to achieve g peace, stability, and social cohesion in Uganda.

The Transitional Justice Bill, just like the policy provides an important opportunity for the government to provide strategic guidance on how it intends to handle justice and accountability for serious crimes. At the same time both the law and policy must strike a balance between rights of victims who have suffered injustice as well as provide mechanisms that will foster reconciliation in the country.

It is against this background that the measures suggested within the Transitional Justice Bill 2019, together with the implementing frameworks are analysed to see to what extent they are aligned to the Transitional Justice Policy as well as the Bill as it provides a response to a legacy of past injustices, brings national reconciliation and long-lasting peace in the country. The Bill from the onset needs to provide a prescription for strengthening stability while diminishing opportunities for impunity, through the application of a combination of justice mechanisms including formal criminal prosecutions, traditional justice, truth telling and reconciliation, reparation and amnesty.

The Bill is comprised of 7 parts. These are;

PART I: PRELIMINARY – this deals with the interpretation of various terms used in the bill, as well as the scope of the act (objectives and time scope of application).

PARTS II & III: TRANSITIONAL JUSTICE COMMISSION & FUNCTIONS OF THE TRANSITIONAL JUSTICE COMMISSION – Hereunder is dealt with the establishment of the Transitional Justice Commission, its establishment, composition, functions, jurisdiction and powers.

PART IV: SECRETARIAT AND STAFF OF THE COMMISSION – Creates the Secretariat and Staff of the Commission whose function is to effect the decisions of the commission and is responsible for the day to day administration of the commission’s work.

Part V: HEARINGS AND PROCEEDINGS OF THE COMMISSION deals with hearings and proceedings of the commission through the establishment of committees, this part also deals with establishment of a reparations programme, amnesty, traditional justice mechanisms, Reconciliation and Nation Building, nature of proceedings and witness protection.

PART VI: FINANCIAL PROVISIONS – and contains the financial provisions of the commission among others funds of the commission, audit and accounting.

PART VII: DEALS WITH GENERAL provisions relating to conflict of interest, duty of non-disclosure, and powers of entry, search and seizure, appeals, creation of various offences, and the power to make regulations. It also deals with Repeals, savings and transitional provisions.

PART I - PRELIMINARY**Clause 1: Definitions**

The Bill lacks critical definitions of;

1. “transitional justice”
2. “traditional mechanisms” of justice
3. “conflict” and or “post conflict situations”
4. “harm”
5. “Perpetrator” should expressly include and recognise “government” as a possible perpetrator
6. “Reconciliation”
7. “Nation building”
8. “Complementarity”; to mention but a few.

All these are essential to defining the scope of the Act and its functionality within the current legal system in Uganda. It would also provide understanding to the reader as to the scope of application of the bill. This is especially so considering the unique nature of the justice needs of post-conflict societies and how they are addressed, separate and distinct from ordinary justice needs.

The definition of victim should be harmonized with the definition in the UN General Assembly, basic principles and guidelines on the right to a remedy, reparation of victims of gross violations of international human rights law: resolution adapted by the General assembly 21st March 2006 A/RES/60/149 which defines victims as persons who individually or collectively suffered harm, including

physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

Clause 2: Application.

Clause 2(1) limits the applicability to actions that occurred after January 26th 1986 – this time limitation excludes a significant portion of Uganda’s history including many conflicts that occurred whose roots have never been resolved but also seemingly excludes actions of the actors in other significant conflicts that predates the specified date.

Recommendation:

- *Time line should be extended to the very least, post-independence conflicts and at best to apply to even pre-independence disputes that have perennially manifested in tensions between central government and some constitutive ethnic groups or between one ethnic group and another for example between Baganda and Banyara or Bakonjo and Bamba.*
- *The timeframe of ten years is too short a period to address post-conflict issues. Transitional justice by its very nature takes time to explore and arrive at the root causes of the conflicts and address deep-rooted communal imbalances brought about by the conflict. Reparations programmes for instance are known to take far longer periods. Clause 2(3) providing power to the minister to extend its application is a welcome remedy. However, it would be more suited if the time limitation of applicability of the act did not exist at all. The functioning of the commission or the power to repeal an act*

already exists and can further be defined in the Act such as upon recommendation of the Minister to parliament. We recommend the Rome system model of convening stakeholders every after ten years to review how the law and the institutions setup to implement the transitional Justice processes have performed rather than a definite ten years currently prescribed in the draft bill.

Clause 3: Objectives

As noted above, the bill is silent on the complementarity of the varying transitional justice processes. For instance, a hierarchy if any, as between criminal prosecution and peace processes, a hierarchy between formal and informal justice processes. As perceived in Clause 3(b), the bill does not clearly state how this is to be achieved. It lacks guiding provisions on the same. For instance, no direct link has been drawn with the International Criminal Court Act 2010 and ensuing obligations under the Rome Statute. The Bill is also silent on which offences can be handled by the traditional justice mechanisms and which cannot. All these lines need to be clearly drawn in the Bill. For instance, it does not determine how a new situation, neither before a court nor the commission, would be handled. That is, who has precedence?

Recommendation:

- *A clear relationship needs to be established as to how the two link, any hierarchy defined and any relevant exceptions there under defined in provisions.*

PART II – SET-UP OF THE COMMISSION

Clause 4 establishes the office of the Transitional Justice Commission with its composition spelt out under clause 5 of the Bill. Although the list appears comprehensive it excludes certain key stakeholders such as representatives of affected communities, Civil Society, Cultural institutions and the elders forum.

Recommendation:

- *The Bill should consider representatives from the affected communities (consider using affected communities as the phrase has gained traction in TJ and International Criminal Justice) which will offer a sense of participation by the community members. Inclusion of civil society is a recognition of the vital role that civil society organisations play in many conflicts, as fast responders to the conflict and helping communities find durable solutions to the effects of war and conflict. Deeply rooted within communities, the presence of CSOs will close the gaps that often exist between government established bodies and the local populations.*

Clause 5(3) and 6(3): Appointment and removal of commissioners is solely under the authority of the president (clauses 5(3) and 6(3)). No oversight is provided for in the Bill, for instance subject to the approval of parliament or other independent body. Clause 5(3) proposes that the commissioners shall be appointed by the President on recommendation of the Minister who in turn is appointed by the President. This is likely to undermine the notions of impartiality and independence of the Commission as a result of high pressures to pay allegiance to their appointing authority i.e. the President.

Recommendation:

- *Subject the selection of the Commissioners or their approval to an independent body/ organ such as parliament. This is essential to ensure a check and balance as to competence of the appointed individuals but also check the President's powers and ensure impartiality and independence of the commission.*

Clause 5(7); Commissioners are to work on a part time basis. This would impede the efficient functioning of the Commission in light of the immense challenges arising from post –conflict situations and the broad nature of its mandate as stipulated in Part III of the Bill.

Recommendation:

- *The commission, being the first of its kind, and given the nature of work to be undertaken, it is recommended that they operate on a full-time basis. In any case, if the perceived work to be undertaken by the commissioners diminish, no longer requiring them to work on a full time basis, this can be handled in the appointing instrument rather than in the Act, where if situations arise necessitating a change, it would require an amendment of the principal Act itself.*

Clause 6(3) lacks specificity on the process to be employed to ensure a fair hearing to the commissioner before the president nor does it provide for the right or process to challenge the decision of the president.

Recommendation:

- *Provide specifically the process to be adopted for fair hearing and expressly state the right of the commissioner to challenge the decision of the President and state the mode of challenge e.g. court process; forum and jurisdiction.*

Clause 6 (4) the commissioners to relinquish particular offices

The person holding any of the following offices shall relinquish that office on appointment as a member of the commission:-

- i. A member of parliament ;
- ii. A member of a local government council;
- iii. A member of the executive of a political party or political organisation;
- iv. A public officer

This is in part to avoid conflict of interest that would arise as a result of dual office holding. This will also help curb fraud and corruption that may arise as a result of dual office holding hence promoting transparency and

accountability. It is also a vivid fact that relinquishing one office before taking on another will promote effective service delivery by such officials.

Clause 9 Procedure of the Commission: The clause is silent here but rather defers this duty to the commission to determine its procedures, permitting the commission to draw from the procedures of other quasi-judicial bodies. While the advantage herein is that it grants the commission flexibility in its functioning, by providing for adaptability to different circumstances, it conversely denies the users certainty no the mode of functioning of the Commission.

Recommendation:

- *To this extent, this should be defined in an annexure, at least within 6 months of the establishment of the commission and appointment of relevant staff. The procedures adopted should be subjected to or under the guidance of complementary bodies such as JLOS institutions, Attorney General etc. to ensure compliance with legal norms and standards on fair hearing. A benchmarking should be done with other truth, justice and reconciliation commissions established around the world to draw experiences; focus should be on African context specific situations which are closer to the Ugandan Context.*

Clause 9(1) of the Bill also provides for the procedure which the Commission will use in the performance of its functions. Unfortunately, the procedure is not laid out in the Bill or schedule yet clause 17 (6) of the Bill refers to the same procedure to be used by the different technical committees.

Recommendation:

- *The drafters should provide the detailed procedure of the conducting the Commission's business either within the main Bill or in the schedule. Such procedure should be detailed enough to guide the commissioners and its different committees following*

best practices of other Commissions as well as principles of natural justice to accord a fair hearing to the parties appearing before the Commission.

Clause 9(2) employs the phrase “rules of human rights” and “natural justice”. This terminology is legally ineffectual, vague and ambiguous. This should be re-phrased to suit the purpose of the drafter.

PART III – FUNCTIONS OF THE TRANSITIONAL JUSTICE COMMISSION

Clause 10(1) (a) is framed, *“to facilitate, initiate and coordinate, inquiries into gross violations or abuses of human rights that fall outside the jurisdiction of established formal justice institutions;”*

The failure to properly define the scope of this act further inhibits the defining clearly of the functions of the commission. The scope of what falls “outside the jurisdiction of established formal justice mechanisms” is ambiguous and bound to create confusion and hindrances in application/functioning of the act. “Formal justice institutions” are neither listed nor defined but rather left to presumption.

Recommendation:

- *As in Part I above, relevant definitions further enhancing the understanding the scope of the Act should be inserted to ensure fulfilment of the objective in clause 3 (b). The framing should be such as to empower the commission to provide the relevant guidance as to which situations should go under the formal justice systems of the established courts, e.g. ordinary trials under the high court, or special court of the International Crimes Division of the High Court (ICD), or even referred to the ICC, as well as which situations can be handled by the traditional justice mechanisms. This will further enhance its functioning and achieving its role in peace, reconciliation and nation building.*

Clause 10(2)Insert and include in addition to this act “and other relevant laws”

Clause 10(3)Insert and include “civil society and other relevant actors where in the Commission’s view such views are relevant”.

Recommendation:

- *The Commission should also consult with other relevant stakeholders such as civil society and a representative from the community to assist in the reconciliation programs.*

Clause 11 uses of the word “determine” with regard to “matters relating to gross violations or abuses of human rights on matters of-

- amnesty;
- reparations;
- reconciliation;
- resettlement and reintegration; and
- traditional justice.”

Because the procedure of the commission has been left to the determination of the commission and is undefined within the bill, it is difficult to ascertain the effect of the decision of the commission. Shall the determination have the power likened to that of a court order, if so, how shall it be implemented? What happens to the aspect of accountability?

Recommendation:

- *Insert a clause clearly spelling out the effect of the decision of the Commission and how such decision will be implemented.*

Clause 13 proposes that Secretariat shall be responsible for implementing the decisions of the commission but the same challenge arises since the precise nature of the decisions of the commission is unknown. Relevant

scenarios might include: “would a decision by the commission on an inquiry as to the participation of an individual or group in gross human rights abuses amount in the affirmative to being sufficient for criminal liability as before a court of competent jurisdiction or would the findings as to culpability be for reference to the responsible authority, in this case, the DPP with a direction to prosecute, within its powers under Clause 12(4) to *“recommend to or order any institution, body, authority or person to adopt or take particular steps or action which, in the opinion of the Commission will promote peace, stability, reconciliation and national unity”*.”

Recommendation:

- *This power to determine should be defined within the Act, clearly setting out the scope of the commission’s powers in this regard and the effect of any decisions it takes.*

Clause 11(2) deals with jurisdiction with regard to pending matters before a court or tribunal. The clause limits the Commission’s function against any matter already before a competent court of law. This provision limits its functionality or purpose in contributing to the peace and reconciliation versus retributive justice dilemma. As noted above, the bill falls short in determining the complementarity of the two systems. Nor does it provide harmony for the complementarity of the varying objectives of TJ and seeks to maintain the separation of formal justice systems which are more retributive in form and informal largely traditional justice systems that are more reconciliatory. For instance, if in the opinion of the Commission, a matter already before a court is best suited for determination before a traditional justice mechanism or best suited for reconciliation, there is no ambit within the law permitting the withdrawal of the matter in favour of reconciliation or other mode of less retributive functionality thus failing the complementarity function of the bill.

Recommendation:

- *Effort should be made to directly address this gap. The bill in its current state only appears to provide a platform for informal justice mechanisms as well as inquiries towards truth telling and reconciliation but falls short in harmonizing with the formal and largely pre-dominant systems of accountability through court proceedings towards punitive justice. This can be done by empowering the commission further. Case in point, one of the commissioners is the Director of Public Prosecutions or a designated representative. Facilitating the commission to engage with the office of the DPP to determine which cases/ matters or situations are best suited for a particular mode of justice, that is, for court or for traditional mechanisms beforehand is a good start.*

Clause 14(3): provides that a person shall cease to hold the office of the secretary if the person resigns or is removed by the Public Service Commission. This clause is also silent on the tenure of the Secretary which may pose a risk of mismanagement of the Commission through abuse of office, powers and the rule of law.

Recommendation:

1. *Insert details on conditions/grounds and procedures for removal by Public Service Commission such as on recommendation of the Commission etc. (or make reference to relevant public service standing orders on removal of persons appointed under public service commission)*
2. *Include a clause on the tenure in office for the secretary of the Commission.*

Clause 17 provides for the Technical committees of the Commission. The clause is silent on gender integration in respect to members of the

respective committees and yet in TJ, some violations are extremely sensitive and would need to be approached through a Gender lens.

Recommendation:

1. *The drafters should be deliberate on mainstreaming gender in the law as a whole and in the different structures established by the Bill.*
2. *Introduce a clause expressly stating the gender composition of the respective committees established under the Bill.*

Clause 18 & 19 provide for reparations. The provisions are silent however on;

1. On whom such recommendation for payment of reparations shall be made, that is, in case of government, or in case of perpetrator, whether such recommendation has force of law as a court order for compensation.
2. A specific fund from which reparations shall be paid. This is in spite of clause 31 which provides for funds of the commission as appropriated by Parliament. (Source of funds where government itself is held accountable to pay reparations and in instances where the perpetrator is unable to meet requirements under the reparations recommendation or order).

Recommendations:

1. *Specifically empower the commission to order reparations for situations brought before it, investigated and determined accordingly.*
2. *Create a special and separate fund particularly for the payment of reparations. Also, designate responsible government entity to ensure remission of the same to persons or communities*

determined entitled to said reparations. Possible solution- create special reparations fund and how it shall be funded- source of funds.

Clauses 20-24 – Amnesty

The framing of Clause 21 creates ambiguity on the role of the DPP in granting of amnesty to individuals by the commission. While clause 20 provides for the power of the Commission to grant amnesty in specific conditions, it then subjects the release of the person to the DPP's opinion on the matter.

Amnesty is wholly dependent on the application by the accused/ alleged perpetrator of the said human rights violations. This works on a premise of awareness of this option by the accused.

Recommendation:

1. *Permit application for amnesty for an individual other than the accused or alleged perpetrator*
2. *Insert a clause that makes it mandatory for the arresting authority and or prosecution to inform the accused/ or alleged perpetrator about the right to apply for amnesty and conditions for grant as well as procedures.*
3. *Provide for right of a hearing before the commission by applicant for amnesty (or detail procedure to be undertaken by commission in determining grant or refusal of application for amnesty and process of appeal and or judicial review for exercise of Commission's powers to refuse grant of amnesty under the act.*

Clause 22 provides for the Role of local governments and states thus;

1. *An official or authority specified in clause 20(3)(b) who receives a person under that section shall hand over the person and*

weapons, if any, to the security committee of the local government of the area.

An official or authority specified in clause 20(3)(b) who receives a person under that section shall hand over the person and weapons, if any, to the security committee of the local government of the area.

There is need for the detailed procedure of how such weapons should be received by the security committee of the local government. If left without such details, this can be subject to abuse.

Recommendation:

- *The Bill should stipulate the detailed procedure of handling petitions such as recording the type and nature of weapons, name etc to avoid situations where a person may be implicated as to having handed over a certain weapon whereas it is not the case.*

Clause 24 (2) is to the effect that *a person granted amnesty may voluntarily participate in a traditional reconciliation process for purposes of reintegration and reconciliation.*

The language used in the text is suggestive and does not encourage someone to participate in a traditional reconciliation process for purposes of reintegration and reconciliation.

Clause 25(1) Traditional justice Courts

Clause 25(1) provides for the direct “creation of traditional justice courts in any area of Uganda, in accordance with the culture, customs, traditions or wishes and aspirations of the people to whom it applies, for the resolution of conflict and post conflict matters under this Act.” This phrasing presumes the competence/ capacity of every traditional justice mechanism as capable of meeting the objectives of the act or the section towards peace, reconciliation, re-integration and nation building which is not the case.

The framing in clause 25(3) further compounds the functioning of these courts in this regard;

- a. Which criminal matters are being refereed to, all criminal matters as created under the various laws of Uganda but particularly the Penal Code Act (CAP. 120) or those said to arise from a conflict within the meaning provided within this Bill.
- b. “Community matters” is vague and ambiguous in its scope
- c. The phrase “geographical scope of the traditional court” is ambiguous and confusing.

Recommendation:

1. *The clause should be re-phrased to recognise the existence of traditional justice mechanisms, howsoever so called, and recognise their power to handle or deal with justice needs of a post conflict society specifically. (Further solution is to “vet” competence of these courts, subjecting them to approval by the commission using a set standard to ensure that they are capable of adhering to the norms of a fair hearing within the meaning of Article 28 of the Constitution and actually ensure the achievement of peace, reconciliation and re-integration. The bill should also expressly provide for the capacity building of traditional justice mechanisms to be able to competently apply and adhere to human rights principles of fair hearing, non-discrimination and equality among others.*

Exceptionally, if the bill is intended to provide for the operation of alternative justice mechanisms generally under this clause, it should be expressly stated under the objectives of the bill and a more comprehensive section dealing with traditional justice mechanisms provided for in all aspects of procedure and jurisdiction.

2. *Geographical scope should be defined with phrasing such as “geographical boundaries of the traditional or cultural institution under which the court is established” to provide clarity as to the geographical jurisdiction of the court.*
3. *The list of criminal offences that the court can adjudicate should be expressly provided for in a list under the schedule or within the section as was done with the civil matters in clause 3(c). The list of offences or causes of action under civil matters can be added upon or decreased under the authority of the minister by statutory instrument on recommendation of the commission.*
4. *The scope of “community matters” should be defined under the Act as well. The term is ambiguous and misleading.*

Clause 25 of the Bill provides for traditional justice courts which is a welcome idea to bring services closer to the communities as well as deal with some of the barriers such as language and formalities which bedevil formal courts. However clause 25 (2) (3) provides that traditional courts shall have jurisdiction over *(b) criminal matters to the extent that they promote healing, reintegration and reconciliation.*

Clause 26: Reconciliation and Nation Building

These are positive aspirations. They however have not been defined within the act. Furthermore, as the mode of functioning of the court is yet to be determined, no actual way of achieving them is detailed within the act. This inhibits implementation or execution or measurement /evaluation of efforts to achieve the same.

Clause 27(2) provides for hearings to be held in public subject only to an application of a party of the proceedings.

Recommendation:

- *Complement this with additional discretion of the Commission to order the hearings to be in private where in its opinion for the safety of witnesses and suspects, orderly holding of proceedings among others. The clause should also provide for in-camera proceedings for children and witnesses among others. These can be further detailed in the guidelines or a schedule.*

Clause 29: Immunity of witnesses

The scope and purpose of the immunity imputed herein is vague. It is unclear the scope of the immunity granted as to whether the immunity is from prosecution, self-incrimination or other immunity.

Recommendation:

- *It is important to define the scope of the immunity suggested here and its application.*

Clause 30 provides for Witness protection: This is an essential clause whose content can be buffered with reference to the DPP Victims & Witness Protection Guidelines among others. (Note: draft Witness Protection Bill 2015 in the offing and reference can be made to it if passed before the TJ Bill)

Clause 37(2) the nature of review for proceedings undertaken by the commission or a committee of the commission wherein a member or officer is suspected of having a conflict of interest is undefined.

Recommendation:

- *It is important to specify the mode through which this review shall be taken, such as whether it shall be a full re-hearing of the proceedings or otherwise. The procedures on how this review*

shall be undertaken can be defined in a schedule to the act or in the proposed regulations to be made by the minister.

Clause 38(2)(b) on Non – disclosure of information.

Recommendation:

- *Insert after “this Act” the following phrase “or other existing relevant law concerning disclosure of information”*

Clause 39 in the listing of sections provides for appeals. However, in the body of the text, clause 39 deals with the power of “Entry, search or seizure upon warrant.”

Strengths & Positives

The bill in its intent seeks to and attempts to formally recognize traditional justice systems and their pivotal role in resolving post-conflict disputes towards peace and reconciliation (see clause 23). The Transitional Justice Commission established in part II is inclusive and holistic in so much as it is “empowered” to handle the varying aspects of TJ, such as, truth telling, accountability, compensation, influencing institutional reform and promoting reconciliation (see clauses 10, 11 & 12, among others). The Bill further empowers the commission, in its functioning to work with or alongside relevant government agencies and or organs in execution of its mandate.

Gaps and weaknesses

The TJ Bill is silent on harmonizing traditional (informal) justice mechanisms with formal justice mechanisms-it leaves the question unanswered as to the complementarity of the systems. Despite one of its objectives as stated in the long title is to *“to provide a framework for management and operation of formal and informal justice process in post conflict situations; & to address the gaps in the formal justice system for post conflict situations; the bill does not particularize on how this shall be achieved. In the examination of the relevant clauses providing for the creation or recognition of the traditional justice systems, the bill does not sufficiently address how, if at all, a hierarchy exists or how the two shall be complementary to sufficiently balance the transitional needs of justice, lasting peace and reconciliation.*

The drafting language is largely lacking and therefore prone to creating of ambiguities where expressions and terminologies are not defined with specificity in application through definition and allocation of roles to bodies or persons etc., as well as absence of reference to relevant complementary laws and systems. Examples of these are referred to in analysis of the various clauses herein.

The bill does not specifically address nor direct how to deal with government accountability (past or present) in contribution to existing conflicts. In fact, it seems to specifically seek to exclude these by setting an application date post January 1986 thereby leaving a lot of historical conflicts out of the jurisdiction of the Act.

The bill specifically lacks any provisions focusing on gender integration in TJ, particularly addressing issues of women and other special interest groups such as children, youth, the elderly, the disabled who are uniquely affected by conflict and would require distinctive interventions to restore any imbalances arising out of the conflict.

Internally Displaced Persons, Refugees and Stateless Persons are also not catered for expressly under the Bill.

Recommendations:

1. *Much reference must be had to the recently adopted African Union Transitional Justice Policy 2019 as well as the Uganda TJ Policy 2019. These espouse the tenets of an ideal TJ commission with regard to its mandate and powers. See specifically section 2 of the AUTJP which elucidates on Peace Processes, Transitional Justice Commissions, The African Traditional Justice Mechanisms, Reconciliation and Social Cohesion Reparations, Redistributive (Socio-Economic) Justice and Memorialisation. They also address wider cross cutting issues with regard to Transitional Justice in line with international best practise and standards.*
2. *Regulations supporting and intended to operationalize the functioning of the commission and its process should be developed alongside the draft bill. This will seek to clear/ answer much of the existing questions about how the commission will achieve its complementing functions especially as between formal and informal traditional justice systems. Delayed drafting of these procedures will further delay the operationalization of the bill once enacted into law.*

The Transitional Justice Bill is a welcome development and is indeed long overdue given the long period for which Uganda has taken to come up with a legal framework for the pursuit of the much needed justice, accountability, healing and reconciliation for victims of gross human rights violations and abuse. It is highly anticipated that the Bill if passed into law will also pave way towards peace, stability and social cohesion especially in conflict afflicted communities. Although the Bill touches on some critical aspects of forum, procedures and rules thereof, aspects on application, functionalities of established structures, complementarities between traditional and formal justice mechanisms and other matters incidental thereto, it is still lacking in some respects. It is hoped that government will consider recommendations for amendment of the provisions of the Bill made by different stakeholders and expedite the enactment of the Bill into law which will consequently restore the hopes of victims who have for the past decade been left in limbo on when and how they would receive redress for past violations committed against them.

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