



JUSTICE
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International Coalition of
SITES of CONSCIENCE

**AN ANALYSIS OF THE DRAFT
TRANSITIONAL JUSTICE BILL, 2019
WITH A LENSE FOR ACCOUNTABILITY
OF BUSINESS SECTOR COMPLICITY
IN GROSS AND SERIOUS HUMAN
RIGHTS VIOLATIONS IN UGANDA**

2022

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LIST OF ACRONYMS AND ABBREVIATIONS

GIJTR	Global Initiative for Justice, Truth & Reconciliation
ICSC	International Coalition on sites of conscience
JAP	Justice Access Point
LRA	Lord’s Resistance Army
NHRIs	National Human Rights Institutions
NTJP	National Transitional Justice Policy
PLA	Platform for labor action
TJ	Transitional Justice
UCAF	Uganda Corporate Accountability Forum
UNNF	Uganda National NGO Forum
UNGCLN	UN Global Compact Local Network
ULA	Uganda Land Alliance
UVF	Uganda Victims Forum

ACKNOWLEDGEMENT

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BACKGROUND

On 17th June 2019, after a decade-long formulation and adoption process, the Government of Uganda finally announced the passing of the National Transitional Justice Policy (NTJP). The passage of the Policy is in the bid to operationalize the Government's commitments on accountability and reconciliation that it made during the Juba Peace process in 2007, as well as its constitutional mandate as provided under Objective III of the National Objectives and Directive Principles of State Policy (iv & v)¹. The adoption of the NTJP raises hope in Uganda; especially for the victims who, for the past two decades, have been left with uncertainty on whether, when and how past violations committed against them would be dealt with. However, during the course of the decade other violent conflicts and gross human rights violations have occurred. The most gregarious conflict-related violations include the Kasese Massacre of 2016, and the 18th November 2020 Killings. Other serious violations have taken in the extractive industry and in the externalization of Ugandan labor especially to the Middle East.

In 2019, Government of Uganda mooted the Transitional Justice Bill, 2019 in the bid to operationalize the Transitional Policy. The bill is for the enactment of an Act to provide for the establishment of a Transitional Justice Commission: to provide for and foster fair and peaceful resolution of conflicts in Uganda through a direct and independent national reconciliation process; 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; to formalize use of transitional justice mechanisms in post conflict situations; to facilitate reconciliation and nation building; to provide for the integration of the people in addressing the historical

1 Objective III of the National Objectives and Directive Principles of State policy, Constitution of the Republic of Uganda, 1995. (as amended)

causes and patterns of violent conflicts and gross violation and abuses of human rights; and to provide for related matters.

Whereas both the National Transitional Justice policy 2019 and the Draft Transitional Justice Bill 2019 were apparently designed with the Northern Uganda context in mind, there have been a number of other conflicts and serious human rights violations including those perpetrated by or with complicity of business entities. This begs the question whether the Draft Transitional Justice Bill is adequate to address especially the business related gross human rights violations in Uganda.

The Purpose of the Analysis of Draft Transitional Justice Bill, 2019

The purpose of the Analysis of the Draft Transitional Justice Bill, 2019 is to identify the gaps and areas for possible amendment so that it is amenable to addressing serious human rights violations including those perpetrated by or with complicity of business entities.

The Scope of the analysis of the Draft Transitional Justice Bill, 2019

The analysis does not intend to explore all the gaps in the Draft Transitional Justice Bill, 2019 but rather to explore the gaps in as far as the adequacy of the proposed transition Justice legislation to address gross and serious human rights violations perpetrated by or with complicity of business entities in Uganda. Such violations may be in the context of violent conflicts that have taken place in Uganda or rule of law deficits.

The rationale & justification for business entities accountability for human rights violations in Uganda through the Transitional Justice processes

1. Transitional Justice (TJ) can and has in a number of jurisdictions, been used to address gross human rights violations and abuse by business entities (implementing the 3rd pillar-remedy). Notably TJ was utilized in South Africa, El Salvador, Kenya, Mauritius, Liberia and Colombia.

2. In the case of human rights violations and abuse faced by persons trafficked or sold in modern slavery², the numbers of victims are staggeringly huge to be effectively handled by a judicial system already struggling with backlog of cases. The numbers of Ugandans that have sought employment in the Middle East over the last 6 years are estimated to be 154,633 employees³. In the meantime there are persistent allegations of illicit extraction of internal human organs from persons trafficked⁴.
3. Uganda has recently experienced resource based conflicts and massive human rights violations arising out of the extraction of the resources or marginalization of the indigenous communities. The case of Karamoja⁵ and Albertine⁶ regions are instructive.
4. Although there have been strategic litigative actions taken by affected communities to counter human rights violations by business entities in Uganda, these have been few and far between, and costly. Moreover other crucial benefits such as truth telling and healing have not been available to the victims.

The limitations and weaknesses in the proposed Transitional Justice Bill 2019

When examined against its adequacy to address gross human rights violations perpetrated by or with complicity of business entities in Uganda, the Draft Transitional Justice Bill 2019 has a number of gaps

- 2 Prevalence Estimate: Forced labor among Ugandan Workers in the Gulf Cooperation Council <https://www.gfems.org/wp-content/uploads/2022/03/GFEMS-OLR-Study-FINAL.pdf>. Accessed 10/10/2022
- 3 24,086 Ugandans seek Jobs in the Middle East every year <https://www.monitor.co.ug/uganda/business/markets/24-086-ugandans-seek-jobs-in-middle-east-every-year-3788710> Accessed 10/10/2022
- 4 Uganda Probes into internal organs harvesting <https://observer.ug/news/headlines/72675-govt-starts-probe-into-internal-organ-harvesting>. Accessed 10/10/2022
- 5 The impact of Mining on Human Rights in Karamoja, Uganda <https://www.hrw.org/report/2014/02/03/how-can-we-survive-here/impact-mining-human-rights-karamoja-uganda>. Accessed 10/10/2022
- 6 Human rights violations amidst oil and gas, and related developments: A case of land rights and vulnerable local communities in Hoima. <https://www.utb.go.ug/sites/default/files/Communities%20evicted%20in%20Rwamutonga.pdf>. Accessed 10/10/2022

that come to light. Some of the gaps identified either stem from the National Transitional Justice Policy 2019 or are simply inherent to the formulation of the draft law and notably include the omission of truth mechanism, lack of specificity and details in the nature of violations to be investigated, the process of appointment of the commissioners and the composition of the commissioners.

1. Exclusion of truth telling

The Draft Transitional Justice Bill 2019 just like the policy does not recognize the pivotal role of truth telling/truth seeking. For instance, the National Transitional Justice Policy has traditional justice mechanisms (1.4.2), national building and reconciliation (1.4.4), reparations (1.4.4), and Amnesty (1.4.5). The draft transitional justice bill 2019 gives the commission jurisdiction to investigate, determine and make recommendations on matters relating to gross violations or abuses of human rights and handle: Amnesty, reparations, reconciliation, resettlement and reintegration, and traditional justice. Truth telling is glaringly absent in both documents. UN Principle 2 for the Protection and Promotion of Human Rights through Action to Combat provides that:

“Every 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 perpetration of those crimes”.

Truth telling is therefore a sine qua non in the case of conflict related gross human rights as well as business related violations. It will respect the right of the victims to be heard, facilitate healing of the survivors, accountability and raising a memory of what happened to contribute to the deterrence or recurrence of similar violations.

Recommendation

Clause (3) of the Draft Transitional Justice Bill 2019 concerning the Objective of the Act should be amended to expressly provide for truth telling/ truth seeking. Further Clause 10(a) of the transitional justice bill 2019 should be amended to make specific reference to truth telling /seeking.

2. Limited scope and specificity of the objectives of the Act

While the Draft Transitional Justice Bill 2019 provides an extensive list of tasks for the commission described as the function of the commission in Clause 10, it provides neither the specific objectives in respect of human rights violations and abuse to be investigated nor any specific objectives for investigating economic crimes. Moreover economic crimes or violations committed by business entities could easily be overlooked to the detriment of the victim's quest for justice. Absence of guidance in the bill on the specificity of violations to be investigated and addressed by the commission blurs the focus and direction of the work of the commission.

Recommendation

Clause 10 Draft Transitional Justice bill 2019 should be amended to provide further details on violations to be investigated and addressed by the commission. Potential crimes for inclusion that have a bearing on the violations allegedly perpetrated by or with complicity of business entities that would merit investigation may include among others aiding and abetting enslavement; imprisonment or deprivation of physical liberty inn violation of fundament rules of international law; torture; rape, sexual slavery , enforced pregnancy, enforced sterilization or any form of sexual violence of comparable gravity.

3. The process of appointment of the commission could compromise the independence of the commission

Clause 5 (3) of the Draft Transitional Justice Bill 2019 provides that the president on the advice of the minister shall appoint the commissioners. This is apparently consistent with the practice in respect of other commissions in Uganda and in some other jurisdictions. For instance,

the promotion of national unity and reconciliation Act No.34 of 1985 which established the truth and reconciliation commission of South Africa gave the President the powers to appoint the commissioners. Although the issues before the commission were emotive and grave, there was public trust and goodwill across the board in the presidency. In the case of Kenya, the truth, justice and reconciliation commission Act No.6 2008 limited the powers of the president in the determination of the commissioners, considering that Kenya was emotionally charged and divided in the aftermath of 2007 Presidential Elections in which 1200 lives were lost in the election violence that occurred. In the case of Uganda, there are concerns that the independence of the commission could be compromised by the proposed mode of appointment given the prevalent culture of clientelism and patronage of national institutions and the business sector in Uganda by the presidency. According to UNCHR:

Commissions will garner the greatest public and international support if their members are selected through a consultative process, and an honest attempt is made to ensure a fair balance in the representation of ethnic, regional or religious groups, gender and political views. Such a consultative process may include inviting nominations from the public and forming a representative panel to vet nominations and interview the finalists, recommending the final commissioners to the appointing authority⁷.

Recommendation

Clause 5 (3) of The Draft Transitional Justice Bill 2019 should be amended to provide for an independent selection panel to manage the identification and selection of commissioners; and that the process should involve the participation of the public. The independent selection panel constituted by the Minister may comprise of a representative of Uganda Law society, the inter-religious council, Victims/survivors networks, NOTU, Uganda Psychiatric Association, Human resource Managers Association of Uganda, etc.

⁷ Rule of law tools for post-conflict states: Truth Commissions, United Nations, <https://www.ohchr.org/sites/default/files/Documents/Publications/RuleoflawTruthCommissionsen.pdf> pg 13-14

4. Engagement of the commissioners on a part time basis

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, multiplicity of gross violations perpetrated by or with complicity of business entities in Uganda, and the broad nature of its mandate as stipulated in Part III of the Bill.

Recommendation

Considering that the commission will have an expanded mandate including investigating gross human rights violations perpetrated by or with complicity of business entities in Uganda, this will present the commission with a lot of work. It is therefore recommended that the commissioners 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.

5. Composition of the commission

Clause 5(2) of the Draft Transitional Justice Bill 2019 provides that the commission shall compose of the chairperson; the director of public prosecutions or his representative; the secretary of the Uganda Human Rights Commission or his/her representative; the Solicitor General or his or her representative not below the rank of Commissioner; the Permanent Secretary of the Ministry responsible for internal affairs or his or her representative not below the rank of Commissioner; a representative of the Inter-religious Council of Uganda; and a representative of the Prime Minister’s Forum of the cultural institutions.

Recommendation

Clause 5(2) should be amended to widen the composition of the commission to accommodate other actors. It may be worthwhile to consider creation of a stakeholder's forum from which one or two representatives may be drawn to represent civil society in the Commission. Possible members of such forum would include the Uganda National NGO Forum, the Uganda corporate accountability forum, UN Global compact local network, platform for labor action, Uganda victims forum, Uganda Land alliance among others.

6. Reparations to victims of gross human rights violations

Whereas clause 18 & 19 provide for reparations, they neither specify parties (e.g. individuals, groups of individuals, business entities or government) against whom recommendation for payment of reparations shall be made; nor give such recommendation force of law equivalent to a court order for compensation and whether; nor create a specific fund from which reparations shall be paid.

Further still, clause 18 of the same Bill does not envisage comprehensive reparations to victims yet this would go a long way in addressing outstanding issues in post conflict situations. Therefore, such legislation ought to cater for a structure and design to implement the same.

Recommendations

Specifically empower the commission to order reparations for situations brought before it, investigated and determined accordingly.

Create a special and separate fund particularly for the payment of reparations. Also, designate a 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.

Expressly empower the commission to order money and other property collected through fines to be transferred to the special and separate fund for purposes of restitution or compensation or rehabilitation or all of those.

Amendment of clause 18 to cater for a comprehensive reparations methodology as well as a favorable structure and design for implementation of reparations. This will ensure public participation in the design and implementation of reparations and enhance information flow on government reparations programmes.

CONCLUSION

It is hoped that this analysis will contribute to opening up further discourse that would lead to the improvement in the draft Transitional Justice Bill 2019 and ultimately the Transitional Justice legislation in Uganda. Specifically, the scope, specificity, function, composition of the commission and mode of appointment of commissioners will need to be reviewed for the proposed legislation to be able to address gross human rights violations perpetrated by or with complicity of business entities in Uganda.

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About Justice Access Point (JAP)

Justice Access Point (JAP) was established in 2018 and duly registered with the National Bureau for Non-Government Organizations 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.

Strategic Objectives

- ✱ To empower key stakeholders to promote, protect and uphold the human rights standards as enshrined in the domestic, regional and international human rights frameworks;
- ✱ To empower key stakeholders to prevent and respond to atrocity crimes in Uganda;
- ✱ To empower key stakeholders to counter violent extremism in Uganda;
- ✱ To empower key stakeholders to prevent and respond to statelessness in Uganda;
- ✱ To strengthen the capacity of the different stakeholders in Uganda to counter hate/dangerous speech.

Justice Access Point (JAP)

P. O. Box 9235, Kampala – Uganda.

Telephone: +256 706 341 749

+256 703 384 055

Email: justiceaccesspoint@gmail.com,
executive@jap.or.ug

Website: <http://jap.or.ug>