

# **Chicken and Egg? Sequencing in Transitional Justice: The Case of Uganda**

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## **Introduction**

The processes of transitional justice and social reconstruction aim, broadly, to repair the social elements of a society. As I have written elsewhere, “transitional justice is engaged in helping societies move either from war to peace, or from a repressive or authoritarian regime to democracy, while dealing with resulting questions of justice, and what to do with social, political and economic institutions” (Hovil & Quinn 2005, 10).

Nelson Mandela noted in 1995 that, “as all... countries recover from the trauma and wounds of the past, they have had to devise mechanisms not only for handling past human rights violations, but also to ensure that the dignity of victims, survivors and relatives is restored” (Mandela 1995, xi). In the Cold War vacuum created after the trials held at Nuremberg and Tokyo, following the atrocities of the Second World War, very little was done. Bit by bit, however, *ad hoc* instruments began to be created that would deal with atrocities that had formerly been, or were still occurring.

This paper considers the manner in which these kinds of mechanisms have been used in addressing such crimes. It further considers the appropriate order in which such mechanisms should be used. And it examines on the case of Uganda, in which a myriad of mechanisms have been applied since Independence, drawing upon a decade of field research the author has carried out in Uganda considering the prospects for transitional justice there.

## **Available Mechanisms**

These mechanisms took surprisingly different forms. As Minow’s by now-standard text notes, these kinds of mechanisms are generally borne out of three different philosophical approaches to dealing with the past. The first, retribution, is widely associated with trials and tribunals. Based on the notion of retribution or punishment for crimes committed, the trial involves a person charged with the commission of an illegal crime being brought before an arbitrator, if not a panel of his peers, whereupon his guilt and subsequent penalty is determined. “In the Western liberal legal tradition, the rule of law... entails the presumption of innocence, litigation under the adversar[ial] system, and the ideal of a government by laws, rather than by persons” (Minow 1998, 25). The second, restoration, instead attempts to bring healing and understanding to communities. Many traditional communities “view a wrongdoing as a misbehaviour which requires teaching or an illness which requires healing” (Ross 1996, 5). As such, restorative mechanisms, including truth commissions and other customary practices, keep both victim and perpetrator at the centre of things. The third, reparation, seeks societal restoration. These institutions tend to fall into two main categories: apology and restitution. Government apologies take the form of activities like Sorry Day in Australia (“Sorry” 2004), or the Canadian Government’s apology to descendants of Métis rebel leader Louis Riel (Anderssen 1998). Restitution most often takes the form of financial compensation, as in the award of CAD \$21,000

to Canadians of Japanese origin who were interned during the Second World War, under the Japanese Canadian Redress Agreement (*Final Report 1997*, 5).

Kofi Annan noted that there is a “full range of processes and mechanisms” available to societies, all of which “attempt to come to terms with a legacy of large-scale past abuses... These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof” (UN Secretary-General 2004, 4). Many of these activities have been attempted in a range of cases over the past several decades. But scholars and practitioners alike as yet have no real idea of the potential impact that the selection of one instrument over another, or perhaps in tandem with another, will have. And the examples of transitional justice practices have ranged in scope and form to the extent that ideas of “what comes first” have not up till now organized themselves in a particularly cogent order.

### **What Comes First?**

The idea that certain activities need to occur before others in order to ensure success is not new. Sequencing is a concept borrowed from the democratization literature. “Democratic sequentialism is one part of a wider body of skeptical thinking about democracy’s global prospects... Pursuing a sequential approach promises to rationalize and defang democratic change by putting the volatile and unpredictable actions of newly empowered masses and emergent elected leaders into a sturdy cage built of laws and institutions” (Carothers 2007, 13).

Democratic sequentialism considers it “a mistake to assume that democratization... is always a good idea. When tried in countries poorly prepared for it, democratization can and often does result in bad outcomes—illiberal leaders or extremists in power, virulent nationalism, ethnic and other types of civil conflict, and interstate wars. To prevent such results, certain preconditions, above all, the rule of law and a well-functioning state, should be in place *before* [emphasis in original text] a society democratizes” (Carothers 2007, 12-13).

In the realm of transitional justice, the idea is that “[j]ustice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives. Advancing all three in fragile post-conflict settings requires strategic planning, careful integration and sensible sequencing of activities” (UN Secretary-General 2004, 1). As such, discussions have ensued as to how and when transitional justice should take place. These have tended to focus on specific instruments, and less on the impediments to the proliferation of mechanisms that could foster social rebuilding. Yet these kinds of sequencing questions seem to be critical.

Among the most important of these has been the cessation of hostilities in transitional or potentially-transitional states. For example, in a state where conflict has been on-going, does that conflict have to be over before a serious attempt at transitional justice can be made? I have argued elsewhere that the state needs to be at a point of *transition* in order for “transitional” justice to occur, but in many cases this is a fuzzy dichotomy, and of potentially little use. It is possible, of course, for transitions to come in many different forms. These might reasonably include political transitions, as in transition from authoritarian rule to democracy; or even the transition from one party to another. In such cases, the role of conflict is different—yet in some cases, these kinds of political or democratic transitions must operate against a backdrop of unresolved conflict. Liberia’s history of violent conflict illustrates just such a discombobulated process: in 1994, a ceasefire was established, yet by 1996, fighting had resumed. And it was not until 2003 that peace talks ended the rebellion, and President Taylor was forced to hand over

power (Accord Liberia 2007). As such, should questions of conflict and its resolution play a role in shaping the institutions that are selected? It may well be that the cessation of hostilities needs to be a certainty before embarking on a process of transitional justice.

Following from this, of course, are questions related to peace agreements. Even if hostilities have ceased, formal peace agreements are not necessarily present in all cases. But should they be? And if so, ought these peace agreements to proceed other overtures aiming broadly at transforming societies? In Guatemala, for example, the *Comisión para el Esclarecimiento Histórico* was established under the Oslo Accord process—effectively, the need to continue the momentum achieved by the Oslo Accord was to be carried out by the successor mechanism, the truth commission (Tomuschat 2001, 239-240). Peace processes can be the catalyst for action. They can also provide the framework on which transition can effectively proceed.

Another piece of the puzzle that may need to be in place to build a sustainable programme of social rebuilding is the democratization process. That is, democracy may, in fact, provide the fundamental basis on which transitional justice can proceed. Conversely, though, it may be that transitional justice processes actually provide the basis for democracy and democratization. One striking example is that of Haiti, after the overthrow of the Cédras government in 1994. As President Aristide returned to power, in the aftershocks of the Governor's Island Accord, he established the *Commission nationale de vérité et de justice* (CNVJ). In the end, the CNVJ was forced to deliver a report that many considered unfinished, simply because Aristide was being forced to flee—a condition brought about by a lack of basic democracy (Quinn 2003, 95) and the safeguards that democracy ensures.

Political will also plays a critical role in the success or failure of the instruments that are implemented in these circumstances. It is important to recognize that these kinds of supports, like funding, or the provision of necessary legislative safeguards, are necessary to the process. It is also important, however, to realize that in many cases, transitional societies are forced to operate without them. In actuality, these kinds of processes are often implemented without the essential support of the public, or of the government. In Chad, for example, a truth commission was appointed, but has never finished its work. It has been handicapped by a lack of space and a dearth of resources, effectively displaying the Deby government's decided lack of political will to keep the process moving forward (Hayner 1994, 623-625). It is important to recognize that when there is overwhelming support for a process, ways and means are almost always found to keep it going; states where no such support is in evidence are often left with incomplete or abandoned processes.

Indeed, many have speculated that the bedrock on which processes of transition should rest is a matter of public accountability, and that trials and tribunals are the best way to ensure that healing and understanding are achieved. "Punishing perpetrators of past abuses can thus serve not only as a symbolic break with the ugly legacy of authoritarian rule, but also as an affirmation of adherence to new democratic values" (Benomar 1995, 33). The International Criminal Tribunal for the Former Yugoslavia attempted to do just that. Its website states that its core achievements have included "[s]pearheading the shift from impunity to accountability, establishing the facts, bringing justice to thousands of victims and giving them a voice, the accomplishments in international law, [and] strengthening the Rule of Law" ("ICTY at a Glance" 2007). Yet "[e]fforts in other countries to try accused perpetrators for politically motivated crimes have sometimes obscured rather than clarified the truth" (Hayner 2001, 101).

And so others have argued for the establishment of a restorative mechanism like the truth commission in advance of any kind of legal accountability being determined. The argument holds that truth commissions will promote a greater understanding of past events, which will bring about healing, all of which will lead to a deeper enshrinement of democratic principles in the country. In post-Pinochet Chile, for example, President Aylwin announced that the most important duty of his government would be to confront Chile's legacy of human rights violations and to pay the "social debt" left by the strict economic reforms of Pinochet (Barahona de Brito 1997, 152), through the *Comisión Nacional de Verdad y Reconciliación*. The Commission's legacy is large, and includes several different pieces of legislation which ensure compliance with its recommendations, each of which sought to lay the foundations for the establishment of justice and democracy.

It has also been the case, in a number of transitional states, that a process aimed at purposely forgetting about past acts has been employed. One way of "doing nothing" is the proclamation of amnesty. An amnesty effectively prohibits retributive action against those who have committed criminal acts. Amnesties have been variously employed in a number of different circumstances. In Chile, for example, General Pinochet declared a blanket amnesty for members of the military when he left office. In South Africa, people were granted individualized amnesty in exchange for truth-telling. Amnesty has acted, in these cases, to facilitate the transition from one regime to the next, and to pave the way for other elements of societal transformation.

In other cases, as outlined above, days of remembrance and public apologies are offered as a means of acknowledging past crimes. Often, it happens that these kinds of public acknowledgements transpire as a result of the work of various instruments of transitional justice. This is the case in Israel, where Yom Hashoah is observed each year to "remember those that suffered, those that fought, and those that died. Six million Jews were murdered" (Rosenberg 2007).

It is certainly the case that in many countries, a number of instruments have been appointed to look at the same issues. In a lot of these cases, such processes have actually been at play concurrently. As such, it is critical to examine their efforts and the outcomes of such efforts, to determine whether or not they were affected, one by the other.

### **Tandem Processes**

Sierra Leone represents an interesting phenomena in the evolution of transitional justice. In the years following the civil conflict between the Government of Sierra Leone and the Revolutionary United Front, Sierra Leone established a truth commission at the same time as the Government of Sierra Leone and the international community established a Special Court for Sierra Leone (SCSL) to prosecute those who bore the greatest responsibility for serious violations of human rights. The interaction between the two instruments "impacted on the work of the Commission" (Volume 1 2007). Indeed, the relationship between the truth commission and the SCSL was complicated. Document- and information-sharing between the two institutions was problematic, and one SCSL justice "concluded that the right to a fair and public trial always prevails over societal or institutional needs" (Dougherty 2004, 44-45). In the end, the truth commission was "unable to prevail against the SCSL in a direct clash of interests, despite its insistence that it was not subordinate to the court... [which] hurt its credibility" (Dougherty 2004, 45).

In Uganda, the Commission of Inquiry into Violations of Human Rights was established in 1986. As part of its terms of reference, it was intended that the Commission would collect

evidence that would be passed on to the Criminal Investigations Department (CID) and the Director of Public Prosecutions (DPP), which “were expected to proceed with further investigation if necessary, and prosecutions” (Republic of Uganda 1994, 18). The Commission of Inquiry Act had obviously envisioned a working relationship between the Commission and the retributive apparatus of the state. Yet a breakdown occurred between the Commission, which itself suffered from complications related to lack of funding and lack of political will, and the CID and DPP. This hand-over of information never took place. “The Criminal Investigations Division (CID) and Director of Public Prosecutions (DPP) avoided completing nearly every task assigned to them by the Commission. As a result, one observer noted that ‘some [cases] got lost in the bureaucracy and corruption of the DPP’s office’” (Quinn 2003, 163). Ultimately, however, “[u]nfortunately, they rarely did [proceed with investigation and prosecutions]” (Republic of Uganda 1994, 18).

South Africa provides another example of experiences with concurrent mechanisms of transitional justice. The Government of South Africa appointed the Truth and Reconciliation Commission as part of the Promotion of National Unity and Reconciliation Act in 1995. The TRC was mandated to work in three inter-related committees: the Human Rights Violations Committee, the Amnesty Committee, and the Reparations and Rehabilitation Committee. The TRC, like many truth commissions before and since, set about effectively establishing the truth about past events.

Yet the provision of amnesty, as set out in the Act, proved troublesome. The framers had conceived of it thus: “[a] grant of amnesty would be the carrot to get perpetrators’ cooperation in the process, and the threat of prosecution would be the stick” (Hayner 2001, 99). In fact,

the relationship between the truth commission and offices of the attorney generals—especially that of the Special Investigation Team of Attorney General Jan d’Oliveira of Transvaal—was sometimes strained. Two-year criminal investigations and near-arrests by the attorney general’s office were brought to a halt when those accused went to the truth commission to apply for amnesty... The commission, for its part, was frustrated that the attorney generals’ office provided the commission’s investigators only limited access to its files (Hayner 2001, 99-100).

As such, the two goals—truth-seeking and amnesty-granting—seemed, in many ways, to be working counter to each other.

These experiences are by no means unique. For, although only three are discussed directly above, nearly every state that has grappled with issues of post-conflict transformation to any real extent has come face-to-face with these dilemmas. And the manner in which such countries have opted to satisfy the specific demands of their state’s unique circumstances is correspondingly unique.

### **Uganda**

After Uganda declared independence in 1962, its leaders pursued policies designed to divide the population. In 1967, the traditional Kingdoms were abolished (Republic of Uganda 1994, 23). Life under Obote and his successors turned out to be very different than it had been under the British. From 1962 until 1986, Uganda experienced a series of coups, culminating in a great concentration of power in the hands of the head of state. Obote’s first term in power was characterized by significant numbers of riots and armed attacks (Berg-Schlosser & Siegler 1990, 196). Many of the violent protests were carried out by the Baganda in protest against Obote’s consolidation of power. Other uprisings came from the Ugandan military.

General Idi Amin Dada, Obote's army commander, overthrew Obote in 1971, suspended the constitution and ruled under a provisional government structure until 1979. To sustain his authority, Amin, who came to be known as "the butcher," carried out a reign of terror, systematically murdering and torturing those he considered to stand in his way (Wright 1996, 306). He targeted those who were seen to have supported Obote, especially people of Acholi and Langi descent, many of whom tended to dominate the military. The more than 70,000 ethnic Asians living in Uganda were brutally expelled by Amin in 1972 and their property confiscated, compensation for which had yet to be determined at the time of writing (Pirouet 1996, 305). During this period, violence was rampant, and the military and paramilitary mechanisms of the state conducted brutal campaigns of torture (Berg-Schlosser & Siegler 1990, 199; Khiddu-Makubuya 1989, 141-157). No exact figures of the number of people who were killed under Amin exist, although conservative estimates place the figure at between 300,000 (Briggs 1998, 23) and 500,000 (Museveni 1997, 41).

Interim governments were appointed in 1979 and 1980. Then, as the result of rigged elections in 1980, Obote returned to power. He remained until July 1985 when he was overthrown, again by a faction of the Ugandan military. The country was once again assailed by "rampant human rights abuses" ("Uganda" 1998, 852), this time far worse than anything experienced during Obote's first term in office. The paramilitary apparatus of the state again began its practice of routinely violating human rights, by means of rape, torture, looting and destruction of property (Berg-Schlosser & Siegler 1990, 199; Khiddu-Makubuya 1989, 153). The scale of repression and abuse was roughly the same as it had been under Amin. The only difference for many Ugandans was that their former leader (Amin) had been substituted for another (Obote) with a heightened and reinvigorated fury. Conservative estimates again place the number of those killed during this period at approximately 300,000 (*Uganda* 1998, 53; Ofcansky 1996, 55) to 320,000 (Ofcansky 1996, 55). From July 1985, a military council governed for six months, until it, too, was overthrown.

Yoweri Museveni seized power in January, 1986, abolishing all political parties except the National Resistance Movement (NRM) that had made his victory possible (Berg-Schlosser & Siegler 1990, 97-132). Museveni and the NRM (formerly the National Resistance Army, the NRA) had been fighting against the regimes of Amin and Obote, as well as the transitional regimes, in Uganda since 1971 (Museveni 1997, 33, 46-173). Conditions began to improve in Uganda after Museveni took power. The human rights abuses abated.

Museveni's Presidency has been challenged by a number of rebellions which have arisen since 1986.<sup>1</sup> At the time of writing, at least two conflicts remain unresolved: The first is the war in Northern Uganda between the Lord's Resistance Army, headed by Joseph Kony, and the Government of Uganda, which has resulted in the displacement of more than 1.8 million people, and the abduction of more than 30,000 children by the rebel forces (Quinn 2006). A clear disconnect exists between northern Uganda and the rest of the country. As one human rights

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<sup>1</sup> These include rebellions by the Action Restore Peace, Allied Democratic Forces, Apac rebellion, Citizen Army for Multiparty Politics, Force Obote Back, Former Uganda National Army, Holy Spirit Movement, the Lord's Army, Lord's Resistance Army, National Federal Army, National Union for the Liberation of Uganda, Ninth October Movement, People's Redemption Army, Uganda Christian Democratic Army, Uganda Federal Democratic Front, Uganda Freedom Movement, Ugandan National Democratic Army, Uganda National Federal Army, Ugandan National Liberation Front, Ugandan National Rescue Fronts I and II, Ugandan People's Army, Ugandan People's Democratic Army, Uganda Salvation Army, and the West Nile Bank Front (Hovil and Lomo 2004, 4; Hovil and Lomo 2005, 6).

activist said, “We... have two countries in one—the north and the south. This is true politically and economically” (Otto 2006).

The second is the resistance of the Karamojong people to the Government. The Karamojong live separately from the rest of Uganda in a traditional (Ochieng 2000, 153) and highly stratified society centred around cattle, which figure prominently in all aspects of life, including bride price, status, and religious and ceremonial practice (Novelli 1988, 83). Traditionally, cattle raiding was originally carried out with spears, but in modern times the Karamojong have adopted the use of automatic weapons, variously stolen from or supplied by the government in Kampala and other allies, including the Sudan People’s Liberation Army, and others in Somalia and Kenya. In 2000, it was estimated that the Karamojong people possessed between 100,000 and 150,000 weapons (Novelli 1998, 83). Other rebellions, including that of the ADF in Western Uganda, are once again brewing. All of these signal a clear discontent with the leadership and governance of Museveni and the ruling party, the National Resistance Movement.

Uganda has employed a number of mechanisms to deal with the many acts of violence that have been perpetrated since 1962. What is clear is that these mechanisms have been implemented very much on an *ad hoc* basis, with little attention to any kind of cohesive plan or coordinated attempt to bring about a planned result. What follows is a brief outline of these mechanisms, listed chronologically.

#### *Truth Commission*

As discussed briefly above, Museveni appointed a Commission of Inquiry into Violations of Human Rights when he seized power in 1986. This marked Uganda’s second effort at a truth commission; the first, the Commission of Inquiry into the Disappearances of People in Uganda since 25 January, 1971, appointed by Amin in 1974, had come to ruin and its report was never released. The role of the 1986 Commission was to inquire into “the causes and circumstances” surrounding mass murders, arbitrary arrests, the role of law enforcement agents and the state security agencies, and discrimination which occurred between 1962 and January, 1986 when Museveni and the NRM assumed power. It was also meant to suggest ways of preventing such abuses from recurring (Republic of Uganda 1994, 3-4). The Commission was also expected to determine the role of various state institutions in both perpetrating and hiding gross human rights violations. The government promised that the results and findings of this Commission would be treated seriously. They were not. The Final Report of the Commission was not released until 1994, and even then it was never disseminated publicly. In the end, the Commission of Inquiry into Violations of Human Rights failed because it did not provide the citizens of Uganda a real opportunity to acknowledge and thus address violations of human rights which had been committed.

#### *Amnesty Act*

In November 1999, the Government of Uganda passed the Amnesty Act, which was enacted in January 2000. The Act reads as follows:

An amnesty is declared in respect of any Ugandan who has at any time since the 26th day of January, 1986 engaged in or is engaging in war or armed rebellion against the government of the Republic of Uganda by:

- (a) actual participation in combat;
- (b) collaborating with the perpetrators of the war or armed rebellion;

- (c) committing any other crime in the furtherance of war or armed rebellion; or
  - (d) assisting or aiding the conduct or prosecution of the war or armed rebellion
- (Republic of Uganda 2000, II.3(1)).

The amnesty “was conceived as a tool for ending conflict... a significant step towards ending the conflict in the north and working towards a process of national reconciliation” (Hovil & Lomo 2005, 6). The Government of Uganda, however, is largely seen to have, at the very best,

ambiguous support for the amnesty process: numerous informants questioned whether or not the government was really serious about the Amnesty. Indeed, since its enactment, the government has never presented a consistent position on the Amnesty... One elderly man in Kitgum articulated a commonly held view: ‘Parliament said [the Amnesty Act] was ok, but the president himself didn’t want it. This is no secret’ (Hovil & Lomo 2005, 18).

### *International Criminal Court*

In what was largely considered to be an extreme measure, but clearly an indication of President Museveni’s unhappiness with the Amnesty process, Museveni formally requested that the International Criminal Court (ICC) investigate the actions of the Lord’s Resistance Army in northern Uganda December 2003, an act made public by the Prosecutor in January 2004. This meant that the future of the Amnesty process was put in doubt.

The ICC has since opened an investigation, and the Chief Prosecutor has issued warrants for the arrest of Joseph Kony and four other senior members of the LRA.<sup>2</sup> Individually, each of the five warrants details the atrocities attributed to the LRA, and to each of the five men, including more than 2,200 killings and 3,200 abductions in over 820 attacks. Kony, for example, is charged with 12 counts of crimes against humanity and 21 counts of war crimes, including “rape, murder, enslavement, sexual enslavement, [and] forced enlistment of children” (Moreno-Ocampo 2005).

In the two and a half years that have passed between the unsealing of the arrest warrants, neither Kony nor his lieutenants have been captured. This, despite their frequent appearances in Juba, South Sudan for peace talks, and the LRA’s known positions in Garamba National Park in the Democratic Republic of Congo, and other places. The Government of Uganda has waffled on the ICC, and the Minister of Internal Affairs has publicly stated (Rugunda 2006) that he believes traditional practices of justice and reconciliation to be sufficient in prosecuting Kony and his deputies, so that the services of the International Criminal Court are no longer required.

### *Peace Talks*

The Government of Uganda (GOU) and the Lord’s Resistance Army have met several times in a series of failed peace talks including the Pece Stadium Accord (1988) the Addis Ababa Accord (1990) a series of peace talks (1994) and another set negotiated by Betty Bigombe (2005). The latest round of peace talks began in August, 2006, and talks have been held in Juba, South Sudan. The GOU and LRA were able to come to some agreement on five agenda items that would need to be brokered at the talks: cessation of hostilities; comprehensive solutions to conflict; accountability and reconciliation (including provisions for amnesty); ceasefire; and demobilization, disarmament, reintegration, and resettlement. At the time of writing, however,

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<sup>2</sup> At the time of writing, none of these warrants has been executed, and these men remain at large.

the final agreement has not been signed. Joseph Kony, the leader of the LRA has walked away from the talks. And the LRA appears to be regrouping for further violence.

### *Reconciliation Efforts*

At the same time, Ugandans have themselves, independent of Government, embarked on a process of national reconciliation. Several consultative meetings have been held since April 2006, and a Steering Committee known as the Council on Reconciliation in Uganda (CORU) has been spearheading the process. CORU is primarily made up of academics and representatives from key civil society organizations. Representatives from across the country, representing each of the 56 different ethnic groups, different religious groups and faiths, and different political groups, have met at several points to discuss the viability of resolving the on-going differences that exist within the country. Initially, consensus on important issues including the meaning and potential goals of reconciliation, the issues to be resolved, as well as the importance of concepts such as a national identity, was limited. Yet in February 2007, 150 delegates to the Civil Society Consultative Conference on National Reconciliation concluded that a National Reconciliation Commission must be established, prepared draft legislation for a National Reconciliation Act, and called for the process to begin in earnest (Kimono 2007).

### **Lessons in Sequencing**

The Ugandan case is, of course, fraught with problems. Clearly, the approaches to transitional justice upon which the Government embarked in the 1980s were not especially successful. Conflict continues, and society remains waiting to be transformed. Similar initiatives throughout the 1990s and early 2000s have been equally received. Nevertheless, there are some important lessons to be drawn from its experiences.

To start, the many failures in Uganda at securing a viable transformation have been grossly undermined, at all points in the process, by the on-going conflicts operating at various levels throughout the country. As evidenced by the more than 20 armed insurgencies that have been carried out against Museveni and his supporters since 1986, and the country's violent history before that, between Independence in 1962 until Museveni himself seized power, the country has long been at the mercy of such conflicts. Indeed, even this most recent process hangs precariously in the balance, caught up in the potential for resolution of the Northern Uganda conflict.

It does seem, therefore, that the cessation of hostilities, accompanied by some sort of tangible guarantee, potentially in the form of a peace agreement, or some other mechanism, are at the very least a prerequisite for good-faith efforts at negotiation with an aim to social transformation. This kind of "durable peace" allows for attention and resources to be diverted away from the consequences of conflict, like abducted child soldiers and internally displaced people, toward future prospects. Without it, efforts at social reconstruction in Uganda have been thwarted time and again.

The second of the requirements proposed above for transformation to take hold was democracy and the democratic process. Clearly, Uganda is only just making initial overtures toward a democratic process. The elections held in February 2006 were the first multi-party elections to be held since shortly after Independence. Although the elections were pronounced free and fair, there are clearly inconsistencies in the tabulation and reporting of votes.<sup>3</sup> In the

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<sup>3</sup> Human Rights Watch reported "ballot stuffing, multiple voting, and potentially hundreds of thousands of people denied the right to vote in the elections" (Human Rights Watch 2006).

North, however, Museveni could do little to disguise the population's blatant dislike of him: the Opposition candidate trounced the President, earning 82.3% to the President's 13.2% in Gulu, and 75.4% to Museveni's 18.8% in Kitgum ("Uganda Decides" 2006).

The LRA insurgency provides an ideal opportunity for the NRM to keep Northerners in general at the periphery and the North-South divide out of the national political debate. As long as the situation of the north is dominated by security matters, the sharing of national resources, the general cohesion of the social and political fabric and the monopolisation of power and wealth by Southerners are not questioned (ICG 2004, 10).

This kind of disaffection greatly affects any efforts toward the promotion of national reconciliation.

Yet, evidence shows that acknowledgement and reconciliation themselves form the building blocks of democracy. As I have written elsewhere, there is a strong and causal relationship between acknowledgement and forgiveness, social trust, reconciliation, and democracy. What these elements have in common is their quest to capture the bonds of social capital and social trust. This thing at which they are aiming, which might more appropriately be called *social cohesion*, is intertwined with the notion of social capital. "Social capital forms a subset of the notion of social cohesion. Social cohesion refers to two broader intertwined features of society: (1) the absence of latent conflict... and (2) the presence of strong social bonds – measured by levels of trust and norms of reciprocity, the abundance of associations that bridge social divisions (civic society), and the presence of institutions of conflict management, e.g., responsive democracy, an independent judiciary, and an independent media" (Berkman and Kawachi 2000, 175). Social cohesion is the "key intervening variable between social capital and violent conflict" (Colletta & Cullen 2000, 13; Sen 1999). It is, effectively, reconciliation (Quinn 2005). And this reconciliation is a necessary condition for democracy. As such, it appears that democracy is an outcome of any social transformation process, rather than a prerequisite.

The third factor considered above is what might effectively be called political will, and which might be made manifest in shortages of funding, office space, or proper legislation. It is clearly the case in Uganda that without substantial support of the Government, initiatives are likely to fail. The Commission of Inquiry into Violations of Human Rights, for example, failed to achieve its goals precisely because of a decided lack of political will: from the unofficial opposition, which refused to participate; from government agencies, which simply did not carry out the tasks assigned to them; from Cabinet, which failed to adequately resource the Commission; and from the general public, which knew little to nothing of the exercise.

Yet coalitions such as CORU appear likely to be more successful in this regard. The recent gathering of more than 150 delegates to discuss options for reconciliation carried with it the weight of the authority of ethnic, religious, and political groups from around the country. And Government Ministers, including the Minister of Internal Affairs and the Minister for Disaster Preparedness, as well as the Army Spokesman, attended and participated in the consultation in seeming good faith, going so far as to "call for reconciliation" (Kimono 2007). The importance of this gathering, and the impetus that it has gathered, rests not only in the support that Government now seems prepared to commit, but especially in the broad-based public commitment expressed throughout.

The fourth of the factors discussed above is the necessity for a trial or tribunal. In the case of Uganda since 2003, this effectively means the role of the International Criminal Court. Uganda effectively "accepted the jurisdiction of the Court" (Rome Statute 12.1) when it referred

the case of Northern Uganda to the ICC. This means that, although there are functioning retributive mechanisms in the country, the ICC is now solely responsible for prosecuting Kony and his deputies.

In any other situation, this would be something to celebrate. Yet introducing prosecutions into the pressure-filled situation of IDPs, peace talks, and rebellion seems to have come at an inopportune time. While some see the foray of the ICC into the fray as necessary to bringing about an end to the war (Citizens 2004), others see the ICC as crushing any hope for real and lasting peace:

The issuing of... international arrest warrants would practically close once and for all the path to peaceful negotiation as a means to end this long war, crushing whatever little progress has been made during these years... Obviously, nobody can convince the leaders of a rebel movement to come to the negotiating table and at the same time tell them that they will appear in courts to be prosecuted (Rodriguez 2004).

As such, it seems that prosecutions that take place too early in the process, or which fail to take into consideration other efforts already underway, are detrimental.

The fifth element considered above is the truth commission. To be sure, Uganda's two experiences with truth commissions, as described above, provide effective examples of the way in which truth commissions should not operate. However, it is likely that these commissions were unsuccessful precisely because the infrastructure which ought to have been in place to support them was simply not there. This is not to say that any one specific element would have been sufficient to effectively buttress the commissions; rather, it seems that a combination of elements, including a durable peace, political will, or democratization, might have been enough to allow them some small measure of success.

Amnesty was another of the elements listed, above, as a potential prerequisite for successful social transition. In Uganda, however, the amnesty has taken a substantially different form from the amnesties declared in places like Chile and South Africa. The Ugandan amnesty was designed as a means of getting the rebels out of the bush, as a way of bringing an end to conflict. The Amnesty Act came about "after a great deal of activism from civil society groups, NGOs and concerned politicians" (Allen 2005, 31). And it is clear that there is wide-spread support for the amnesty as a tool to end the war in the north (Hovil & Lomo 2005), but also a recognition that the majority of combatants are former abductees. However, it is also true to say that there is widespread support for Kony and senior commanders to either be tried in a court of law, or simply killed—or both. The consequent polarization of the debate is creating an environment in which people are effectively being forced to choose between the two alternatives of amnesty and prosecution, neither of which, on its own, is likely to adequately encapsulate the demands of justice in the long-term. However, it is also an impossible choice to make while the conflict is on-going.

The sixth element, described above as the public acknowledgement of past crimes, is without much precedent in Uganda. Uganda has simply chosen not to remember. There are a handful of streets in Kampala that are named after people important to the causes and campaigns of former leaders; one of these, Luwuum Street, was named after Archbishop Luwuum, who was killed in the time of Amin. He was so honoured by Obote, and the street name remains unchanged. Some of the memorial projects implemented by former governments had been co-opted by Museveni's regime. Perhaps the best example of this is a national holiday called "Heroes' Day," initially instigated by the Obote's party to mark his return to power in 1980

(Onyango-Obbo 2002), and still held under the NRM to “remember people of all kinds who died during the war” (Kato 2001)—although only Museveni’s compatriots are honoured. Yet there have been no efforts to publicly acknowledge landmark occasions that hold meaning for all Ugandans. Curriculum in the schools, for example, does not teach any of Uganda’s recent history. Any public acknowledgement of the past has come with serious historical revisionism.

Ugandan citizens are presently seeking to institute a day of remembrance *in advance* of the appointment of any other kind of process. Ugandans have now called for a draft bill of National Reconciliation, which would include “the declaration of a national healing day or week for people to commemorate and to forgive others” (Kimono 2007)—to take place *before* any kind of reconciliation process is begun. It seems that public acknowledgement will need to take place in order for any decisions to be made about what next steps must be for the process of social transformation to take place.

### Conclusions

Carothers’ conception of democratic sequentialism as misguided, then, appears to have traction in transitional justice, at least in the Ugandan case. In this case, it is not simply a matter of “which came first, the chicken or the egg?” Yet it does seem as though certain components of transitional justice are necessary for the successful realization of success via other instruments—a kind of chicken *and* egg scenario. These are, however, not sufficient conditions, as the term sequentialism seems to imply.

Instead, what seems to be at play is the idea that the presence of some instruments can provide the necessary support for others—that transitional justice simply cannot be about the use of one approach or instrument in isolation. Former Secretary-General Kofi Annan put it this way: “[a]pproaches focusing only on one or another institution, or ignoring civil society or victims, will not be effective. Our approach... must be comprehensive in its attention to all of its interdependent institutions, sensitive to the needs of key groups and mindful of the need for complementarity between transitional justice mechanisms” (UN Secretary-General 2004).

Indeed, complementarity, not sequentialism, is required. This approach is especially useful in Uganda, in the on-going uncertainty over the role and place of the International Criminal Court *viz à viz* national courts, and the future of the Lord’s Resistance Army. These kinds of questions bear future consideration.

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