

Chicken and Egg? Sequencing in Transitional Justice:¹ 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.”³

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.”⁴ 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.

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³ Lucy Hovil and Joanna R. Quinn, “Peace First. Justice Later: Traditional Justice in Northern Uganda,” *Refugee Law Project Working Paper Series*, Working Paper No. 17, 8 July 2005, 10.

⁴ Nelson Mandela, “Foreword,” in *Transitional Justice*, vol. 1, ed. Neil J. Kritz (Washington: United States Institute of Peace Press, 1995), xi.

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."⁵ 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."⁶ 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,⁷ or the Canadian Government's apology to descendants of Métis rebel leader Louis Riel.⁸ 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.⁹

⁵ Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998), 25.

⁶ Rupert Ross, *Returning to the Teachings* (Toronto: Penguin, 1996), 5.

⁷ "Sorry Day," [article on-line]; available from <http://www.cultureandrecreation.gov.au/articles/sorry/>; accessed 9 Dec. 2004.

⁸ Erin Anderssen, "Natives Finally Get Ottawa's Apology," *The Globe and Mail*, 7 Jan. 1998.

⁹ *Final Report on the Implementation of the Japanese Canadian Redress Agreement, 1988* (Ottawa: Japanese Canadian Redress Secretariat and Canadian Heritage, Nov. 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.”¹⁰ 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.”¹¹

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

¹⁰ United Nations Secretary-General, *Report of the Secretary General: The rule of law and transitional justice in conflict and post-conflict situations*, 2004, S/2004/616, 4.

¹¹ Thomas Carothers, “How Democracies Emerge: The ‘Sequencing’ Fallacy,” *Journal of Democracy* 18.1 (Jan. 2007): 13.

in fragile post-conflict settings requires strategic planning, careful integration and sensible sequencing of activities.”¹²

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.¹³ 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.

¹² United Nations Secretary-General, *Report of the Secretary General*, 1.

¹³ “Accord Liberia Project: Chronology,” Conciliation Resources; available from <http://www.c-r.org/our-work/accord/liberia/chronology.php>; accessed 19 Feb. 2007.

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.¹⁴ 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 democracy¹⁵ 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

¹⁴ Christian Tomuschat, "Clarification Commission in Guatemala," *Human Rights Quarterly* 23.2 (2001): 239-240.

¹⁵ Joanna R. Quinn, "The Politics of Acknowledgement," (Ph.D. diss., McMaster University, 2003), 95.

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.¹⁶ 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."¹⁷ 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."¹⁸ Yet "[e]fforts in other countries to try accused perpetrators for politically motivated crimes have sometimes obscured rather than clarified the truth."¹⁹

¹⁶ Priscilla B. Hayner, "Fifteen Truth Commissions—1974-1994: A Comparative Study," *Human Rights Quarterly* 16 (1994): 623-625.

¹⁷ Jamal Benomar, "Justice After Transitions," in *Transitional Justice*, vol. 1, ed. Neil J. Kritz (Washington: United States Institute of Peace Press, 1995), 33.

¹⁸ "The ICTY at a Glance," International Criminal Tribunal for the Former Yugoslavia; available from <http://www.un.org/icty/>; accessed 19 Feb. 2007.

¹⁹ Priscilla B. Hayner, *Unspeakable Truths* (New York: Routledge, 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,²⁰ 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.

²⁰ Alexandra Barahona de Brito, *Human Rights and Democratization in Latin America* (New York: Oxford University Press, 1997), 152.

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.”²¹

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.”²² 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.”²³ 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.”²⁴

²¹ Jennifer Rosenberg, “Yom Hashoa: Holocaust Remembrance Day,” *About: 20th Century History*; available from <http://history1900s.about.com/cs/holocaust/a/yomhashoah.htm>; accessed 19 Feb. 2007.

²² “Volume 1: Introduction to the TRC Report,” *The Final Report of the Truth & Reconciliation Commission of Sierra Leone*; available from <http://trcsierraleone.org/drwebsite/publish/intro.shtml>; accessed 19 Feb. 2007.

²³ Beth K. Dougherty, “Searching for Answers: Sierra Leone's Truth & Reconciliation Commission,” *African Studies Quarterly* 8.1 (Fall 2004): 44-45.

²⁴ *Ibid.*, 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.”²⁵ 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.’”²⁶ Ultimately, however, “[u]nfortunately, they rarely did [proceed with investigation and prosecutions].”²⁷

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.

²⁵ The Republic of Uganda, *The Report of the Commission of Inquiry into Violations of Human Rights* (Kampala: UPPC, 1994), 18.

²⁶ Quinn, “The Politics of Acknowledgement,” 163.

²⁷ The Republic of Uganda, *The Report of the Commission of Inquiry into Violations of Human Rights*, 18.

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.”²⁸ 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.²⁹

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.³⁰ 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

²⁸ Hayner, *Unspeakable Truths*, 99.

²⁹ *Ibid.*, 99-100.

³⁰ The Republic of Uganda, *The Report of the Commission of Inquiry into Violations of Human Rights* (Kampala: UPPC, 1994), 23.

of riots and armed attacks.³¹ 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.³² 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.³³ During this period, violence was rampant, and the military and paramilitary mechanisms of the state conducted brutal campaigns of torture.³⁴ No exact figures of the number of people who were killed under Amin exist, although conservative estimates place the figure at between 300,000³⁵ and 500,000.³⁶

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

³¹ Dirk Berg-Schlosser and Rainer Siegler, *Political Stability and Development: A Comparative Analysis of Kenya, Tanzania and Uganda* (Boulder: Lynne Rienner Publishers, 1990), 196.

³² Nancy G. Wright, "Uganda: History From 1971," *Encyclopedia of Africa South of the Sahara*, ed. John Middleton (New York: Charles Scribner's Sons, 1996) 306.

³³ M. Louise Pirouet, "Uganda: History to 1971," *Encyclopedia of Africa South of the Sahara*, ed. John Middleton (New York: Charles Scribner's Sons, 1996), 305.

³⁴ Berg-Schlosser and Siegler, *Political Stability and Development: A Comparative Analysis of Kenya, Tanzania and Uganda*, 199; Edward Khiddu-Makubuya, "Paramilitarism and Human Rights," in *Conflict Resolution in Uganda*, ed. Kumar Rupesinghe (Oslo: International Peace Research Institute, 1989) 141-157.

³⁵ Philip Briggs, *Uganda* (Old Saybrook, CT: The Globe Pequot Press, 1998) 23.

³⁶ Yoweri Kaguta Museveni, *Sowing the Mustard Seed* (London: MacMillan, 1997), 41.

“rampant human rights abuses,”³⁷ 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.³⁸ 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 300,000³⁹ to 320,000.⁴⁰ 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.⁴¹ 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 1971.⁴² 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 1986.⁴³ At the time of writing, at least two conflicts remain unresolved: The first is the

³⁷ “Uganda,” *The World Almanac and Book of Facts 1999*, ed. Robert Famighetti (Mahwah, NJ: Primedia Reference, 1998), 852.

³⁸ Berg-Schlosser and Siegler, *Political Stability and Development*, 199; Khiddu-Makubuya, “Paramilitarism,” 153.

³⁹ *Uganda* (Brooklyn: Interlink Books, 1998), 53; Thomas P. Ofcansky, *Uganda: Tarnished Pearl of Africa* (Boulder: Westview, 1996), 55.

⁴⁰ Ofcansky, *Uganda: Tarnished Pearl of Africa*, 55.

⁴¹ For a much more complete account of Uganda’s history from 1971, see Berg-Schlosser and Siegler, 97-132.

⁴² Museveni, *Sowing the Mustard Seed*, 33, 46-173.

⁴³ 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. Compiled from Lucy Hovil and Zachary Lomo, *Working Paper 11: Behind the Violence: Causes, Consequences and the Search for Solutions to 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.⁴⁴ A clear disconnect exists between northern Uganda and the rest of the country. As one human rights activist said, "We... have two countries in one—the north and the south. This is true politically and economically."⁴⁵

The second is the resistance of the Karamojong people to the Government. The Karamojong live separately from the rest of Uganda in a traditional⁴⁶ and highly stratified society centred around cattle, which figure prominently in all aspects of life, including bride price, status, and religious and ceremonial practice.⁴⁷ 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.⁴⁸ 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

War in Northern Uganda, (Kampala: Refugee Law Project, Feb. 2004), 4; and Lucy Hovil and Zachary Lomo, *Working Paper 15: Whose Justice? Perceptions of Uganda's Amnesty Act 2000: The Potential for Conflict Resolution and Long-Term Reconciliation* (Kampala: Refugee Law Project, Feb. 2005), 6.

⁴⁴ See Joanna R. Quinn, "Sophisticated Discourse: Why and how the Acholi of Northern Uganda are talking about international criminal law," presented at the Canadian Political Science Association Annual Meeting, 3 June 2006.

⁴⁵ James Otto quoted in UN Office for the Coordination of Humanitarian Affairs, "Uganda: War-ravaged north rues Museveni win," (1 March 2006); available from www.irinnews.org/print.asp?ReportID=51960; accessed 10 March 2006.

⁴⁶ Levi Ochieng, "Peace Initiatives and Challenges in Karamojong Conflicts," in *Living Beyond Conflict: For Peace and Tolerance* (Kampala: ABETO, 2000), 153.

⁴⁷ Bruno Novelli, *Aspects of Karimojong Ethnosociology* (Verona: Museum Combonianum no.44, 1988), 83.

⁴⁸ *Ibid.*

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.⁴⁹ 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

⁴⁹ The Republic of Uganda, *The Report of the Commission of Inquiry into Violations of Human Rights*, 3-4.

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.⁵⁰

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.”⁵¹ 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.’⁵²

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.⁵³ Individually, each of

⁵⁰ The Republic of Uganda, *Amnesty Act 2000*, Part II, 3(1).

⁵¹ Hovil and Lomo, *Working Paper 15: Whose Justice?* 6.

⁵² *Ibid.*, 18.

⁵³ At the time of writing, none of these warrants has been executed, and these men remain at large.

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.”⁵⁴

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 stated⁵⁵ 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

In May of 2006, representatives of the LRA, including Kony, approached the Government of South Sudan to facilitate talks between the LRA and the Government of Uganda. Peace talks began in Juba, South Sudan, in August of that year. The deadline for peace, however, which was initially slated for 12 September 2006, has gradually slipped away. After months of back and forth with the Government of Uganda, Kony and the LRA have finally withdrawn from the peace talks. The LRA has now demanded a change of venue and new facilitators; the Government of

⁵⁴ Chief Prosecutor Louis Moreno-Ocampo, “The Investigation in Northern Uganda,” International Criminal Court, 14 October 2005 ; available from http://www.icc-cpi.int/library/organs/otp/Uganda_PPpresentation.pdf; accessed 22 February 2006.

⁵⁵ Ruhakana Rugunda, “Keynote Address,” Stakeholders Consultative Meeting on the Juba Peace Talks: A search for durable peace in Northern Uganda, Kampala, Uganda, 30 Aug. 2006.

Uganda has publicly stated that it has no intention of acquiescing to what it sees as insignificant demands.⁵⁶

The peace talks are the latest in a series of negotiations and other efforts that have been undertaken in Uganda to bring about the cessation of hostilities. Among these are the Pece Stadium Accord (1988) the Addis Ababa Accord (1990) and earlier peace talks (1994).⁵⁷ One key figure in this process has been Betty Bigombe, formerly Minister of State for Pacification of Northern Uganda and, later, Minister of State in the Office of the Prime Minister, Resident in Uganda in Museveni's Government. However, this time, the talks have gone ahead without Bigombe at the head, to some a signal of Museveni's final willingness, finally, to negotiate. The current process has garnered the support of a "Group of Seven Plus One" states which have banded together to support the peace talks morally and financially.⁵⁸

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

⁵⁶ Ruhakana Rugunda, "Key Note Address by the Guest of Honour: Possibility of Reconciliation in Uganda & the Official Opening of the Consultative Conference," Civil Society Consultative Conference on National Reconciliation, Munyonyo, Uganda, 12 Feb. 2007.

⁵⁷ *Listen to the People: Peace and Reconciliation in Northern Uganda* (Kampala: HURIPPEC, 03, May 2004), 92-93.

⁵⁸ The Group of Seven Plus One is composed of Belgium, Germany, Ireland, the Netherlands, Norway, Sweden and the United Kingdom and Canada. The Government of Canada pledged \$1.5 million to the process in December, 2006, and an additional \$2.5 million in February, 2007. Government of Canada, "Canada calls on Ugandan parties to maintain commitment to Juba peace talks and announces \$2.5 million toward peace efforts," available from <http://www.reliefweb.int/rw/RWB.NSF/db900SID/RMOI-6Y22R5?OpenDocument>; accessed 20 Feb. 2007.

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.⁵⁹

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.

⁵⁹ Godfrey Kimono, "Kabwegyere calls for reconciliation," *The New Vision*, 16 Feb. 2007.

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.⁶⁰ In the 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.⁶¹

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.⁶²

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

⁶⁰ Human Rights Watch reported “ballot stuffing, multiple voting, and potentially hundreds of thousands of people denied the right to vote in the elections.” See Human Rights Watch, “Uganda: Election Irregularities Require Judicial Probe,” 3 Mar. 2006; available from <http://hrw.org/english/docs/2006/03/01/uganda12745.htm>; accessed 20 Feb. 2007.

⁶¹ Figures from “Uganda Decides 2006,” *The Monitor* (Kampala) 27 Feb. 2006.

⁶² *Northern Uganda: Understanding and Solving the Conflict*, 10.

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.”⁶³ Social cohesion is the “key intervening variable between social capital and violent conflict.”⁶⁴ It is, effectively, reconciliation.⁶⁵ 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

⁶³ Lisa F. Berkman and Ichiro Kawachi, eds., *Social Epidemiology* (New York: Oxford University Press, 2000), 175.

⁶⁴ Nat J. Colletta and Michelle L. Cullen, *Violent Conflict and the Transformation of Social Capital* (Washington: The World Bank, 2000), 13. See also Amartya Sen, *Development as Freedom* (New York: Knopf, 1999).

⁶⁵ Joanna R. Quinn, “What of Reconciliation? Traditional mechanisms of acknowledgement in Uganda,” a paper presented at the conference, “Reconciliation” held by the Nationalism and Ethnic Conflict Research Group, The University of Western Ontario, London, ON: 15 May, 2005.

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.”⁶⁶ 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”⁶⁷ 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

⁶⁶ Godfrey Kimono, “Kabwegyere calls for reconciliation,” *The New Vision*, 16 Feb. 2007.

⁶⁷ Rome Statute of the International Criminal Court, Art. 12.1.

bringing about an end to the war,⁶⁸ 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.⁶⁹

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,

⁶⁸ Citizens for Global Solutions, "In Uncharted Waters: Seeking Justice Before the Atrocities Have Stopped," (June 2004), 29; available from <http://www.globalpolicy.org/intljustice/icc/2004/2004water.pdf>; accessed 20 Feb. 2007.

⁶⁹ Father Carlos Rodriguez, "Public Statement," in Adam Branch, "International Justice, Local Injustice: The International Criminal Court in Northern Uganda," *Dissent Magazine*, Summer 2004.

NGOs and concerned politicians.”⁷⁰ And it is clear that there is wide-spread support for the amnesty as a tool to end the war in the north,⁷¹ 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 1980,⁷² and still held under the NRM to “remember people of all kinds who died during the war”⁷³—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

⁷⁰ Tim Allen, *War and Justice in Northern Uganda: An Assessment of the International Criminal Court’s Intervention* (London: Crisis States Research Centre, Development Studies Institute, London School of Economics, Feb. 2005), 31.

⁷¹ See Hovil and Lomo, *Whose Justice? Uganda’s Amnesty Act 2000*, RLP Working Paper #15.

⁷² Charles Onyango-Obbo “17 Years Ago, Museveni did it to Binaisa,” *The Monitor* (Kampala), accessed 22 December 2002; available from www.charlesobbo.com/article68.html; internet.

⁷³ Joshua Kato, “Honour our living heroes,” *New Vision* (Kampala), 9 June 2001.

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”⁷⁴—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

⁷⁴ Godfrey Kimono, “Kabwegyere calls for reconciliation,” *The New Vision*, 16 Feb. 2007.

interdependent institutions, sensitive to the needs of key groups and mindful of the need for complementarity between transitional justice mechanisms.”⁷⁵

Indeed, complementarity, not sequentialism, is required.

⁷⁵ United Nations Secretary-General, *Report of the Secretary General*, 1.