

Making Gender-Just Remedy and Reparations Possible: Upholding the Rights of Women and Girls in Uganda's Greater North



KEY MESSAGES:

- Remedy and reparations must account for multidimensional violence against women and girls through restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
- Equality and non-discrimination are overarching principles that should guide:
 - outreach processes
 - registration and documentation processes
 - data forms, collection and analysis
 - remedy and reparation scope and distribution

This briefing paper presents findings from [***Making Gender-Just Remedy and Reparation Possible: Upholding the Rights of Women and Girls in the Greater North of Uganda***](#).¹ The research objective was to develop a typology of and framework for accountability and reparation measures to help inform gender-just remedy and reparation processes and outcomes for women and girls in the Greater North of Uganda who suffered serious crimes and harms during the conflict between the Government of Uganda (GoU) and the Lord's Resistance Army (LRA). The study intends to enable national reparation that is informed at the local level, particularly by women and girls. The study also seeks to inspire other grassroots groups of victims to come forward on these issues, so that the voices at the table are truly inclusive of those from the war-affected populations of the Greater North.

Methods

Five studies were designed and carried out between January 2010 and September 2012.² In these studies, both females and males were interviewed, and gender and generational analyses were used to give insight into crimes, harms and priorities for remedy and reparation processes and outcomes. The final report – ***Making Gender-Just Remedy and Reparation Possible*** – and this briefing note present overall findings on what is necessary for gender-just remedy and reparation for women and girls in the Greater North of Uganda.

We carried out semi-structured, in-depth interviews with 646 victims of serious crimes and their families, select traditional leaders, and community and civil society actors working directly with victims from the Acholi, Lango, Teso and West Nile sub-regions of the Greater North of Uganda. These interviews were conducted in local languages.

¹ Published 2013 by the Feinstein International Center, Tufts University and ISIS-Wicce (Kampala), available at <http://fic.tufts.edu/assets/Gender-Just-Remedy-and-Reparation-3-27-13-final.pdf>

² Published studies from this work include *Modern Challenges to Traditional Justice: The Struggle to Deliver Remedy and Reparation in War-Affected Lango, Uganda* <http://fic.tufts.edu/publication-item/modern-challenges-to-traditional-justice/>; *They Were Just Thrown Away and Now the World is Spoiled: Mass Killing and Cultural Rites in Barlonyo, Uganda* <http://fic.tufts.edu/publication-item/they-were-just-thrown-away-and-now-the-world-is-spoiled/>



Background

The concepts of **gender-just, gender-equitable and gender-sensitive repair for serious violations and crimes** have only begun to be explored in theory and practice. This briefing note and the report from which it is drawn contribute to identifying the factors that constitute gender-just remedy and reparation for Uganda, with **insights applicable internationally**.

In 2008, Uganda established the International Crimes Division of the High Court to prosecute crimes of genocide, crimes against humanity, war crimes, and other serious crimes including terrorism and human trafficking. Also in 2008, Uganda's Justice, Law and Order Sector (JLOS) established a high-level Transitional Justice Working Group to implement the provisions of the Juba Peace Agreement. The Transitional Justice Working Group is made up of five thematic sub-committees: (1) war crimes prosecutions; (2) truth and reconciliation; (3) traditional justice; (4) finance; and (5) integrated systems. Issues of remedy and reparation cut across these thematic areas. The Transitional Justice Working Group is currently drafting national policy on transitional justice that will provide principles and guidance for its advancement. A number of important reports and actions by national and international NGOs and Ugandan civil society have also shaped the remedy and reparation debate.

What are victims' rights under law and how can their rights and needs be effectively addressed?

There are a number of key provisions for victims' rights to remedy and reparation within international and regional treaties that Uganda has committed to, as well as those within Uganda's constitution and domestic laws.³

The Agreement on Accountability and Reconciliation and its Annexure is one of the five agreements (collectively known as the Juba Protocols) reached in negotiations between the GoU and LRA. The Agreement/Annexure makes clear that women's and girls' experiences of the GoU-LRA conflict should be emphasised within any inquiry and in the resulting reparation policy and programme.

Key aspects of gender-just remedy and reparation processes

³ For a complete listing of international and Ugandan legal instruments with bearing on the right to remedy and reparation, please see <http://www.ohchr.org/Documents/Press/WebStories/DustHasNotYetSettled.pdf>

A gender-just approach gives insight into the processes of remedy and reparation. **How victims are treated and whether the processes empower or disempower them** will, in the end, help determine the success of remedy, reparation and the overall transitional justice process.

(1) Equality and Non-Discrimination Principles

Equality and non-discrimination should be among the overarching principles that guide the work of:

- outreach processes
- registration processes
- data collection forms, data collection and data analysis
- forms, scope and distribution of remedy and reparation measures

(2) Outreach

Outreach is a two-way process that involves engaging with victims and their representatives and seeks to build trust and confidence among victims, particularly victims of sexual and gender-based violence who are highly stigmatised. Such processes should uphold the dignity of victims, and support their social recognition and acceptance. The observers, legislators, intermediaries and staff of transitional justice efforts should be encouraged to see women and girls who have been subjected to violence as resisters, as persons whose lives go beyond the victimisation they were forced to experience.

Outreach should be facilitated with the help of civil society organisations that are known and trusted by victims. Outreach should be responsive to women's high levels of illiteracy, poverty, poor access to transportation and deep social fractures (gender, ethnic, language, class or sub-regional differences). Outreach processes should consider the complexities of the survivor's relations with her community and with others who may see her primarily as a victim and thus diminish her agency within her family and community. Also, care should be taken to avoid or minimize perceptions of 'favouritism' of survivors by national and international reparation service providers.

(3) Registration and Documentation Processes

Gender-just procedures and processes should include gender-sensitive registration and legal and documentary processes. These include data collection tools and approaches that reflect multiple local languages and low literacy rates. Given that many woman- and child-headed



households will not possess paperwork for property or land, or medical or legal documentation to support their claims, there should be simplified procedures to allow lower thresholds of evidence. Local intermediaries are preferred, Survivors and relatives of survivors can be trained to translate difficult concepts, values and cultural practices of the survivors' communities.

All male and female staff should be trained to ensure gender-sensitive and gender-just approaches in their interactions with victims and their families.

Provisions should be made to offset women's and girls' difficulties in traveling to and accessing officials tasked to document and process reparation claims.

(4) Working with Victims of Sexual Violence

Due to the severe stigmas attached to sexual violence in Uganda, there is a strong likelihood that female and male survivors will be take longer to come forward to access reparation. Flexible time frames need to be put into place. Requiring victims of sexual violence to come forward under the 'label' of sexual violence may deter many from speaking up. It is preferable to welcome survivors of sexual violence under the umbrella of other forms of injury or violence.

Nurses and medical personnel associated with reparation programmes (including those referred through hospitals, private clinics and NGOs) should be trained to detect the physical and psychosomatic presentations of patients who may have been sexually abused, so that they can discretely provide the necessary care to which the victim is entitled. They should be linked with civil society organisations (CSOs) that provide victim support and outreach on remedy and reparation for referral.

Children born of rape represent an extremely delicate and important group in gender-just reparation. Reparation processes should enable their care providers to come forward on their behalf to claim reparation, with complete confidence that neither they nor the children's identities will be disclosed. At the same time, as part of reparation efforts, educational tools about the types of situations children experienced during the war should be readily available in the schools in northern Uganda. This will help reduce stigma and create greater awareness and acceptance of the war-affected children.

(5) Indivisibility of Rights

Gender-just reparation should move beyond a near-

exclusive focus on violations, abuses and harm built on civil and political rights to incorporate economic, social and cultural rights. It should also seek to address structural violence, and pre-existing inequality and discrimination.

(6) Victims as Full Participants in the Design, Implementation, Monitoring and Evaluation of Reparation Programmes

Participation of women and girl victims and civil society organisations in the transitional justice process is essential and has reparatory value. Gender-just reparation should have administrative structures that enable the participation of CSOs and victim-led groups in the design, implementation, monitoring and evaluation of reparation programmes.

What forms can reparation take, and how can they be gender-just?

Our study looks specifically at the different forms of reparation – **restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition** – and highlights key areas for realising gender-just reparation for women and girls. The main findings include:

The Right to Restitution

Definition: Restitution should seek as much as possible to restore victims to their original state prior to the violations. It includes, as appropriate, 'restoration of liberty; enjoyment of human rights, identity, family life and citizenship; return to one's place of residence; restoration of employment; and return of property'.⁴

Because gender-just reparation is based on equality and non-discrimination, restitution efforts should be transformative and link with all other forms of reparation to raise women's and girls' status and equality. To do this, reparation processes must be familiar with the structural discrimination and barriers to women's and girls' equality that underlie most cultures and structures in the Greater North of Uganda.

The right to return to one's residence is violated for many women whose husbands were killed or disappeared and who have been pressured off or had their land stolen by in-laws, neighbours and others.⁵ Gender-just restitution

⁴ A/RES/60/147, Article 9, para. 19.

⁵ See also Isis-WICCE, *Women's Experiences of Armed Conflict in*



should strengthen traditional and formal means to enable women – who, by law, have a claim to land and housing – to uphold their rights. Consider reforming customary laws of land ownership and access to accommodate women who are not traditionally married.

Thousands of girls and young women returned from LRA enslavement and forced marriage with children born of sexual violence. Gender-just restitution should **support healthy family ties** and should provide health and educational support for these children. The mothers and grandmothers raising these children are extremely concerned about their future because of discrimination and stigma, as well as the struggle to provide for basic needs including education and health care.

The Right to Compensation

Definition: Compensation should be given for any economically-assessable damage in a manner that is appropriate and proportional to the violations, which can include physical, mental, material, opportunistic and moral harms and costs incurred in addressing the resulting harms.⁶

Gender-just compensation processes should enable women and girls' to claim benefits and compensation in a way that is responsive to local languages and low levels of literacy and requires few, if any, legal documents on the part of the claimant.

Gender-just compensation requires awareness of the structural inequalities that pre-date the conflict and were often exacerbated during the conflict, in order to enable women and girls to assume roles as equal members of their families and communities.

Women and girls interviewed in our study prioritised cash payments, vouchers, pensions and other monetary benefits as their preferred form of compensation. They also prioritized educational support for themselves and their children or grandchildren born of sexual violence.

However, the women interviewed feared that accepting compensation would close the door to demands for truth-telling processes. Thus, compensation processes should be part of a larger transitional justice process including acknowledgement, truth-telling, investigation, documentation and other appropriate forms of satisfaction.

Uganda, Gulu District 1986–1999.

⁶ A/RES/60/147, Article 9, para. 20.

Payment modalities for compensation should be easily accessible and simple to use for women in rural areas.

The Right to Rehabilitation

Definition: Rehabilitation encompasses medical and psychological care and access to legal and social services.⁷

The case for individual and collective reparation for victims of serious crimes who suffered physical injury and mental and emotional distress is large in scale, compelling and urgent.⁸ Our more recent research in Acholi and Lango for the Secure Livelihoods Research Consortium (SLRC)⁹ finds that 5 percent of the total population reported being significantly impaired or incapacitated by war-related physical, psychological and emotional injuries, and are in urgent need of treatment.¹⁰

Gender-just medical rehabilitation programmes should have a gendered understanding of harms suffered and necessary treatment and recovery in order to enable the full treatment and recovery of female victims, including survivors of sexual violence, those with gynaecological injuries, and children born due to sexual violence and enslavement. For some types of injuries, the rates of injury, ability to access treatment, and costs are significantly different between females and males, especially for victims of sexual violence. Gender also has important bearing on the nature and consequences of war trauma, including presentation of psychiatric disorders.¹¹

Given the large scale of medical and mental health needs of female and male victims of serious crimes, collective forms of medical and psychosocial rehabilitation should be considered.

The Right to Satisfaction

Definition: Satisfaction is broadly understood to include measures that help cease violations; verification and full public disclosure of the facts (while ensuring disclosure

⁷ A/RES/60/147, Article 9, para. 21.

⁸ See, for example, Isis-WICCE, Women's Experiences of Armed Conflict in Uganda, Gulu District 1986–1999. See also Kinyanda et al. (2010). 'War Related Sexual Violence and Its Medical and Psychological Consequences as Seen in Kitgum, Northern Uganda: A Cross Sectional Study.' *BMC International Health and Human Rights*, 10:28.

⁹ <http://www.securelivelihoods.org/>

¹⁰ See Mazurana et al. (2014) Surveying livelihoods, service delivery and governance: Baseline evidence from Uganda. Available at:

http://www.securelivelihoods.org/publications_details.aspx?ResourceID=295

¹¹ Isis-WICCE, Medical Interventional Study.



does not harm victims or witnesses); the search for and identification of those disappeared, abducted and killed; proper reburial; official declarations, apologies and sanctions against those liable for the violations; and tributes to the victims, including victims of conflict-related sexual violence.¹²

The right to satisfaction was the most highly prioritised reparation right named by women and girl victims and their families that we interviewed.

Women's first priority for all forms of reparation was documentation, investigation and disclosure of the extent and nature of the conflict and the serious crimes committed during the conflict. They wanted official apologies and declarations that acknowledged that they and their families had suffered serious crimes and harms at hands of parties to the conflict and that the GoU had either committed or failed to protect them from those crimes and harms. This included making clear which persons or parties were responsible for the crimes and harms, and holding them accountable.

The immense scale of abduction and disappearance of men, women, boys and girls is a defining feature of the two-decade long conflict between the GoU and LRA. Our SLRC research finds that 13 percent of households in Acholi and Lango had a member forcibly taken by parties to the conflict and never returned, totaling 63,826 to 99,180 people disappeared and never returned.¹³

The vast majority (82 percent) of the disappeared from Acholi and Lango who have not returned are male, though a significant minority (18 percent) are female. 48 percent of those taken and never returned were children under 18 at the time of disappearance. Many of the families of the disappeared are now headed by women, who reported significant resulting impoverishment of the household. Enforced disappearance has dire social, economic, legal, administrative, emotional, psychological and cultural consequences for the families left behind that should be taken into consideration.

Proper treatment of the dead, according to local custom, is an explicitly articulated right to satisfaction that is critical to helping families and communities progress in

the aftermath of serious crimes. The improper burial of people who were killed violently is causing mental and physical health problems to a significant number of the survivors we interviewed at massacre sites.¹⁴ A responsible (re)burial programme should be complemented by processes of discussion with the victims and community leadership, resources to assist with necessary rituals, and the development of long-term emotional and livelihood support and psychosocial resources to assist the living.

The Right to Guarantees of Non-Repitition

Definition: Guarantees of non-repetition include civilian control of armed security forces; application of international standards of due process; independence of the judiciary; upholding of protections for protected persons under international law; human rights and humanitarian law training for relevant sectors and adherence to these laws, and a gender-just interpretation of these laws within codes of conduct; and reform of laws that contribute to violations of international humanitarian and human rights law, including an approach that promotes women's rights and equality.¹⁵

The GoU should seek to enact, implement and support a witness protection law. State personnel who interact with witnesses should be sensitised, particularly for work with witnesses who have experienced sexual and gender-based violence. The state should provide counselling and mental health services for witnesses who become distressed after giving information.

The vast majority of victims of serious crimes currently have no access to remedy or reparation for the crimes they have suffered. A primary reason is the Amnesty Act, which as it has been implemented in a blanket form blocks key remedy and reparation rights for victims. The GoU, JLOS and the Parliament of Uganda should intensify efforts to ensure, at least, that victims' surviving rights to remedy and reparation are fully respected and enforced.

Currently, traditional justice mechanisms are unable to provide remedy or reparation for victims of serious crimes resulting from the GoU-LRA conflict, as envisioned, in part, within the Agreement on Accountability and

¹² A/RES/60/147, Article 9, para. 22.

¹³ See 'The impact of serious crimes during the war on households today in Northern Uganda' briefing paper at http://www.securelivelihoods.org/resources_download.aspx?resourceid=298&documentid=324

¹⁴ See for example *They Were Just Thrown Away and Now the World is Spoiled: Mass Killing and Cultural Rites in Barlonyo, Uganda* <http://fic.tufts.edu/publication-item/they-were-just-thrown-away-and-now-the-world-is-spoiled/>

¹⁵ A/RES/60/147, Article 9, para. 23.



Reconciliation. Any attempt to bolster such systems should be based on a thorough assessment of what they have done to date and what they are actually capable of doing. These efforts should be mindful of the frequent failure of these systems to treat women and girls with equality and non-discrimination.¹⁶

Conclusion and implications

It is necessary and possible to offer gender-just remedy and reparations processes to address the rights of victims and their families who experienced serious crimes due to the GoU-LRA conflict. The right to such processes is guaranteed under Ugandan and international law.

To date, few programmes have targeted victims of serious crimes. A national transitional policy has been drafted, and more recently, the Ugandan parliament unanimously adopted a resolution calling on the GoU to adopt a number of measures targeting the conflict recovery of women and children.¹⁷ The GoU must now clarify the concrete steps it will take to ensure that gender-just remedy, reparation, and recovery measures are properly planned and implemented according to national and international law and agreements.

Further resources:

Report: Making Gender-Just Remedy and Reparation Possible: Upholding the Rights of Women and Girls in the Greater North of Uganda
<http://fic.tufts.edu/assets/Gender-Just-Remedy-and-Reparation-3-27-13-final.pdf>

Briefing Paper: Recovery in Northern Uganda: How are people surviving post-conflict?
http://www.securelivelihoods.org/publications_details.aspx?resourceid=297

Briefing Paper: The war-wounded and recovery in Northern Uganda
http://www.securelivelihoods.org/publications_details.aspx?resourceid=299

Briefing Paper: The impact of serious crimes during the

war on households today in Northern Uganda
http://www.securelivelihoods.org/publications_details.aspx?ResourceID=298

Report: Modern Challenges to Traditional Justice: The Struggle to Deliver Remedy and Reparation in War-Affected Lango, Uganda
<http://fic.tufts.edu/publication-item/modern-challenges-to-traditional-justice/>

Report: They Were Just Thrown Away and Now the World is Spoiled: Mass Killing and Cultural Rites in Barlonyo, Uganda
<http://fic.tufts.edu/publication-item/they-were-just-thrown-away-and-now-the-world-is-spoiled/>

For further information please contact Dyan Mazurana, PhD (dyan.mazurana@tufts.edu) or Teddy Atim (teddy.atim@tufts.edu) at the Feinstein International Center: <http://fic.tufts.edu>

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¹⁶ See, for example, *Modern Challenges to Traditional Justice: The Struggle to Deliver Remedy and Reparation in War-Affected Lango, Uganda* <http://fic.tufts.edu/publication-item/modern-challenges-to-traditional-justice/>

¹⁷ See <http://justiceandreconciliation.com/2014/04/applauding-parliament-for-adopting-a-resolution-on-reparations-for-war-victims/>