

Refugee Law Project Working Paper No. 17

# PEACE FIRST, JUSTICE LATER:

TRADITIONAL JUSTICE IN NORTHERN UGANDA



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The Refugee Law Project (RLP) was established in November 1999 with the aim of protecting and promoting the rights of forced migrants in Uganda. The RLP operates as an autonomous project within the Faculty of Law of Makerere University, and focuses on three main areas: legal assistance, training, and research and advocacy. The Refugee Law Project works towards ensuring that asylum seekers and refugees are, as specified under national and international law, treated with the fairness and consideration due fellow human beings.

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## **REPORT SUMMARY**

**The following report seeks to engage in the current debate on issues of post-conflict reconstruction and appropriate mechanisms of justice within northern Uganda. It begins by outlining both the goals of any reconstruction phase, as well as defining the two words, peace and justice. It then argues that there is a clear order in which they should happen: peace needs to be secured before justice can be decided upon and carried out. This sequencing explains, in part, the apparent contradictions that emerged both between different individuals, and within the same interview: the separating out of restorative and retributive aspects of justice is seen to be false.**

**It therefore considers the current and potential role of traditional, or localised, mechanisms of justice within the conflict zone and in any future period of transition. While findings indicate that many individuals still recognise the relevance of such mechanisms, they are currently seen to have future rather than current value: there was consensus that many of the values and processes underpinning traditional mechanisms have been displaced along with the people of the conflict-affected area. That said, many are of the opinion that they should play a significant role in any post-conflict phase.**

**The report is based on field research conducted in October and November 2004, and March 2005, predominantly in the northern districts of Gulu, Kitgum and Pader. A total of 109 interviews were conducted with a wide spectrum of individuals, including local government officials, religious and cultural leaders and, most importantly, civilians currently living in the IDP camps.**

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**GLOSSARY OF ABBREVIATIONS**

CBR:	Centre for Basic Research
CIVHR:	Commission of Inquiry Into Violations of Human Rights
GoU:	Government of Uganda
ICC:	International Criminal Court
ICCPR:	International Covenant for Civil and Political Rights
ICTR:	International Criminal Tribunal for Rwanda
ICTY:	International Criminal Tribunal for the former Yugoslavia
IDP:	Internally Displaced Person
LC:	Local Council
LRA:	Lord's Resistance Army
MIA:	Ministry of Internal Affairs
NGO:	Non-Governmental Organisation
NRM:	National Resistance Movement
NUPI:	Northern Uganda Peace Initiative
UPDF:	Uganda People's Defence Force
WFP:	World Food Program

## 1 INTRODUCTION

The conflict in the north of Uganda between the Lord's Resistance Army (LRA) and the Government of Uganda (GoU) has raged for almost two decades. While the conflict clearly has roots in the political mishandling of power,<sup>1</sup> the consequences of the war have generated untold suffering for the people in the north and have further underscored notions of marginalisation. In its wake, more than 1.8 million people are living in camps for Internally Displaced People (IDP), a figure which represents more than 80% of the population of the region.<sup>2</sup> The government's counter-insurgency strategy of creating 'protected villages' has forced entire communities to flee their homes and livelihoods, reassembling in disjointed, overcrowded camps where they are largely dependent on external assistance. Far from being protected, they continue to be attacked by the rebels on a regular basis.<sup>3</sup>

Children have become particular victims in this war. An estimated 30,000 children have been abducted and forced to become combatants,<sup>4</sup> while thousands of other children, colloquially referred to as "night commuters," seek shelter in town centres every night in an attempt to find safety.<sup>5</sup> Indeed, the 'visibility' of abductees has, at times, masked the reality of an entire generation that has known nothing but war, and a war that is brutal in the extreme. Child-soldiers are often forced to commit the most heinous of acts, and often against their own families. As a result, the social infrastructure of the north has been almost completely destroyed.

In response to numerous failed military attempts at resolving the conflict – with disastrous consequences for civilians – the government, under pressure from civil society, enacted an Amnesty Act in 2000, which allows rebels to receive amnesty if they voluntarily come out

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<sup>1</sup> For an analysis on the root causes of the conflict, see Zachary Lomo and Lucy Hovil, *Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda*, Refugee Law Project Working Paper No. 11, February 2004.

<sup>2</sup> World Vision, *Pawns of Politics: Children, Conflict and Peace in Northern Uganda* (Kampala: World Vision, 2004), 4.

<sup>3</sup> Médecins Sans Frontières. *Life in Northern Uganda: all Shades of Grief and Fear*. MSF 2004.

<sup>4</sup> The UN Office for the Coordination of Humanitarian Affairs estimates that 20,000 children have been abducted, yet others put this number as high as 30,000 or higher. As Allen points out, "the scale of abduction is a matter of speculation, because there has been no systematic monitoring by UNICEF since 2001." See "Uganda: Waiting for elusive peace in the war-ravaged north," IRIN, 9 June 2005 [article on-line]; available from [http://www.irinnews.org/report.asp?ReportID=47568&SelectRegion=East\\_Africa](http://www.irinnews.org/report.asp?ReportID=47568&SelectRegion=East_Africa); accessed 14 June 2005; and 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, February 2005), iii.

<sup>5</sup> Again, such numbers are hard to quantify. OCHA/IRIN estimated in 2003 that the number of night commuters was approximately 25,000. "When the sun sets, we start to worry...": *An Account of life in Northern Uganda*, OCHA/IRIN, November 2003, 8. By May 2005, the estimates of the number of night commuters had risen to 40,000 in the three districts of Gulu, Kitgum, and Pader. See UN OCHA, Note for the file, Minutes of the Contact Group Meeting, Kampala, 11 May 2005.

of the bush and renounce rebellion.<sup>6</sup> Seen primarily as a tool for ending the war, it has allowed a significant number of combatants to escape from the rebels and, in theory, return to their communities.

It must be noted that this conception of amnesty is very different than amnesties that have been implemented in other situations of transitional justice. The amnesty granted in Chile, for example, was granted to military personnel *after* the conflict was finished, and in *blanket* form, to keep them from being prosecuted in the trials that would come after. The amnesty granted in South Africa as part of the Truth and Reconciliation Commission process was granted on an *ad hoc* basis in exchange for testimony. The amnesty in Uganda has been declared *before* the end of the conflict. While people in Uganda appear to perceive of the amnesty as having been very much a tool to end the war, there is less clarity over the consequences it might have afterward.

At the same time, the International Criminal Court (ICC) was asked by President Museveni in December 2003 to investigate the actions of the Lord's Resistance Army in northern Uganda. The ICC has now determined that there is enough evidence to begin an investigation. What this means, of course, is that those found guilty of crimes, including crimes against humanity and war crimes, all of which have almost certainly been committed in the long-running conflict, will be sentenced and imprisoned according to the penalties set out in the Rome Statute, the legislation upon which the ICC is based.

As a result, there appears to be a contradiction between the Amnesty Act, seen by many as an alternative to punishment, and the investigations and subsequent punishment by the ICC. Indeed, several delegations of Lango, Acholi, Iteso and Madi community leaders have prevailed upon the ICC to reconsider or at least to carefully consider its actions in light of the fact that the conflict is still ongoing and the ICC has no special powers of arrest. In other words, people want the amnesty to take precedence at the moment, even though the granting of amnesty to senior members of the LRA is not necessarily a final measure in the minds of many; certain individuals could still face prosecution by the ICC. It also raises the question as to just how far down the chain of command such prosecutions will reach – at what “rank” or number of crimes against humanity or war crimes committed will the prosecutors cap their investigations? Yet another question is the perceived adequacy of any punishment that the ICC can offer, since internationally-conceived prison conditions are vastly different than what prisoners could expect in Uganda. Numerous additional logistical and legal questions surround the whole viability of the process. Ultimately, however, the people living in the war-affected region will have to live with the decisions that are being made.

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<sup>6</sup> For more information on the Amnesty Act and its implementation, see Lucy Hovil and Zachary Lomo, *Whose Justice? Uganda's Amnesty Act 2000: The potential for peace and long-term reconciliation*, Refugee Law Project Working Paper No. 15, February 2005.

More recently, attempts at negotiations between the rebels and the GoU have provided some hope of a resolution. But, given the obvious lack of commitment by both parties, not least of all the government, it is by no means a foregone conclusion that an end to the conflict is imminent. Furthermore, the apparent decrease in support for the LRA from the Government of Sudan was recently brought into question, generating a further obstacle to a cessation of hostilities.<sup>7</sup>

All of this, of course, raises serious questions about what can be done to address the living conditions of the IDPs, the impact of the activities of the LRA over the past two decades of conflict, the crimes committed by child soldiers while under the control of the LRA, and the response and involvement in the conflict by the government itself. Various calls for justice, peace, and reconciliation are being heard, and it is increasingly clear that strong measures will have to be put in place in order to adequately and fully address the demands of each.

Still, it is also difficult to sustain and foster debate on such issues when the same terms are used by different players to signify blatantly different things. The words 'justice' and 'peace' are both used to denote such disparate notions as the actual resolution of conflict, or bringing the war to an end; building a lasting peace; reintegrating rebel soldiers and child abductees; amnesty; reconstruction of the physical property damaged in the conflict; compensation; and repaired relationships. Thus, while the debate surrounding justice and peace appears to be seen as being of the utmost importance, defining exactly what this means remains unclear. This, in turn, has served both to polarise the discussion, and to cause a disproportionate desire for outcomes that may or may not be sustainable – both in the peace process, and in people's everyday lives.

In light of this ongoing debate, the following report seeks to explore some of the issues relating to the interface between justice and peace. In particular, it examines the scope for the possible use of traditional mechanisms of justice in relation to the efforts aimed at achieving sustainable peace. Indeed, many of the lessons drawn from the potential for resolution of the conflict in Northern Uganda might also prove useful in a national process of peace, justice and reconciliation which might be undertaken in the rest of the country.

It takes as its framework the rubric which frames the current debate in northern Uganda about what should be done. Two main questions animate the debate at this point: First, which institutions are best suited to dealing with the people who have committed crimes in the on-going conflict between the LRA and the GoU over the past twenty years? Is it, as the international community suggests, the International Criminal Court? Or is it the customary mechanisms which have traditionally been used by the Acholi people to resolve conflicts? And, second, which should come first: justice or peace?

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<sup>7</sup> International Crisis Group, *Building a Comprehensive Peace Strategy for Northern Uganda*, Africa Briefing No. 27, 23 June 2005.

This report does not pretend to have any definite answers to this highly complex situation, but hopes to explicate the various meanings of some of the salient words being used. Most importantly, it hopes to document and to clarify what some people on the ground appear to be saying. Although any attempt to ‘speak for the victims,’ is nearly impossible in a situation of ongoing conflict, our respondents emphasised that while the role of traditional mechanisms of justice has been diminished to some extent in the current context of the war, a wide variety of individuals still see these mechanisms to have some currency.

## **1.1 Methodology**

The primary source of material for the report is field-based interviews conducted in October and November 2004, and March 2005. In total, 109 individuals were interviewed. The majority of interviews took place in the northern districts of Gulu, Kitgum and Pader, with additional interviews in Kampala with key stakeholders. In the north, a wide variety of individuals were interviewed, including local government officials, religious and cultural leaders and, most importantly, civilians currently living in the IDP camps. The approach throughout was qualitative, utilising interview maps that loosely defined the structure of each interview, but left sufficient flexibility for interviewees to raise issues pertinent to them and in the order in which they thought appropriate. As will be seen below, the sequence in which questions related to peace and justice are raised is a vital determinant of the kind of responses that are elicited. While the material does not represent an inclusive sample of the numerous different voices and opinions that currently exist in the arena of the war, it gives indicators to some of the complexities that surround issues of justice and peace. Furthermore, the geographical focus of the research – namely, the northern districts of Gulu, Kitgum and Pader – means that the opinions of those living in the Teso sub-region as well as Adjumani district, who have also been directly affected by the war, have not been taken into account. Other than the limitations of the study itself, this is partly explained by the fact that the paper looks specifically at the use of traditional mechanisms of justice within Acholi society.

The report begins, in Section 2, by addressing just what a process of transitional justice seeks to do. Section 3 tackles the subject of peace and justice, by defining each term and situating them within the context of Uganda’s need for both cessation of war and for adequate means of dealing with what has happened in the post-conflict period. Section 4 focuses on the need to properly understand the order in which the development and use of such post-conflict mechanisms must take place. Section 5 considers traditional mechanisms, and how they have been and continue to be used in Uganda, and discusses perceptions of the use of these institutions. Section 6 looks at the requirements of international law and assesses whether the kinds of customary mechanisms discussed throughout the paper are capable of meeting the requirements laid out in the International Covenant on Civil and Political Rights (ICCPR) and the Rome Statute, which effectively established and continues to govern the International Criminal Court.

## **2 THE GOALS OF POST-CONFLICT RECONSTRUCTION**

Assuming that the conflict will one day end, it is vital that there is a clear understanding of what the ideals are in any post-conflict reconstruction phase. It is all too easy, in the aftermath of such a brutal conflict, for issues to be brushed aside as people desperately seek to put their lives back together. However, numerous situations of conflict around the world have shown this to be both short-sighted and dangerous. Even within Uganda, little has been done to specifically acknowledge the impact and role of different actors in the numerous rebellions that have taken place since independence. Indeed, the main approach by the government in responding to cessation of conflict in different areas of the country has been to simply absorb a number of former combatants into the Uganda People's Defence Force (UPDF) and otherwise not engage in any further processes of post-conflict acknowledgement. The absence of any form of accountability for actions committed by rebels and government forces alike has belittled the amnesty process, which has remained a mechanism for 'buying' rebels out of the bush rather than as a tool for generating acknowledgement and, therefore, long-term reconciliation.<sup>8</sup>

### **2.1 The need to remember**

By contrast, ultimately, the processes of transitional justice and social reconstruction are aiming broadly at goals which include the repair of that society. Talking about and admitting details about what has happened, whether through testimony presented at trials or through less formal testimony gathered through truth commissions or traditional elders' circles, is extremely important in the rebuilding of society. Through this kind of acknowledgement, people may begin to come to terms with the past, begin to deal with the often troubling emotions which arise, and begin to actively remember that past, through things like memorial schools or hospitals and the incorporation of history into school curriculum. This is an important part of the individual and societal healing process.<sup>9</sup>

There is no question that these kinds of admissions will be difficult, both for victims to hear and admit, and for perpetrators to confess, in large part because it will come as new and shocking information to many of those who hear it. Yet a process of acknowledgement must be undertaken so that affected communities can begin to move forward after conflict. Talking about the past is a key ingredient in reckoning with the past, both on an individual level and in the context of societal recovery. Without actively acknowledging the past, it is impossible that the following stages will be attained.<sup>10</sup>

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<sup>8</sup> See Hovil and Lomo, *Whose Justice? Uganda's Amnesty Act 2000*, Refugee Law Project Working Paper No. 15, February 2005, in particular the analysis of reintegration in West Nile, where the amnesty package has come to dominate the discussion on reintegration.

<sup>9</sup> Distilled from Joanna Quinn, "The Politics of Acknowledgement," (Ph.D. diss., McMaster University, 2003) 9-47.

<sup>10</sup> Acknowledgement forms a necessary but not sufficient condition of social rebuilding. Effectively, this kind of acknowledgement must take place, although by itself it is not capable of bringing about reconciliation or

## 2.2 The requirements of forgiveness and trust

The next step in the social rebuilding process is forgiveness. While this is clearly a difficult concept to quantify, it is defined by the Canadian Oxford Dictionary as to “stop feeling angry or resentful towards [someone]” and is a critical step in the process of reckoning with the past. It is widely agreed that forgiveness leads to “renewed relationships built on trust”<sup>11</sup> and ultimately to reconciliation.<sup>12</sup> If allowed to function properly, the process of acknowledgement has the potential to generate varying degrees of forgiveness: reconciliation, which leads to trust, and eventually social trust. This, in turn, forms the bedrock on which democracy can function.

Trust exists specifically within the context of social relationships, which are often destroyed during prolonged conflict. Without trust, people inevitably stop accepting the word of their superiors, stop interacting with each other, and stop participating in the activities of civil society.<sup>13</sup> People living with low levels of trust are suspicious and have doubts about whether they ought to engage in activities with their neighbours and the wider community.<sup>14</sup> Basic attitudes like trust and participation are difficult or impossible because prolonged and violent conflict destroys them. The development of trust within society, then, is of great importance in sustaining the kinds of institutions that are able to grow and thrive.

Trust is also important because it allows people within war-affected communities to engage in activities outside of their primary social groups – a participation that is essential in building and sustaining 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...”<sup>15</sup> Effectively, this social cohesion is the “reconciliation” that people are hoping to achieve.

In the context of northern Uganda, it is clear that social trust has broken down at a profound level. Civilians have been living in an environment in which they trust neither ‘side’ in the conflict, and have difficulty trusting the people who live in their communities, let alone outsiders. While strong distrust of the LRA is to be expected – despite numerous

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democracy. It is very closely tied to other “ingredients” including the building of social trust, social capital, and social cohesion.

<sup>11</sup> Geiko Müller-Fahrenholz, *The Art of Forgiveness: Theological Reflections on Healing and Reconciliation*, (Geneva: WCC Publications, 1997), 36.

<sup>12</sup> Robert C. Roberts, “Forgiveness,” *American Philosophical Quarterly* 32 (1995), 299.

<sup>13</sup> Gabriel Almond and Sidney Verba, *The Civic Culture* (Princeton: Princeton University Press, 1963), Chapter 10; *Uganda: Post-Conflict Reconstruction* (Washington: World Bank 2000), 9.

<sup>14</sup> Kerstin Danert, Richard C. Carter, Ronnie Rwamwanja, Jamil Ssebalu, Graham Carr and David Kane, “The Private Sector in Rural Water and Sanitation Services in Uganda: Understanding the Context and Developing Support Strategies,” *Journal of International Development* 15 (2003), 1111.

<sup>15</sup> Lisa F. Berkman and Ichiro Kawachi, eds., *Social Epidemiology* (New York: Oxford University Press, 2000), 175.

accusations of collaboration by external commentators to the contrary – civilians also cannot fully trust the UPDF, not least because any military action taken by the UPDF against the LRA generally involves killing their abducted children. Furthermore, the assumed presence of collaborators working for the LRA has generated an atmosphere of suspicion, further underscored by members of the UPDF who treat anyone outside of an IDP camp or major town as a potential collaborator. The consequent ambiguity of allegiances has further deepened the crisis within the war-affected communities. Indeed, even the use of the word ‘community’ in this context has to be seriously called into question.

### **3 PEACE AND JUSTICE**

Having laid out in broad terms some of the fundamental goals of a possible post-conflict reconstruction phase, it is important to return to the fact that the war in the north has not yet ended. While planning for such activities is important, it is also vital that there is a clear understanding of what role different mechanisms should play while the conflict is still ongoing, and what should be left until the conflict has ended. In other words, it is important to have clarity over the interaction between mechanisms of justice and the requirements of peace, in the current context of the war in northern Uganda. To this aim, there is a need to define how the two words, justice and peace, are being used in this context. The following section, therefore, sets out to define these two terms.

#### **3.1 Peace: the absence of war**

The word ‘peace’ is used in many different ways, not least in the context of discussions surrounding northern Uganda. The Oxford Dictionary defines “peace” as “freedom from or the ending of war.” In the most basic sense, peace can be said to have been attained when the conflict has ended and when people are free from its grip. Furthermore, there is an implicit assumption that, when war is over, people ought to be able to resume their former lives. In the case of northern Ugandan, however, this state of affairs will be much more difficult to realise, for a number of important reasons.

First, any agreement between the LRA and GoU to end the conflict will not automatically ensure that peace is achieved. Those directly affected by the conflict may still not experience the freedom inherent in the definition above, particularly if they are unable to return to their homes and villages. Living in what have been perceived as temporary facilities has drastically altered the way of life of those who live within the camps. In many cases, the means of sustainability, such as farming and jobs, ended with displacement, and inside the camps, people are forced to rely on the delivery of relief supplies to meet basic subsistence needs.<sup>16</sup> If the IDPs do return home, it is doubtful that they will find the

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<sup>16</sup> “Uganda's northern rebellion,” *BBC News* [article on-line]; available from <http://news.bbc.co.uk/1/hi/world/africa/3514473.stm>; accessed 9 June 2005. See also Sverker Finnstrom, *Living With Bad Surroundings: War and Existential Uncertainty in Acholiland in Northern Uganda* (Uppsala: Acta Universitatis Upsaliensis, Uppsala Studies in Cultural Anthropology No. 35, 2003), 204-213.

familiarity of their pre-war lives. Indeed, it is quite possible that, at least initially, conditions at home will be worse.

Second, recent findings suggest that a substantial number of IDPs may not ever be able to return to their homes.<sup>17</sup> In this case, enforced ‘communities’ that have sprung up within the IDP camps may be formalised, and the camps themselves will become permanent. If this happens, the forcible dislocation of people from their traditional homes and *gemeinschaft*<sup>18</sup> communities could further hamper the process of attaining freedom from war. Furthermore, the situation of permanent displacement is likely to have a direct impact on the economic sustainability of the region: as urban centres grow and the needs of a population unable to grow its own food or provide for other basic requirements multiply, the need for skilled workers is likely to increase. Meanwhile, the majority of those living in the camps at present possess none of the knowledge required, and thus it is likely, at least for this generation, that those living in IDP camps will be reliant on additional assistance from others.

Third, past experience has shown that even during ceasefire periods, raids on villages often continue in the interim period. While it is not at all clear how any kind of armistice would proceed, what is apparent is that different factions within the LRA could well respond differently to the conditions that might be imposed during any potential cessation of hostilities.<sup>19</sup> These kinds of irregular insecurity incidents, too, would compound the perception that freedom from war does not exist.

Fourth, the presence of former combatants within communities is also cause for concern within many of these communities. While the immediate families of those who have been abducted by the LRA are relieved when the abductees return alive, evidence suggests that others within those same communities are uncomfortable with their presence. This discomfort reveals two significant issues: First, it is often felt that many of these former abductees have committed crimes against their own people, and must make right their wrongdoings. Second, given that many children have been abducted at a young age and have had no formal education or socialisation by their communities of origin, they may experience difficulty in fitting back into their communities and in rejoining society.

At the root of all of this, however, is the cloud of uncertainty that hangs over the region as a whole. Numerous friends and family members have been displaced, or killed, or their

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<sup>17</sup> “UNDMT Technical Group Status Report: Preparatory Planning for Displaced Persons” as cited in Chris Dolan, “Understanding War and Its Continuation: The Case of Northern Uganda,” (Ph.D. diss., University of London, 2005), 167.

<sup>18</sup> Ferdinand Tönnies divided societies into two distinct groups: “*Gemeinschaft* society is one in which people live together in primary groups, tightly wound around the institutions of kin, community and church... In *gesellschaft* society, by contrast, people frequently leave their primary groups for association with people who may be strangers. One chooses one’s occupation, place of residence, and marriage partner. Ties to primary kin, place of origin, and church are loose and may be cut off entirely.” See Rhoda E. Howard, *Human Rights and the Search for Community* (Boulder: Westview, 1995), 25-26.

<sup>19</sup> Stephanie Nolen, “Face to Face with the Lord’s Resistance,” *Globe and Mail* (Toronto), 27 April 2005.

whereabouts remain unknown. At the same time, the relentless duration of the war makes it feel as if it could continue indefinitely. This has had and continues to have a tremendously unsettling effect on those who remain and, as a result, the freedom to participate in the everyday activities of life, ultimately, is not there. So the guarantee of *peace* is, perhaps, at this point, and with past experience as a robust indicator, less meaningful than it ought to be – as regards the current potential for obtaining peace. There remains, however, room for optimism that peace might one day be realised, as circumstances change.

### **3.2 Justice: dealing with the past**

“Justice”, accordingly, is defined by the Oxford Dictionary as “the administration of law in a fair and reasonable way.” Clearly, this is a very different notion from the idea of peace, discussed above: justice, at its most basic level, is simply about dealing fairly with the wrongdoings of the past. A growing number of academics and practitioners has begun to focus on issues of justice in precisely the kind of situation in which Uganda finds itself. “Transitional justice,” as it is called, 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.<sup>20</sup>

Justice is often classified into two very distinct ideological perspectives: retributive and restorative.<sup>21</sup> Retributive justice is most commonly associated with accountability and punishment, and focuses on forcing the perpetrator of a crime to “pay” for the actions he took in the commission of that crime. Restorative justice, conversely, is a process of active participation in which the wider community deliberates over past crimes, giving centre stage to both victim and perpetrator in a process which seeks to bestow dignity and empowerment upon the victim, with special emphasis placed upon contextual factors.<sup>22</sup>

It is generally accepted that Western societies have based their justice systems on the principles of retribution, outlined above. In the Western model, this dealing with past crimes in the wake of wars or dictatorial regimes is mostly centred around the notion of retribution or punishment for crimes committed, although a small number of Western societies has begun to use restorative mechanisms as well as (or instead of) retribution. Often, this takes the form of trials, involving 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 their modern guise, these trials may be sponsored by the national government according to the laws of the country in question, or

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<sup>20</sup> Joanna R. Quinn, “The Role of Informal Mechanisms in Transitional Justice,” a paper prepared for presentation on the panel, “Transitional Justice: Local and International Dimensions,” at the Canadian Political Science Association Annual Meeting, 2 June 2005.

<sup>21</sup> See, for example, Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998).

<sup>22</sup> Adapted from Sinclair Dinnen, “Restorative Justice in Papua New Guinea,” *International Journal of the Sociology of Law* 25 (1997), 245-262.

held internationally. Such international trials began with the post-war Nuremberg trials and Tokyo tribunal, both of which were enacted by the victorious Western Allied powers following the Second World War. These form the basis of international precedent and law for the tribunals that were appointed in the 1990s: the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), and the recent establishment of the International Criminal Court (ICC).

By contrast, traditional African models of justice approach the perpetrators of crimes very differently. Indeed, the African model is similar to the manner in which other traditional societies, including aboriginal communities in North America, Australia and elsewhere, approach justice. A wrongdoing is viewed as “a misbehaviour which requires teaching or an illness which requires healing.”<sup>23</sup> African traditional beliefs reiterate these values:

If you have harmed my child, it is because something has gone wrong with you to such an extent that you could do that. That which has gone wrong for you is now harming my life. It means I cannot be the kind of human being I want to be because you are no longer human. So it is in my interest – my interest – as the victim, to get you and assist you to get your humanity back so that I can become human again... This is a fundamentally different way of looking at a community and looking at what to do with evil. African traditional religion has no such thing as Satan. The biggest evil is to live in complete disregard of others.<sup>24</sup>

Therefore, “the community exercises responsibility of being part and parcel of the clan because whatever happens to the individual happens to the clan, and whatever happens to the clan happens to the individual.”<sup>25</sup> Restorative justice sees greater value in educating and rehabilitating an offender than in simply incarcerating him and forgetting about him.

Consequently, the traditional African sense of justice is not simply about isolating the retributive aspects of justice, as it is in the Western model. Instead, retribution is but one part of an overarching process that also encompasses rehabilitation, reconciliation, compensation, and restoration. In other words, it is not just that retribution equals justice. Indeed, justice itself is one component of restoring perpetrators back into harmony with the values of a community.

### **3.2.1 What is punishment?**

This dilemma relates directly to understandings of what constitutes ‘punishment’ in this context. While western understandings generally equate justice with punishment, it is clear that punishment has traditionally been interpreted much more widely within the Acholi

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<sup>23</sup> Rupert Ross, *Returning to the Teachings* (Toronto: Penguin, 1996), 5.

<sup>24</sup> Antjie Krog interview by Philip Coulter, in *Walk to Freedom (Ideas)*, Canadian Broadcasting Corporation, 2004).

<sup>25</sup> Joseph Ndrua, “A Christian Study of the African Concept of Authority and the Administration of Justice among the Lugbari of North Western Uganda,” (M.A. diss., Catholic Higher Institute of Eastern Africa, 1988), 42.

community. Traditionally, shame and compensation (*culo kwor* in the Acholi language translates to “repaying a life”) were vital ingredients to any satisfactory form of punishment. As an elderly man said, “the government makes you take your punishment by being in jail, but for our cultural practice, the punishment is paying the compensation which directly benefits the bereaved and creates a sense of reconciliation.”<sup>26</sup> Or, in the words of an elderly woman, “The charge is the punishment they give. For them, what they call punishment is the feeling that comes inside, the feeling that you are guilty. But the purpose is to bring the wrongdoer and the victims together.”<sup>27</sup> Furthermore, this punishment is something that is felt by the whole clan, not just by the individual who committed the crime. As a retired teacher explained, “In Acholi, compensation for the loss of life is not by killing the culprit, but by paying animals. That is why *all* members of a clan, a family, are very much concerned with the behaviour of the members of the family. The problem of one member is a problem of the whole family.”<sup>28</sup>

What is more complex, however, is discerning what would be acceptable levels and forms of punishment within the current context of the war. Again, there seems to be divided opinion on the matter. Some informants said that Kony should be granted amnesty and made to live within the communities in order for him to live with the consequences of what he has done. As one cultural leader said,

Kony being convicted and taking him to the Hague, that is taking him to heaven. His cell will have air conditioning, a TV, he will be eating chicken, beef. He will be given a chance to work in the jail and earn something. I’d rather he be here and see what he has done. Let him talk to the person he has ordered the lips to be cut off. Let him talk and hear. The Acholi mechanisms must be allowed to run their course first, so that peace can be brought about. Only if at that stage there is a complainant who wants to take Kony to court should legal action be taken.<sup>29</sup>

This sentiment was echoed by a woman whose daughter had been abducted and raped, and who now has a baby. “I want to see them back in the community to restore the Acholi, so they can realise what they have done... If we kill them, they won’t realise what they have done, they will die immediately.”<sup>30</sup>

Some saw compensation as a viable form of punishment.<sup>31</sup> Yet under the current circumstances, many feel that traditional compensation cannot take place as per tradition, since people have been cut off from their traditional means and separated from their

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<sup>26</sup> Interview with elderly man, Labuje IDP camp, Kitgum, 12 March 2005, interview in Acholi (no translation).

<sup>27</sup> Interview with elderly woman, Gulu town, 4 March 2005.

<sup>28</sup> Interview with retired teacher, Gulu town, 4 March 2005.

<sup>29</sup> Interview with cultural leader, Gulu town, 6 March 2005.

<sup>30</sup> Interview with mother of abducted girl, Gulu town, 6 March 2005.

<sup>31</sup> In Western forms of justice, compensation is a product of civil law, while the objective of criminal law is deterrence and punishment.

possessions. “The compensation now might not be fair especially in this conflict, because if one killed ten people, it would be difficult to compensate them all.”<sup>32</sup>

In fact, in many cases compensation, as traditionally understood, is seen to be impossible given that in many instances people do not know the exact identities of both the victims and the perpetrators. As an IDP woman said, “Those who come from the bush, normally they don’t do any compensation, even if they have killed. Because the people who they have killed, they may not even know who and where from. So it is difficult, they may not even know where to take the compensation.”<sup>33</sup>

This has led others to call for the government to step in. Many suggest that compensation should be the government’s responsibility, since people in the north are simply unable to comply with traditional compensation measures. “The government makes you take your punishment by being in jail, but for our cultural practice, the punishment is paying the compensation which directly benefits the bereaved and create a sense of reconciliation.”<sup>34</sup> Within this paradigm, such requirements could, in fact, be fulfilled through the performance of community service by commanders, in order to help restore society, and for people to see their contrition first-hand.

Others see compensation or “paying back” as impossible. As an NGO worker said, “those who were directly affected, those whose lips were cut, those whose ears were cut, those whose arms were cut, those whose sons and daughters were abducted, those whose property was destroyed, they might not be able to accept these people back.”<sup>35</sup> Indeed, for some, retribution is the only answer. As one woman said, “The only advice that I can give on the issue of Kony... is that they should catch him and bring him to the public and they should kill him in a traditional way. People should shoot at him with arrows and stab at him with spears.”<sup>36</sup> Or in the words of another woman, “we should first of all talk to them nicely so that the amnesty works, so that all of them come out... to deceive them so they come out. Then when they have all come out, they should all be taken to the ICC.”<sup>37</sup>

There was also consensus that any justice that takes place will be meaningless if government is not also held accountable for its actions. As one young man said,

I think that ICC should be for leaders in government who commit atrocities against their people. Like if people are killed in Luwero by government forces, the leader then should be taken to a criminal court to account for such atrocities. Like the time of Amin, when he could just get his people and kill like my father who was a driver, but because he was an

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<sup>32</sup> Interview with young man, Labuje IDP camp, Kitgum, 12 March 2005, interview in Acholi (no translation).

<sup>33</sup> Interview with woman, Palenga IDP camp, Gulu, 9 March 2005, interview in Acholi (through translation).

<sup>34</sup> Interview with elderly man, Labuje IDP camp, Kitgum, 12 March 2005, interview in Acholi (no translation).

<sup>35</sup> Interview with NGO worker, Gulu town, 6 March 2005.

<sup>36</sup> Interview with woman, Amida IDP camp, Kitgum, 13 March 2005, interview in Acholi (through translation).

<sup>37</sup> Interview with woman, Unyama IDP camp, Gulu, 10 March 2005, interview in Acholi (through translation).

Acholi he was picked and killed. Even my uncle was killed – he was a big person in the military. Such leaders should account for their rule.<sup>38</sup>

The same informant then went on to say that he thought “*Mato oput* should be with government and not with the community, because they were fighting the government.”<sup>39</sup>

Thus, justice and peace are very different aspects of the process of conflict resolution and subsequent social rebuilding. Along with justice (in any form) and peace, in any successful transition from war, other institutions and processes will also have to be drawn upon. These might include compensating people for their losses during the conflict; truth-telling exercises; attempts at social memory and remembering through commemoration or other means; amnesty; or even official apologies from the perpetrator groups. These institutions, however, must also be bolstered by reforms in other sectors, and might include economic reforms, rebuilding of damaged schools, hospitals, roads and houses, as well as police reform.

### 3.2.2 Holding all sides to account

It is apparent that within the context of northern Uganda, any justice that takes place needs to take into account all parties involved in the conflict, and not just the LRA. Interviews show the extent to which there is a widespread assumption that any prosecutions that might take place in the future will hold the GoU accountable in the same way as the LRA. It is vital to understand this level of expectation: given that two significant root causes of the conflict appear to be the lack of accountability and impunity following previous regime changes, and deep-rooted regional divisions within the country,<sup>40</sup> any process that is seen to take into account the actions of only one side is likely to generate serious future grievances. Indeed, the need to address the root causes of the conflict lies behind support among civil society for a negotiated settlement. As one person living in an IDP camp said, “The beginning and continuation of the war should not be blamed only on the rebels. If there is any prosecution, the government should also be prosecuted. If it had been a matter of ending this war only for the sake of the rebels it would have ended a long time ago.”<sup>41</sup> Another man living in an IDP camp in Pader referred back to when the government allegedly killed 30 people in Acholi Bur IDP camp, making the point that they need to be held accountable, too.<sup>42</sup>

Furthermore, just as justice needs to take into account all parties in the conflict, so does reconciliation. As one young man said, “*Mato oput* would require that Museveni and Kony participate in the ceremony.”<sup>43</sup>

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<sup>38</sup> Interview with young man, Labuje IDP camp, Kitgum, 12 March 2005, interview in Acholi (no translation).

<sup>39</sup> Interview with young man, Labuje IDP camp, Kitgum, 12 March 2005, interview in Acholi (no translation).

<sup>40</sup> See Hovil and Lomo, *Behind the Violence*, RLP Working Paper No. 11, February 2004.

<sup>41</sup> Interview with man, Amida IDP camp, Kitgum, 13 March 2005, interview in Acholi (through translation).

<sup>42</sup> Interview with man, Acholi Bur IDP camp, Pader, 15 March 2005, interview in Acholi (through translation).

<sup>43</sup> Interview with young man, Labuje IDP camp, Kitgum, 12 March 2005, interview in Acholi (no translation).

Individuals in the Acholi sub-region have found interesting ways to balance the demands of restoration and retribution. Many of the responses relating to what should happen in a post-conflict environment differed according to the extent to which individuals placed the conflict within a wider national and historical context. For instance, there was a widespread recognition that amnesty should be contingent upon voluntarily stopping rebellion (as opposed to being caught). Some people seem to equate amnesty with restorative justice despite the fact that they are, in fact, fundamentally different, in that amnesty does not satisfy the principles of restoration, above.

Many also felt that the government needs to be consistent in its promises. This reflects an understanding of the amnesty that appears to go deeper than straightforward pragmatism. As a woman in an IDP camp in Pader said, “If they now punish those who started the rebellion and a new rebellion starts and they set such a law [amnesty] again, nobody will believe. And again, if they have now started to take some of them to court, those in the bush will not come out and this thing will just continue like that.”<sup>44</sup> As another put it, “Kony is not the first to benefit from [amnesty] in history. There have been many people who have done wrong and who have received amnesty.”<sup>45</sup> Indeed, several interviewees referred to the fact that Museveni had, himself, effectively been granted amnesty:

This was not the first war fought in Uganda... Even the current government ruling the country also came to power – no accusation was made against them. They did lots of atrocities during their time in the bush. So in the same way, we think these people have to be forgiven... Otherwise it is not proper for this [ICC] law to come into force for the LRA only.<sup>46</sup>

However, such an emphasis on restorative justice also presents a dilemma for many of those interviewed: they want revenge for what has taken place, but acknowledge that it is not an end in itself. As an elderly man said, “if people are allowed to revenge the same way, we have not stopped the war.”<sup>47</sup>

#### **4 SEQUENCING**

Having defined the different roles and functions of peace and justice, it is important to think through how they might be applied within the context of northern Uganda. This is no simple task, and one of the difficulties in attempting to undertake all of these vastly different activities, is how to accomplish them in any successful manner. Indeed, those engaged in work broadly surrounding the topic of transitions are now beginning to grapple with the

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<sup>44</sup> Interview with woman, Acholi Bur IDP camp, Pader, 15 March 2005, interview in Acholi (through translation).

<sup>45</sup> Interview with NGO worker, Gulu town, 4 March 2005.

<sup>46</sup> Interview with man, Acholi Bur IDP camp, Pader, 15 March 2005, interview in Acholi (through translation).

<sup>47</sup> Interview with elderly man, Palenga IDP camp, Gulu, 9 March 2005.

order in which these activities must occur. Many of the ideas that are emerging have direct application to the current debate about how to proceed in generating an end to the conflict and rebuilding society in northern Uganda, which is already complicated by an on-going amnesty process as well as investigations by the International Criminal Court.

#### 4.1 Peace first, justice later

Among the lessons learned from the analysis of social reconstruction in countries emerging from war, is that peace must be secured before any other activity or process may be successfully undertaken. There is growing emphasis on the fact that *after* the cessation of conflict, as “countries recover from the trauma and wounds of the past, they have... 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.”<sup>48</sup> Indeed, many of those interviewed on the subject of the war in northern Uganda appear to recognise this.

Although there was discrepancy about different mechanisms of justice that might take place in the future, the interviewees demonstrated a surprising consensus on the order in which things should take place: the war has to end first, and only then can decisions be made as to what mechanisms of justice should be implemented. For instance, when asked what should happen to Kony, some informants immediately said that he should be killed. However, when further questioned about how the war should be brought to an end, the majority referred to the amnesty, and some then changed their mind and said that Kony should be granted amnesty if he comes out voluntarily, while others said that he should then be prosecuted. A young woman in Kitgum articulated a widely held view:

The thing is, peace first. Justice will come later. He has violated so many people’s rights, but people have weighed a lot and found that peace should be paramount. And if he hears that he is wanted, he will not come out and that is no peace. I think that what happens to Kony after he has come out and peace achieved will be another thing.<sup>49</sup>

Likewise a man living in an IDP camp in Pader articulated his viewpoint: “Kony should be arrested and taken to court because of the many crimes he has committed like killing, maiming and displacing. His crimes are too big for amnesty the Acholi way – that is beyond the Acholi records of crime... However, maybe if he comes out and apologises before people he can be forgiven.”<sup>50</sup>

The reason for this sequencing is simple: unless and until the conditions detailed above, wherein people’s security cannot be guaranteed, are changed, those people living in the midst of conflict have neither the time nor the inclination to focus on post-conflict reconstruction. As an elderly man said, “During the conflict, you go on with life. Most

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<sup>48</sup> Nelson Mandela, “Foreword,” in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, ed. Neil J. Kritz (Washington: United States Institute of Peace Press, 1995), xi.

<sup>49</sup> Interview with young woman, Kitgum town, 14 March 2005, interview in Acholi (no translation).

<sup>50</sup> Interview with man, Acholi Bur IDP camp, Pader, 15 March 2005, interview in Acholi (no translation).

families would lose people... The picking-up afterward, for a lot of us, that is life.”<sup>51</sup> Therefore, the process of ensuring peace must come prior to any of the other processes that subsequently ought to happen in order to assist any community in its transition from conflict to functioning society. Indeed, people not only need to know intellectually that peace has been declared in fact; they need to feel that peace emotionally as well.

It is important to bear in mind that few people believe that there is a military solution to the war, and those who do tend to believe that the ICC has special powers to arrest Kony. As one young man living in an IDP camp said, “ICC should arrest [senior commanders], because I understand that it has a very powerful military power from the USA. Those people can fight very well and they can arrest Kony.”<sup>52</sup> However, in the majority of cases people took a more realistic view, and emphasised that some form of negotiated settlement is likely to offer the best hope for ending the conflict. As a local government official in Gulu said: “At the moment, people just want to see that the war ends... People see that if the government tries to fight, civilians get killed.”<sup>53</sup>

Furthermore, many informants referred to the fact that justice takes time to happen, and that decisions about what should happen need to take place in a certain order. As a young man in an IDP camp said, “I think [Kony] should be given amnesty when he comes out so that he can tell us why he did all this... Then from what he will have said, if we find that it is not something worthy going to the bush and killing people, then he should be taken to court. But if we find that he had valid reasons, then he can be forgiven.”<sup>54</sup> A young man living in an IDP camp in Pader also articulated this viewpoint:

With the Acholi tradition, the person needs to be there physically for the reconciliation. Now we feel the court may be faster, for they have the resources, and then it would be very difficult for the elders to access that person. So we feel that if we are given some time for the traditional mechanism to take place, so that some healing can take place, because these traditions are important. Then if other things come later, that is ok. The elders should make the investigations and they should make recommendations to the government about which ones of these commanders should be prosecuted. They could say to the government, ‘this one has been so rude, you help us with this one.’<sup>55</sup>

Many people also referred to the issue of timing with regard to the intervention of the ICC. As a cultural leader said, “When we set the blanket amnesty, that was a way of saying, let’s have peace first...’ *Then* we say, everyone is home now, now these other processes could come in... Some people believe that if Kony doesn’t go to jail, no justice has been done. Other people believe that if the traditional mechanisms can help, let it prevail. In this peace

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<sup>51</sup> Interview with older Acholi man, Kampala, 20 November 2004.

<sup>52</sup> Interview with young man, camp leader, Labuje IDP camp, Kitgum, 12 March 2005, interview in Acholi (through translation).

<sup>53</sup> Interview with local government official, Gulu town, 3 March 2005.

<sup>54</sup> Interview with young man, Labuje IDP camp, Kitgum, 12 March 2005, interview in Acholi (no translation).

<sup>55</sup> Interview with young man, Acholi Bur IDP camp, Pader, 15 March 2005, interview in Acholi (through translation).

process, we should work together, but there should be a sequence, so that nothing jeopardises the peace process.”<sup>56</sup> Indeed, numerous interviewees criticised the intervention by the ICC on account of its timing. As a young man living in an IDP camp said, “The important thing is to let [the rebels] come out. That is when they should decide who should be taken to court. Those who deserve to be taken to court should be taken to court, and those who deserve amnesty should be given amnesty.”<sup>57</sup>

Although it is often not articulated, there is a definite distinction to be made about the relationship between Ugandan “justice” and the ICC. Allowing traditional mechanisms to run their course and then bringing in the ICC if required is a very different thing from granting amnesty to achieve peace and then bringing in the ICC, especially since there does not appear to be a consensus among people living in the war-affected region about what should be done once the conflict has ended. As discussed above, “amnesty” does not provide even a quasi-judicial solution – when granted amnesty, people are effectively *free*, and will not be made to face any kind of punishment, at least at the national level. (Of course, a retributive course could then be pursued by the ICC, which will, presumably, ignore the pardons granted under Uganda’s Amnesty Act.) Nor will they benefit from the restorative benefits that traditional mechanisms can offer, and their integration back into the community will suffer for it.

On the other hand, if the traditional mechanisms are used – even in modified form, to take into account the very un-traditional crimes that have been committed – those who are dealt with by them will go through a process which seeks to bring them back into the community. The potential uses of these customary mechanisms are dealt with in greater detail, below. It is important to note, however, that the amnesty and traditional mechanisms deal with the perpetrators of crimes in very different ways, especially since the amnesty was conceived primarily as a means of ending the conflict, and not, as it has been in other places, as a means of dispensing justice – or very clearly choosing not to. As articulated in the Introduction, above, questions surrounding the role of the ICC have clearly not been settled.

And so it is clear that the process and order in which justice takes place is of primary importance. This issue of sequencing – that is, resolving the conflict before beginning to deal with the perpetrators of crimes – in part, explains some of the current debate surrounding ideas of justice in northern Uganda. It also illuminates why field researchers are given different responses to the same question, depending on the context in which that question is posed.

#### **4.2 Uganda’s Truth Commission (1986-1994)**

The GoU has made the mistake of getting ahead of itself on other occasions, with ruinous result. Indeed, almost as soon as President Museveni came to power, he tried to tackle this

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<sup>56</sup> Interview with cultural leader, Gulu town, 6 March 2005.

<sup>57</sup> Interview with young man, Palenga IDP camp, Gulu, 9 March 2005.

kind of social rebuilding. Museveni appointed a truth commission in 1986 to look into the abuses that had been carried out under the regimes of Idi Amin, and Milton Obote during his second term in office, between 1962 and 1986, and to suggest ways of preventing the recurrence of these kinds of abuses.<sup>58</sup> It was called the Commission of Inquiry into Violations of Human Rights (CIVHR).

The very timing of the appointment of the CIVHR, however, was wrong: although the National Resistance Army had technically seized power in January 1986, for many months to follow, the country was far from secure.<sup>59</sup> Appointing the truth commission on 16 May 1986, a mere three months after Museveni took office, was in direct contravention of the principle of ensuring peace before contemplating any other processes of transition. The Commission was inaugurated one month later, on 13 June 1986.<sup>60</sup> As a result, the Commission faced a number of significant impediments throughout its difficult existence. Although it had been scheduled to complete its work within a couple of years, it did not actually finish until eight years later. Despite the best efforts of those who saw the work of the commissions through to its final conclusion, ultimately the commission faced political and practical limitations that would prove to be its un-doing.

The Commission was beleaguered by institutional constraints including lack of adequate funding and shortages of staff and office space. Similarly, the overall capacity of the Commission was extremely limited. The Commissioners faced significant opposition by those both within and outside of the very governments that had appointed them, which often translated into death threats and the disappearance of key evidence. Time itself proved to be an insurmountable difficulty, in that many people died before the process finally began, nearly 20 years after the start of the conflict. Additionally, a lack of political will and commitment to the mandate of the Commission severely limited its success.

Ultimately, the Commission's legacy is small.<sup>61</sup> The majority of Ugandans appear to be unaware of the Commission and its work, and those who do know of it are critical of its findings, which they see as inherently biased toward the National Resistance Movement (NRM). It seems that there has been little, if any, acknowledgement, either in influencing the outcome of the commission or in the subsequent rebuilding undertaken in its wake. In fact, the Commission is seen by many to have been a bureaucratic panacea that turned out to be almost completely unsuccessful for a variety of reasons, including those listed above. The current existence of a modest and still-growing civil society indicates that some

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<sup>58</sup> The Republic of Uganda, "Legal Notice No. 5 of 1986: The Commission of Inquiry Act," *The Report of the Commission of Inquiry into Violations of Human Rights* (Kampala: UPPC, 1994), 3-4.

<sup>59</sup> Yoweri Kaguta Museveni, *Sowing the Mustard Seed* (Kampala: Fountain Publishers, 1997), 171-176.

<sup>60</sup> Although the CIVHR was named and appointed in May, it was not until June that its work officially began. This is common for truth commissions, who must first design a mandate for themselves, find office space and furniture, and hire staff. For a more in-depth discussion, see Joanna R. Quinn and Mark Freeman, "Lessons Learned: Practical Lessons Gleaned from Inside the Truth Commissions of Guatemala and South Africa," *Human Rights Quarterly*, 25.4 (Nov. 2003) 1117-1149.

<sup>61</sup> For a more detailed discussion, see Quinn, "The Politics of Acknowledgement."

acknowledgement had taken place. But democracy is not firmly entrenched, and President Museveni shows no sign of allowing it to take hold. As a result, growth of civil society in the country remains stunted. It seems that the Commission was unable to affect real and lasting political stability, let alone foster social trust and social capital.

### **4.3 Lessons learned**

Any transitional process, therefore, must take into consideration the very real limitations imposed by the consequences of conflict on a society. The conflict in northern Uganda has been going on for the better part of two decades, and has taken a massive toll on society in northern Uganda. This, in turn, has had implications for the rest of the country. The cessation of that conflict must be complete before any other processes begin.

Having said that, it is also critical, even while the conflict is on-going, that society becomes engaged in debate about what Ugandan society will look like once the conflict does, in fact, end. Indeed, it will serve no-one's purposes to be faced with the end of the conflict and have no idea about how to proceed. There is also a specific need to generate national ownership of this process: to date, the war in the north has, to a large extent, been treated as a regional problem. To address the consequent feelings of marginalisation this has generated, it is vital for any future reconstruction process to be *national* in its reach and ownership. Furthermore, there are numerous other conflicts within the country that have had a similarly destructive impact on the fabric of society, and these need to also be taken into consideration. A number of conferences have been held in recent months to discuss these very issues. For example, the Centre for Basic Research (CBR) and the Institute for Historical Justice and Reconciliation (Salzburg) held a conference entitled, "Historical Memories of Cooperation, Conflict, and Reconciliation in Uganda," in Jinja, 8-9 July 2004. Another conference, called "Gulu: Reconciliation: The Way Forward," was jointly organised by Ministry of Internal Affairs (MIA), Cultural Leaders of the Acholi Sub-Region, Religious Leaders of the Acholi Sub-Region, and Northern Uganda Peace Initiative (NUPI), and held in Gulu, 9-10 December 2004. And the "Youth Partnership for Peace and Reconciliation Conference: Reconciliation: Rising up Against the Challenge" conference was organised by Northern Uganda Peace Initiative (NUPI) in Gulu, 14-16 March 2005.

The dialogue promoted by these gatherings is essential, as it informs the decisions that political leaders and negotiators will need to make as the transition from conflict to peace becomes more and more entrenched. The current mechanisms that are in place – in particular Uganda's Amnesty Act 2000 and the more recent involvement of the ICC – need to be taken into consideration, as they both interact with the ongoing conflict, and will have an inevitable impact on the acceptance and recognition of any post-conflict justice mechanisms. However, what remains of utmost importance is ensuring that the conflict is stopped. Only then will it be possible to begin to work towards satisfying other societal demands.

## 5 TRADITIONAL MECHANISMS

Having discussed various ideas about justice, some of which, implicitly, could be labelled ‘traditional’ while others are more ‘western’, it is important to better understand both the genesis and application of what are commonly referred to as ‘traditional’ mechanisms – although it could be argued that ‘localised’ or ‘customary’ are more appropriate descriptions.

Pre-Western societies around the world developed and used a variety of instruments to resolve problems and conflicts, including Ugandan societies; each of Uganda’s many ethnic communities traditionally used different forms of customary mechanisms to deal with conflict. And although in some instances these kinds of traditions have disappeared, subsumed by the Western model of retributive justice, in other places they are still an active part of community life.

Customary mechanisms were once widely used among the indigenous aboriginal populations of both Canada and the United States, and have begun to be used more often in the past few years. Healing circles<sup>62</sup> have been established, along with community courts,<sup>63</sup> as well as traditional elders’ courts<sup>64</sup> and tribal courts.<sup>65</sup> These kinds of traditional mechanisms are also found in other areas of the world, and include restorative youth sentencing<sup>66</sup> and village courts.<sup>67</sup>

Across the African continent, such traditional mechanisms are widely used. “Each community or society has its own set form of restitution... for various offences, both legal and moral.”<sup>68</sup> IDPs in Angola go through a ritual called *conselho*, traditional psychological healing based on “the general encouragement given to people to abandon the thoughts and memories of war and losses.”<sup>69</sup> Holistic purification and cleansing rituals, attended by the family and broader community, are used in welcoming ex-combatant child soldiers back

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<sup>62</sup> An excellent description of Hollow Water’s Community Holistic Healing Circle is found in Ross, *Returning to the Teachings*, 29-50.

<sup>63</sup> *Ibid.*, 223.

<sup>64</sup> The Attawapiskat traditional justice pilot project ran from 1991-1994, and the traditional court of justice has been sitting ever since. Bryan Phelan, “Provincial court barred from Attawapiskat,” *Wawatay News* Vol.21 #10 [article on-line] May 19, 1994; available from <http://www.wawatay.on.ca/index.php?module=pagesetter&func=viewpub&tid=1&pid=536>, accessed 30 April 2005.

<sup>65</sup> Philmer Bluehouse and James Zion, “The Navajo Justice and Peace Ceremony,” *The Mediation Quarterly* 10.4 (Summer 1993), 328.

<sup>66</sup> Teresa Olsen, Gabrielle M. Maxwell and Allison Morris, “Maori and Youth Justice in New Zealand,” in *Popular Justice and Community Regeneration*, ed. K. Hazlehurst (London: Praeger, 1995), 89-102.

<sup>67</sup> Sarah Garap, “The struggles of women and girls in Simbu Province,” *Development Bulletin* 50 (October 1999), 48.

<sup>68</sup> John S. Mbiti, *African religions and philosophy* (Kampala: East African Educational Publishers, 1969, 2002), 211.

<sup>69</sup> Carola Eyber and Alastair Ager, “Conselho: psychological healing in displaced communities in Angola,” *The Lancet* 360 (14 September 2002), 871.

into the community in Angola and Mozambique.<sup>70</sup> In Sierra Leone, “cooling the heart” is a widely-recognised way of dealing with the trauma of child ex-combatants upon their return to their home communities.<sup>71</sup> And in Rwanda, the use of *gacaca* courts has been adopted, re-vamped, formalised, and is now used to deal with crimes of genocide. *Gacaca* was traditionally used as a form of traditional dispute resolution mediated by chiefs and tribal elders in that country.<sup>72</sup>

Customary mechanisms, then, are based on traditional values and teachings, and in many instances look very similar to the kinds of mechanisms that would have existed in pre-Western times. In other instances, however, they are simply modelled on old institutions, with changes made to make them relevant to contemporary circumstances; in this way, they are “neo-traditional” institutions.<sup>73</sup> These mechanisms have also been formalised, in that their proceedings are regularised and carried out according to pre-arranged and codified rules. In Canada, for example, they are also officially recognised by the Government of Canada and the Royal Canadian Mounted Police,<sup>74</sup> as alternatives to Western models of administering justice. These mechanisms either provide a parallel model of justice, or sometimes they are used in conjunction with Western mechanisms. Although these mechanisms broadly fit within very different approaches to justice, whether retributive or restorative, and fulfil different roles within their respective societies, from cleansing and welcoming to prosecution and punishment, what they have in common is that they draw upon traditional customs and ideas in the administration of justice in modern times.

## 5.1 Application in Uganda

Within the rich diversity of ethnic traditions found in Uganda, many of these same kinds of customary mechanisms exist. Traditional acknowledgement customs and ceremonies are practiced by many of the 56 different ethnic groups across Uganda. Indeed, Article 129 of the 1995 Constitution allows Local Council (LC) Courts<sup>75</sup> to operate at the sub-county,

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<sup>70</sup> Alcinda Honwana, “Children of War: Understanding War and War Cleansing in Mozambique and Angola,” in *Civilians in War*, ed. Simon Chesterman (Boulder: Lynne Rienner, 2001), 1137-140, and Carolyn Nordstrom, *A Different Kind of War Story* (Philadelphia: University of Pennsylvania Press, 1997), 142-152.

<sup>71</sup> Rosalind Shaw, *Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone*, United States Institute of Peace, Special Report 130 (February 2005), 9

<sup>72</sup> See, for example, Peter E. Harrell, *Rwanda’s Gamble: Gacaca and a New Model of Transitional Justice* (New York: Writers Club Press, 2003).

<sup>73</sup> Stephen Brown, “Forging National Unity in Rwanda: Government Strategies and Grassroots Responses,” a paper presented at *Reconciliation*, a conference held by the Nationalism and Ethnic Conflict Research Centre at The University of Western Ontario, May 14-15, 2005.

<sup>74</sup> “Community Justice Forums,” *RCMP Aboriginal Policing*; [description on-line]; available from [http://www.rcmp-grc.gc.ca/ccaps/aborig\\_e.htm](http://www.rcmp-grc.gc.ca/ccaps/aborig_e.htm), accessed 30 April 2005.

<sup>75</sup> The LC Courts were formerly known as Resistance Council Courts and “were first introduced in Luweero in 1983 during the struggle for liberation. In 1987 they were legally recognised throughout the country.” John Mary Waliggo, “The Human Right to Peace for Every Person and Every Society,” a paper presented at Public Dialogue organised by Faculty of Arts, Makerere University in conjunction with Uganda Human Rights Commission and NORAD, Kampala, Uganda, 4 December 2003, author’s collection, 7.

parish and village levels.<sup>76</sup> Under the subsequent Children Statute 1996, these courts have the authority to mandate any number of things including reconciliation, compensation, restitution, and apology.<sup>77</sup>

Such ceremonies have been widely practiced in different areas of the country. For example, the Karamojong rely on the *akiriket* councils of elders to adjudicate disputes according to traditional custom,<sup>78</sup> which includes various forms of cultural teaching and ritual cleansing ceremonies.<sup>79</sup> *Kitewuliza*, a juridical process with a strong element of reconciliation, was traditionally used by the Baganda to bring about justice.<sup>80</sup> The Lugbara utilise a system of elder mediation in family, clan and inter-clan conflict.<sup>81</sup>

The Acholi carry out a ceremony called *mato oput* (drinking the bitter herb), and another called *nyouo tong gweno* (a welcome ceremony in which an egg is stepped on over an *opobo* twig). *Nyouo tong gweno* is used to welcome back anyone who has been away from his home for an extended period of time. Traditionally, the welcoming ceremony is thought to cleanse someone from whatever ills have attached themselves to the traveller and is not in itself a dispute settlement ceremony. For someone who returns home and who is a wrongdoer, the cleansing ceremony is a necessary precondition before the reconciliation ceremony. Moreover, *mato oput* is traditionally used only where a member of one clan has killed a member of another clan. With reference to the current conflict, it is widely thought that abductees need no more than the simple cleansing ceremony, while ex-combatants also need *mato oput* – although there are clear exceptions to this, as outlined below.

Overall, however, the ceremonies allow the Acholi to acknowledge that this person has been accepted back into the community, and that the community is pleased to have them back.

For the Acholi, for one to stay away from his home for a long time, that is never acceptable, that is always something bad, something associated with bitterness. So these words always are part of the ceremony for returnees. *Wa ojoli paco*, these are also words spoken at the ceremony. It means, “we welcome you home.” It is to say that, “the people have forgiven you everything, the Acholi people welcome you back and they now want you to take responsibilities in the community.” Immediately you are welcomed in the community, the community is beginning to extend its services and responsibilities to you. People will come and talk to you. Once a child is born in Acholi culture, that child becomes part and parcel of

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<sup>76</sup> “Uganda: Constitution, Government & Legislation,” [article on-line]; available from <http://jurist.law.pitt.edu/world/uganda.htm>, accessed 30 April 2005.

<sup>77</sup> Government of Uganda, *The Children’s Statute 1996*.

<sup>78</sup> Bruno Novelli, *Karimojong Traditional Religion* (Kampala: Comboni Missionaries, 1999), 169-172, 333-340.

<sup>79</sup> Interview with Peter Lokeris, Minister of State for Karamoja, 18 November 2004, Kampala.

<sup>80</sup> Waliggo, “The Human Right to Peace,” 7. Also, idem, “On Kitewuliza in Buganda, 3 May 2005” author’s collection, 1.

<sup>81</sup> Ndrua, “A Christian Study of the African Concept of Authority,” 42-56.

that particular family, and the clan, and then the community. So the whole community would also expect some responsibility from you.<sup>82</sup>

In the current conflict, both ceremonies are being used to welcome ex-combatant child soldiers home after they have been decommissioned.<sup>83</sup> And in 1985, *gomo tong* (the bending of spears), an inter-tribal reconciliation ceremony, was held to signify that “from that time there would be no war or fighting between Acholi and Madi, Kakwa, Lugbara or Alur of West Nile.”<sup>84</sup>

Certainly, and not surprisingly, the role played by traditional mechanisms of justice has changed. For instance, several informants acknowledged the fact that external influences, such as colonialism and now the country’s central government, have altered the way in which justice is administered. In addition, there was frequent reference to the fact that ‘the youth’ do not recognise or understand such mechanisms any longer, a complaint that is not uncommon in societies around the world. The introduction of other religions, and in particular Christianity, appears to have led many to reject traditional mechanisms – although a number of people referred to the level of compatibility between their religious beliefs and Acholi traditional mechanisms, and saw no contradiction.

As Finnstrom observes:

It is important to note that drinking the bitter root (*mato oput*) is not simply a tradition of some glorious past. In the midst of war this reconciliation ritual is conducted in Acholiland and clan feuds are settled there. Even though a murderer is sent to prison, a reconciliation ritual ought to be conducted... These practices, far from being dislocated in a past that no longer exists, have always continued to be situated socially. They are called upon and performed to address present concerns. Of course, like any culturally informed practice, with time they shift in meaning and appearance.<sup>85</sup>

Unfortunately, but perhaps inevitably, the use of these kinds of mechanisms has declined somewhat in recent years. Still, there remains a common understanding of the meanings and symbolism behind them, even where these mechanisms are no longer used at all, or are used only rarely. “The situation is complicated because of diversity of ethnicity but there is some commonality. The shedding of blood, for example, is a common element throughout all districts in Uganda; it cuts across all groups.”<sup>86</sup> Many different kinds of mechanisms and symbols can symbolise the restoration of peace. In different ethnic traditions, they might include the slaughter of animals, the exchange of dried coffee berries, intermarriage, blood relationships, eating and drinking together, the shaking of hands, and the exchange of

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<sup>82</sup> Interview with middle-aged professional man, Gulu town, 5 March 2005.

<sup>83</sup> For an excellent description of *mato oput* see Finnstrom, *Living With Bad Surroundings*, 297-299.

<sup>84</sup> *Ibid.*, 299.

<sup>85</sup> *Ibid.*, 296-299.

<sup>86</sup> Interview with Dixon Kamukama, Professor of Development Studies and History, Makerere University, Kampala, 15 November 2004.

gifts.<sup>87</sup> It is reported that the younger generation still understands and respects these traditional institutions:

Under Obote I, Obote II, that was the climax of leaving out those traditional things, because people had to find their own way to survive. Those who are there, some do remember, but many more who have gone to Kenya do remember more those traditional methods. My dad, in particular, has some memory of what happened with traditions, and my grandma also – she is in her 80s, I think. The new generation does not belong anywhere. They are neither new nor old. But everyone respects these traditions.<sup>88</sup>

There is, however, some evidence of their decline.<sup>89</sup> “The traditional values, cultural knowledge and social institutions of everyday life are threatened.”<sup>90</sup> And the social meanings of the ceremonies that are still practiced appear, in some cases, to be shifting<sup>91</sup> as people move farther away from their *gemeinschaft* communities. This is especially true in regions where large numbers of people have been forced out of their homes and into IDP camps.<sup>92</sup>

## 5.2 Application in northern Uganda

In the case of northern Uganda, it is also important to distinguish between cultural mechanisms that naturally change over time, and those that have been altered by the conflict. Indeed, in the majority of interviews, the war was seen as being the dominant factor in explaining the reduced use of traditional mechanisms amongst Acholi people. In particular, numerous informants referred to the issue of displacement as having created an environment in which carrying out traditional ceremonies had become impossible. For many, this was symbolised by the fact that people are no longer able to sit around a campfire in the evenings and talk, as it is too dangerous. Thus the oral tradition and all that is bound up in it has been subsumed beneath the constant threat of violence. In the words of one young man living in an IDP camp in Pader, “war is destroying our tradition. In the camps, the animals are not there – not even chickens, not even the eggs that the ones who come back from the bush have to step on. And we can no longer sit at night and discuss all these things. The army tells us to stay inside.”<sup>93</sup> Or in the words of an elderly woman,

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<sup>87</sup> John Mary Waliggo, “Reconciliation as a Means of Resolving Conflict and Restoring Relations,” (paper presented at AMECEA Pastoral Institute, Eldoret, Kenya, 6 June 2003) author’s collection, 2. Also interview with Sister Specioza Kabahoma, Justice and Peace Commission, 10 November 2004, Nsambya, Kampala.

<sup>88</sup> Interview with Sabinu man studying at Makerere University, 7 November 2004, Kampala.

<sup>89</sup> Allen reports that a study funded by the Belgian government revealed that young people no longer automatically respect the elders. Allen, *War and Justice in Northern Uganda*, 76.

<sup>90</sup> Finnstrom, *Living With Bad Surroundings*, 201.

<sup>91</sup> *Ibid.*, 298.

<sup>92</sup> *Ibid.*, 201.

<sup>93</sup> Interview with young man, Acholi Bur IDP camp, Pader, 15 March 2005, interview in Acholi (through translation).

“You know, the camp is like a tree where you are getting shelter, it is not like a home where cultural things can be carried out.”<sup>94</sup>

Indeed, many informants referred to the fact that the essence of their lives had been destroyed by displacement: the physical structures of the camps have created an artificial environment that has damaged the fabric of the communities. As one elderly man said,

If you look at the way huts are built, squeezed together, and what people do at night – even at daytime – has removed respect completely now... Morally we are completely broken, the Acholi way of life is torn apart... Raping women has not been acceptable in Acholi culture, but today it is very pleasing. Killing has never been accepted in Acholi culture, but today it is considered a game. Go and see in the street what kind of games people play, the words people use. Our children now talk about laying ambush, shoot to kill – war games. Before they used to play marriage games, dancing games, hunting games. Now they make tanks, lorries, airplanes.<sup>95</sup>

Said another, “Our culture was very rich. Education was not just got from formal classrooms. Wang ‘oo’ was the place all the cultural, moral education happened. In camps the wang ‘oo’ is not there. Now parents do not have time to talk to their children... Now the basic “family” is destroyed and also the community at large. The camp situation has left people not believing in reality. They now have this as their way of life, they now dwell on artificial life, the hand-outs, feeding on WFP [World Food Program-provided food]. Being dependants is now part of the system, something that used not to happen.”<sup>96</sup>

It is also important to note the growing phenomenon of ‘night commuting,’ whereby thousands of children walk into towns every evening to sleep in shelters and on pavements in order to reduce the risk of abduction. Little is known at this point what the long-term societal impact will be, but what is clear is that it is further destroying the ties between families, clans and communities, as children are separated from their families on a nightly basis. In many respects, it represents the perverse logical conclusion of forced displacement: given that the ‘protected villages’ offer no protection, children are being forced to search for their own safety by further displacing themselves. At the same time, the adult population is being forced to stand back and watch helplessly for want of an alternative. Generational tensions that were already evolving within the IDP camps – in addition to the impact of child abductions – have further divided the communities. The detrimental impact of displacement is taken to an extreme as communities are further alienated from within.

The net impact of this large-scale displacement caused by the war is a strong belief that traditional mechanisms can no longer be applied in any meaningful way in a context of displacement: ceremonies have little meaning when there is no place to perform them, and

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<sup>94</sup> Interview with elderly woman, Kitgum town, 14 March 2005, interview in Acholi (no translation).

<sup>95</sup> Interview with elderly man, Gulu town, 3 March 2005.

<sup>96</sup> Interview with young man, Kitgum town, 13 March 2005, interview in Acholi (no translation).

food is so scarce that there are no animals left to sacrifice. “The pre-war cultural agency of the displaced Acholi people diminishes. In the long run, the situation is of course socially destructive.”<sup>97</sup>

In addition, children are no longer growing up within the type of environment that is conducive to passing on ideas and values that underpin many of the cultural mechanisms. To some, this has generated a feeling that traditional mechanisms have become obsolete. However, a significant number of those interviewed were of the opinion that once people have returned home, there is no reason why the use of traditional mechanisms should not be revived in some form, given the right conditions. As one woman said, “[traditional mechanisms] can work if all the people have gone to their normal settlements, not as IDPs. Because then you are sure of where your son or child is. But if we return to our homes, then we can start to do these things again.”<sup>98</sup> Indeed, for many, the use of traditional mechanisms is seen to be a vital component to the whole process of return, symbolising aspects of social cohesion that have been (temporarily) lost during displacement.

Others, however, believe that traditional mechanisms could be carried out in the camps. One informant said, “Our chiefs are trying to revitalise the system, but not fully. Because now, many of the cleansing ceremonies for example are done here in Gulu. If it could be done in the camps, I think many of the young there would see, ‘this is the way things used to be done.’ But when things are only done in Gulu, then only the wrongdoers see what is being done.”<sup>99</sup>

### 5.3 Reintegration

Despite the considerable challenges to the implementation of mechanisms of justice of any sort while the war is ongoing, it appears that traditional rituals are currently fulfilling an important role in the present context and, more importantly, are referred to in ideas for future reconciliation. In particular, this appears to be the case with returning rebels/abductees: many returnees are taking part in a cleansing ritual, commonly referred to as the ‘stepping on the egg’ ceremony (*nyouo tong gweno*) and, to a lesser extent, in *mato oput*. However, it appears, increasingly, that elements of the older traditions are mixing with new ideas, and that some form of hybrid or “neo-traditional” ceremony is taking place on a fairly regular basis to assist the process of former rebels ‘reintegrating’ into the camps. In particular, numerous informants referred to the fact that the ceremony is taking place within the towns rather than in the IDP camps due to logistical constraints. This, in and of itself, presents a major departure from how the ceremonies were traditionally carried out. Furthermore, they are being done in groups rather than individually, and signify the return of an ex-combatant not to his or her home, but to an IDP camp revealing some of the

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<sup>97</sup> Finnstrom, *Living With Bad Surroundings*, 204.

<sup>98</sup> Interview with elderly woman, Kitgum town, 14 March 2005, interview in Acholi (no translation).

<sup>99</sup> Interview with middle-aged man, Gulu town, 3 March 2005, interview in Acholi (no translation).

complications of a 'reintegration' process taking place within a context of ongoing displacement.

Not surprisingly, many former combatants referred to this process as something positive. As one former combatant, now living in an IDP camp in Kitgum, said: "[stepping on the egg] put me at peace for the bad things I did when I was in the bush. I felt relieved."<sup>100</sup> Or, in the words of an NGO worker, "Many young people are surprised that there is something in the culture that could cover them, because many were not aware. They were surprised that despite all the atrocities they have committed, there is a system in the culture that can bring them back and that people forgive them and are beginning to care for them."<sup>101</sup> The extent to which this is recognised as a legitimate process is impossible to determine at this stage, particularly among those who are receiving former combatants.

While it is apparent that this is currently performing an important function in an intensely volatile and complex situation, it is important to bear in mind that the reintegration process is complicated by the fact that it is often impossible to distinguish between perpetrators and victims. During the course of the nineteen-year war, identities have become increasingly blurred, and the process of attributing blame is highly charged. As one young woman said, "everyone is a victim and everyone is a perpetrator."<sup>102</sup> However, while it is widely understood that the majority of individuals fighting within the LRA were, themselves, forcibly abducted, it is still extremely hard and painful for individuals who have lost close family members to accept back those who have killed. One informant related the story of one returnee:

As an example, [name of a young man] escaped from the rebels. He went to a village where he had killed four people when he was with the rebels. He entered a home and his luck was that there were only women. They allowed him in the house. Then fortunately an elder came. Then when the boys came home, the woman sat by the door and stopped them from entering. So the young man was spared.<sup>103</sup>

People are faced with a dilemma. There is recognition that the majority of those fighting in the LRA did not join voluntarily and, therefore, are themselves victims of this brutal war. At the same time, given the military strategy used by the LRA, the majority of those who did not escape within the first days or week of captivity, and who survived, are likely to have killed innocent civilians. In addition, such civilians are often deliberately targeted because they are from the home area of the child. Regardless of the level of coercion, some individuals are questioning the extent to which this is adequate to justify what has taken place. What is clear is that mechanisms need to be put in place that go far beyond the

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<sup>100</sup> Interview with ex-combatant, Amida IDP camp, Kitgum, 13 March 2005, interview in Acholi (through translation).

<sup>101</sup> Interview with NGO worker, Gulu town, 4 March 2005.

<sup>102</sup> Interview with young woman, Gulu town, 6 March 2005.

<sup>103</sup> Interview with religious leader, Gulu town, 3 March 2005.

current 'reintegration' process – although the question remains, to what extent is this possible within an environment of ongoing conflict?

#### **5.4 The scale of war**

Another impact of the war on the use of traditional mechanisms of justice identified by interviewees refers to the magnitude of what has taken place in northern Uganda, which is widely seen as something unprecedented. In particular, many referred to the fact that killing has taken place on such a scale that it is no longer possible to determine who is responsible for individual deaths. As a man living in an IDP camp in Pader said, with reference to a particularly brutal massacre, "The massacre in Atiak, it was inflicted on students from many clans, from Kitgum, Pader, Gulu. That is why I say a general cleansing ceremony can be done, but only when the man comes back, he admits that he as done that, he asks for forgiveness, and then the ceremony is performed... But then it is hard, because 220 lives cannot really be compensated by his clan."<sup>104</sup>

The very nature of this conflict, which has forced people to kill within their own families, is unparalleled in the region's history. As another man living in the same IDP camp said, "Kony has brought killings where people kill in their own clans and families. This is so complex that I do not think it can easily be handled."<sup>105</sup> Indeed, it is vital that the nature of the conflict, which has impacted people's lives at the most personal of levels, is taken into account in any mechanisms of justice that are instituted. Civilians have not only borne the brunt of the conflict, they have also been the main source of brutality, as abducted children have been forced to carry out many of the atrocities committed by the LRA. These same children, once they have escaped, are, in theory, being reintegrated back into their 'communities' and considerable pressure is being put on people to accept returnees. As a religious leader said with reference to this, "The relatives would say to him to accept reconciliation. They would say to him, 'look, a mistake has already been made, we have already lost someone, if you take revenge, you may never know, we might lose even more people.' But sometimes this is too hard."<sup>106</sup> In other words, for many, any form of justice that takes place will be seen as inadequate in the face of the unprecedented scale of the conflict which has held the Acholi sub-region in its grip for nearly two decades.

#### **5.5 Amnesty**

Many of the dilemmas outlined above, in particular with regard to the interaction between retributive and restorative notions of justice, are encapsulated in the issues surrounding the use of the amnesty. The need to pursue rebuilding activities in an order appropriate to the Acholi context is also tantamount in any discussion on the amnesty. Previous research has

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<sup>104</sup> Interview with man, Acholi Bur IDP camp, Pader, 15 March 2005, interview in Acholi (through translation).

<sup>105</sup> Interview with man, Acholi Bur IDP camp, Pader, 15 March 2005, interview in Acholi (no translation).

<sup>106</sup> Interview with local government official, Gulu Town, 3 March 2005.

shown widespread support for the amnesty as a mechanism to end the war in the north.<sup>107</sup> It is also perceived by many to contain a potential ‘restorative’ component that is seen to have currency in the current context.

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. Both opinions, while seemingly contradictory, often appeared within the same interview. Indeed, there is currently much confusion on the ground, and within the wider discourse surrounding the war, over the role that should be played by different mechanisms of justice, and over who should dictate the process. As one former combatant said, “In one corner there is amnesty, in one corner there is prosecution. So it means everything is mixed together, there is no transparency in the amnesty...”<sup>108</sup> The consequent polarisation 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.

On the one hand, there is widespread support for the amnesty, stemming not only from recognition that the majority of combatants are former abductees, but also from a desire to end the conflict. In other words, the amnesty *as a mechanism to end violence* is seen, in and of itself, as a form of justice: it has the potential to save lives and allow people’s children to return home. As one elderly man currently living in an IDP camp said, “We are now desperate. These people should be forgiven, and if this process of forgiveness continues, then maybe one day the government will let us go home again.”<sup>109</sup>

People’s responses appear to vary depending on their own situation, as can be expected: The amnesty has served a valuable purpose in helping to end the conflict. More than 14,695 ex-combatants had reported to the Amnesty Commission by early 2005,<sup>110</sup> many of them having agreed to leave the conflict expressly because of the guaranteed amnesty that awaited them.

Clearly, the amnesty process was initiated for this very reason. Yet the potential implications of this, particularly in light of the International Criminal Court (ICC) investigation initiated by Museveni in December 2003, are incongruent. (The case in Uganda is only the second case ever to be referred to the ICC<sup>111</sup> and, as such, investigators intend to use the Ugandan case as a testing ground.) Put simply, these two processes work against each other.

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<sup>107</sup> See Hovil and Lomo, *Whose Justice? Uganda’s Amnesty Act 2000*, RLP Working Paper No.15.

<sup>108</sup> Group discussion with 3 returnees, Gulu town, 8 March 2005.

<sup>109</sup> Interview with elderly man, Palenga IDP camp, Gulu, 9 March 2005.

<sup>110</sup> *Whose Justice? Perceptions of Uganda’s Amnesty Act 2000*, RLP Working Paper No. 15, 7.

<sup>111</sup> The first case referred to the ICC was the Democratic Republic of Congo. See “President of Uganda refers situation concerning the Lord’s Resistance Army (LRA) to the ICC,” [article on-line]; available from [http://www.icc-cpi.int/pressrelease\\_details&id=16&l=en.html](http://www.icc-cpi.int/pressrelease_details&id=16&l=en.html); accessed 13 June 2005.

As a result, adding customary mechanisms to the mix seems in some way to provide a middle ground. If, indeed, such traditional mechanisms are able to meet the needs of the community through already-understood mechanisms that can adjudicate, arbitrate, mediate, reconcile, and compensate, then perhaps they can be called upon to provide these services in the context of a complicated legal minefield. With some revisions, these mechanisms might even be able to incorporate the retributive aspect that many seem to desire. The *gacaca* process in Rwanda followed this model, and appears to be meeting these same kinds of goals. The following section explores this idea in more detail.

## **5.6 Thinking beyond conflict**

Peace is a precondition for justice. Indeed, it seems that for many interviewees, the possibility of peace returning to the north has been elusive for such a long time that they have ceased to think about peace as a genuine possibility. As a result, many interviewees gave the impression that they were unable to think about what should happen once the conflict has ended. Instead, they were primarily preoccupied with thinking about how an end to the conflict could be achieved. For instance, when asked about what should happen to those who went to the bush voluntarily, a woman in Kitgum articulated a widely held view:

I think when they come out, people will be happy because they now feel that at least we shall now sooner or later be at peace or at rest, because there are now fewer people left who can order these atrocities, it is weakening the other side and it maybe will realise peace. For now, the people only see towards the end of the war. When these people come out, they can speak directly to those left behind and when they see what is happening on the ground, they will say to those in the bush, "it is not like we thought, maybe you can also join us." These days, people can't think anything further than the end of the war. But hopefully after the end of the war, there is a lot to be done.<sup>112</sup>

With regard to the majority of returnees who are widely recognised as having been abducted in the first place, there was a willingness to accept them back. As stated above, for many this is not an easy thing to do, and the reintegration process is far from straight forward. Many responses stemmed from a recognition of the depth to which the conflict has penetrated within the society. Given the number of those abducted and returning on a daily basis, allowing for the acceptance of former combatants has become vital to the process of societal rebuilding, and goes a long way to building social trust and social cohesion, as discussed above. As one young woman said, "The fact that everyone's child was abducted in one way or another and may have committed atrocities at the moment makes it important for the whole community to now say, 'we want total reconciliation.'"<sup>113</sup>

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<sup>112</sup> Interview with female NGO worker, Kitgum town, 14 March 2005.

<sup>113</sup> Interview with young woman, Gulu town, 6 March 2005.

However, it is vital that the reintegration process not be taken for granted. While there is an overall willingness to accept the majority of former combatants back, more needs to be done to facilitate the long-term process and assist the communities in absorbing former combatants. The emphasis on the issue of the senior commanders has perhaps detracted from the daily reality in which former combatants, whether voluntarily or not, are moving within the wider spaces of society. As a religious leader said, “The trouble with ICC is that you go and arrest the... six or so leaders of the LRA. But we are saying, ‘the war has been here for nearly 19 years. Is it really true that there are only six people who did wrong?’”<sup>114</sup> Indeed, numerous informants referred to the fact that, while the conflict continues, people will accept former combatants, but once it is over, then more needs to be done to avert tensions and future conflict from arising. In other words, the long-term implications of amnesty – of having former combatants returning to the areas in which they operated as combatants – needs to be given serious consideration. The levels of acceptance and forgiveness that exist must not be taken for granted. As one man living in an IDP camp in Gulu said,

The amnesty says you are forgiven, but for us, they still have to come and talk to the parents and compensation will have to be done. Even if the amnesty has done its work the ceremony of *mato oput* has to be done and compensation paid... But when they come back, they will not be rushed into paying compensation. But when the people go back to their homes, that is when they will slowly begin to deal with these issues and with the compensation.<sup>115</sup>

One young woman in an IDP camp in Kitgum gave an example of how tough it is to accept someone back who has killed an individual known to them:

People in the community, especially the ones who know that it was this returnee who killed their people, they feel the bitterness... There is an old man here; two of his children were going for a visit. The rebels killed them. Recently these rebels returned, they reported to the primary school here. Then when the old man saw them and saw that they were wearing his sons’ clothes, he went to them, he was very angry and wanted revenge – he was like a madman. People were holding him. He demanded that the rebels show him where they had buried the two sons, so they went and collected the remains.<sup>116</sup>

A few of those interviewed admitted that they are unwilling to accept former combatants back regardless of whether or not they were abducted. As one elderly woman said, “Even those who were abducted, they are no longer our children. They are now with Kony and they take instructions from Kony to kill us. They should also be killed.”<sup>117</sup> Or in the words

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<sup>114</sup> Interview with religious leader, Gulu town, 10 March 2005, interview in Acholi (through translation).

<sup>115</sup> Interview with man, Unyama IDP camp, Gulu, 10 March 2005, interview in Acholi (through translation).

<sup>116</sup> Interview with young woman, Labuje IDP camp, Kitgum, 12 March 2005, interview in Acholi (through translation).

<sup>117</sup> Interview with woman, Amida IDP camp, Kitgum, 13 March 2005, interview in Acholi (through translation).

of an elderly woman, “People are bitter, like me, I am so bitter. I feel they should kill that person who killed my son.”<sup>118</sup>

While these comments were in the minority, it is still vital that such opinions are taken into consideration both while the conflict is still ongoing, and in any post-conflict environment. This points to some of the inadequacies within the amnesty process, which places unrealistic demands on communities that are already living under extraordinary strain. In particular, the lack of accountability built into the amnesty was frequently referred to, particularly in connection with the return of more senior combatants who are now seen to be living a life of luxury in Gulu town. As one informant said, “when these commanders come out, not one time do they acknowledge their crimes. And that adds so the pain. The people want these commanders to admit that they were in the wrong. That is one factor that makes is not easy for reconciliation.”<sup>119</sup> Or, as a young woman living in squalid conditions in an IDP camp said, “These commanders, they now live better than we do... they come out and are so arrogant.”<sup>120</sup>

This points to an important difference between the traditional Acholi system of justice (in particular the *mato oput* ceremony) and the amnesty: in the case of the former, a vital part of the ritual is acknowledgement and truth telling, something that is missing from the amnesty process. As illustrated by the quotation above, people are disturbed by the lack of accountability within the process that, in turn, creates an environment in which receiving an amnesty certificate is seen as a complete process in and of itself. Such an impression is underscored by the way in which the government is using senior ex-combatants to tempt others out of the bush. While this might be accepted as an effective strategy for ending the war, further mechanisms need to be built into the process to satisfy people’s understandings of justice in a post-conflict environment. Furthermore, the wisdom of parading ex-combatants in this way has to be seriously called into question: while it might help to encourage other senior ex-combatants to surrender, it is also further damaging the image of government in the eyes of civilians.

Thus, while support for the amnesty as a means of getting the rebels out of the bush was widely shared, with most interviewees able to explain their reasons for supporting the amnesty in terms of achieving an end to conflict, the views of what should happen next were much more divergent and less well thought out. The majority of civilians see the amnesty process as being the surest way to absorb the thousands of abductees/ex-combatants back into society. However, there was also a recognition that further processes will need to be put in place to facilitate a genuine reintegration process in the long-term. In addition, and not surprisingly, there was considerable divergence of opinion relating to the issue of what should happen to the LRA’s senior commanders, in particular Kony.

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<sup>118</sup> Interview with elderly woman, Amida IDP camp, Kitgum, 13 March 2005, interview in Acholi (through translation).

<sup>119</sup> Interview with NGO worker, Gulu town, 6 March 2005.

<sup>120</sup> Interview with woman, Palenga IDP camp, Gulu, 9 March 2005.

Indeed, the point at which the amnesty/prosecution debate comes into sharp focus is with regard to Kony and the senior leaders of the LRA. There was a wide variety of opinion as to what should happen in this regard, often within the same interviews. Some individuals believe that they should receive amnesty, others that they should initially receive amnesty and then be prosecuted, others asserted that the granting of amnesty should be contingent upon whether or not they come out of the bush voluntarily, while others want them to be simply locked up or killed. What is clear, however, is that the majority of people acknowledge that such debates, at the present time, remain hypothetical. The LRA is still at large, and the ICC has no powers of arrest. The UPDF has been trying to 'finish' them off for 19 years. While it is interesting to sit in Kampala and debate such issues, at the end of the day, the issue of what should happen to these individuals can only be decided once the war is over. People are crying out for justice but, even more, they desperately want the war to end.

This report does not pretend to give an overview of such opinions. However, what seems clear is that the appropriate use of these customary mechanisms ought to be fostered and encouraged. "No society can build a civilization on borrowed values. In order for [Uganda] to have a real civilization for peace, tolerance, world understanding and democracy, human rights, authentic integral liberation and development, [Uganda] must look at its own heritage, and basing on its best values in that heritage, build the real and permanent culture and civilization of peace and peaceful resolution of conflicts."<sup>121</sup> Whatever institutions are implemented in northern Uganda must be built on Ugandan values, specifically those espoused by the people who have been affected directly by the conflict. "People feel that western methods are more sophisticated so traditional methods are not being used."<sup>122</sup> "Maybe the western method on its own, or the traditional method on its own, will suffice. Or maybe we need a blend."<sup>123</sup> "We should maybe look back at what went wrong, and how people used to solve issues and use traditional roots to inform current policies."<sup>124</sup>

## **6 "JUSTICE" AND LAW**

Finally, it is important to place the discussion on traditional mechanisms within the framework of international law. This is particularly pertinent given the current interaction between localised, national and international mechanisms of justice. At the end of the day, any mechanisms that may be used need to be accepted not only as legitimate on the ground, but they also need to be seen as acceptable within the wider paradigms of international law. This is a relatively new debate, and little has been written on the subject.

As a result, the following section forms a preliminary and exploratory analysis on placing traditional mechanisms within the standards required by international law. Indeed, some

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<sup>121</sup> Waliggo, "The Human Right to Peace," 9.

<sup>122</sup> Interview with Rose Othieno, Centre for Conflict Resolution, Kampala, 5 November 2004.

<sup>123</sup> Interview with NGO official, Kampala, 1 November 2004.

<sup>124</sup> Interview with Sabinu man studying at Makerere University, Kampala, 7 November 2004.

consider the kinds of customary mechanisms discussed above too informal to meet the often-strenuous requirements of international law in establishing accountability for crimes. Others have seen them as “second best.” For these reasons, traditional institutions have long been disregarded. Beginning in colonial times, traditional customs were belittled, and set aside for use only by “natives” within the colonies, while separate mechanisms for use by ‘non-natives’ were maintained, effectively creating a dual system.<sup>125</sup> And as African nations, in the throes of anticolonialism, began to declare independence in the 1950s and 1960s (including Uganda in 1962), eventually the two systems were integrated to some extent.<sup>126</sup>

Earlier, this paper addressed the issues of peace and justice, and determined that “justice” can only come once the conflict itself has been halted. Just what shape processes of justice should take, however, remains ambiguous. Informants stressed the importance of holding all sides to account – including members of the LRA and the GoU – along with addressing the root causes of the conflict, while keeping in mind the real consequences of the conflict and the limitations that the war in northern Uganda has imposed.

Yet just how to hold all sides to account is difficult. Those interviewed spoke of a number of different solutions which drew on a number of different models of justice, including both restorative and retributive ideas. The difficulty arises in part because African justice, and especially the kinds of mechanisms traditionally employed by the Acholi, encompasses facets of both restoration and retribution. Informants did not distinguish between the two, and often spoke of both as being necessary.

The debate is further complicated by the many different processes which have been initiated in Uganda. Instead of a coherent and planned approach to “justice”, the GoU has instead implemented two very different and contradictory approaches; it initiated an amnesty process to bring combatants out of the bush in an effort to stop the conflict; and then, when it seemed that the amnesty was not sufficient, the GoU called upon the International Criminal Court to step in and carry out Western-style justice. In the meantime, the religious and traditional leaders have used customary mechanisms, including *mato oput* and *nyouo tong gweno* to address the former combatants; the idea of justice under them goes well beyond simply punishing perpetrators in prisons. And so, many different processes, including Ugandan justice, amnesty, restoration, and Western justice, are at play.

One further complication is the inherent contradiction that arises from this discussion: Why is it that so-called international standards – obviously a collection of cultural norms from a select group of nations – are being used as benchmarks, when the inverse might actually be ideal? That is, some of the questions arising from the on-going conflict in northern Uganda and other transitional situations should inform current international law, rather than constantly having to bend these complex situations to fit “international standards”. This

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<sup>125</sup> Mahmood Mamdani, *Citizen and Subject* (Kampala: Fountain Publishers, 1996), 109-110.

<sup>126</sup> *Ibid.*, 128-130.

section attempts to sort out some of these ideas, and how international instruments, including the Rome Statute and the International Covenant on Civil and Political Rights, might allow Ugandans to adopt a modified solution using some features of international mechanisms, while still utilizing customary ideals and traditional mechanisms that meet the requirements of international law.

## 6.1 Retributive models

While it is vital not to over-romanticise traditional mechanisms, it is also important to bear in mind the fact that the Western retributive model is far from perfect. In the face of modern conflicts in which civilians are often caught up in the frontline, and in which clear categories of perpetrators and victims often do not exist, many different problems arise from using the Western retributive model. Such justice is often accused of sacrificing the rights of defendants for social solidarity; distorting historical understandings of a nation's past; fostering delusions of purity and grandeur; requiring extensive admissions of guilt and repentance; risks having its legal efforts to influence collective memory fail because such memories arise "only incidentally"; and forces authorities to conceal deliberateness of purpose.<sup>127</sup> This type of retribution, sometimes referred to as the "liberal-prosecutorial model," has been deemed by some as inappropriate in transitional contexts.<sup>128</sup> "The limitations of formal justice are most vivid when there are 'many dirty hands,'"<sup>129</sup> as there are in civil conflicts like the conflict in northern Uganda.

The implementers of retributive institutions see their task as mainly technical in nature, and often fail to consider contextual factors. This has been called "global legalism from above" and is seen as one of the biggest difficulties of outside experts participating in the building of appropriate institutions in post-conflict societies.<sup>130</sup> These programmes are often "one-size-fits-all" and therefore less effective than tailor-made solutions, since they target institutions and structures rather than getting to the heart of the problem.<sup>131</sup> In other words, while many of the ideals are good in theory, when applied to a complex conflict such as the one in northern Uganda, they look inadequate if applied in isolation. It is a mistake to assume that simply prosecuting and, hopefully, convicting Kony and a few of his senior commanders will satisfy the needs of justice in this context. Worse, still, is the possibility that Kony might be released, for instance, on a plea of insanity, as has been suggested.

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<sup>127</sup> Mark Osiel, *Mass Atrocity, Collective Memory and the Law* (New Brunswick, NJ: Transaction Publishers, 1997), 7-8.

<sup>128</sup> Harrell, *Rwanda's Gamble*, 5.

<sup>129</sup> Nancy L. Rosenblum, "Justice and the Experience of Injustice," in Martha Minow, *Breaking the Cycles of Hatred; Memory, Law and Repair*, ed. Nancy L. Rosenblum (Princeton: Princeton University Press, 2002), 78.

<sup>130</sup> Antonio Franceschet, "Global Legalism from Above: Kant and the Problem of Transitional Justice," a paper prepared for presentation on the panel, "Transitional Justice: Local and International Dimensions," at the Canadian Political Science Association Annual Meeting, 2 June 2005.

<sup>131</sup> Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Oxford: Polity Press, 2002), 68.

## 6.2 Capabilities of traditional mechanisms

Customary mechanisms, on the other hand, are able to perform a number of different functions within transitional communities, as they have done for many years.<sup>132</sup> These traditional mechanisms are extremely complex, in part because their judicial functions are bound up with the extensive social education received in the home and in the community, through teaching surrounding the celebrations and everyday activities of the community.<sup>133</sup>

The customary processes that are used in dealing with conflict at the group, community, clan or neighbourhood level may include a number of different elements. These include adjudication or arbitration, mediation, reconciliation, compensation, and various rites and symbols.<sup>134</sup> It is clear that in the practical definition of many of these elements, the boundaries between restorative and retributive justice, as mentioned above, begin to blur.<sup>135</sup>

Adjudication and mediation, for example, are two distinct things:

The dynamics of mediation and adjudication are different. Adjudication [sometimes also referred to as arbitration] uses power and authority in a hierarchical system. A powerful figure makes decisions for others on the basis of “facts” which are developed through disputed evidence, and by means of rules of “law” which are also contested by the parties.... In sum, adjudication is a vertical system of justice which is based on hierarchies of power, and it uses force to implement decisions.

In contrast, mediation is based on an essential equality of the disputants. If parties are not exactly equal or do not have equal bargaining power, mediation attempts to promote equality and balance as part of its process. It is a horizontal system which relies on equality, the preservation of continuing relationships, or the adjustment of disparate bargaining power, between the parties.<sup>136</sup>

Adjudication, or “the traditional administration of justice,”<sup>137</sup> is similar to the trials mentioned above: those involved in a dispute or conflict appear before a panel of wise or powerful men,<sup>138</sup> and through the deliberations of a standing committee<sup>139</sup> or group of elders, held in secret<sup>140</sup> or in the open<sup>141</sup> leaders generally come to a common agreement and

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<sup>132</sup> Shorter, *African Culture*, 65.

<sup>133</sup> Eric O. Ayisi, *An Introduction to the Study of African Culture*, 2nd ed. (Nairobi: East African Publishers, 1979), 110.

<sup>134</sup> Waliggo, “The Human Right to Peace,” 7.

<sup>135</sup> Andrew Oldenquist, “An Explanation of Retribution,” *The Journal of Philosophy* 85.9 (Sept. 1988), 471.

<sup>136</sup> Bluehouse and Zion, “The Navajo Justice and Peace Ceremony,” 328-329.

<sup>137</sup> Waliggo, “The Human Right to Peace,” 8.

<sup>138</sup> Ayisi, *An Introduction to the Study of African Culture*, 67, 111; Bruno Novelli, *Aspects of Karimojong Ethnoscology* (Verona: Museum Combonianum no. 44, 1988), 48; and Ngologoza, *Kigezi and Its People*, 20.

<sup>139</sup> Ngologoza speaks of the *Abakuru b'emiryango* as such; see *Kigezi and Its People*, 20.

<sup>140</sup> Waliggo, “The Human Right to Peace,” 8.

<sup>141</sup> Ngologoza, *Kigezi and Its People*, 20.

decide upon a suitable punishment. This is crucial: “without taking proportional retribution in grave cases, a society dishonours itself, and undermines public confidence that the society takes itself and its values seriously.”<sup>142</sup> Yet this retribution is linked directly with other social controls including socialisation<sup>143</sup> and compensation, discussed further below. And unlike the Western retributive model, this kind of judgment is sought only as a last-ditch attempt to find resolution, after the adjudicators have exhausted all other means at their disposal.<sup>144</sup>

A key part of the conflict resolution process is mediation, wherein one person or a group of people acts as a go-between among the offended parties and the offender. Mediation is “the most commonly appreciated means of solving conflicts” in many rural African communities.<sup>145</sup> It is distinct from adjudication or arbitration, in that all parties have equal power, and the decisions come “out of the clans and families from the bottom up, not the top down.”<sup>146</sup> This is closely linked with the process of negotiation, wherein, “using the African wisdom, the elders and even the two parties themselves gradually come to a common agreement.”<sup>147</sup> In this way, “individual problems can be solved and a wider societal balance achieved.... [The session] is not only one of individual healing but also a process of socialization.”<sup>148</sup>

Another vital part of this process, in many cases, is compensation. The Acholi traditional mechanisms count compensation as a precondition for their reconciliation ceremonies.<sup>149</sup> This is echoed in claims that “forgiveness comes after the payment of damages.”<sup>150</sup> What is called for is “reconciliation through disbursement.”<sup>151</sup> “Social barriers can be dissolved by admitting wrongdoing and deciding on compensation.”<sup>152</sup>

Surrounding all of this, of course, is the element of reconciliation. “Reconciliation was always an essential and final part of every legal and other peaceful settlement of conflict...[Yet] it also stood on its own.”<sup>153</sup> In many different ethnic configurations, such as the institutions of the Karamojong, reconciliation is always the first element of this process

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<sup>142</sup> Oldenquist, “An Explanation of Retribution,” 471.

<sup>143</sup> Ayisi, *An Introduction to the Study of African Culture*, 111. See also Finnstrom, *Living With Bad Surroundings*, 76, 201, 219; Novelli, *Karimojong Traditional Religion*, 201-225; and Pritchard, *Witchcraft, Oracles and Magic Among the Azande*, 154.

<sup>144</sup> Novelli, *Aspects of Karimojong Ethnosociology*, 73.

<sup>145</sup> Waliggo, “The Human Right to Peace,” 8.

<sup>146</sup> Ross, *Returning to the Teachings*, 55.

<sup>147</sup> Waliggo, “The Human Right to Peace,” 8.

<sup>148</sup> Finnstrom, *Living With Bad Surroundings*, 219.

<sup>149</sup> Interview with Geresome Latim, Executive Secretary, *Ker Kwaro Acholi*, Gulu, 22 November 2004.

<sup>150</sup> Dennis Pain, *The Bending of Spears* (International Alert, December 1997), 55.

<sup>151</sup> *Ibid.*, 34.

<sup>152</sup> Finnstrom, *Living With Bad Surroundings*, 297.

<sup>153</sup> Waliggo, “The Human Right to Peace,” 9.

to be attempted.<sup>154</sup> And of the Acholi mechanisms, Rwot Onen David Acana II said, “*poro lok ki mato oput*” (“Peace talks and reconciliation are the best way to resolve conflict.”)<sup>155</sup>

### 6.3 Potential difficulties in the use of traditional mechanisms

Traditional practices, however, are not without their shortcomings, and little has been written about the manner in which customary mechanisms might meet the stringent requirements of international law in determining accountability and the manner in which “justice” in whatever guise should proceed. “Unwittingly reinforcing iniquitous practices or undesirable power authorities out of deference to local customs, culture and leaders” can be a particularly harmful outcome of customary mechanisms.<sup>156</sup> There is clear evidence of this, in fact, in looking at the way in which colonial powers unfairly and prejudicially empowered particular chiefs instead of others, thereby “turning [them] into an enabling arm of state power.”<sup>157</sup> Among the Acholi, European colonial powers favoured different clans and chiefs, by times the Payira, the Paicho, and the Padibe, although today the Payira “promote their chief as the paramount Acholi leader.”<sup>158</sup>

It is therefore vital to recognise that “not all customary laws are necessarily benign, as they have undergone their own troubled history and evolution, and their content may not necessarily be uniformly acceptable to all citizens or communities in the country.”<sup>159</sup> The fear, of course, is again that bias and prejudice could tend to strip away the uniformity of such institutions, since their “substantive and procedural rules are imprecise, unwritten, democratic, flexible, *ad hoc*, and pluralistic.”<sup>160</sup>

One further difficulty was highlighted repeatedly in the interviews conducted with those living in the war-affected region. Informants frequently used concepts of restoration and retribution interchangeably, seemingly without realizing that these concepts are seen as strictly defined and completely incompatible in the international system. As discussed above, it is obvious that the Acholi traditional mechanisms, in particular, skilfully combine these elements – and that, as a result, people familiar with these mechanisms see no reason why they ought to be kept apart.

It is, therefore, important to understand exactly what standards customary mechanisms must meet in order to satisfy those who insist that only Western models will suffice, if traditional models are to be used. These requirements are of two basic types: The first is *procedural*, and is concerned with the procedures and protocol that are to be followed in carrying out

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<sup>154</sup> Novelli, *Aspects of Karimojong Ethnosociology*, 73.

<sup>155</sup> Quoted Allen, *War and Justice in Northern Uganda*, 67.

<sup>156</sup> Mani, *Beyond Retribution*, 84.

<sup>157</sup> Mamdani, *Citizen and Subject*, 122-124.

<sup>158</sup> Finnstrom, *Living With Bad Surroundings*, 70; more generally 69-71.

<sup>159</sup> Mani, *Beyond Retribution*, 81.

<sup>160</sup> Richard Abel, *The Politics of Informal Justice*, Vol. 2 (London: Academic Press, 1982), 2.

“justice.” The second is *accountability*, which is therefore concerned with punishing criminals for offences they have committed.

One of the most respected benchmarks of international law is the United Nations’ *International Covenant on Civil and Political Rights* (ICCPR), and it is to the legal doctrine laid out in this Covenant that the best theories and practices of procedural justice must adhere. This document is important to Ugandans, since the country became a signatory to it on 21 September 1995. In so doing, the GoU pledged to respect and protect the human rights guaranteed in the ICCPR.

Another document, the *Rome Statute*, which came into force in 2002, provides an equally sound, yet updated “gold standard” which is meant to address the most heinous of crimes; it forms the basis of procedural and accountability standards to be upheld by the International Criminal Court. This document, of course, is of major importance in the debate about what should be done regarding punishment of those involved in the commission of crimes in the Ugandan conflict because in December 2003, President Museveni asked the ICC to look into the situation in northern Uganda, and the Chief Prosecutor of the ICC has since determined that there is a reasonable basis to open an investigation. The Rome Statute complements other legal instruments, including the United Nations Genocide Convention and the Geneva Conventions, for example, and lays out the rules that pertain to accountability for crimes including genocide, crimes against humanity, crimes of aggression, and war crimes. The following discussion, based on the ICCPR and the Rome Statute, represents a small part of a much larger and very complicated legal debate.

The ICCPR delineates procedural responsibilities which must be upheld by mechanisms of justice in Article 14:

Article 14<sup>161</sup>

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
  - a. To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
  - b. To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
  - c. To be tried without undue delay;

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<sup>161</sup> United Nations, *International Covenant on Civil and Political Rights*, adopted by resolution 2200A(XXI) on 16 December 1966, entered into force 23 March 1976.

- d. To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing;...
- e. To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- f. To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- g. Not to be compelled to testify against himself or to confess guilt;
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment shall be compensated according to law...
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Although the kinds of customary mechanisms discussed above do seem considerably less formal in some instances, it appears that the conditions listed in Article 14 of the ICCPR could easily be met. For example, interviews suggest that the presumption of innocence (14.2.) is already a part of the system in Acholi.<sup>162</sup> That same system has traditionally ensured equality (14.1); full disclosure of charges and accusations (14.3.a.); adequacy of preparation time (14.3.b.); protection against undue delay (14.3.c.); guaranteed presence at the time of arbitration or mediation (14.3.d.); questioning of witnesses (14.3.e.); and no requirement of confession of guilt (14.3.e.). (As the majority of people who use the Acholi system already speak Acholi, (3.g.) the need for translation becomes unnecessary; presumably, though, translation could be arranged.) The promotion of rehabilitation (14.5.), especially among young people is already, in fact, a central tenet of the customary process of the Acholi. Indeed, the efforts of ARLPI and the Gulu District Reconciliation and Peace Team, among others, with ex-combatant child returnees bear this out.<sup>163</sup>

Customary mechanisms are built on ceremonies and traditions that have evolved over time into precise instruments that are carried out in an almost “formulaic” manner at times, much as ceremonies of liturgy or Eucharist are carried out within Christian religious observances. As such, these traditional mechanisms are strictly organized. This is true among the majority of traditional ceremonies practiced among the different ethnic groups within Uganda; among the Karimojong, for example, the *akiriket* meetings are very stratified, and “everyone knows his position and where to sit.”<sup>164</sup>

<sup>162</sup> Interview with Geresome Latim, Executive Secretary, *Ker Kwaro Acholi*, Gulu, 22 November 2004.

<sup>163</sup> World Vision, *Pawns of Politics*, 39-40.

<sup>164</sup> Interview with middle-aged professional Karimojong man working in Kampala, 13 November 2004.

Likewise, Acholi mechanisms are carried out in a clearly defined manner.<sup>165</sup> “The actual reconciliation ritual [for example] to redress the wrongs of a killing between clans is complex and sophisticated. The ritual involves many people and takes a full day. Before the actual ritual, however, many things must be arranged, discussed and decided upon. The ritual can be preceded by weeks, months or even years of careful negotiations.”<sup>166</sup>

Particular ceremonies are held to address particular crimes. One interviewee described the process:

Traditionally, different problems were solved differently. If two people fought, their case would be taken in front of elders, who would hear the reasons why they fought. Each of the parties would be requested to make a statement. Then the witnesses could also be summoned to testify, just to get who of the two was wrong. When the person who was in the wrong was identified, the elders would give him a fine. Say a chicken, or a bottle of *warragi* [local gin]. Then the person would be reprimanded, and told not to repeat his wrongdoing. Because the problem could arise for example because someone is drinking, so he would be warned not to repeat.<sup>167</sup>

Another informant described a ceremony held after someone has been killed accidentally: “If one killed another unknowingly, there is compensation and this is referred to as *too-bong*. This is a death that occurs without one’s intention; it is an “accident”. Here they do not drink the *oput*. In these days, the person would have to pay 8 cows [head of cattle], plus one for the Rwot and two goats. And there it ends.”<sup>168</sup>

The Rome Statute, too, reflects upon these procedural requirements.<sup>169</sup> Articles 53 to 61 deal with a number of issues including: initiation of an investigation; duties and powers of prosecutors; the rights of persons during an investigation; the role of the pre-trial investigation and its functions and powers; issuing warrants and summonses; arrest and court proceedings; and confirmation of charges. Articles 62-76 demarcate the activities and responsibilities inherent in the trial process, including, among other matters: having the trial in the presence of the accused; the presumption of innocence; rules of evidence; and sentencing. Articles 81-85 lay out rights to appeal and revision of sentences handed down by the court.

But the Rome Statute’s utility lies more in its careful outline of those crimes which are punishable, and just what should be done when these crimes have been committed. The Rome Statute also defines the terms of reference for the International Criminal Court. The

<sup>165</sup> Interview with Geresome Latim, Executive Secretary, *Ker Kwaro Acholi*, Gulu, 22 November 2004.

<sup>166</sup> Finnstrom, *Living With Bad Surroundings*, 291.

<sup>167</sup> Interview with middle-aged man, Gulu town, 3 March 2005, interview in Acholi (no translation)

<sup>168</sup> Interview with elderly man, Labuje IDP camp, Kitgum, 12 March 2005, interview in Acholi (no translation)

<sup>169</sup> Parts 5, 6, and 8 of the Rome Statute of the International Criminal Court deals with procedural elements. Rome Statute of the International Criminal Court, adopted by resolution ICC-ASP/2/Res.3 on 12 September 2003, entered into force 1 July 2002.

ICC is charged with considering “the most serious crimes of concern to the international community... [including]: (a) the crime of genocide; (b) crimes against humanity; (c) war crimes; (d) the crime of aggression.”<sup>170</sup>

Beginning in the Preamble, the Rome Statute outlines its commitment to questions of peace, justice and accountability. In it, the states parties to the Statute “Recogniz[e] that such grave crimes threaten the peace, security and well-being of the world... Determin[e] to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes... and Resolv[e] to guarantee lasting respect for and the enforcement of international justice.”<sup>171</sup>

The balance of the document then goes on to outline how it will do so. Articles 5-9 carefully define the crimes (genocide, crimes against humanity, war crimes, and crimes of aggression) that will be within the ICC’s jurisdiction to investigate and prosecute. Articles 10-21 go on to outline rules for admissibility and the applicable laws that support such endeavours. Articles 28-33 outline the general principles of international law. And Articles 77-80 describe the penalties which will be assigned and how these will be carried out.

Yet customary mechanisms, too, have long addressed questions of peace, justice and accountability. These matters were traditionally managed by the traditional structural leaders of the community.<sup>172</sup> “The traditional leaders oversee the general peace of their subjects. These institutions used to work with the community to reconcile the conflicts in the community, and also murder. If someone has done these things, he needs to accept the guilt. [“Accepting the guilt” is seen as acknowledgement in Acholi culture.] If someone does not accept the guilt, he is left free and remains outside the community. The fundamental thing is for the criminal to be alive and contribute to strengthening society.”<sup>173</sup>

And these customs were traditionally passed on through strong social and cultural education, passed on from one generation to the next. Acholi children were traditionally taught a representative proverb, *te okono pe kiputu* (“the stump of the pumpkin should not be uprooted”). This proverb was symbolic of two basic principles: first, that they should not destroy Acholi traditions; and second, that they should respect their “clan, relations, elders, ancestors and holy shrines.”<sup>174</sup>

Individuals, therefore, often approach questions of peace, justice and accountability in much the same fashion:

There are many different problems. There are domestic problems. For a husband to throw a crumb of bread at his wife, that is already a crime, that cannot be tolerated. Something must

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<sup>170</sup> Rome Statute of the International Criminal Court, Article 5.1.

<sup>171</sup> Rome Statute of the International Criminal Court, Preamble.

<sup>172</sup> Finnstrom, *Living With Bad Surroundings*, 292.

<sup>173</sup> Interview with Geresome Latim, Executive Secretary, *Ker Kwaro Acholi*, Gulu, 22 November 2004.

<sup>174</sup> Finnstrom, *Living With Bad Surroundings*, 274.

be done. To pick a fight, to walk out of the house, swearing never to come back, that is already a crime. Incest cannot be tolerated: justice needs to be done, not only to the person wronged, but also to the family, to the whole clan. If my wife refuses to have sex with me and she puts ash near her private parts, that is a crime, and the elders will know how to deal with it. To kill someone: the crime is at two levels, intentional and unintentional. These are handled in different ways. Stealing: I don't know how we have been dealing with it, it has been very rare. There is no ceremony for someone who has stolen, unless it was stealing grain. The elders would handle these things. If I had quarrelled with my wife, my parents - my father - and my brothers would come in. If it is a big problem, the elders of the community would come in.<sup>175</sup>

People also tend to connote accountability with punishment, which is mostly seen as capital punishment, or the death penalty:

In our community, the question of punishment was not there. I have heard it only once, the death penalty was passed. If you play with the Chief, if you commit a crime against the Chief, your life is in real danger. If you create insecurity for the chief, you can easily die. There is this story about a woman called Latiina. She started brewing *kwete*, the local brew. The Acholi did not have it then, she started it. Culturally, anything new must never be consumed before it is taken to the Chief. He tasted it and he found it was very good and he drank it and then he got very drunk. When the chief was drunk, you know, you lie down, and people thought that he had died. You never kill anyone in the compound, so the woman was taken out of the compound and stoned with *keno* until she died. That was punishment, because she played with the life of a Chief. We have a saying today, *yom yic oneko Latiina* ("happiness has killed Latiina").<sup>176</sup>

#### 6.4 Rome Statute regarding traditional mechanisms

Indeed, investigations and prosecutions undertaken by approved, and presumably retributive, mechanisms would be inadmissible for investigation and prosecution by the ICC. That is, if an investigation were to be carried out using agreed-upon and sufficiently-prosecutorial<sup>177</sup> traditional means, it would therefore not be eligible for investigation by the ICC. Article 17.1.c stipulates that, "a case is inadmissible where... the person concerned has already been tried for conduct which is the subject of the complaint..." And so, if the mechanisms pursued by the GoU are deemed sufficiently retributive in nature, it is feasible that Ugandans could utilize these customary mechanisms and still meet the requirements of international law.

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<sup>175</sup> Interview with elderly man, Gulu town, 3 March 2005.

<sup>176</sup> Interview with elderly man, Gulu town, 3 March 2005.

<sup>177</sup> Darryl Robinson notes that the features of "genuine" Court-approved mechanisms include its quasi-judicial character; independence; effectiveness; ability to bring perpetrators to justice; and proven necessity for using a mechanism other than the ICC. Darryl Robinson, "Serving the Interests of Justice: Amnesties, Truth Commissions and the International Criminal Court," in *Bringing Power to Justice?*, eds Joanna Harrington, Michael Milde and Richard Vernon (Montreal: McGill-Queen's University Press, 2005, forthcoming), 25-26.

If these mechanisms are not sufficiently retributive, however, the requirements of international law, and of the Rome Statute specifically, may still be met. Article 17.1.b, addresses non-retributive mechanisms, and allows the state itself, in this case the Government of Uganda, to pursue any cases it chooses by means of sanctioned or approved mechanisms after a thorough investigation by any means it chooses – potentially including the use of customary mechanisms.

It has been suggested, however, that the ICC is, indeed, capable of supporting mechanisms that are restorative in nature:

Article [53.1.b] specifically juxtaposes the traditional criminal justice considerations – the gravity of the crime and the interests of the victims – with the broader notion of “interests of justice” and clearly indicates that the latter might trump the former. Thus, the ordinary meaning of this text, examined in the light of its object and purpose, suggests that “interests of justice” is a relatively broad concept.<sup>178</sup>

The amnesties granted by the Amnesty Commission, however, pose some difficulty, and complicate the matter of meeting international rule of law requirements somewhat. It appears that these amnesties could not be upheld in the face of ICC investigation, even though, as mentioned in both Section 1 and Section 5.5, above, the main goal of the Ugandan amnesty has been to end the conflict and save lives, not to shield criminals:

The bestowal of... amnesties could never satisfy the complementarity test [of the Rome Statute]. First, there would likely be no “investigation.” Second, even if there were an “investigation...” it could hardly be said that there was a “decision” not to prosecute... One could argue that the *primary* intent was to promote reconciliation and not to shield perpetrators, but nevertheless it would be undeniable that the means chosen was to shield perpetrators. Thus there would clearly be *an* intent (a substantial even if not primary intent) to shield perpetrators.”<sup>179</sup>

Still, the balance of amnesty reporters (who are called “perpetrators” in the language of the Rome Statute) could be dealt with by customary mechanisms. This would leave the major perpetrators, including Kony and others, to be dealt with by the ICC. And this scenario conforms nicely to the stated wishes of many of those interviewed for the purposes of this study.

One young Acholi man said, “For these people who have come back from the bush, they should all be forgiven because most of them were just abducted... But for Kony, if he does not come out through the peace process then they should get away of arresting him and government can do anything they think fits him.”<sup>180</sup>

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<sup>178</sup> An excellent discussion of this can be found in Robinson, “Serving the Interests of Justice,” 9.

<sup>179</sup> *Ibid.*, 24-25.

<sup>180</sup> Interview with young man, Labuje IDP camp, Kitgum, 12 March 2005, interview in Acholi (no translation).

Said another, “Kony should be arrested and taken to court because of the many crimes he has committed like killing, maiming and displacing. His crimes are too big for amnesty the Acholi way.”<sup>181</sup>

These sentiments were also echoed by those in the structure of government. “Kony should be arrested and prosecuted for all the atrocities he was committed. Amnesty has been our attempt to bring peace.”<sup>182</sup>

Other informants, however, disagreed. One elderly man said,

The worst killers are the low people [i.e. of lower ranks]. Because as you compare what has been happening here, most of the bad things have been done by government fighters. So Kony will be forgiven. If the government insists on punishing Kony, I think that the Acholi will in chorus say, “no, if you wanted to kill him, why did you encourage us to bring him home?” No Acholi elder will accept this. “You will involve us in persuading Kony to come home. Why do you now want to kill him?” I think there would be many reasons for the Acholi leaders to complain world wide. It must be made known to the world that we Acholi people do not want, from the bottom of our heart, for Kony to be punished. The conditions given now should be maintained. We want blanket amnesty.<sup>183</sup>

Another said, “Kony is like a magnet and arresting him is going to jeopardise the amnesty process and it will affect the reconciliation process in the community. There is going to be no peace without forgiveness. For there to be peace we should be forgiving and accommodating. The ICC is in sharp contrast with the culture of the Acholi people.”<sup>184</sup>

What is clear is that the Rome Statute and the ICC are in no way meant to “discourage attempts by national states to come to terms with their past... It would be regrettable if the only approach to gross human rights violations comes in the form of trials and punishment. Every attempt should be made to assist countries to find their own solutions provided that there is no blatant disregard of fundamental human rights.”<sup>185</sup> Some, in fact, have suggested that the ICC should defer to national mechanisms.<sup>186</sup> Still, “the ICC must be committed to

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<sup>181</sup> Interview with man, Acholi Bur, Pader, 15 March 2005, interview in Acholi (no translation).

<sup>182</sup> Interview with local government official, Kitgum town, 14 March 2005, interview in Acholi (no translation).

<sup>183</sup> Interview with retired teacher, Gulu town, 4 March 2005.

<sup>184</sup> Interview with middle-aged professional man, Gulu town, 5 March 2005.

<sup>185</sup> Alex Boraine, *A Country Unmasked: South Africa's Truth and Reconciliation Commission* (Cape Town: Oxford University Press, 2000), 433.

<sup>186</sup> For example, UN Secretary General Kofi Annan has suggested that it would be “inconceivable” for the ICC to set aside an approach like that adopted in the South African situation: Kofi Annan, “Speech at the Witwatersrand University Graduation Ceremony (1 September 1998),” quoted in Charles Villa-Vicencio, “Why Perpetrators Should Not Always be Prosecuted: Where the International Criminal Court and Truth Commissions Meet,” *Emory Law Journal* 49.1 (2000), 222. See also Mahnoush H. Arsanjani, “The International Criminal Court and National Amnesty Laws,” *ASIL Proceedings* 93 (1999), 65-8; and Michael Scharf, “The Amnesty Exception to the Jurisdiction of the International Criminal Court” *Cornell International Law Journal* 32.1 (1999), 507-27.

prosecution and can defer to non-prosecutorial programs only in exceptional situations”<sup>187</sup> as in northern Uganda, where the conflict has been on-going for nearly 20 years.

## 6.5 Building on success

As such, it appears that customary mechanisms used traditionally by the Acholi could, in fact, meet the expectations of Article 14 of the ICCPR. Although their “informal” status is roundly criticised in some quarters, it does appear to meet the standards established by the international community. Yet that system, like any system, could be improved upon to some degree.

It also appears that the requirements of the International Criminal Court, as laid out in the Rome Statute, could potentially also be met through the use of customary mechanisms. Again, the mechanisms themselves would likely have to be formalised to some extent. And afterward they would have to be approved by the state or by the ICC investigators. But it is possible that they could play an important role even within the context of coming to terms with the crimes committed during the conflict in northern Uganda.

Certainly, these kinds of traditional mechanisms could be allowed to work in conjunction with the activities of the International Criminal Court, sanctioned as they are by the Rome Statute. The key, of course, is that the Rome Statute and ICC have not yet been tested in this way. No precedents exist. And the Ugandan case will almost certainly be the first to “test” the ICC’s stand on such issues.

Currently, ‘traditional’ mechanisms are *ad hoc* at best, underscored by the fact that there is a clear discrepancy in opinion between the leadership and those living in IDP camps. Moreover, the extent to which there is misunderstanding over the meaning and content of different mechanisms is underscored by the fact that numerous informants referred to *mato oput* as covering anything seen to be broadly ‘traditional’. One way to address this would be for the Acholi to codify those mores and traditions that make up these customary mechanisms and institutions. In other words, the expectations of the community ought to be written down so that everyone in the community knows or is able to access such rules. These rules would then also inform the decisions taken by the elders or community leaders.<sup>188</sup> This would clearly address any questions of bias and flexibility. Codification and other “fair procedures [would] serve to satisfy neutral observers”<sup>189</sup> and reinforce already-existing community standards.

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<sup>187</sup> Robinson, “Serving the Interests of Justice,” 9.

<sup>188</sup> Ayisi calls these community leaders “men of prestige” and considers them distinct from men of knowledge or “elders.” See *An Introduction to the Study of African Culture*, 69.

<sup>189</sup> Rosenblum, “Justice and the Experience of Injustice,” 83.

In order for any mechanisms to work, however, the community must be deeply involved in the process. “Efforts to strengthen social capital [must] allow communities to take development into their own hands.”<sup>190</sup>

A basic tenet of social reconstruction or reclamation is the need for post-war communities to define and take ownership of the process of justice and reconciliation... Peacemaking and peacebuilding are not sustainable unless their form and content are shaped by local actors. While individuals and groups locked in conflict are obviously concerned about physical and economic security, they also crave respect, acknowledgement and affirmation. They want to be involved in decisions which affect their lives, and they resent being treated as the object of some other body’s plans.<sup>191</sup>

Involvement at many levels will increase public confidence.<sup>192</sup> This involvement will also “strengthen local societal structures (including legal ones) as a means of providing the ongoing structures necessary for development. Traditions here are layered, and Western ones, to the extent that they are received, [must be] adjusted to those which exist already.”<sup>193</sup>

Indeed, there is growing support in favour of combining customary models with Western models to form a kind of “state law pluralism,” in which official state law accepts both customary and modern laws. This has been successfully done in African countries including Chad, Central African Republic, and the Democratic Republic of Congo. An alternative would be to integrate customary and Western legal codes into one, as has been done in both Ghana and Senegal.<sup>194</sup> The Western retributive system is more than capable of incorporating alternative legal traditions,<sup>195</sup> and linking modern and customary mechanisms will strengthen public trust.<sup>196</sup>

Whatever the case, “[j]ustice, like beauty, is in the eye of the beholder and can be interpreted in a variety of ways.”<sup>197</sup> It can legitimately take many forms.<sup>198</sup> It remains to be seen what those living within the conflict zone will choose.

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<sup>190</sup> Nat J. Colletta, Markus Kostner, and Ingo Wiederhofer, *The Transition from War to Peace in Sub-Saharan Africa* (Washington: World Bank, 1996) 3. See also Robert Putnam, *Making Democracy Work* (Princeton: Princeton University Press, 1993), 169, 177; Almond and Verba, *The Civic Culture*, 264-265, 284.

<sup>191</sup> Harvey M. Weinstein and Eric Stover, “Introduction: Conflict, justice and reclamation,” in *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein (Cambridge: Cambridge University Press, 2004), 18-19.

<sup>192</sup> Mark Plunkett, “Reestablishing Law and Order in Peace-Maintenance,” *Global Governance* 4.1 (1998), 68.

<sup>193</sup> H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law* (Oxford: Oxford University Press, 2000), 336. The elements discussed here are sometimes identified as the “Communitarian Restorative Model.” See Harrell, *Rwanda’s Gamble*, 59-65.

<sup>194</sup> Mani, *Beyond Retribution*, 83.

<sup>195</sup> Glenn, *Legal Traditions of the World*, 328.

<sup>196</sup> Mani, *Beyond Retribution*, 84.

<sup>197</sup> Weinstein and Stover, “Introduction: Conflict, Justice and Reclamation.” 4.

<sup>198</sup> *Ibid.*, 10.

## 7 CONCLUSION

The intractable nature of the conflict in northern Uganda means that there are no easy answers – either to the question of how the war might end, or to what should be done in any post-conflict situation. This paper has explored some possible responses to these issues through the lens of transitional justice mechanisms. In so doing, it has sought to carefully define notions of peace, and notions of justice, and has shown the extent to which the two processes have different sets of criteria to be met.

Of paramount importance is the fact that, while there is much diversity of opinion within the conflict zone on many issues, findings indicate widespread consensus over the fact that peace needs to come before justice. Put another way, there can be no meaningful justice while civilians continue to be caught in the middle of a vicious battle between the LRA and government forces. This ‘sequencing’ of events is currently dictating people’s perceptions of mechanisms that are intended to facilitate the ending of the war, as well as people’s understandings of what might happen after a cessation of hostilities. In other words, the current attempts at a peace process, the amnesty, the intervention by the ICC, and the ongoing military offensive are all seen from the perspective of how they might help or hinder an end to the war. Appropriate mechanisms for dealing with the atrocities of the past will then be decided upon once the security of civilians is guaranteed.

Thus the fact that the processes of peace and justice are, to a large extent, separated in people’s minds, is vital to understanding current opinion on issues of justice within the conflict zone. For instance, current support for an amnesty that appears, to the outsider, as an easy route for perpetrators of the worst types of war crimes to dodge any form of accountability and punishment, needs to be read in the light of civilians desperate for the war to end. Indeed, it could be argued that what people are demanding through their desire to end the war and *then* determine appropriate mechanisms for dealing with crimes committed, is not less justice but more – and justice that is more appropriate and better able to deal with the level of mass atrocity that has taken place.

All of this is especially important in the context of rebuilding the social trust that has been destroyed by the protracted nature of the conflict in Northern Uganda – and by the mounting distrust that has been growing in a number of different regions of the country since Independence in 1962. As outlined above, the building of social trust is critical to the rebuilding and reconciliation process. Without this essential element, people will be unwilling and unable to forge meaningful relationships and to get on with their lives in the absence of fear and distrust. Indeed, it is only through a willingness to confront and acknowledge their collective past, and only then if there is a clear trend toward the end of hostilities, that people can begin the process of social reconciliation. The building of social trust must therefore be given priority status, and this must be recognised and incorporated into strategic policies and their implementation beginning immediately – and continuing throughout the resolution of the conflict and beyond.

While many civilians struggle to imagine the possibility of a post-conflict environment, there are indicators of some of the different requirements in a post-conflict reconstruction phase, one that would lead to long-term reconciliation. It is important to note that any successful post-conflict rebuilding must necessarily address a number of elements, above and beyond simply issues of “justice”. For, those living in the conflict zone must be provided with the tools they need to begin again to live a life unencumbered by the devastation of war. As such, the reconstruction process must also take into account economic stability, physical rebuilding of homes, hospitals, roads, and schools, as well as police and military reform, among other things which ought to address social justice needs in a comprehensive and substantial way. Still, many believe that traditional mechanisms of justice should play a pivotal role in this process, although understandings of these mechanisms and their capabilities are sometimes clouded by misinformation. At the same time, many of these people believe to some extent in the work of the ICC, and support their role in the process.

Much of the debate has become lodged somewhere between these two approaches to justice: restorative and retributive. The international community, with its own origins and preconceived notions resting squarely within the realm of retributive justice, continues to push for the kinds of institutions it has always used: Nuremberg-style trials and tribunals of the kind created to deal with the Rwandan genocide. But evidence has shown and continues to show<sup>199</sup> that these kinds of mechanisms are not at all suited to the kinds of violent conflict that has taken place in Northern Uganda and elsewhere. And so it is imperative that a solution be found to the conflict in the north that takes these specificities, along with the ideas of those directly involved, into account.

Clearly, the lessons that are drawn from the resolution of the conflict which now centres around the Acholi, might have broader application within Uganda. Indeed, many different people and groups within the country have begun to explore the possibility of a national programme of reconciliation. These include regions other than Acholi, where the conflict continues – although calls for such a programme are perhaps strongest there. These other regions have never recovered from the abuses suffered at various times from 1962 to the present. These, too, are calling for reconciliation both within and between particular regions. And a good number of these are interested in the inclusion of traditional acknowledgement as a main focus.

But first, there must be peace.

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<sup>199</sup> Reports are beginning to surface that Rwandans both within the country and in neighbouring countries do not trust the *gacaca* courts. “Minister scoffs at criticism over ‘forced repatriation’,” *IRIN News.org* [article on-line]; available from [http://www.irinnews.org/report.asp?ReportID=47655&SelectRegion=Great\\_Lakes&SelectCountry=BURUNDI-RWANDA](http://www.irinnews.org/report.asp?ReportID=47655&SelectRegion=Great_Lakes&SelectCountry=BURUNDI-RWANDA); accessed 22 June 2005.

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