

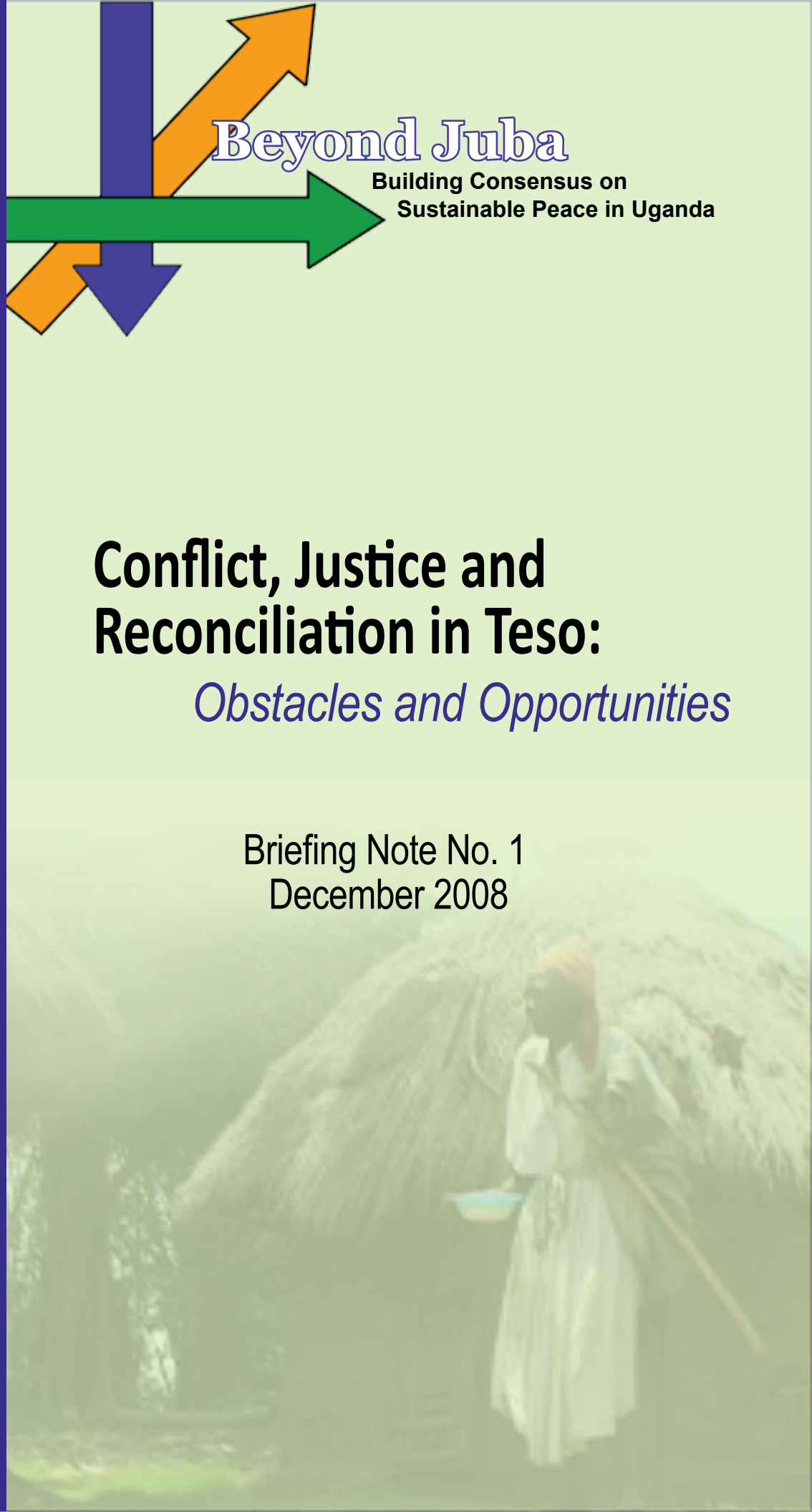
Beyond Juba

Building Consensus on
Sustainable Peace in Uganda

Conflict, Justice and Reconciliation in Teso:

Obstacles and Opportunities

Briefing Note No. 1
December 2008



Beyond Juba

A transitional justice project of
the Faculty of Law, Makerere University,
the Refugee Law Project and
the Human Rights & Peace Centre

The Beyond Juba Project builds on the participating organisations' work on peace- and conflict-related issues in Uganda and is a direct response to the Juba peace talks between the Government of Uganda and the Lord's Resistance Army.

The project constitutes three pillars:

- In-depth consultation and training with key stakeholders including different branches of government
- Research on critical issues relating to transitional justice in Uganda
- A multi-layered public information campaign that reaches all sectors of society

Beyond Juba is a three year project funded by the Swedish International Development Agency (SIDA) and the Norwegian Embassy.

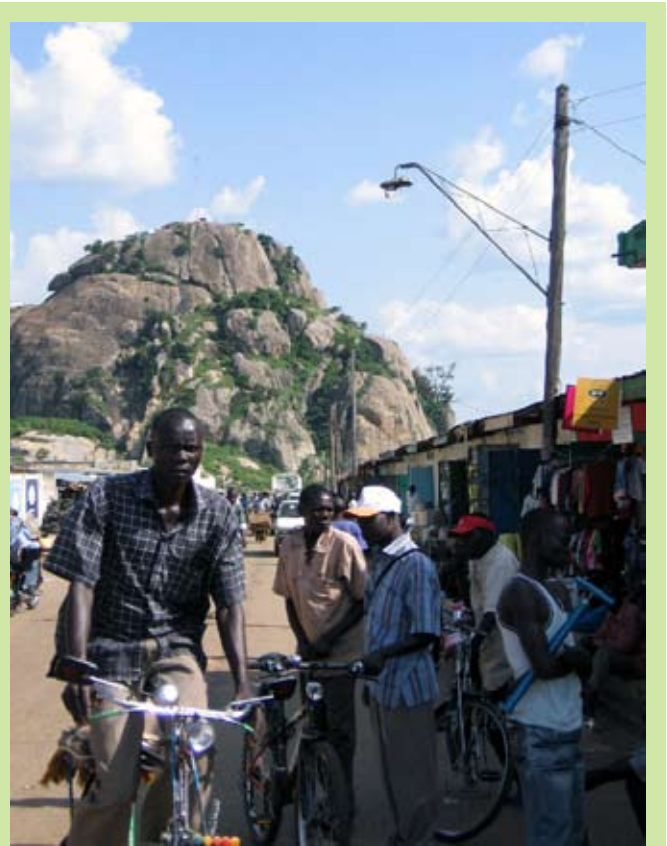
ACKNOWLEDGMENTS

This report is based on field research conducted between 10 and 28 August 2008 in towns, villages and internally displaced persons camps in the districts of Amuria, Katakwi, Kumi, Pallisa and Soroti. The research teams consisted of Lyandro Komakech, Tenywa Livingstone, Daniel Neumann, Moses Chrispus Okello and Alex Sheff of the Refugee Law Project. This paper was written by Alex Sheff with valuable input from Chris Dolan, Moses Chrispus Okello and Paulina Wyrzykowski. The author is particularly grateful to the Iteso Cultural Union and numerous local officials for their openness and guidance, the Uganda National Council for Science and Technology and the Office of the Prime Minister for permission to conduct the study, and the Vassar College Maguire Fellowship for additional personal funding. Finally, this report would not have been possible without the insights of all the individuals who agreed to take time out of their more immediate concerns to share their experiences and opinions with us.

INTRODUCTION

Since the late 1990s, as the search for solutions to protracted conflict has deepened, the potential role of traditional justice in responding to the situation in Northern Uganda has been increasingly researched and discussed. The roots of traditional practices lie in principles and mechanisms used in pre-colonial communities to ensure the maintenance of a just society. While previous studies of traditional justice have focused on present-day understandings of these practices and their relevance in the Acholi and Lango sub-regions, little has been done to elucidate the potential of such practices in Teso.

Given that Teso's complex history of conflict—which includes the incursion of the Lord's Resistance Army (LRA) beginning in 2003¹—constitutes an important part of Uganda's national legacy of unaddressed conflicts, this briefing paper focuses on the potential of traditional justice in the Teso region. It thereby aims to make a contribution to the Beyond Juba Project's wider objective of building consensus on sustainable peace in Uganda as a whole.



Soroti Town

The paper begins with a short overview of the history and impact of violent conflict in Teso. It then explores the history and contemporary relevance of traditional justice in Teso, as well as people's perceptions of formal dispute resolution processes. The ultimate aim is to better understand the contrasts between traditional justice practices used in Teso and those used in the Acholi and Lango sub-regions. Finally, the practical implications for any implementation of the Juba Peace Agreement and potential reforms in the Justice, Law and Order Sector (JLOS)—an inter-agency body constituted of the judiciary, the Ministry of Justice and Constitutional Affairs, correctional services, the police, the office of the Attorney General and the office of the Public Prosecutor, among others—in a local and national context are also highlighted.

The briefing paper is based on the preliminary findings of research conducted between 10 and 28 August 2008. Qualitative research methods were used, using interview maps to guide conversations with respondents. Key informant interviews were conducted with cultural leaders, community elders, government officials including Local Councillors, members of JLOS including regional and district police officers, public defenders and district magistrates, as well as humanitarian and other workers from various non-governmental organisations (NGOs). In addition, focus group discussions and select interviews were held with the general public in villages, towns and internally displaced persons (IDP) camps. It is important to note that these findings are preliminary and more complex conclusions may be revealed as further analysis and research allows. A total of 32 interviews and 7 focus group discussions were conducted throughout the districts of Amuria, Katakwi, Kumi, Pallisa and Soroti in the Teso sub-region of Uganda.

¹ See for example Refugee Law Project (RLP) Working Paper No. 17 (2005): *Peace First, Justice Later: Traditional Justice in Northern Uganda*, and a forthcoming discussion paper on the codification of traditional justice.

POLICY CONTEXT

Beginning in the late 1990s, the role of traditional justice has been increasingly debated. These debates gained added urgency when peace talks between the Government of Uganda (GoU) and the LRA began in the Southern Sudanese capital of Juba in July 2006. What role should traditional justice play in the process of addressing violations committed in the course of the LRA conflict? This debate, which has both political and policy dimensions, has in turn informed thinking about potential reforms in JLOS. In the short term these may involve building traditional justice into a national transitional justice process; in the medium and long term these could go further still to include far-reaching reforms of national legislation.



A focus group in a village in Amuria District near the border of the Teso and Lango sub-regions.

In mid 2006, late 2007 and early 2008, sub-agreements were signed on all five of the items on the agenda of the Juba peace talks between the LRA and the GoU.² While the prospect of Joseph Kony signing the Final Peace Agreement appears dim, the GoU has on several occasions reiterated its commitment to implementing as much as possible of what it committed to in the five sub-agreements. The Principal Agreement on Accountability and Reconciliation, reached under Agenda Item 3 of the Juba peace process (Agenda Item 3 Principle Agreement), carves out a potentially vital role for traditional justice. Article 3.1 of the agreement states that “traditional justice mechanisms such as *Culo Kwor*, *Mato Oput*, *Kayo Cuk*, *Ailuc* and *Tonu ci Koka* and others as practiced in the communities affected by the conflict shall be promoted, with necessary modifications, as a central part of the framework for accountability and reconciliation.”

In addition to the Agenda Item 3 Principle Agreement, the Peace, Recovery and Development Plan’s Strategic Objective 4 “Peace Building and Reconciliation” broadly proposes a place for traditional justice practices, and calls for a focus on “building informal leadership among men and women to engage with local authorities and civilians in the reconciliation process” through “localised conflict management mechanisms.”³ The call for an appraisal of traditional justice may in part relate to the limited responsiveness of existing national and international formal justice mechanisms in addressing Uganda’s numerous legacies of conflict, and to the way

² *Agreement on Comprehensive Solutions*, reached under Agenda Item 1 of the Juba peace process (2006); *Agreement on Cessation of Hostilities*, reached under Agenda Item 2 of the Juba peace process (2007); *Agreement on Accountability and Reconciliation*, reached under Agenda Item 3 of the Juba peace process (2007); *Agreement on Disarmament, Demobilisation and Reintegration*, reached under Agenda Item 5 of the Juba peace process (2008).

³ *Peace, Recovery and Development Plan (PRDP)* (2007): Strategic Objective 4: *Peace Building and Reconciliation*, Article 4.4.1: Public Information, Education and Communication (IEC) and Counselling Programme.

in which the broader colonial legacy of Ugandan law alienates much of the country from its own justice system.⁴

Although these agreements and policy documents acknowledge that traditional justice has a role to play, the nuances of their operation and applicability remain unclear. Questions are increasingly being posed about the ability of these mechanisms to address injustices committed in the course of decades of violence whose nature is in some key respects quite different from the situations traditional justice was originally designed to address. These issues are being debated within numerous academic and policy circles, including Uganda's own JLOS, which has been tasked with the responsibility of designing a fitting transitional justice policy for the country. In the recently concluded JLOS Forum key questions were raised about the relationship between formal and informal accountability mechanisms, and whether or not the latter should be integrated into national justice structures or, alternatively, implemented at a local level only.⁵ The discussion focused on which abuses traditional justice could address, the extent to which (if at all) they could be adapted for contemporary application, whether or not formal codification of traditional principles into national law is desirable, and to what extent they must be allowed flexible implementation at a more local level. This policy debate is part of a broader narrative being charted in Uganda as the country struggles to confront its history of conflicts and to move toward national reconciliation. While the whole enterprise of using traditional practices to address "modern" injustices may be at a crossroads, there is evidence that tradition still enjoys a degree of local application in areas affected by conflict and that the values and principles embodied in these practices have a future role to play in national transitional justice mechanisms as well as in overall reforms of Ugandan law. The manner in which the Agenda Item 3 Principle Agreement was framed, however, is limiting in scope and pre-supposes that the anticipated policy shifts will be confined to the "conflict affected areas." Ultimately, the effective integration of traditional justice principles could make an important contribution to what Article 2.4 of the Agenda Item 3 Principle Agreement suggests should be the "widest national ownership of the accountability and reconciliation process."⁶

THE LEGACY OF VIOLENT CONFLICT IN TESO

The Teso Region exemplifies the kind of legacies of unacknowledged conflict and human rights violations which have in the past—and may again in the future—produce cyclical patterns of violence in Uganda. The longest running episodes of violence have been with the Karimojong who have consistently conducted cattle raids in the region, but the Ugandan People's Army (UPA) rebellion from 1986 to 1992 and the LRA incursion which occurred in 2003 have also had devastating effects on the region.

After the fall of Idi Amin in 1979, a group of Karimojong raided the arms store of Moroto barracks. This is widely regarded as a key marker in the transition from the use of traditional weaponry to the current predominance of small arms and a corresponding aggravation in levels and types of violence, which in turn have prompted numerous military interventions in the name of disarmament. This resulted in an intractable situation of internal displacement within both Karamoja and Teso that was accompanied by loss of property, psycho-social insecurity and an ongoing humanitarian crisis. In addition to armed cattle raids by Karimojong, the UPA

⁴ See for example RLP Working Paper No. 15 (2005) *Whose Justice? Perceptions of Uganda's Amnesty Act 2000: The Potential for Conflict Resolution and Long-Term Reconciliation*, RLP Working Paper No. 17 (2005): *Peace First, Justice Later: Traditional Justice in Northern Uganda*, and RLP Working Paper No. 20 (2007): *Partial Justice: Formal and Informal Justice Mechanisms in Post Conflict West Nile*.

⁵ Minutes of the Third National Justice Law and Order Sector Forum held July 30-31, 2008 (on file with the Beyond Juba Project).

⁶ *Agreement on Accountability and Reconciliation*, reached under Agenda Item 3 of the Juba peace process (2007): Article 2.4.

rebellion against the then new National Resistance Army/Movement (NRA/M) government (a response to perceived or real marginalisation of the region), also had detrimental consequences for the Teso people. This latter rebellion devastated the region economically and socially, and provided further opportunities for intensified cattle raids by the Karimojong. The LRA incursion into the region, which began in June of 2003, was thus only the most recent addition to a long history of violence.



Some local councillors have developed hybrid justice practices combining traditional and formal justice. Here a cattle thief in Amuria District is paraded before the community tied to a cow under instructions from the local councillor.

Prolonged insecurity has left a complicated legacy in Teso, involving a trail of human rights violations, which remain unacknowledged in any comprehensive fashion. Rather than develop a policy to deal with this legacy and the associated governance deficits, the Ugandan government brought an end to the overt violence by negotiating with and co-opting key members of the UPA in 1992. The negative peace that was achieved left no place for the voices of victims, and no proper process of accountability, reconciliation and compensation with which to achieve closure. From the interviews we conducted, it appears that parts

of the population remain deeply bitter over the abuses they suffered during the UPA rebellion, and that peace in Teso is more fragile than is generally acknowledged. Indicators of this fragility include the reluctance of some sections of the population to cooperate with the on-going disarmament process,⁷ the incomplete demobilisation and reintegration of UPA combatants and the swiftness with which a locally organised militia, known as the Arrow Boys, was mobilised in response to the LRA incursion in 2003. Furthermore, the LRA incursion has left residual tensions between Teso and Acholi. The Acholi people in Teso were often identified with the LRA, and responsibility for the LRA incursion is frequently projected onto the Acholi as a whole. Because the Karimojong conflict is ongoing, Teso communities on the border live in a state of constant insecurity. These unaddressed legacies leave open the potential for future violence and unrest on a regional scale, in addition to fostering an environment rich in daily civil and criminal disputes, fed by the violent atmosphere and the remaining stockpile of weapons. These two legacies are the result of a post-conflict environment in which efforts to address accountability, reconciliation, compensation and even the legitimacy of the current government have been sorely wanting. The findings of this study are thus intended to inform the discussions geared at addressing such issues.

⁷ Joseph Malinga, "UPDF recovers 57 guns in Teso," *The Daily Monitor*, 26 November 2008. pg 7. This article quotes an army spokesman saying that some residents are adamant in refusing to respond to the disarmament process.

SUMMARY OF KEY FINDINGS

LEGACY OF CONFLICT IN THE TESO REGION

- **Most respondents placed responsibility for cattle theft during the UPA conflict on both the Karimojong and Government forces.** The Karimojong were consistently seen as having taken advantage of the chaos created by the conflict to conduct extensive cattle raids during the time of the rebellion. Some respondents also believed the government stole cattle directly, either by masquerading as Karimojong raiders or by not returning all of the cattle which they claimed to have recovered from the Karimojong raiders. Others stated that the government forces failed to provide protection to the region against the raids, which in turn was cited as a catalyst for further conflict. The majority of the respondents felt the government was somewhat responsible for the loss of cattle in the region.
- **Teso communities accepted almost no responsibility for the conflict with the Karimojong.** Most respondents stressed their willingness to provide food and work for Karimojong who travelled into Teso. Virtually no respondents mentioned incidents in which the Teso might have been seen as taking vengeance, and despite the fact that the civilian population in Teso clearly has some access to small arms, responsibility for the arms build-up in Karamoja was consistently laid at the feet of either the Karimojong or bordering countries such as Kenya and Sudan.
- **Limited cross-cultural interaction was cited by many respondents as a prominent cause of the continuing strife with the Karimojong.** Respondents were concerned that there was little access across the border between Amuria or Katakwi and Moroto, making trade and communication exceedingly difficult. Moreover, most schools and other public resources are built to service either Karimojong or Teso communities but not both. Several respondents raised the hope that more trade and common use of resources between the communities along the border region between Teso and Karamoja might foster more mutual understanding, particularly for the younger generation.
- **According to some respondents, the LRA's initial incursion into the Teso region was carried out not only with the intention of demonstrating their reach, but also of allying with elements of the Teso community who were disaffected with the government.** Several respondents reported that LRA leaders actively sought support from local political and community leaders as well as from ex-UPA combatants. These individuals showed initial openness to the LRA's mission, but were ultimately rejected by the LRA leadership on the grounds that they were not young enough to be trained as proper fighters. The LRA then began to abduct younger children in the region, causing resentment against the LRA and spurring many ex-combatants to mobilise under the name Arrow Boys. Thus, the LRA presence in the Teso region was from the beginning intertwined with a previous history of conflict. Taken with the other findings on the history of conflict in the region, this suggests that the legacies of the major conflicts in Teso may be local in impact, but national in scope.

VIEWS OF ITESO TRADITIONAL JUSTICE

- **There was nearly unanimous understanding of the basic principles and central mechanisms for resolving conflict in Teso.**⁸ The principles centered on truth-telling, reparations (including material compensation) and acknowledgment of responsibility for the infractions committed. This basic process included:
 1. A series of meetings between the clan elders of both parties to a conflict held at a neutral location.
 2. The allotting of reparations, almost always in the form of cows (material compensation) from the party responsible for the offence to the party wronged in the conflict.
 3. The importance of either the individual or the clan taking responsibility for the infractions. Ultimately, it was the clan that was accountable for the activities which took place.

This process was the primary mechanism for resolving conflicts during the pre-colonial era in Teso, and it has continued in modified forms throughout the colonial and post-independence period. Today, it appeared to be in limited use, though it was seen as potentially applicable to infractions ranging from theft to verbal or physical quarrels, adultery and murder.⁹ Some respondents referred to this mechanism as *ailuc*, while others used *ailuc* only to refer to the specific offence of adultery.

- **The understanding of the details of traditional justice practices varied significantly by age, social roles, location, religion and gender.** Detailed understandings of these practices were held almost exclusively by older individuals and those with close ties to the Iteso Cultural Union. However, even among this group accounts of the details of the justice practices varied. Younger respondents expressed less understanding of the particular nature of any one practice. Different practices were also emphasised differently depending on the gender of the respondent. Practices surrounding marriage and childbirth were emphasised by female respondents more than other dispute resolution practices.
- **Many respondents also described a ceremony (including a feast and in some cases the slaughtering of an animal) as an important part of the justice process.** The vast majority of respondents agreed that the intended purpose of the feast was to provide a forum for sharing, the re-establishment of relations between the clans of the victim and the perpetrator and reconciliation with a new beginning for the relationship between the two clans. Some described the final reconciliation as *augan*, which appeared to represent a form of closure on the matter and a seal for the peace process intended to prevent reprisals. Those with strong Christian beliefs, whether Catholic, Anglican or other denominations, expressed discomfort with the activities involving alcohol consumption and the slaughtering of an animal with the intention of appeasing gods or spirits.
- **Caning or beating was also described as an important aspect of punishment in traditional justice.** The beating would most often take place before any reparations were paid and was usually a public event. The reason for the public nature of the beatings is unclear. One possibility is that the public setting serves to prevent the beating from becoming too severe, as other community members would intervene. Another possibility is that the humiliation would serve as a deterrent both for the guilty

⁸ These principles and their corresponding practices were understood as being relevant to a very wide range of situations ranging from major conflicts between clans, to small issues within a family.

⁹ Please see the Policy Implications section below for further explanation of the implications of this finding.

individual and for other members of the community. According to several respondents, caning was used particularly often in disciplining youths. Caning was no longer said to be widely practiced in Teso communities, though many elders reflected that it might be useful to bring it back as a common practice to discipline the youth.

- **Infractions of a sexual nature could be resolved through the general practice of meetings resulting in reparations or material compensation, with the exception of incest, which required a specific ceremony.** Most infractions of a sexual nature were described in Teso culture as adultery, or *ailuc* (though many respondents also used the same term to



Interview with a 114-year-old elder and his wife in Kumi District.

refer to the general dispute resolution mechanism). There were, however, a variety of different categories of sexual infractions. Adultery committed by a man with a married woman could be resolved through the general conflict resolution mechanism with reparations in the form of material compensation paid to the husband of the woman who had been with another man. Adultery committed by an older man having relations with an unmarried younger woman of a certain age and education level (i.e. defilement) with or without her consent, referred to by some as *ekingol*, could be addressed in the same manner, with compensation paid to the family of the girl. In this case, the man, if unmarried, might be obliged to marry the girl. Adultery involving members of the same family including siblings and cousins (i.e. incest), was considered particularly serious and was among the few infractions that required a specific cleansing ceremony. Importantly, none of these categories of sexual infractions encompassed the contemporary definition of rape in part because forceful abduction of a spouse had been a part of Teso tradition. While some respondents seemed ready to incorporate modern definitions into their understanding of sexual infractions that would require the general justice practice, others were more skeptical of contradicting tradition.

- **Specific ceremonies exist for individuals returning after a prolonged absence resulting from a family quarrel; however there were varying views on the nature of this practice. Some respondents either did not know or did not believe there was a particular practice for this situation, while others described a detailed ceremony of welcoming returning individuals.** In the current post-conflict environment, many respondents spoke about the need to forgive those returning from abduction for the infractions they may have committed. However, views on the practice of forgiveness were not uniform. Some respondents felt that forgiveness for abducted individuals should be unconditional because they had been forced against their will to commit infractions. Others felt that forgiveness could only exist once the person had acknowledged his or her responsibility and promised never to repeat the infraction.

- **Some respondents voiced the need for a cleansing ceremony for an area where a lot of killing took place.** This ceremony may also have been connected to the need for burial of bones that remained in such areas.
- **Respondents voiced concern that the practices would remain difficult to administer between Teso and other ethnic groups because any valuing of one group's practice over another could be interpreted as biased.** Both the Acholi and the Karimojong were viewed as perpetrators in Teso, and there was concern that it would be unfair for the group which had committed abuses to dictate the terms of the reconciliation, with additional skepticism being voiced with regards to Karimojong practices that were described as fundamentally non-Christian. There was, however, a tentative belief that some principles overlap across cultures. Thus, while there was some optimism regarding the common principles of the different practices, there was a high degree of limitation on the capacity for traditional justice practices to function in the case of inter-tribal/ethnic conflicts.
- **The authority of traditional leaders in Teso has been deeply eroded.** Respondents tended to cite one or more of three possible causes for this loss of authority. The first is the clan elders' loss of their relative economic power within the community. As the measure and means of achieving wealth have evolved, the younger generation have become higher income earners than elders and the latter's ability to garner support through patrimonial means (e.g. by providing loans or other financial support in the community) has declined. The second reason is the rise in education of the younger generations who no longer see the elders as the ultimate figures of authority or wisdom. The third reason, something of an amalgamation of the first two along with other economic and social effects, is the broader force of modernisation which increasingly pushes the elders' social role into the background.

IEWS OF FORMAL JUSTICE MECHANISMS

- **Respondents indicated a considerable distrust for the formal justice process, including the role of police, lawyers and courts.** This distrust was in part the result of a widespread lack of understanding regarding the formal justice process. The lack of understanding and distrust appeared to be related to a number of factors including public misunderstanding of the judicial process, corruption within the police force and logistical as well as infrastructural barriers such as legal fees. At the most fundamental level the challenges seemed to stem from the fact that the principles of formal justice do not resonate with those of traditional justice.
- **An example of this distrust is that imprisonment as the primary form of punishment was disapproved of by most respondents because it did not allow for any reconciliation between the families of the victim and perpetrator and did not provide any material redress for the victim's family.¹⁰** While formal justice processes have been designed almost exclusively in relationship to civil and political rights, respondents expressed a desire for justice responses that would address the social and economic consequences of conflict.
- **Local Council courts, which are intended to address some of the issues of distrust and misunderstanding concerning the judiciary, were themselves plagued by similar problems, though they were nonetheless seen as more responsive to community needs.** While some respondents believed

¹⁰ Some of the skepticism regarding imprisonment may also have been a reflection of a dynamic identified in previous RLP research which found that police often imprisoned those accused of a crime, only to release them after 48 hours without pressing charges.



Interview with an elder and her family in Kumi District.

Local Council (LC) courts were open to bribery and corruption, others saw them as important connectors between the communities and the formal justice system. This variation may be partially accounted for by the differing personal relationships between LCs and their communities in different locations.

- **Despite the police's shortcomings and the high level of distrust, police were still seen as the first recourse in the case of crimes such as theft, murder and rape.**¹¹ A distinction was drawn by most respondents between civil and

criminal cases, in which criminal cases were almost always reported to the police. In rural settings it was also common for individuals to pursue a matter both through the formal justice system and using traditional justice mechanisms simultaneously, with the latter being used to seek compensation.

- **The Uganda Human Rights Commission (UHRC) regional office in Soroti also received formal complaints of human rights abuses.** The complications around reporting human rights violations were multifaceted. UHRC records showed an average of eleven complaints per month between January and July of this year.¹² However, many cases were closed because of loss of interest on the part of the complainant.¹³ In addition, appeals on the part of complainants were found to be rare and payment of compensation in settled cases was often delayed, sometimes indefinitely. A number of cases brought to the Commission concerned state actors, though some also dealt with non-state actors such as the Arrow Boys.¹⁴ Respondents outside the formal justice sector did not appear to recognise the role of the UHRC as a relevant mechanism for pursuing justice.
- **Respondents varied as to whether they felt traditional practices could be fused with formal structures.** A pattern seemed to emerge indicating that the more formal the structure, the more skepticism people expressed regarding whether it could be used for the contemporaneous application of traditional justice. Some respondents felt that Local Councillors could play a role (so long as they did not interfere with the practice itself), while others felt they would corrupt the process. Any suggestion of involving formal court magistrates was received with skepticism.

¹¹ This finding differs from previous RLP research conducted in the West Nile region. That research found that the police were often used to enforce decisions determined by traditional leaders and LC courts. See RLP Working Paper No. 20 (2007): *Partial Justice: Formal and Informal Justice Mechanisms in Post Conflict West Nile*.

¹² Monthly Report by the Uganda Human Rights Commission (UHRC) Regional Office, Soroti (July, 2008).

¹³ Monthly Report by the UHRC Regional Office, Soroti (July, 2008).

¹⁴ The Arrow Boys might be better characterised as quasi-state actors, since they were independently mobilised, but co-opted by the UPDF in fighting the LRA.

POLICY IMPLICATIONS

If the legacies of ongoing Karimojong cattle raids (which today are not akin to traditional cattle raids), and the LRA incursion are not promptly acknowledged and addressed they will only add to frustrations lingering from the UPA conflict, and are likely to continue to fuel future cycles of violence in the region. Traditional justice can potentially contribute to breaking such cycles, both in terms of promoting a culture of peace and responding to day-to-day violent crime.

The findings presented above suggest that Teso traditional justice practices have both national and local relevance, and could contribute to addressing both the legacies of the major conflicts in the region and

day-to-day issues of crime and other social infractions. While a local accountability and reconciliation mechanism on its own would struggle to address the abuses committed by the Ugandan government forces during the conflicts in Teso, national mechanisms which have no local roots are unlikely to be sufficiently accessible or responsive to the needs of the affected communities. This therefore suggests that both national and local mechanisms will be necessary if the legacy of conflict in Teso is to be properly addressed. Traditional justice may be relevant in establishing the principles of a national system, while also being practiced directly in local communities affected by the conflict.

Traditional justice principles, rather than being obsolete, appear to have potential relevance to a wide variety of abuses. Traditionally they were considered applicable to two different types of infractions: minor issues such as verbal quarrelling and assault, and those which could deeply disrupt communal relations, such as murder, arson, theft, adultery (with its several previously identified variations) and incest. While these infractions reflect only some of those committed throughout the history of conflict, they account for some of the most common, and the underlying principles could be extended to encompass issues such as torture, mutilation, property destruction and sexual slavery. Moreover, a key principle was the limitation of revenge actions by normalising relations between the clans of the perpetrator and the victim. While the application of this principle needs to be extended beyond inter-clan practices, it could be a key component of what is so urgently needed to bring lasting peace to the region, its neighbors and the entire nation.

As highlighted in the discussion of the policy context above, the Annexure to Agenda Item 3 of the Juba peace process stipulates several mechanisms for the implementation of a national transitional justice policy. These include a national body of inquiry into the history of the conflict and related matters, a special division of the High Court to try high level perpetrators, as well as traditional justice practices that should “form a central part



A focus group with young women in an IDP camp in Amuria District.

of the alternative justice and reconciliation framework identified in the Principal Agreement.”¹⁵ Furthermore, following the Government’s determination that JLOS should spearhead the transitional justice process, the sector has stated that they seek a fusion of traditional methods with formal systems, while acknowledging that more exploration is needed on how to achieve this. This research tends to support the view that a fusion of traditional and formal justice mechanisms has a place both at a local and a national level. Such a fusion should take account of the broad principles that form the backbone of traditional justice in Teso—truth-telling, compensation and responsibility. These principles are similar, though not identical, to the principles of traditional justice identified by previous RLP research.¹⁶ The ubiquity of these principles and the limited abilities of current local mechanisms to address relations between the GoU and different communities, suggests that the principles should be reflected in the collection of national bodies that will be tasked with the transitional justice process. These bodies include the War Crimes Court, established as a special division of the High Court of Uganda, the Amnesty Commission, which is likely to continue receiving returning ex-combatants, the UHRC and a potentially new national body of inquiry, as called for in the Annexure to Agenda Item 3 of the Juba peace process, that would coordinate with these other mechanisms.

The reflection of these principles in the national transitional justice process might include providing for some form of public truth-telling. Truth-telling as part of the accountability and reconciliation process, called for by Article 7.3 of the Agenda Item 3 Principal Agreement¹⁷, was and still is central to Teso traditional justice practices, in which a face-to-face meeting of the clan elders of both the victim and the perpetrator was the first step to achieving justice and reconciliation. While a face to face meeting between perpetrators and victims could be potentially volatile, the basic principle appears to be a mechanism that enables all parties to a conflict to negotiate a shared and co-owned truth about a divisive past.

It is, however, also important to acknowledge the complexities and challenges to such a step. While truth-telling was a central principle of Teso traditional justice, there was some resistance to requiring truth-telling for returning ex-combatants, perhaps because of the more immediate need to cope with their return and the differing stages of post-conflict recovery experienced by communities.

If the principles underlying traditional justice are to be reflected in the national transitional justice process, this will require a prominent role for compensation as part of a broader national reparations framework. Compensation as one part of a comprehensive reparations framework was cited as an important part of the accountability and reconciliation process in Articles 9.1 through 9.3 of the Agenda Item 3 Principal Agreement. These clauses also identified the need for “collective as well as individual reparations” and left open the possibility for Government involvement in this task.¹⁸ The provision states that such reparations would “be made to victims through mechanisms to be adopted by the Parties upon further consultation” with the possibility that some reparations would be made available “out of resources identified for that purpose.”¹⁹

In Teso, material compensation as a part of reparations carried particular importance and was scaled proportionally to a given offence. The amount of compensation was an important expression of the gravity of the abuse and also the resulting consequences, which were often material as well as psychological. For example,

¹⁵ Annexure to *Agreement on Accountability and Reconciliation*, reached under Agenda Item 3 of the Juba peace process (2008).

¹⁶ See RLP Working Paper No. 17 (2005): *Peace First, Justice Later: Traditional Justice in Northern Uganda*, and a forthcoming discussion paper on the codification of traditional justice.

¹⁷ *Agreement on Accountability and Reconciliation*, reached under Agenda Item 3 of the Juba peace process (2007): Articles 7.2 and 8.1.

¹⁸ *Ibid.*: Articles 9.1-9.3.

¹⁹ *Ibid.*: Articles 9.1-9.3.

a physical disability from an attack, a child born from rape or the inability to have children, all caused not only personal distress but can also carry an increased financial burden. In such circumstances, purely symbolic compensation would be entirely insufficient, if not insulting. Thus, it will be vital for any system of compensation to take into account the gravity of the offence as well as its socioeconomic implications. Most respondents voiced a clear desire for material compensation in the form of livestock. However, many believed that equivalent financial compensation would be equally acceptable should livestock restocking prove impractical. In actual terms, reparations, including compensation, are likely to be suggested either by the UHRC or a new national transitional justice body, though the experience of the UHRC to date indicates the difficulties of ensuring that the required compensation is actually received by the victims.

In addition, this research provided insight into the appropriate time period that a national transitional justice process should examine. The Agenda Item 3 Principle Agreement is ambiguous regarding the scope of time that should be under consideration.²⁰ It appeared that, when working in Teso, the national transitional justice process and its operating mechanisms should investigate the relationship between the Teso people and non-state militias, as well as the various regimes of the GoU, paying particular focus to the time period from 1979 until the present. This would allow for the inclusion of the most widely discussed conflicts in the region including the Karimojong cattle raids, the UPA rebellion and the LRA incursion.

The findings also suggest that it is as important for traditional mechanisms to be practiced at a local level, perhaps through an amalgamation of informal traditional means and formal structures, as it is for them to be reflected in the national process. Given that there is a limit to the responsiveness of national justice mechanisms, and given the wide variation in the details of traditional justice practices, a communally participatory local component might be vital to the overall transitional justice process. Revitalising and strengthening the practice of traditional justice at a local level could be important for accomplishing “meaningful participation of victims in accountability and reconciliation proceedings,” as called for by Article 8.2 of the Agenda Item 3 Principal Agreement.²¹ In addition, such practices could also be used to deal with some daily civil and criminal abuses that require redress in many areas of Teso. The local system should be based on the same three fundamental principles—truth-telling, compensation and responsibility—as the proposed national system. At the local level however, it is imperative that there be a significant degree of flexibility in the fusion of traditional methods and the formal system, with a limit on the standardisation that can be expected from such practices.

Evidence of the need for flexibility in a locally reconstituted system of traditional justice is apparent not only because of the wide variations in procedures, but also because of the vast differences between and among communities regarding the causes of conflicts and issues that require redress, as well as the jurisdictional impediments to the applicability of the mechanisms. For example, communities bordering Lira district (where there had been a heavy LRA presence) were concerned with the need for justice on this front, whereas communities near the Karamoja border felt that reconciling with the Karimojong was the most pressing issue. Those within Soroti town on the other hand appeared more concerned with how to address daily criminal activity. In addition, land issues were raised repeatedly by respondents throughout the region as a major source of conflict. This issue was, however, more pressing in areas with high levels of displacement. The varying needs of different communities suggest that while it may be possible to identify traditional justice principles and to implement them throughout the region, a significant degree of flexibility will need to be built into the process.

²⁰ *Agreement on Accountability and Reconciliation*, reached under Agenda Item 3 of the Juba peace process (2007): Article 2.2.

²¹ *Ibid.*: Article 8.2.

CHALLENGES TO CODIFICATION

Notwithstanding this call for serious consideration to be given to codifying key aspects of traditional justice, the research also revealed two major challenges to the contemporary application of traditional justice in Teso.

First, the deep skepticism with which the Teso view the traditional justice practices of the Acholi and Kari-mojong suggests a major limitation to the application of the practices in inter-ethnic conflicts. Any justice practices carried out between Teso and other ethnic groups would require a great deal of sensitivity, with the meaning and procedure of the event needing to be mutually agreed upon in advance.

Second, the waning and weakened authority possessed by traditional clan leadership poses a significant challenge to the contemporary use of traditional justice in Teso. Several options suggest themselves. One is to seek to bolster traditional leaders through giving them more formal recognition, and through the leveraging of power from other formal and quasi-formal institutions such as the LC system. Another would be to seek alternative mechanisms through which to apply the principles underlying traditional justice. At the local level this could include working closely with youth and women involved in the LC system.

Overall, however, the research found that the principle themes of traditional justice, although long absent from formal responses to conflict and crime in Teso, remain ubiquitous and highly valued among the population and could be usefully incorporated into a national process to address the legacies of conflict in the region so that the seeds of future violence are not sown.

RECOMMENDATIONS

TO THE UGANDAN GOVERNMENT:

This research supports Article 3.1 of the Agenda Item 3 Principle Agreement, suggesting that the principles of traditional justice practices should be reflected in national transitional justice mechanisms and any potential reforms proposed by JLOS. A revitalised, coordinated and highly flexible system of the practices themselves should be constituted at the local level to address the abuses suffered during the history of conflict in the Teso region, as well as ongoing civil and criminal disputes.

- **National transitional justice mechanisms should, among other things, reflect the three major principles of traditional justice in Teso—truth-telling, compensation and responsibility:**
- **The principle of truth-telling could be built into the national process and might be carried out by the Amnesty Commission, as well as a wider reconciliation forum.²²**
 - It is also important to provide a forum for truth-telling for others who have either already returned, or who participated in conflicts on behalf of government forces or other militias such as the UPA or Arrow Boys. This may or may not be an appropriate task for the Amnesty Commission, though it is important that there is parity between the truth-telling process for return-

²² Such a national reconciliation forum has been proposed by RLP in a draft National Reconciliation Bill. See www.refugeelaw-project.org.

ing ex-combatants from the LRA and the process for other groups. This role for truth-telling is in line with the Principle Agreement on Disarmament, Demobilisation and Reintegration, reached under Agenda Item 5 of the Juba peace process which calls for “reintegration support to former LRA” that promotes “harmony within the wider community.”²³

- **A comprehensive reparations policy which pays particular attention to material compensation could be implemented through a newly established national reconciliation body, of which the UHRC might be a part, as part of the integration of traditional justice into the national transitional justice process.**
 - In addition to compensation paid directly by the government for any abuses they committed throughout the conflicts, it will also be important to create a mechanism for allowing compensation to be paid to victims of other groups besides the government forces. From the research it would appear that non-state parties to the conflict such as returning LRA combatants, Kari-mojong cattle rustlers and former UPA combatants will not be capable of providing appropriate compensation independently. Therefore, the GoU should consider including a compensation fund as part of their overall framework for reparations, and donors as well as non-governmental organisations should consider financially supporting the comprehensive reparations framework developed by the Government. While compensation is most important as part of the national structure, it should not be precluded from being part of the local functioning of traditional justice in the region.
- **A national forum that provides for the acknowledgment of responsibility by a wide array of parties to the conflicts in Teso could be established.**
 - Collective responsibility of the various relevant groups might be emphasised in this national forum, much the way clan responsibility was emphasised in Teso. It would be less important that every individual who committed an infraction during the long history of conflict acknowledge their responsibility than it would for the leaders of the various parties to the conflicts to take responsibility for their groups’ actions. UPA, LRA and GoU leaders would be among those who should participate in the process.
- **To help the revitalisation of the local practice of traditional justice, the role of traditional leaders should be specifically and formally recognised in order to strengthen their authority.**
 - While traditional leaders are not currently prohibited from administering traditional practices by the Constitution, provided those practices are not in violation of the Constitution, their authority could be strengthened by a formal articulation of their potential roles. This step would be in line with the intentions of Article 4.1 of Objective 4 of the Government’s Peace, Recovery and Development Plan for Northern Uganda (PRDP), which called for support to traditional institutions for managing intra- and inter-communal conflicts.²⁴
- **A revived system of traditional justice at the local level could combine elected government structures such as LC3 and LC5 chairmen with traditional clan leadership to achieve a suitable**

²³ *Agreement on Disarmament, Demobilisation and Reintegration*, reached under Agenda Item 5 of the Juba peace process (2008): Article 7.6.

²⁴ *PRDP (2007): Strategic Objective 4: Peace Building and Reconciliation*, Article 4.4.1: Public Information, Education and Communication (IEC) and Counselling Programme.

balance of trust and power, once the potential roles of traditional leaders are more clearly articulated (in line with existing constitutional provisions).

- The LC chairmen could serve as arbitrators, mediating meetings of traditional leaders, while lending their decisions authority. Though LC chairmen are imbued with considerable authority and power, there are some limitations to the trust they may have within communities. Conversely, clan elders enjoy more trust within the community, but have little authority to enforce their decisions. By combining the two structures, it may be possible to secure both the trust and authority necessary to administer justice in communities.
- **Finally, as part of the comprehensive reconstruction programme, articulated in the PRDP under both Strategic Objective 2 “Rebuilding and Empowering Communities”, and Strategic Objective 3 “Revitalisation of the Economy,” access to transportation and the development of shared public resources between Karimojong and Teso communities along the border of the two regions should be increased, with the intention of raising mutual understanding between the two groups.**



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