

**Challenges in the pursuit of transitional justice:  
A case of northern Uganda**

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**Introduction**

Transitional justice refers to a range of approaches that societies undertake to reckon with legacies of widespread or systematic human rights abuse as they move from a period of violent conflict towards peace.<sup>2</sup> The term is slightly misleading, however, in that ‘transitional justice’ usually refers to justice during transition and not to any particular model of justice. A number of judicial and extrajudicial transitional justice approaches are available to help societies strike the right balance in this critical juncture, such as domestic, hybrid and international prosecution, truth-telling initiatives, reparations, institutional reform, public apologies, memorials and museums, blanket and individualized amnesties and traditional justice mechanisms. However, it is exactly the question of which justice approach to take during transition that has caused a lot of debate among the different actors involved in trying to deliver sustainable peace to the conflict affected communities.

As negotiations between the Government of Uganda and the Lord’s Resistance Army (LRA) are scheduled to resume in Juba, Southern Sudan it is imperative to analyze the available transitional justice approaches in the context of northern Uganda and to build consensus on the best way forward.

**Current Justice approaches in northern Uganda**

One can identify a series of approaches to justice in northern Uganda, that have already been (partially) implemented - from an international, national and local level- to deal with the war crimes and massive human rights violations that have taken place during the twenty years of civil war.

*International Level*

At the international level, in December 2003, the Government of Uganda (GoU) referred the situation in Northern Uganda to the Prosecutor of the International Criminal Court (ICC). Subsequently, on the basis of the investigations by the Prosecutor, the Chief Prosecutor, Luis Moreno Ocampo, issued arrest warrants for five leaders of the LRA and

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<sup>2</sup> ICTJ Annual report, 2004/5 p.g 1

currently four arrest warrants are still valid since one of the indicted was reportedly killed in August 2006.

#### *National level*

At a national level, the GoU has taken varying approaches to justice and to reconciliation over the last five years. In 2000, the GoU brought into force the *Amnesty Act*, which allows any person who, after January 1986, has participated in a war or armed rebellion against the GoU, to receive blanket amnesty if they voluntarily surrender. The mandate of the Amnesty Act, as stated in the preamble, was to reconcile warring parties in Uganda and bring about peace and security. Significantly, this act does not contain any provisions that would prevent the leaders of the LRA from getting amnesty.

As already mentioned, in 2003, in contradiction to the message portrayed by the Amnesty Act, the GoU referred the situation in northern Uganda to the ICC. However, after realizing they were unable to effectuate the arrests, the GoU has opted for a negotiated settlement of the conflict under the mediation of the Government of Southern Sudan (GoSS). Despite some sharp international criticism, the GoU has committed itself to extending a blanket amnesty to all leaders of the LRA as long as they renounce rebellion. The Government of Uganda has indicated that it would negotiate in good faith, without any preconditions and that it intends to honour the terms of any agreement reached with the LRA. Fears of an apparent rebuff of the amnesty by the LRA seem to have been allayed.

#### *Local Level*

At the local level, one can identify and increase in acknowledgement of, and support for traditional Acholi justice mechanisms. Such mechanisms are both independent and transparent, where elders act as neutral arbitrators of disputes. Restorative in nature, the process encompasses principles of truth, acknowledgement and accountability and compensation and culminates in the reconciliation of the parties through symbolic traditional ceremonies. The most commonly referred justice system in Acholi is called *mato oput* (drinking the bitter root) used in cases of accidental or purposeful killings.<sup>3</sup>

### **The challenge of merging the different justice approaches**

The justice-versus-peace debate in northern Uganda has polarized many actors around the question of whether the fight against impunity through the ICC hampers the attainment of peace through dialogue and amnesty. This debate has also extended to the question of whether or not traditional and Western justice are compatible and what impact either process has on the potential for fostering a peace process.

On one end of the spectrum, dialogue and the extension of amnesty to LRA commanders has been met with sharp international criticism on grounds that a just and sustainable peace is incompatible with impunity and that amnesties for serious international crimes including genocide, crimes against humanity, and war crimes are not permissible under international law. It is argued that prosecution, undertaken by formal judicial institutions,

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<sup>3</sup> See Liu Institute for Global Issues, Gulu District NGO Forum, Ker Kwaro Acholi, *Roco Wat I Acoli: Restoring Relationships, Traditional Approaches to Justice and Reintegration*. 2005.

will not only fulfil the objective of removing the worst offenders from society, but it will also provide a moral vindication to victims because it will lead to public acknowledgement of wrongfulness of the acts committed. If prosecution is administered in an effective manner, it will send a clear message to the population that principles of law ought to be respected and any breach of law will be sanctioned.

On the other end of the spectrum, the announcement of the arrest warrant by ICC was met with little enthusiasm by civil society in Uganda on the grounds that prosecution at this time would undermine the Amnesty Act and attempts at peace talks. It is believed the indictments would deter the LRA commanders from laying down their weapons. Furthermore, it is argued that international approaches to justice were inappropriate to the current context, and would possibly undermine traditional approaches to justice.

These polarized positions do not, however, accurately reflect the complexity and the nuances of the current context. It is important to be aware of a few essential factors when analyzing the influence of the international, national and local approaches to justice. Namely, first, it is not for GoU to decide whether or not the four inductees will be prosecuted by the ICC or will gain amnesty. The ICC does not recognize the Amnesty Act, 2000, as this act is a construct of national law, not international law. The only way the indictments against the four commanders can be retracted is if the ICC decides that, under article 53 of the Rome Statute, the only way peace can be achieved in northern Uganda is by granting amnesty to the four inductees, and it is 'not in the interest of justice' to uphold the arrest warrants. Up until now, the ICC has shown little signs that it is moving in this direction.

The real issue here is whether Uganda is entitled within its sovereign competence and the provisions of the Rome Statute to assume responsibility for dealing with the LRA at the national level. That choice, if it were exercised in the context of talks, would raise other issues as to the treatment accorded to individuals. It is worth noting that *the Rome Statute gives a primary role to Uganda which has jurisdiction over the alleged crimes to assume responsibility for dealing with the relevant offending*. Thus Uganda, despite making the initial referral to the ICC Prosecutor, may legitimately assume and assert its right to exercise jurisdiction over its own nationals.

### **Important elements of transitional justice in northern Uganda**

One should also be aware that sustainable peace and justice in Uganda does not solely hinge on the fate of the four indicted commanders. Many more perpetrators have been involved in the war, both on the side of LRA, as well as the GoU, and for justice to occur all those involved need to be held accountable. ICC prosecutions are not a 'magic bullet' that will end impunity or prevent future war crimes; nor is it the only obstacle to peace.

It should also be emphasized that while local traditional forms of justice continue to apply to ordinary crimes to date, it still remains undecided how they can be adapted to address the unprecedented crimes committed during the conflict. For example, an important element of traditional Acholi justice system is that the clans of the perpetrator and victims are brought together. However, because of the mass scale of the killings and because of

the mass scale of displacement, this is proving to be very difficult to achieve. In addition, it is difficult to disentangle and distinguish between victims and perpetrators, when most of the killings that have occurred, have been carried out by abducted children. It is also important to note that traditional Acholi justice cannot address all crimes committed in Acholi-land and beyond, because not all the perpetrators and victims involved in the conflict are Acholi. Other cultural groups in Uganda have differing perspective on attaining justice and reconciliation, and thus will need other justice programs to meet these perspectives. Furthermore it is often difficult to guarantee the rights of victims. For instance, mato oput is usually applicable to murder case and yet there are many crimes that took place such as rape, sexual and gender based violence and may not extend to extra ordinary crimes committed during the conflict. The process is traditionally one that is voluntary; compelling victims to acknowledge responsibility for their actions and the genuine desire to say the truth and accept responsibilities of the past therefore would be an additional challenge.

Recognizing the nuances and complexity of the situation in northern Uganda, complementary mechanisms to the ICC are already being explored within Uganda, which will require technical support, time and consensus building.

### **National Unity**

While the current Juba peace process has provided space for the LRA and GoU to discuss disparities in political, social and economic life of what happened over the years, the parties still disagree on the sources of these disparities with accusations and counter accusations of who committed what war crimes and hotly contested between the parties. For instance the parties cannot agree on the origins of the conflict and the reasons behind its continuation and who committed what crimes against the civilian populations. While it is important to move beyond the current impasse, there is need for compromise through a national mechanism that should involve the LRA, GoU and the broader civil society.

While Uganda continues to be faced with the challenge of national unity it is still doubtful whether the GoU has the political will to pursue transitional justice at national level. This however should also be complemented with a keen interest on the part of the victims, perpetrators, witnesses and the civil society to be active participants in the process through a truth seeking process

### **Truth seeking processes at the community level**

Truth seeking ensures that the truth is established about the legacy of past violations. It is certainly important for victims and thousands of people who have been displaced as a result of the conflict to understand why certain things and events happened to them the way they did and, why they were allowed to happen for as long as they did. There is a growing feeling for most victims of the conflict that knowing the truth will help them understand the root causes of the conflict as essential to prevention of future conflicts, and for reconciliation. In a recent survey with 1,145 northern Ugandan displaced persons, a resounding 97 percent stated that they wanted the 'truth' about the conflict to be known. Furthermore, most believed truth telling was an essential part of their cultural process for

reconciliation, and therefore truth telling within communities could help promote reintegration, acknowledgement and reconciliation.<sup>4</sup>

### **Traditional justice approaches**

While a number of challenges exist, there is also a great potential to adapt cultural mechanisms for resolving conflict to promote truth telling, acknowledgement and accountability at the community level, facilitating the process of prevention, ending impunity and promoting reconciliation. However, it is unclear as yet if such mechanisms can meet the standards of international justice that would merit the withdrawal of the ICC, or if they would simply act as a complementary to the ICC.

### **Reparations**

While reparations as a concept finds support in both traditional and international law, state responsibility ought to be recognised due to the states failure in terms of its responsibility to protect the victims of the 20 year conflict. In the case of northern Uganda, entire communities have been gravely affected by the conflict and as a result, live in extreme poverty. The challenge is how to design a mechanism to compensate victims while at the same time manage expectations. It is therefore important that any reparations programmes needs to be carefully managed and that such programmes do not lead to further inequality and discrimination and a clear balance between programmes to reduce poverty levels and development need to be taken into account.

### **Conclusions**

There is need for a multi-pronged approach to address crimes of the past through the adoption of various transitional justice options coupled with a strong national mechanism to support truth seeking processes at local and national levels. Efforts that aim to strengthen community and national reconciliation among tribal groups need to be supported and to allow for different accountability and reconciliation mechanisms which involve truth telling and reparations.

As Katherine Southwick has observed of the ICC, ‘the [ICC] investigation is widely opposed to those groups the Rome Statue is designed to serve: the victims. The Rome Statue does not appear to have contemplated such a scenario; the approaches to justice reflected in the statute are seen to be universal. The apparent clash of an international conception of justice with local approaches raises basic questions of when and how the former must compromise with the latter.’<sup>5</sup> Uganda will certainly be an important test case not only for the ICC and world, but the next generation of transitional justice practices where increasingly, the need to be locally relevant is recognized.

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<sup>4</sup> Justice and Reconciliation Project. Forthcoming. *Cooling Hearts: Local Truth Telling and Reconciliation in Northern Uganda*, Liu Institute for Global Issues and Gulu District NGO Forum.

<sup>5</sup> Katherine Southwick, ‘Investigating War in Northern Uganda: Dilemmas for the International Criminal Court’, *Yale Journal of International Affairs*, Summer/Fall, 2005, pp.113-114.