

THE JUSTICE AND RECONCILIATION PROJECT:

Liu Institute for Global Issues
Gulu District NGO Forum
Field Notes, No. 3, October 2006



Accountability, Reconciliation and the Juba Peace Talks: Beyond the Impasse

INTRODUCTION

As peace talks between the Lord's Resistance Army (LRA) and the Government of Uganda proceed in Juba, many anticipate the forthcoming discussion of the third agenda item on Reconciliation and Accountability. The LRA leadership has repeatedly stated that no fighter will return home unless the Prosecutor of the International Criminal Court withdraws indictments against four of the remaining five commanders still alive.¹ The Prosecutor, Luis Moreno Ocampo, has ruled out any possibility of lifting the arrest warrants, arguing if war crimes go unpunished, they could happen again.²

This paper suggests ways to move beyond the current impasse. It identifies a series of current justice and reconciliation alternatives available. By placing an emphasis on what can be discussed in the peace talks, it hopes to illustrate means of realizing both peace and justice.

RATIONALE

A number of Ugandan human rights advocates and politicians (including some in the Government of Uganda) support the

legal recognition of *Mato Oput*, a traditional Acholi justice process for murder in northern Uganda. Other international advocates, such as the International Crisis Group, have been more sceptical of traditional forms of justice, and examine how the UN Security Council might intervene in order to promote peace.³ With talks still under way and no guarantee of their outcome, the ICC has justified its continued pressure by arguing that the indictments helped lead to negotiation in the first place. Without a convincing justice alternative, the Court will not withdraw.⁴

Milton Munu, a local leader from Opit, observed of this debate: "If you count all the loss over twenty years it can't account to the same as these five indicted men, so really we don't care what happens to them. We just want peace."⁵

Mr. Munu's observation should give pause to advocates on either side of the peace versus justice debate. Sustainable peace in

³ See ICG, 'Peace in Northern Uganda?' *Africa Briefing* No. 41, 13 September 2006; Nick Grono, 'ICC's Prosecutorial Strategy for 2007-2009' *Second public hearing to the office of the prosecutor*. 26 September 2006.

⁴ Under article 53 of the Rome Treaty the Prosecutor can stop a prosecution if it is no longer in the 'best interests of justice' to do so. As ICG points out, "the best interests of justice are different from the interests of peace", Grono 26 September 2006.

⁵ Quoted in Tristan McConnell, 'Uganda: Peace versus Justice?' *Open Democracy*, 9 September 2006.

¹ Vincent Otti, on Kampala's KFM radio by satellite phone, quoted in Wallis, Daniel, "Uganda Rebels want ICC arrest warrants scrapped". Reuters, 6 September 2006.

² As reported in Reuters Alertnet, 'ICC says Uganda Crimes will go on without arrests'.

Uganda will not hinge on the fate of the four indicted commanders. Too much loss has occurred. Justice in Uganda is in part, but not exclusively about whether or not four commanders are held accountable to international legal standards. Too much must be accounted for, and all sides must be held to account. Of course the Prosecutor has always known this, arguing that the ICC is only one part of the justice solution for Uganda.

In other words, in Uganda, the ICC is not a silver bullet for ending impunity or preventing future war crimes. Nor is it the only obstacle in the way of peace. The current debate threatens to divert attention away from wider issues of accountability in dire need of attention. Without care, the ICC could be a scapegoat for the failure of the talks, and fuel a new era in the Ugandan conflict.⁶

SUMMARY RECOMMENDATIONS

The articulation of any justice system, complementary or as an alternative to the ICC, requires technical support, time and consensus building. Realistically, the objective of the Juba Talks agenda on accountability and reconciliation should focus on the creation of a blueprint for moving forward. This requires reaching a consensus on the types of justice systems that could be implemented in a post-conflict period.

This *Field Note* recognizes that national prosecutions are an unlikely scenario. The LRA will not likely agree to be tried in a national court. Amnesty has already been extended by the Government of Uganda, and the LRA high command has agreed to accept it, if ICC indictments are repealed.

⁶ A number of prominent Ugandans such as Madame Bigombe, former peace mediator under the 2004-05 talks, have argued that if indictments stand, the ICC will dash all hopes of reaching a peaceful solution in Uganda.

As already discussed, the ICC will not repeal without reaching adequate standards of justice.

This *Field Note* explores two mechanisms that deserve closer attention at the Juba Peace Talks. First, a mechanism of traditional justice for community reconciliation could facilitate rebuilding the social fabric, particularly in Acholi-land, the region most grossly affected by the conflict. This process should address questions of cultural differences, since LRA raids reached beyond the Acholi sub-region to include Langi, Teso and West Nile region. Resolution of these issues is central to realizing sustainable peace and reconciliation in the region.

Secondly, a commission or panel composed of non-governmental experts could be appointed. Its primary task would be to investigate and report who did what, when, where and why. Unlike the ICC, which is bound by the Rome Statue to investigate crimes committed from 2002 onwards, such a commission would not be time bound.⁷

This *Field Note* explores the relative strengths and weaknesses of each alternative and raises a number of questions to be explored by technical experts.

At the same time, the talks cannot get mired in the technicalities of creating a new justice system, something that often takes countries emerging from conflict years, even decades, to decide.⁸ To avoid delaying the talks, the parties could create a temporary Technical

⁷ The LRA and the Government of Uganda are deeply divided about who committed what crimes against humanity and war crimes, some committed prior to the start of the LRA conflict. One protest against the ICC is that it fails to investigate all crimes committed throughout the conflict.

⁸ For instance, while the International Tribunal for Rwanda was created relatively swiftly, it was some years before the first conviction. Gacaca was only functional nearly ten years after the genocide.

Commission on Accountability and Reconciliation that would establish a 'plan of action' for the post-conflict period. It might also satisfy the Court that steps are being taken to satisfy justice.

TRADITIONAL JUSTICE

A Technical Commission on Accountability and Reconciliation would have to explore the possibilities of setting up a justice mechanism that reflects local belief systems and is culturally appropriate, much akin to the process leading up to the creation of *gacaca* courts⁹ in Rwanda or the *bashingantahe* courts in Burundi.¹⁰ To this end, it is useful to explore what is known about Acholi cultural approaches to justice and reconciliation, and it would need to be addressed to develop a blueprint for moving forward.

Acholi justice

Acholi justice is executed according to oral spiritual and cultural laws that correspond to the level and intensity of a crime committed. While ritual Acholi practices differ across clans, it is possible to describe the general principles and beliefs of justice commonly shared by Acholi people. These include: the voluntary nature of the process; mediation of truth; acknowledgement of wrong doing; and reconciliation through symbolic acts and spiritual appeasement. Historically, conflicts

or crimes are dealt with by different councils of elders, from the level of the hut, compound, clan or inter-clan to inter-tribal levels, according to the severity of crime.

In the lead up to discussion of Accountability and Reconciliation, advocates have most commonly explored the justice process of *Mato Oput* (drinking the bitter root).¹¹ Used in cases of accidental or purposeful killings, *Mato Oput* encompasses the same principles of truth, accountability and compensation, and restoration of relationships as other justice processes. It is both an independent and transparent process, where elders act as neutral arbitrators of disputes.¹²

Once an offence is committed, elders intervene to separate clans¹³ involved to prevent reprisals (known as a cooling down period). A period of shuttle diplomacy then occurs, where elders establish the facts of the crime based on evidence provided by witnesses on both sides of the dispute.

The mediators determine the appropriate time to bring the two clans together in order to reach a consensus on events that occurred, and later, to determine the amount of compensation to be paid by the whole of the offending clan to the clan of the offended. Clans have unwritten by-laws that generally determine the amount of compensation to be

⁹ *Gacaca* is the revival of a traditional court system established to try the 1994 genocide suspects without a mandate to hand down death sentences.

¹⁰ *Bashingantahe* is traditional courts of 'wise men' that continue to be both the symbol and achievement of justice at the *colline* level in Burundi. One report has suggested it is the most appropriate means of facilitating the work of the National Commission for Truth and Reconciliation within communities. See Centre Humanitarian Dialogue Report, *The Role of Informal Systems in Fostering Rule of Law in Post-Conflict Societies: The Case of Burundi*, July 2005.

¹¹ The roots of an *oput* tree are extremely bitter. It is mixed with local brew and drunk by both sides to the conflict as a symbol that they are willing to swallow and wash away all the bitterness that once existed between them.

¹² Although rarely practiced, *Mato Oput* does continue in war torn Acholi-land. A series of cases were recorded and carried out in Pajule, Pader Town Council by elders. It is not uncommon to find other cases in camps, although most go unrecorded.

¹³ The Acholi are a communal culture, thus if a crime is committed, then the actions of an individual extend to the whole of her or his clan and likewise, the victim's suffering affects the whole of the victim's clan.

paid; this usually corresponds to the gravity of the crime committed.

Once compensation has been paid in full, an appropriate cultural ceremony or ritual to help restore relationships between clans, nearly universally called *Mato Oput*, is held as a means of promoting reconciliation between clans of the victim and perpetrator. The two clans are then welcomed to resume their past relationship and to put the past event behind them. Proponents have urged consideration of adapting *Mato Oput* as a means of reconciling Acholi-land and promoting a lasting forgiveness.¹⁴

What a Technical Commission could develop

*"If the people of my place forgive me and myself I have also said, I have done something wrong they should forgive me, and the Mato Oput process has taken place, I think I can go home peacefully without any attack from the people of my village,"*¹⁵ In this statement by Vice Chairperson of the LRA Vincent Otti, it is not likely that he is referring to the detailed process of *Mato Oput* described above, but a general reconciliation.

In a 2005 study on traditional justice and reintegration¹⁶, dozens of Elders across Acholi almost universally expressed that there was little sense in pursuing *Mato Oput* on a case by case basis, that too many people had been killed, and that it was difficult to trace who killed who and

therefore, which clans to engage.¹⁷ In Acholi culture, *Mato Oput* is done between two clans – that of the perpetrator and victim.

In the case of someone like Vincent Otti, where his village of Atiak is home to many clans that suffered serious atrocities, ‘who would *Mato Oput* with whom?’ How would shuttle diplomacy work? Who would agree on who did what to whom?

Even more complicated is the question of compensation. Traditionally, the responsible clan is supposed to raise compensation as a means of punishment but it is also symbolic of replacing the life that is lost. It is not likely possible and even less probable that each commander’s clan could pay such amounts.

Other questions would need to be answered as well. If *Mato Oput* is only applicable to murder cases, what of rape, sexual and gender based violence, abduction and forced recruitment of children into armed service, mutilation and mass looting, arson, property destruction? While cultural laws exist to address some of these crimes, they generally do not extend to extra-ordinary crimes encountered during the conflict. Moreover, each generally requires a unique reconciliation ceremony. Rape, for instance, generally involves *Moyo Kum*, the cleansing of the body of the woman that was raped, and the perpetrator.¹⁸ It is unclear if any traditional laws on male rape exist, or on forced rape, yet these crimes too were committed.

It is unlikely these questions can be fully answered within the purview of the talks, but they could be established for further investigation by a Commission.

¹⁴ Bishop Baker Ochola has been an outspoken proponent of *Mato Oput* internationally and in Uganda. See “Uganda: The Acholi Traditional Justice is Enough for Kony,” *New Vision*, Opinion. 28 August 2006.

¹⁵ Charles Mwanguhya Mpagi et al. ‘Otti to Apologize, Wants to talk to Museveni’ *The Monitor*, 15 September 2006.

¹⁶ Liu Institute, GDNF, KKA. *Roco Wat I Acoli/ Restoring Relations in Acholi: Traditional Approaches to Justice and Reintegration*. September 2005

¹⁷ For instance, there are instances of groups killing individuals and of strangers killing strangers.

¹⁸ JRP plans to investigate this in a forthcoming *Field Note* on Sexual and Gender Based Violence.

It should also be noted that the Ugandan People's Defense Force (UPDF) are known to have also committed crimes throughout the course of the conflict, although most are held to account under the laws of the military. Whether or not Acholi soldiers would be subject to community accountability mechanisms, or what to do when the offender is Acholi and victim is non-Acholi, remains to be seen.

There also remains the question of whether or not Acholi justice could remain voluntary. While elders often argue that the phenomenon of *cen*, ghostly vengeance, is enough to prompt a person or his or her clan to pursue justice, they also admit this could take years.

Legitimacy and Consensus

In the report, *Roco Wat i Acoli*, other concerns were raised as well.¹⁹ Women, for instance, are not involved in major decision-making, arbitration or negotiations of the *Mato Oput* process, nor are youth. What is more, few youth know about cultural practices, although fewer still know about formal legal practices.

While most religious leaders are supportive of tradition, born-again Christians reject ritual practices as satanic. It is also not clear how crimes committed by non-Acholi would be held accountable within Acholi, or conversely, if Acholi crimes and systems of justice would resonate with non-Acholi victims and neighboring clans.

It is also reasonable to ask if Acholi elders and chiefs are up to the task of leading an independent and neutral traditional justice system; and if not, if adequate training could be provided. British colonialists stripped chiefs of political power, replacing them with colonial administrators. Cultural leaders were not officially recognized again until a 1995 Constitutional reform. Over the

course of the conflict, the cultural institutions have been severely weakened in terms of status and popular authority. Once 'providers' to their people, elders and chiefs now live in extreme poverty and sometimes lack the basic requirements to perform their duties. Unable to transmit cultural stories and knowledge, most youth know little about traditional justice practices. In a word, cultural leaders need to regain a place in Acholi society and to build the trust and confidence of their people. This will no doubt take a long time, and the concerted effort of Ker Kwaro.

Reconciliation

Despite these unanswered questions, there are many Acholi cultural practices that are thought to help bring victims closure, or to move past 'bitterness' and thus promote reconciliation – these practices do not include an accountability mechanism that involves perpetrator and victim, but do involve confession in some cases and promote spiritual atonement and forgiveness by clan members.

Some traditional healing practices have been more widely embraced without official sanction of the cultural institution or inducement by any conscious transitional justice strategy. For instance, close to twenty percent of persons who have returned from captivity are quietly performing 'cleansing ceremonies' together with their clan. These ceremonies involve aspects of a justice process such as truth telling, symbolic compensation and rituals to atone for conflict related crimes – but do not involve the victim's clan.²⁰

¹⁹ Liu Institute, GDNF, KKA. *Roco Wat I Acoli: Restoring Relations in Acholi*. September 2005.

²⁰ For a comprehensive exploration of the challenges facing persons seeking this alternative see for example Field Note 1, Alice's Story. JRP has since documented a handful of other cases involving formerly abducted persons and mid-level commanders who have gone through extended and comprehensive cleansing ceremonies that adapt aspects of the *Mato Oput* process.

The most common and thus well known ritual is *nyono tong gweno* (stepping on the egg), which is designed to welcome home family members who have been away for an extended period of time; in this case, it is performed for those persons who have returned from the bush. 'Stepping of the Egg' is practiced by the cultural institution, Ker Kwaro Acholi, at the communal level across northern Uganda. Over 50 communal ceremonies have been held with the intention of building unity across clans and to promote the spirit of forgiveness. It sends out a message to the LRA that should they return home, they will be 'welcomed'. While few respondents interviewed by JRP found *nyono tong gweno* as sufficient to restore relationships within communities, nor with the spirit worlds, many see it as a first step on a continuum towards justice. In other words, this practice helps restore confidence in traditional approaches to justice and could lead eventually to *Mato Oput*.

A more complex ceremony being performed with persons returning from captivity is *Moyo Kum*²¹ (the cleansing of the body). The ritual differs slightly in terms of practice from clan to clan, but in general calls for a gathering of Elders to bless the returned person, wash away their ill-deeds, chase away evil spirits, and appeal to the ancestors for their blessing. In some clans, this involves a multiple day ceremony in which the returned person must imitate the life lost by re-enacting parts of their lives. In other cases it involves a simple spearing of a goat and dragging it across a compound to rid the clan of *cen*. *Moyo Kum* is an Acholi ritual that has some precedent in other post-conflict reconciliation practices, such as in Mozambique, Angola and Sierra Leone.²²

²¹ The ritual of cleansing the body and ground also differs in name across clan to clan.

²² Alcinda Honwana, 'Children of War: Understanding War and War Cleansing in Mozambique and Angola,' in S. Chesterman, ed. *Civilians in War*. 2001.

Moyo Piny (cleansing of an area). In the context of the conflict, *Moyo Piny* is a ceremony involving a sacrifice of goats to appease ancestors and cleanse an area of evil spirits that are believed to dwell in places where war related massacres have occurred. For instance, *Moyo Piny* have been held at sites of deadly ambushes, mass murder in fields or compounds, or battle sites. Religious leaders also hold prayer ceremonies to promote harmony and help lay the spirits of those killed to rest.

Lwongo tipu (calling the spirit) is another adaptation of a ritual used to lay the spirit of the disappeared to rest. In Acholi, it is important to bury the dead in elaborate ceremonies.²³ This is done in order to send them peacefully into the after-world and to bury them at home to keep them close to the family clan. Where persons have been abducted or disappeared in battle, family members have held this ritual to call the spirit of their loved one to rest at home, so that it is not lost outside. The ceremony can help provide closure to families. JRP has heard testimonies from persons who stated that only by performing *Lwongo Tipu* did they come to terms with the death of their abducted son or daughter.

Memorials have been erected across northern Uganda. Some are as simple as wooden crosses erected at road site where families and friends come to pray or have practiced traditional rites. Others involve more elaborate sites, where entire communities gather to remember a massacre, such as in Chope, Atiak and Koch Goma. In places like Corner Kilak, massacre sites have no visible marker, but no one builds or cultivates the land. These are still the sites of annual prayers and traditional ceremonies.

²³ JRP has documented a number of such rituals adapted for children and youth who were abducted and thought to have died in captivity.

The erection of memorials could provide acknowledgement of what has happened, something most Ugandans have been denied. Such memorials would likely continue to be accompanied by traditional practices that promote social healing, and may be adapted. For example, calling the spirit back home (*Lwongo Tipu*) could be done during memorial ceremonies at mass burial sites. Both religious and traditional alternatives are possibilities for promoting reconciliation of a society greatly afflicted by conflict, but also one where the line between victims and perpetrators is highly blurred.

Gomo Tong (bending of the spear) is a vow between two warring parties to end hostilities. Few recorded practices of *Gomo Tong* exist, but those that do date back decades and involve inter-tribal conflicts. It is considered a highly sacred act, evoking ancestors and thus once completed, no further blood should be shed. There has been some discussion of revising this practice between the Acholi and neighbouring tribes affected by the conflict. It is such discussions that need to be strengthened and upheld across the war affected regions involving the grassroots population.

All of these rituals and ceremonies, plus others not described here, provide important insight into Acholi values and beliefs. As any reconciliation mechanism is designed, including the potential of a Truth and Reconciliation Commission or Panel of Experts, such cultural practices in Acholi and neighbouring regions should be considered.

Regional Justice and Reconciliation

A number of observers have rightly pointed out that Acholi justice should not be the standard for justice across different regions affected by the conflict. In Uganda, the Mahdi, Teso, Langi, persons from Apac and other districts affected by the conflict do not

share Acholi belief systems. However, it has never been proposed in any document that Acholi justice should be imposed. Rather, the suggestion is that in order to promote accountability and reconciliation of the Acholi with Acholi perpetrators, Acholi traditional mechanisms are the most relevant.

For eastern regions affected by the conflict, an investigation is warranted into which mechanisms are required to promote community healing, accountability or reintegration. To this end, a Technical Commission would have to have a regional presence and begin investigations.

However, there are shared or similar understandings of reconciliation processes across regions that could be adapted to promote national unity. Neighbouring regions largely hold the Acholi responsible for the conflict and for the suffering they have endured. For example, eastern regions have been hostile in the past to the Acholi, where the LRA high command is largely composed of Acholi persons. Certainly the South of the country has long held the misperception that the war in the north is the fault of the Acholi. Southern Sudanese attending the Juba Peace Talks asked Acholi leaders what they had allowed 'their children to do', assigning responsibility.

Yet there is also some agreement between regional actors that traditional justice practices could help facilitate reconciliation. Northern Ugandan and Southern Sudanese cultural leaders have agreed to slaughter a bull at the border to symbolize peace and the restoration of relations. *Gomo tong* has also been discussed as a means of promoting regional reconciliation in Uganda.

Again, the Technical Commission would need to investigate what traditional measures could be adaptable, and build consensus around this approach if it was to be adopted.

While the Ugandan Coalition for the International Criminal Court (CICC) coordinator Stephen Lamony has argued elsewhere that tribal leaders outside Acholi want the LRA to be prosecuted by the ICC, more recent developments in Juba suggest otherwise.²⁴ In late July, an inter-district / tribal delegation of leaders from affected regions met with the LRA high command in Nabanga to appeal for peace and promised to 'fight against' the ICC indictments, some swearing they'd do so if every last dollar they had was spent. The Government of Uganda has since approved an inter-district delegation of observers to the talks led by Local Councillor V, Norbert Mao, an ardent supporter of traditional mechanisms (not only Acholi) and opponent to the ICC. Subsequent delegations of civil society leaders from across the north and east have reiterated these sentiments at meetings with the LRA.

In the heat of the talks and with the possibility of peace so close relative to past efforts, it may be premature to state definitively what victims want in terms of justice.. This is one reason why hammering out what observers (including victim representatives) and parties to the talks can agree to in terms of a Commission should now be the focus, with the specifics of justice mechanisms carried out after peace.

NATIONAL MECHANISMS

The Juba peace talks have provided space to discuss disparities in political, social and economic life between the north-east and the south-west of Uganda. But the LRA and the Government of Uganda have failed to agree on the source of these disparities. Furthermore, accusations of who committed what war crimes are hotly contested between the two parties, sometimes leading to a standstill in the talks. For instance, neither the LRA nor the Government of Uganda can

²⁴ Quoted in IWPR, 'Peace versus Justice in Uganda' Kathy Glassborow, 27 September 2006.

agree on the origins of the conflict, the reasons behind its continuation and who committed what crimes against the civilian population.

To move beyond the circular debate between the two parties to the peace talks, a compromise is needed. One compromise would be to create a national mechanism such as a Truth and Reconciliation Commission or a Commission of Experts to investigate key areas of contestation after peace has been secured. The Technical Commission could be charged with the creation of this mechanism in the post-conflict period.

In deliberations of agenda item three, the LRA, GoU, victims groups and civil society could concentrate on spelling out terms of reference that would define the national mechanism to be created by the Technical Commission. For instance, they might agree on its investigatory powers and reach, such as time-frame, geographic scope and substance. The LRA, GoU and observers must agree on who should sit on the national mechanism (civil society, national or international experts, Government or LRA). The purpose of the mechanism must also be agreed to at the talks, and to whom the final report must be submitted, as well as whether any recommendations should be included.²⁵

Although amnesty may be an option of last resort for supporters of the ICC, a recent study of 200 constitutional reforms by Jennifer Widner, a professor at Princeton University, found that amnesty was strongly associated with the durability of peace agreements.²⁶ In the case of Uganda, amnesty has already been extended to the LRA should they reach an agreement. At this point, it is unlikely any rebel will return

²⁵ Priscilla Hayner: Fifteen Truth Commissions - 1974 to 1994: A Comparative Study, in: *Human Rights Quarterly* 16 (1994), pp. 597-655

²⁶ Cited in Jack Snyder and Leslie Vinjamuri, 'A Midwife for Peace', *International Herald Tribune*, 26 September 2006.

if they are certain to face national prosecution – no rebel would trust the Ugandan state to be a fair and neutral arbitrator. The compromise then, is to offer amnesty but make it conditional that both parties agree to an independent investigation of events that occurred just prior to and during the conflict.

Other issues would equally need attention in the talks. The number, nationality, sex, and language of the commissioners, as well as their qualifications need to be defined. How the commission will proceed – public or private hearings, location and accessibility or relationship to civil society – are further issues for consideration. Funding and resources, as well as safeguards to ensure it is an independent and effective body would also be required.

While Ugandans have cause to be sceptical of Truth Commissions based on past experiences,²⁷ they also have a new opportunity for defining a workable national mechanism, and relative to past Truth Commissions, civil society is poised to play an important role in holding the proposed body to account. More recent and positive experiences with the Amnesty Commission suggests this is possible. Moreover, lessons can be drawn from related commissions and investigations in Africa and other developing countries to avoid repetition or gaps and/or mistakes. A number of experts internationally can offer support in establishing the process.²⁸

²⁷ J. Quinn, 'Constraints: The Un-doing of the Ugandan Truth Commission,' *Human Rights Quarterly*, 26.2, 2004.

²⁸ The International Centre for Transitional Justice has expertise it could offer parties to the talks in hammering out these issues. A useful website for national policy makers that assist in developing Truth Commissions is www.truthcommission.org

BEYOND THE IMPASSE

This paper suggests ways to move beyond the current impasse in the peace versus justice debate.

The current UN position on northern Uganda is that international standards of justice and accountability must be met but in such a way that does not block peace and reconciliation. The ICG has argued that the ICC is unlikely to withdraw the indictments against LRA commanders unless a domestic justice process is in place that satisfies international standards. The ICG therefore argues that a better route to move beyond the impasse is to take the issue to the Security Council under article 16 of the Rome Statute. 'This article permits the Council to determine that an agreement would be in the interests of peace and require the ICC by a Charter VII resolution to defer action for renewable one-year periods,' thereby suspending prosecutions. But as ICG notes, this would likely be unsatisfactory to both the Security Council (to whom the majority of members support the ICC) and to the LRA high command, which wants a permanent withdraw of indictments.²⁹

What the ICG option does do is buy time to discuss what should be done. However, it is unlikely that the LRA indicted will be convinced of a 'temporary' suspension of arrest warrants. The ICG does not state what alternatives exist, it simply rules out customary mechanisms as possibly meeting international standards of justice³⁰

In Uganda, the current debate has become a rather one-sided lobby against the ICC. One Ugandan human rights advocate went so far as to accuse the ICC of violating national

²⁹ See ICG, 'Peace in Northern Uganda?' *Africa Briefing* No. 41, 13 September 2006.

³⁰ Nick Grono, 'ICC's Prosecutorial Strategy for 2007-2009' *Second public hearing to the office of the prosecutor*. 26 September 2006.

sovereignty, advising the Government of Uganda to withdraw from the Rome Statute.³¹ Here, it is reasoned, the obligations of the Government of Uganda to the ICC should not override its obligations to ensuring security by seeking to end the conflict peacefully.³² Other advocates are 'frozen', unsure of what to advocate for given their desire to realize both peace and justice and the seeming lack of alternatives.

The 'peace versus justice' debate does not take the preferences of the primary victims of the conflict into consideration. In a survey by the International Centre for Transitional Justice (ICTJ) and Human Rights Centre, researchers found that 76 percent of the population believed that war criminals should not go unpunished. This statistic is used again and again by supporters of the Court as a way of proving they have a role to play in Uganda. But in a subsequent question, 'what are your immediate needs and concerns?', 31 percent of respondents named peace, 33 percent named food, 8 percent security and zero percent stated justice.

That Ugandans in the ICTJ survey did not name justice as a priority doesn't mean they don't want it. It more likely indicates that after 20 years of war, peace is a priority over justice. So long as delegates in Juba remain silent on viable domestic accountability options and focus on the ICC as the obstacle

³¹ Zachary Lomo, 'Why the International Criminal Court must withdraw Indictments against the top LRA leaders: A Legal Perspective'. Refugee Law Project, August 2006.

³² This argument deserves further attention, particularly for future prospects of the court. New analytical measures must be developed to assess whether or not the ICC has contributed to getting the LRA to come to the table, or if it has or will undermine the peace process and destabilize the region causing more harm than good. If the later, should the ICC have more flexible 'rules of engagement?' What messages might this send to other criminal actors if the ICC backs off are things reach its worst?

to peace, no other options will exist. 'If they are not forgiven, these commanders are now used to staying in the bush, they will continue to remain in the bush and commit more atrocities. For us, we will remain their battlefield.'³³

Recall Munu's statement: "If you count all the loss over twenty years it can't account to the same as these five indicted men, so really we don't care what happens to them. We just want peace." The preoccupation with the fate of the top five is not constructive, failing to serve the interests of the people of Northern Uganda.³⁴ The current debate must move beyond 'peace versus justice' to address the huge number of justice and reconciliation questions outlined in this report. This special issue of *Field Notes* is one proposed set of steps in this direction. Any debate on what mechanisms could exist and how these could be designed to satisfy the ICC's 'standards of justice' would be most welcomed.

Field Notes is a series of reports by the JRP. The JRP documents traditional justice practices using participatory methods among the war-affected communities in order to contribute to local, national and international discussion on justice, reconciliation and reintegration issues in northern Uganda. This issue was researched and written by Erin Baines, with input from Kica Richard, Otim Michael, Robert Hartfiel and Ojok Boniface. Thanks to Letha Victor for proof reading. The project is supported by the John D. and Catherine T. MacArthur Foundation, the Royal Embassy of the Netherlands and the Compton Foundation.

For more information contact:

ojok.boniface@gmail.com

www.northern-uganda.moonfruit.com

³³ Opinion of man from Potogali camp, Pader District, in a focus group discussion with JRP researchers, 17 August 2006.

³⁴ The debate is one largely kept alive by international actors such as advocacy groups, newsmakers and observers and fueled by heated statements of the LRA and Government of Uganda.