

**“Accountability and Reconciliation”:¹
Traditional Mechanisms of Acknowledgement
and the Implications of the Juba Peace Process**

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The Juba Peace Talks, between the Government of Uganda and the Lord’s Resistance Army/Movement, have been on-going since 2006. Both sides have been working toward agreement on five agenda points: cessation of hostilities; comprehensive solutions to conflict; accountability and reconciliation; ceasefire; and demobilization, disarmament, reintegration, and resettlement. This paper considers the composition of the agreements on accountability and reconciliation, along with the role played by “traditional” mechanisms in Uganda. It then assesses the implications of these agreements in the context of “justice”.

The History of Conflict in Northern Uganda

Since the time of Independence in 1962, Uganda has been wracked by conflict. Under both Idi Amin and Milton Obote, many thousands of Ugandans were wounded and killed. It is estimated that between 300,000³ and 500,000⁴ Ugandans were killed during the time of Idi Amin, from 1971 to 1979. Under the rule of Obote, between 1980-1985, approximately 300,000⁵ to 500,000⁶ were killed. The current President, Yoweri Museveni, seized power by means of military force

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³ Philip Briggs, *Uganda* (Old Saybrook, CT: The Globe Pequot Press, 1998) 23.

⁴ Yoweri Kaguta Museveni, *Sowing the Mustard Seed* (London: Macmillan, 1997) 41.

⁵ *Uganda* (Brooklyn: Interlink Books, 1998) 53; Thomas P. Ofcansky, *Uganda: Tarnished Pearl of Africa*. (Boulder: Westview, 1996), 55.

⁶ Abdul Nadduli, LC5 District Chairman, interview with author, 17 Nov. 2004, Luweero town, Uganda.

in 1986. As with his predecessors, Museveni has faced considerable opposition from many of the 56 different ethnic groups throughout the country. Between 1986 and 2008, Museveni faced more than 27 armed insurgencies.⁷

One of the longest-lasting, and most devastating, is the conflict in northern Uganda. “The conflict in Acholiland began soon after Uganda's last regime change in January 1986. It was triggered [in part] by the NRM's methods for consolidating control over the northern parts of the country.”⁸ Led by Joseph Kony, the Lord's Resistance Army (LRA), has undertaken a brutal regime of violence. Kony and his troops have perpetrated brutal abuses on the people of northern Uganda. Abducted child soldiers themselves have been forced to commit the most heinous of acts, often against their own families.⁹

The effect on Northern Uganda has been devastating. “Over the years [the conflict has] spread across the entire northern region and parts of the east.”¹⁰ One perplexing aspect of this conflict is that that part of the population which is now twenty-two years of age and younger has never known anything but the conditions of war and insecurity. Between 30,000 and 45,000 children have been abducted by the LRA,¹¹ which has resulted in the phenomenon of “night

⁷ These include rebellions by the Action Restore Peace, Allied Democratic Forces, Apac rebellion, Citizen Army for Multiparty Politics, Force Obote Back, Former Uganda National Army, Holy Spirit Movement, the Lord's Army, Lord's Resistance Army, National Federal Army, National Union for the Liberation of Uganda, Ninth October Movement, People's Redemption Army, Uganda Christian Democratic Army, Uganda Federal Democratic Front, Uganda Freedom Movement, Ugandan National Democratic Army, Uganda National Federal Army, Ugandan National Liberation Front, Ugandan National Rescue Fronts I and II, Ugandan People's Army, Ugandan People's Democratic Army, Uganda Salvation Army, and the West Nile Bank Front. Compiled from Lucy Hovil and Zachary Lomo, *Working Paper 11: Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda*, (Kampala: Refugee Law Project, Feb. 2004), 4; and Lucy Hovil and Zachary Lomo, *Working Paper 15: Whose Justice? Perceptions of Uganda's Amnesty Act 2000: The Potential for Conflict Resolution and Long-Term Reconciliation* (Kampala: Refugee Law Project, Feb. 2005), 6.

⁸ Catherine Barnes and Okello Lucima, “Introduction,” *Accord* (2002) 11: 1.

⁹ Lucy Hovil and Joanna Quinn, *Working Paper 17: Peace First, Justice Later* (Kampala: Refugee Law Project, July 2005), 3.

¹⁰ UN Office for the Coordination of Humanitarian Affairs, “Uganda: War-ravaged north rues Museveni win,” IRINnews.org (1 March 2006); available from www.irinnews.org/print.asp?ReportID=51960; accessed 10 March 2006.

¹¹ Tim Allen points out that “the scale of abduction is a matter of speculation” due to insufficient monitoring. See Allen, *War and Justice in Northern Uganda*, iii.

commuting” wherein up to 25,000 children living in these areas, at the height of insecurity, walked for miles each night to sleep in the relative safety of centres guarded by the Ugandan military, to avoid being abducted.¹² In one community, 79% of people reported having witnessed torture, 40% had witnessed killing, and 5% had been forced to physically harm another.¹³

It is estimated that 1.8 million¹⁴ people have been internally displaced (IDP) within the region and living in ostensibly protected camps for the internally displaced, a figure which represents more than 80% of the region’s population. These camps are an “integral part of the Ugandan government’s anti-insurgency policy. In some places, anyone who refused to move from their rural homes was forcibly displaced.”¹⁵ Effectively, the people were “herded into camps where they [were forced to] survive on relief aid.”¹⁶ Some have likened the camps to concentration camps.¹⁷ Recent reports estimate that 1000 people die each week as a result of the deplorable conditions within the camps;¹⁸ government officials have admitted that “basic infrastructure and services in the IDP and refugee camps... are still inadequate and below standard.”¹⁹ Resettlement, or “decongestion,” as it is called by the Government, began in 2006.²⁰ “While roughly 230,000 people have left the camps, few have actually returned home. Most have

¹² “*When the sun sets, we start to worry...*”: *An Account of life in Northern Uganda*, OCHA/IRIN, November 2003, 8.

¹³ Tim Allen, *War and Justice in Northern Uganda: An Assessment of the International Criminal Court’s Intervention* (London: Crisis States Research Centre, Development Studies Institute, London School of Economics, Feb. 2005), 24.

¹⁴ Geresome Latim, Secretary to the Paramount Chief of Acholi, interview by author, 22 Nov. 2004, Gulu town, Uganda; also World Vision, *Pawns of Politics: Children, Conflict and Peace in Northern Uganda* (Kampala: World Vision, 2004), 4.

¹⁵ Allen, *War and Justice in Northern Uganda*, 23.

¹⁶ Moses Odokonyero, “Acholi’s political ‘Elephant breed’ fails,” *The Monitor* (Kampala), 10 March 2006.

¹⁷ Olara Otunnu, “Northern Uganda: Profile of a Genocide,” *The Monitor* (Kampala), 8 January 2006.

¹⁸ Betty Bigombe and John Prendergast, “Stop the Crisis in Northern Uganda,” *The Philadelphia Inquirer*, 21 February 2006.

¹⁹ Ministry of Finance, Planning and Economic Development, “Discussion Paper 8: Post-conflict Reconstruction: The Case of Northern Uganda,” Aug. 2004, 32.

²⁰ IRIN News, “Uganda: IDPs unlikely to meet deadline to vacate camps,” 26 Dec. 2006; [article on-line]; available from <http://www.irinnews.org/report.aspx?reportid=62892>; accessed 28 April 2007.

been relegated to smaller resettlement camps where conditions are often as bad (or worse) than the older, more established sites.”²¹

[Those] enforced ‘communities’ that have sprung up within the IDP camps may be formalized, and the camps themselves will become permanent. If this happens, the forcible dislocation of people from their traditional homes and *gemeinschaft*²² communities could further hamper the process of attaining freedom from war. Furthermore, the situation of permanent displacement is likely to have a direct impact on the economic sustainability of the region: as urban centres grow and the needs of a population unable to grow its own food or provide for other basic requirements multiply, the need for skilled workers is likely to increase. Meanwhile, the majority of those living in the camps at present possess none of the knowledge required, and thus it is likely, at least for this generation, that those living in IDP camps will be reliant on additional assistance from others.²³

Museveni “has urged the people of Lango and Teso to go back to their homes... [He] said he would give resettlement kits like iron sheets, food for six months, oxen, and ox ploughs to the people as they go home...”²⁴ Yet the people of northern Uganda now living in camps, some of whom have lived in the camps since 1986, most of whom have been there since 1996, may never be able to return to their homes.²⁵ “As people begin to venture back to their villages, conflicts have already begun to erupt over land whose boundaries have been blurred by long displacement, disfigured by war, and rendered uncertain by ambiguous laws... ‘Some people had begun constructing homes in their villages, but this has stopped due to conflicting reports on the

²¹ Enough, “Northern Uganda Monthly Report,” April/May 2007, [article on-line]; available from <http://www.enoughproject.org/region/northern-uganda/overview.php>; accessed 20 April 2007.

²² Ferdinand Tönnies divided societies into two distinct groups: “*Gemeinschaft* society is one in which people live together in primary groups, tightly wound around the institutions of kin, community and church... In *gesellschaft* society, by contrast, people frequently leave their primary groups for association with people who may be strangers. One chooses one’s occupation, place of residence, and marriage partner. Ties to primary kin, place of origin, and church are loose and may be cut off entirely.” See Rhoda E. Howard, *Human Rights and the Search for Community* (Boulder: Westview, 1995), 25-26.

²³ Hovil and Quinn, *Peace First, Justice Later*, 9.

²⁴ Apunyo, “Abia IDP Camp Marks 2nd Anniversary of Massacre.”

²⁵ “UNDMT Technical Group Status Report: Preparatory Planning for Displaced Persons” as cited in Chris Dolan, “Understanding War and Its Continuation: The Case of Northern Uganda,” (Ph.D. diss., University of London, 2005), 167.

status of the peace process.”²⁶ Land is one of the issues around which further conflict is likely to erupt.

The Juba Process

The Government of Uganda (GOU) and the Lord’s Resistance Army have met several times in a series of failed peace talks including the Pece Stadium Accord (1988) the Addis Ababa Accord (1990) a series of peace talks (1994)²⁷ and another set negotiated by Betty Bigombe (2005). The latest round of peace talks began in August, 2006, and have been held in Juba, South Sudan. The talks have been brokered by the new Government of South Sudan (GOSS), which “has a clear interest in ending the threat to regional security the northern Uganda conflict poses.”²⁸ The involvement of GOSS began in May, 2006, when the LRA approached South Sudanese Vice President Riek Machar and asked him to approach the GOU about commencing peace talks.

The GOU and LRA were able to come to some agreement on five agenda items that would need to be brokered at the talks: cessation of hostilities; comprehensive solutions to conflict; accountability and reconciliation; ceasefire; and demobilization, disarmament, reintegration, and resettlement. The first agreement produced by the talks was the “Agreement on Cessation of Hostilities,” on 26 August 2006. A subsequent agreement was signed between the two parties at Ri-Kwangba, and is called “The Ri-Kwangba Communique;” it extended the first agreement until June, 2007, and established the date for the resumption of talks between the two parties. The second agenda item was agreed upon in the “Agreement on Comprehensive Solutions,” signed 2 May 2007. The third agenda item was made manifest in the “Agreement on

²⁶ Enough, “Northern Uganda Monthly Report.”

²⁷ *Listen to the People: Peace and Reconciliation in Northern Uganda* (Kampala: HURIPPEC, 03 May 2004), 92-93.

²⁸ Refugees International, *Bulletin: Uganda: Challenges of Peace and Justice* (Washington: Refugees International, 19 Feb. 2008), 1.

Accountability and Reconciliation,” signed 29 June 2007. Subsequent to that agreement, the parties signed the “Annexure to the Agreement on Accountability and Reconciliation” on 19 February 2008. The remaining two agenda items have not yet produced substantive agreements.

Although it is difficult to tell what exactly is happening within the LRA itself, since 2006, the LRA has come to call itself the LRA/M, signifying the presence of an active “political” wing separated from the military arm of the group; the existence of the political wing dates to at least June 1998.²⁹ Many of those who have been involved with the LRM, and particularly those involved in the negotiations in Juba, are

drawn mainly from politically active Ugandan refugees exiled in Africa and Europe... who have lost touch with Uganda. Save for 2 members, the rest of the members of LRA delegation fled from Uganda during M7’s war of vengeance and reign of terror in eastern and northern Uganda. The common term used to describe them was and still is ‘the Diaspora Ugandans’ which to a larger extent is meant to make them sound like ‘the Diasporas are offspring of a generation that left Uganda before M7 grabbed power by the gun.[’]³⁰

“Few of the 17-member LRA[/M] delegation that arrived in Juba... have combat experience and many of them are based abroad.”³¹ There is some doubt as to whether the LRM represent the LRA itself. “[I]t is debatable whether [the LRM] have the influence to negotiate on behalf of the leadership in the bush.”³² “These delegates are not reliable or credible representatives.”³³ “[They are accused of] putting forth all manner of issues, loading down the agenda with things that the Lord’s Resistance Army as an entity never fought for, and does not

²⁹ Statement by David Masanga, LRM representative, Institute for African Alternatives, London, June 27, 1998, in Human Rights Watch, *Hostile to Democracy: The Movement System and Political Repression in Uganda* (London: Human Rights Watch, 1999), 92.

³⁰ *To Whom it May Concern: A Synopsis on Uganda Peace Talks*, [article on-line]; available from http://www.radiorhino.org/htm_material/archiv/text/press/monitor/A%20Synopsis%20on%20Uganda%20PeaceTalks%20070208.htm; accessed 16 May 2007.

³¹ “Ugandan rebel peace talks begin,” *BBC News Online*, 14 July 2006; [article on-line]; available from <http://news.bbc.co.uk/go/pr/fr/-/2/hi/africa/5175602.stm>; accessed 14 July 2006.

³² “Ugandan rebel peace talks begin,” *BBC News Online*.

³³ Nick Grono and Adam O’Brien, “Exorcising the Ghost of the ICC,” *The Monitor (Kampala)* 31 October 2006.

represent the people of Northern Uganda on it.”³⁴ Prior to the Juba talks, the LRA had never been known to have any clear political agenda,³⁵ yet “the LRA now appears to have an agenda... [evidenced by] demands that northern residents be guaranteed 35 per cent of top government and military positions, as well as government contracts in the expected reconstruction of the north.”³⁶ In late 2006, a split occurred among the political wing of the LRM,³⁷ and in July 2007, three members of the LRM were fired from the negotiating team over supposed differences with the LRA,³⁸ leaving the direction the LRM will pursue up in the air. Kony and the other top commanders have been largely absent from the talks, and many have speculated that they have little to do with the talks at all.³⁹ “Kony is a man who has always been less interested in the Juba talks... The Obita’s and Matsanga’s [LRM negotiators] don’t fit into the jigsaw that Kony was weaving.”⁴⁰

The GOU has likewise been divided in its approach. It is common for Government statements to indicate a certain decision, whilst individuals from within the Government espouse opposite views and make contrary claims. Museveni has long been clear on his expectations for ending the war; in 2005, for example, Museveni said “This is the last warning to those fools. We

³⁴ John A. Akec, “Why Naivasha success story could not be repeated in Uganda talks?” *Sudan Tribune*, 9 April 2007. Akec also argues that it is “neither correct nor fair to depict the Acholi Diaspora as those who caught the LRA bandwagon into Juba at the last minute to advance their personal agenda. They have every right to form the core of LRA/M negotiating team in Juba and are well equipped to speak on behalf on [*sic*] Northern Uganda. Liberation struggle is a voluntary thing and it does not require mandate from anyone. LRA/M was restricted and banned from establishing offices in the West as SPLM did. We must bear that in mind when comparing LRA/M lack of visibility in the West.”

³⁵ Will Ross, “Ugandans ask ICC to spare rebels,” *BBC News Online*, 16 March 2005; [article on-line]; available from <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/africa/4352901.stm>; accessed 16 March 2005.

³⁶ Caroline Ayugi, “Scepticism Over Juba Accord,” 11 March 2008; [article on-line]; available from: http://www.iwpr.net/?p=acr&s=f&o=343302&apc_state=henh; accessed 20 March 2008.

³⁷ Emmy Allio, “LRA split on peace talks,” *New Vision (Uganda)*, 16 Nov. 2006.

³⁸ Chris Ocowun, “Kony drops 3 officials,” *New Vision (Uganda)*, 7 July 2007.

³⁹ “Uganda: Give peace a chance, northern leaders tell ICC,” IRINnews.org (2 June 2006); available from www.irinnews.org/print..asp?ReportID=53685; accessed 13 June 2006. See aksi Caroline Ayugi, “LRA Split a Tactical Ploy,” IWPR Report (20 March 2008); available from: http://iwpr.net/index.php?m=p&o=343546&s=f&apc_state=henfacr343546; accessed 20 March 2008.

⁴⁰ “Kony not part of Juba talks, says Ochora,” *Juba Post*, 7 March 2008; [article on-line]; available from <http://www.k2-media.org/jubapost/go/record.php?cat=13&recordID=385>; accessed 23 March 2008.

are preparing a last dose for Kony... We want peace everywhere.”⁴¹ His statements on the Juba process have been similarly worded. Museveni’s cabinet ministers, though, are known for public statements that wildly contradict the official party line. On the same day Museveni held made his “last dose” statement, Minister of Internal Affairs Ruhukana Rugunda, who is also the chief negotiator for the GOU in Juba, “was more conciliatory, saying that [the GOU] had come to negotiate and conclude peace.”⁴² In the months since, Rugunda has continued to stress that the GOU is committed to a peaceful resolution.⁴³

As such, the talks have been anything but straightforward. As I have outlined elsewhere⁴⁴ at several points, the talks have broken off. Various interlocutors, including officials from the governments of Kenya, Congo, Mozambique, Tanzania, South Africa, Norway, the European Union, Canada, and the United States, along with representatives of the United Nations, have participated in the talks, and have attempted to keep things on track. The parties have managed to agree upon the first three agenda points: the cessation of hostilities; comprehensive solutions to conflict; and accountability and reconciliation.

Each of the Agreements negotiated to this point clearly corresponds to those issues seen to be of paramount importance at the time of negotiations pertaining to that issue. The “Agreement on the Cessation of Hostilities,” for example, makes no mention of accountability or reconciliation, but speaks only of the physical needs of the LRA. The “Agreement on Comprehensive Solutions,” however, includes reconciliation in the preamble. Indeed, the language of each Agreement is very different:

⁴¹ “Uganda’s Museveni vows to punish corrupt troops,” *Reuters AlertNet*, 04 Apr. 2005 [article on-line] available from <http://www.alertnet.org/thenews/newsdesk/L04222434.htm>, accessed 28 Apr. 2005.

⁴² “Tense start to Uganda peace talks,” *BBC News Online*.

⁴³ Ruhakana Rugunda, “Keynote Address,” Stakeholders Consultative Meeting on the Juba Peace Talks: A search for durable peace in Northern Uganda, Kampala, Uganda, 30 Aug. 2006.

⁴⁴ See Joanna R. Quinn, “Getting to Peace: Negotiating with the LRA in Northern Uganda,” *Human Rights Review*, 2008, *forthcoming*.

Technically, there are differences in form. In different agreements, the spelling of certain words varies, which indicates the level of influence and technical assistance coming from outside parties. The spellings of various words shift over the course of the sum total of the Agreements; for example, “recognised” is spelled in some agreements with an “s” and in others with a “z”. And the inclusion of bits of what might be considered superfluous information hint at the kinds of concessions being pushed for by both sides. For example, Article 21.1 of the “Annexure to the Agreement on Accountability and Reconciliation” lists the traditional Ankole practice of *okukaraba*. This, despite the fact that Ankole is located in the extreme southwest of the country, far removed from the conflict in northern Uganda. And in spite of the fact that Article 1 of the “Agreement on Accountability and Reconciliation” clearly spells out the parameters of “the conflict” as being “between the Parties in Northern and North-eastern Uganda.” In fact, neither of the lead negotiators from either side is from northern Uganda. David Matsanga, the LRAM negotiator is an ethnic Mugisu from the southeast. Ruhukana Rugunda is an ethnic Mukyiga from the district which borders Rwanda in the southwest. The significance of having negotiators from outside of the region in question, each of whom no doubt comes with an outsider’s understanding of events,⁴⁵ along with an ingrained set of prejudices against the north,⁴⁶ cannot be underestimated.

Practically, each of the Agreements speaks very differently about the whole basket of issues that is on the negotiating table. The Agreements, taken as a whole, vary considerably from the Government’s goals as laid out in the *Peace, Recovery and Development Plan for Northern Uganda* (PRDP). So, while Museveni states in the Foreword to the PRDP that “Northern Uganda has consistently fallen behind the rest of the country within the realm of

⁴⁵ Scott Worden, *USIPeace Briefing: The Justice Dilemma in Uganda* (Washington: USIP, Feb. 2008), 7.

⁴⁶ CSOPNU, *The Need for National Reconciliation: Perceptions of Ugandans on National Identity* (Kampala: CSOPNU and JYAK, Dec. 2004), 11-12.

human development. For example, access to basic services such as water and sanitation, as well as health facilities is poor by national standards,⁴⁷ there is no recognition of the role of the conflict in northern Uganda that has been allowed to continue by the Government for more than 20 years, nor responsibility taken for the Government's prior inaction. Taken individually, the Agreements themselves cover a laundry list of wishes, both little and big. These range from livestock and land, to prosecutions on violations of the Geneva Conventions.

The agreements which speak to the third agenda point, the "Agreement on Accountability and Reconciliation," and the "Annexure to the Agreement on Accountability and Reconciliation" provide an overview of the future of "justice" for northern Uganda. Together, these two documents outline, in some places only vaguely, just what the processes and structures that must be implemented to bring about accountability and reconciliation will look like. They discuss a number of complexities, including the presence and role of the International Criminal Court, which became involved⁴⁸ in the Ugandan case in 2003, and issued warrants against five senior LRA officials in 2005⁴⁹—but not against the Government of Uganda, which has perpetrated crimes of its own in the region and elsewhere, and sought solely to shield itself from prosecution on these same matters.⁵⁰ The documents also contain formulae for the establishment and jurisdiction of judicial and non-judicial fora in which the crimes of the LRA and individuals

⁴⁷ Government of Uganda, *Peace, Recovery and Development Plan for Northern Uganda 2007-2010* (Kampala: Republic of Uganda, 2007), iii.

⁴⁸ Museveni officially referred the situation to the ICC in December 2003. It has been commonly assumed that Museveni approached the Court first. Information has recently surfaced that the Chief Prosecutor actually approached Museveni to ask him to refer the situation. See Nicholas Waddell and Phil Clark, eds., *Courting Conflict? Justice, Peace and the ICC in Africa* (London: Royal African Society, March 2008), 43. There is a great deal of debate about what this discrepancy means, and what impact it may have on the Juba Talks and beyond.

⁴⁹ Kony and his deputies have been charged with more than 2,200 killings and 3,200 abductions in over 820 attacks. Kony, for example, is charged with 12 counts of crimes against humanity and 21 counts of war crimes, including "rape, murder, enslavement, sexual enslavement, [and] forced enlistment of children." See Chief Prosecutor Louis Moreno-Ocampo, "The Investigation in Northern Uganda," International Criminal Court, 14 October 2005 ; available from http://www.icc-cpi.int/library/organs/otp/Uganda_PPpresentation.pdf; accessed 22 February 2006.

⁵⁰ See Chandra Lekha Sriram, "'The ICC Africa Experiment: The Central African Republic, Darfur, Northern Uganda, and the Democratic Republic of the Congo,'" a paper presented at the International Studies Association Annual Meeting, San Francisco, CA: March 26, 2008, 5.

throughout northern Uganda who have been involved in the conflict can and will be tried. These include references to traditional practices. A greater examination of these two agreements follows below.

The final agreement is meant to be signed by 28 March, 2008. At the time of writing, it is unclear whether or not this deadline will be met. Or what the consequences of not signing might be. “[T]here are real fears [for] the imminent collapse of the peace deal the rebels reached with the Ugandan government...”⁵¹

Traditional Mechanisms

In the global North, justice has come to look reasonably homogeneous: systems of courts exist to try, and to punish, the perpetrators of crimes that are defined in criminal codes. Yet, prior to the introduction of this system of justice around the world, “justice” existed in every society. Although different in form, substantively the mechanisms that were employed were similar in societies around the world. They carried out a number of functions, including mediation, arbitration, adjudication, restitution, and punishment—the same retributive elements included in the kinds of systems familiar in “modern” justice. As well, however, they often included elements of restoration and reconciliation.⁵²

In many parts of the world, these kinds of mechanisms are still used. In New Zealand, Family Group Conferences, based on traditional Maori principles and community restoration, have been available as an alternative to modern sentencing since 1989.⁵³ Village courts

⁵¹ Ayugi, “LRA Split.”

⁵² Joanna R. Quinn, “Tried and True: The Role of Informal Mechanisms in Transitional Justice,” a paper presented at the International Society of Political Psychology Annual Meeting, Toronto, 6 July 2005.

⁵³ Teresa Olsen, Gabrielle M. Maxwell and Allison Morris, “Maori and Youth Justice in New Zealand,” in *Popular Justice and Community Regeneration*, ed. K. Hazlehurst (London: Praeger, 1995) 89-102.

adjudicate according to customary law in the Highlands of Papua New Guinea.⁵⁴ In parts of Canada, aboriginal communities utilize traditional practices in conjunction with modern justice; these practices include community healing circles, elders' courts, and community courts.⁵⁵ In the United States, Navajo Tribal Courts⁵⁶ adjudicate cases under Navajo common law.

These kinds of practices are common, too, throughout much of Africa. Internally displaced, war-affected people in Angola utilize a type of traditional psychological healing called *conselho*, which is based on “the general encouragement given to people to abandon the thoughts and memories of war and losses.”⁵⁷ Holistic purification and cleansing rituals, attended by the family and broader community, are carried out in welcoming ex-combatant child soldiers back into the community in both Angola and Mozambique.⁵⁸ In Western Kenya, traditional conflict resolution mechanisms are used by the Pokot, Turkana, Samburu and Marakwet.⁵⁹ Ceremonies to “cool the heart[s]” of child ex-combatants upon their return to their home communities in Sierra Leone are carried out by the broader community.⁶⁰ Inkundla in South Africa comprises a series of traditional small claims courts.⁶¹ And in Rwanda, *gacaca* courts, a form of traditional

⁵⁴ Sarah Garap, “The struggles of women and girls in Simbu Province,” *Development Bulletin* 50 (October 1999): 48.

⁵⁵ See Rupert Ross, *Returning to the Teachings* (Toronto: Penguin, 1996).

⁵⁶ Philmer Bluehouse and James Zion, “The Navajo Justice and Peace Ceremony,” in *The Mediation Quarterly* 10.4 (Summer 1993): 328.

⁵⁷ Carola Eyber and Alastair Ager, “Conselho: psychological healing in displaced communities in Angola,” *The Lancet* 360 (Sep. 14, 2002) 871.

⁵⁸ Alcinda Honwana, “Children of War: Understanding War and War Cleansing in Mozambique and Angola,” in *Civilians in War*, ed. Simon Chesterman (Boulder: Lynne Rienner, 2001) 1137-140, and Carolyn Nordstrom, *A Different Kind of War Story* (Philadelphia: University of Pennsylvania Press, 1997) 142-152.

⁵⁹ Ruto Pkalya, Mohamud Adan, Isabella Masinde, *Indigenous Democracy: Traditional Conflict Resolution Mechanisms*, eds. Betty Rabar and Martin Karimi (Kenya: Intermediate Technology Development Group – Eastern Africa, Jan. 2004).

⁶⁰ Rosalind Shaw, *Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone*, United States Institute of Peace, Special Report 130 (Feb. 2005): 9

⁶¹ *Gacaca, Inkundla, traditional systems of justice being looked at in the US as “Restorative Justice.”* Herndon, VA: Marek Publications, 2001, [article on-line]; available from <http://www.marekinc.com/GovernanceINT100901.html>, accessed 22 July 2002.

dispute resolution mediated by chiefs and tribal elders, are a re-vamped, formalized system, used to deal with crimes of genocide.⁶²

In Uganda, many of the 56 different ethnic groups also carry out such practices. Among the Karamojong, the *akiriket* councils of elders adjudicate disputes according to traditional custom⁶³ which include cultural teaching and ritual cleansing ceremonies.⁶⁴ The Acholi use a complex system of ceremonies in adjudicating everything from petty theft to murder;⁶⁵ in the current context, two ceremonies have been adapted to welcome ex-combatant child soldiers home after they have been decommissioned: *mato oput* (drinking the bitter herb), and *nyouo tong gweno* (a welcome ceremony in which an egg is stepped on over an *opobo* twig).⁶⁶ The Baganda have used the traditional *kitewuliza*, a juridical process with a strong element of reconciliation, to bring about justice.⁶⁷ The Lugbara, in the northwest of the country, maintain a system of elder mediation in family, clan and inter-clan conflict.⁶⁸ And in 1985, an inter-tribal reconciliation ceremony, *gomo tong* (the bending of spears) was held to signify that “from that time there would be no war or fighting between Acholi and Madi, Kakwa, Lugbara or Alur of West Nile.”⁶⁹ A similar ceremony, *amelokwit*, took place between the Iteso and the Karamojong in 2004.⁷⁰

⁶² See, for example, Peter E. Harrell, *Rwanda's Gamble: Gacaca and a New Model of Transitional Justice* (New York: Writers Club Press, 2003).

⁶³ Bruno Novelli, *Karimojong Traditional Religion* (Kampala: Comboni Missionaries, 1999) 169-172, 333-340.

⁶⁴ Peter Lokeris, Minister of State for Karamoja, interview by author, 18 Nov. 2004, Kampala, Uganda.

⁶⁵ See Thomas Harlacher, Francis Xavier Okot, Caroline Aloyo Obonyo, Mychelle Balthazard, and Ronald Atkinson, *Traditional Ways of Coping in Acholi: Cultural provisions for reconciliation and healing from war* (Kampala: Thomas Harlacher and Caritas Gulu Archdiocese, 2006).

⁶⁶ For an excellent description of *mato oput* see Sverker Finnstrom, *Living With Bad Surroundings: War and Existential Uncertainty in Acholiland in Northern Uganda* (Uppsala: Acta Universitatis Upsaliensis, Uppsala Studies in Cultural Anthropology no. 35, 2003) 297-299.

⁶⁷ John Mary Waliggo, “The Human Right to Peace for Every Person and Every Society,” a paper presented at Public Dialogue organized by Faculty of Arts, Makerere University in conjunction with Uganda Human Rights Commission and NORAD, Kampala, Uganda, 4 Dec. 2003, author’s collection, 7. Also, idem, “On Kitewuliza in Buganda, 3 May 2005,” author’s collection, 1.

⁶⁸ Joseph Ndrua, “A Christian Study of the African Concept of Authority and the Administration of Justice among the Lugbari of North Western Uganda,” (M.A. diss., Catholic Higher Institute of Eastern Africa, 1988), 42-56.

⁶⁹ Finnstrom, *Living With Bad Surroundings*, 299.

⁷⁰ Iteso focus group, conducted by author, 31 Aug. 2006, Kampala, Uganda.

The “Annexure to the Agreement on Accountability and Reconciliation” also lists those mechanisms used by the Lango (*kayo cuk*), Teso (*ailuc*), and Madi (*tonu ci koka*).

These traditional practices were the *de facto* legal system of Uganda until Independence in 1962, when they were disbanded in favour of a harmonized court system modeled on the British system.⁷¹ They are now legally provided for under legislation including Article 129 of the 1995 Constitution, which provides for Local Council Courts⁷² to operate at the sub-county, parish and village levels;⁷³ and the Children Statute 1996, which grants these courts the authority to mandate any number of things including reconciliation, compensation, restitution, and apology.⁷⁴

Today, those ethnic groups which were traditionally organized hierarchically, such as the Baganda, are far less likely to utilize these mechanisms. Conversely, those ethnic societies that were arranged horizontally, with a system of equal clans, like the Acholi, are more likely to continue to utilize these mechanisms. It seems that the hierarchical stratification of societies with entrenched kingdoms, whose social order was organized from top to bottom, were more likely to coordinate whole formalized political systems, of which justice formed one part. Certainly, this is the case in Buganda, where the *kitawuliza* courts, used mostly at the sub-sub-county level, were headed by the head of that particular political strata; he, in turn, reported to *muluka* chiefs, and so on, up to the *katikkiro*, and ultimately, the *kabakka*, or king, who had the power to reverse the decisions made.⁷⁵ This pattern seems to repeat itself in Uganda today, in

⁷¹ The British Colonial Office, *Report of the Uganda Relationship Committee*, 1961.

⁷² The LC Courts were formerly known as Resistance Council Courts and “were first introduced in Luweero in 1983 during the struggle for liberation. In 1987 they were legally recognized throughout the country.” See Waliggo, “The Human Right to Peace for Every Person and Every Society,” 7.

⁷³ “Uganda: Constitution, Government & Legislation,” [article on-line]; available from <http://jurist.law.pitt.edu/world/uganda.htm>, accessed 30 April 2005.

⁷⁴ Government of Uganda, *The Children’s Statute 1996*.

⁷⁵ Dr. Livingstone Walusimbe, Institute of Languages, Makerere University, interview by author, 16 May 2006, Kampala, Uganda.

that those ethnic groups with highly stratified kingdoms, including Buganda, Toro, Ankole and others, use such traditions infrequently.

These traditional mechanisms have a great deal to offer. Many people have reported to me that “everyone respects these traditions,”⁷⁶ and that reconciliation continues to be an “essential and final part of peaceful settlement of conflict.”⁷⁷ Indeed, the majority of these traditional practices include reconciliation as a basic element. A common understanding of these symbols, ceremonies, and institutions, and their meanings remains throughout Uganda—even in those areas where such practices are no longer carried out.

Where they are used, traditional justice mechanisms have changed. Like institutions in any society, these institutions have been altered over time, influenced by current social practice.⁷⁸ “Ideas about old models are often used to help shape new ones.”⁷⁹ In neighbouring Rwanda, the *gacaca* courts represent the embodiment of this idea. Intrusions including colonialism and the imposition of a central government, have altered the way in which justice is administered. And the introduction of other religions, and in particular Christianity, appears to have led many to reject traditional mechanisms—although a many see a strong level of compatibility between their religious beliefs and Acholi traditional mechanisms.

The war itself has caused tremendous change, and has made it difficult to “teach the children [the] Acholi culture,”⁸⁰ some feel that the younger generation does not recognize or understand such mechanisms any longer, a complaint that is not uncommon in many societies

⁷⁶ Confidential interview by author with Sabiny man studying at Makerere University, 7 Nov. 2004, Kampala, Uganda.

⁷⁷ Waliggo, “The Human Right to Peace for Every Person and Every Society,” 9.

⁷⁸ Max Weber was one of the early proponents of the theory of social change. See Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (New York: Bedminster Press, 1968).

⁷⁹ Allen, *War and Justice in Northern Uganda*, 84.

⁸⁰ Benjamin Oballim, Camp Leader, Labuje Camp, Kitgum, cited in *Trapped in Anguish: A call for Acholi reconciliation*, prod. Northern Uganda Peace Initiative, Eyez on Africa, 2006, videocassette.

around the world. “The traditional values, cultural knowledge and social institutions of everyday life are threatened.”⁸¹

Certain practices and beliefs are still widespread in some areas of Acholi but less common in others. Moreover, some rituals might not have been performed for a long time in a particular area because it has not been possible to put together all the necessary components due to extreme poverty or war-time insecurity, but might still be applicable and sought after by the community.⁸²

And the social meanings of the ceremonies that are still practiced appear, in some cases, to be shifting⁸³ as people move farther away from their *gemeinschaft* communities. Among the Karamojong⁸⁴ and also among the Acholi,⁸⁵ cultural education through practice and social education, is beginning to decline.⁸⁶

It would be wrong to imagine that everything traditional has been changed or forgotten so much that no traces of it are to be found. If anything, the changes are generally on the surface, affecting the material side of life, and only beginning to reach the deeper levels of the thinking pattern, language content, mental images, emotions, beliefs and response in situations of need. Traditional concepts still form the essential background of many African peoples, though obviously this differs from individual to individual and from place to place. I believe... that the majority of our people with little or no formal education still hold on to their traditional corpus of beliefs.⁸⁷

Finnstrom and others also take this into account: “These practices, far from being dislocated in a past that no longer exists, have always continued to be situated socially. They are called upon to address present concerns. Of course, like any culturally informed practice, with time they shift in meaning and appearance.”⁸⁸ After the conflict has ended, however, it is “not clear whether the

⁸¹ Finnstrom, *Living With Bad Surroundings*, 201.

⁸² Harlacher et al., *Traditional Ways of Coping in Acholi*, 113.

⁸³ Finnstrom, *Living With Bad Surroundings*, 298.

⁸⁴ Novelli, *Karimojong Traditional Religion*, 201-225.

⁸⁵ Finnstrom, *Living With Bad Surroundings*, 76, 219. See also E.E. Evans Pritchard, *Witchcraft, Oracles and Magic Among the Azande* (Oxford: Clarendon Press, 1937) 154.

⁸⁶ Allen reports that a study funded by the Belgian government revealed that young people no longer automatically respect the elders. Allen, *War and Justice in Northern Uganda*, 76.

⁸⁷ John S. Mbiti, *African religions and philosophy* (Kampala: East African Educational Publishers, 1969, 2002), xi.

⁸⁸ Finnstrom, *Living With Bad Surroundings*, 299.

post-colonial state [will] return to a pre-colonial experience”⁸⁹ or whether such institutions will continue to adapt to new experiences and conditions. Whatever the case, Ugandans will attempt to “re-member... to put parts back where they matter, to bring about a wholeness.”⁹⁰

How the Juba Agreement Conceptualizes Accountability and Reconciliation

The “Agreement on Accountability and Reconciliation” and the subsequent “Annexure to the Agreement on Accountability and Reconciliation”⁹¹ are reasonably broad in their commitments to justice. For example, none of the references to traditional justice in any way define (nor, contrarily, do they limit) the form that such mechanisms might take, how they would be implemented, or who would have ultimate jurisdiction over them. At the same time, however, they are also specific with regard to the kinds of institutions that are to be established to bring about this kind of justice. The following section attempts to break these down into component parts for a more detailed analysis.

The “Principal Agreement” and the “Annexure” lay out Governmental responsibility for bringing various aspects of the system of accountability and reconciliation to fruition. The “Annexure” commits the Government to “expeditiously prepare and develop the necessary legislation and modalities for implementing” all that the two “Accountability Agreements” contain.⁹² Indeed, the Government is now obligated to make arrangements for all activities related to justice. These include the enactment of required legislation to provide for the

⁸⁹ Timothy G. Kiogora, “Good Governance for Development: Perspectives from the African Traditional Cultural Heritage,” in *Peacemaking and Democratisation in Africa*, eds. Hizkias Assefa and George Wachira (Nairobi: East African Educational Publishers, 2003), 25.

⁹⁰ *Ibid.*, 29.

⁹¹ In this paper, these two agreements are hereafter referred to as the “Principal Agreement” and the “Annexure,” respectively. Together, they are referred to as the “Accountability Agreements.”

⁹² Government of Uganda and Lord’s Resistance Army/Movement, “Annexure to the Agreement on Accountability and Reconciliation” (Juba, 19 Feb. 2008), Art.2.0.

institutions to be created,⁹³ the adaptation of the existing legal framework to incorporate the terms of the agreements,⁹⁴ the designation of an investigations unit,⁹⁵ the provision of fair, speedy, and public hearings,⁹⁶ and the amendment of the Uganda Human Rights Commission or the Amnesty Act.⁹⁷ On top of these, the Government has guaranteed that it will make arrangements for reparations,⁹⁸ and determine the appropriate roles of traditional mechanisms⁹⁹ and “promote” them.¹⁰⁰

The Creation of New Institutions

There are a number of mechanisms provided for by the “Accountability Agreements,” all of which the Government must now establish in order to carry out the commitments therein. The “Principal Agreement” stipulates that “[i]nsofar as practicable, accountability and reconciliation processes shall be promoted through existing national institutions and mechanisms, with necessary modifications”¹⁰¹ and that the parties consider the Uganda Human Rights Commission and the Uganda Amnesty Commission “capable of implementing relative aspects of the [Principal] Agreement.”¹⁰² It is equally clear, however, that the Government will have to establish additional institutions.

⁹³ Government of Uganda and Lord’s Resistance Army/Movement, “Annexure,” Art.4.0.

⁹⁴ Government of Uganda and Lord’s Resistance Army/Movement, “Agreement on Accountability and Reconciliation,” (Juba, 29 June 2007), Art.4.4.

⁹⁵ Government of Uganda and Lord’s Resistance Army/Movement, “Annexure,” Art.10.0.

⁹⁶ Government of Uganda and Lord’s Resistance Army/Movement, “Principal Agreement,” Art.3.2.

⁹⁷ *Ibid.*, Art.14.4.

⁹⁸ Government of Uganda and Lord’s Resistance Army/Movement, “Annexure,” Art.16.0.

⁹⁹ *Ibid.*, Art.20.0.

¹⁰⁰ Government of Uganda and Lord’s Resistance Army/Movement, “Principal Agreement,” Art.3.1.

¹⁰¹ *Ibid.*, Art.5.4.

¹⁰² *Ibid.*, Art.5.5.

First, the Government is expected to inquire, by means of new legislation that is to be introduced that will look into the events of the past,¹⁰³ considering the history of the conflict, and how it played out, through public and private hearings. The “Principal Agreement” emphasizes “that a comprehensive, independent and impartial analysis of the history and manifestations of the conflict, especially the human rights violations and crimes committed during the conflict, is an essential ingredient for attaining reconciliation at all levels.”¹⁰⁴ This body will presumably take the form of a Commission of Inquiry, as has been the case many times over in that country.¹⁰⁵ It is not clear whether this body will be the same “truth-seeking and truth-telling mechanism [that] shall be promoted” by the Government,¹⁰⁶ or whether that will be a different body to be established.

Second, the Government has agreed to establish a multi-disciplinary unit specifically to carry out investigations.¹⁰⁷ This is quite unlike earlier Commissions of Inquiry, in which the Criminal Investigations Division (CID) has been called upon to investigate past human rights abuses. But perhaps the Government has learned from its earlier mistakes; in the case of the Commission of Inquiry into Violations of Human Rights, the CID failed to investigate nearly everything that was sent its way.¹⁰⁸ It is the case that the Directorate of Public Prosecutions (DPP) will oversee both investigations and prosecutions.¹⁰⁹

¹⁰³ Government of Uganda and Lord’s Resistance Army/Movement, “Annexure,” Art.4.0; idem, “Principal Agreement,” Art.2.2-2.3.

¹⁰⁴ Government of Uganda and Lord’s Resistance Army/Movement, “Principal Agreement,” Art.2.3.

¹⁰⁵ The “Commission of Inquiry into the Disappearances of People in Uganda since 25 January, 1971” was appointed by Amin in 1974. See Priscilla B. Hayner, “Fifteen Truth Commissions - 1974 to 1994.” *Human Rights Quarterly* 16 (1994): 597-655. The “Commission of Inquiry into Violations of Human Rights” was established to look into events that took place between 1962-1986. See Joanna R. Quinn, “Constraints: The Un-Doing of the Ugandan Truth Commission,” *Human Rights Quarterly*, 26.2 (May 2004): 401-427.

¹⁰⁶ Ibid., Art.7.3.

¹⁰⁷ Government of Uganda and Lord’s Resistance Army/Movement, “Annexure,” Art.10.0-11.0.

¹⁰⁸ Joanna R. Quinn, “The Politics of Acknowledgement: Truth Commissions in Uganda and Haiti,” Ph.D. diss., (Hamilton: McMaster University, 2003), 162-163.

¹⁰⁹ Government of Uganda and Lord’s Resistance Army/Movement, “Annexure,” Art.12.0-13.0.c.

Third, the Government has committed to establish reparations arrangements.¹¹⁰ This is in keeping with a directive issued by the Secretary-General of the United Nations, which advises that “Victims also benefit from well-conceived reparations programmes, which themselves help ensure that justice focuses not only on perpetrators, but also on those who have suffered at their hands.”¹¹¹ As outlined above, however, the complexity of the situation in northern Uganda may well make this impossible. Particularly with regard to land tenure and other issues related to displacement, just how to compensate the victims of the long-running civil conflict will be difficult to determine. And, since the Government of Uganda has allocated only 3.67% of the total budget toward “facilitation” of the peace agreement *as well as* peacebuilding and reconciliation (including the pay-out of amnesty packages), it is hard to see from where the funding will materialize.¹¹²

Fourth, the Government will “examine the practices of traditional justice mechanisms in affected areas, with a view to identifying the most appropriate roles for such mechanisms...”¹¹³ Presumably, this will require the creation and/or implementation of a body to oversee the selection of mechanisms, and to regulate them once chosen. Certainly, the “Principal Agreement” recognizes that the legal framework must be substantially altered to incorporate these mechanisms.¹¹⁴ The fact that the Local Council Courts Act already allows for the use of some of these practices bodes well for the continued use of traditional mechanisms. Yet it seems likely that the Government could do one of two things that would seriously jeopardize the use of traditional mechanisms in this regard: It could simply choose not to sanction any or all of the

¹¹⁰ Ibid., Art.19.0.

¹¹¹ United Nations Secretary-General, *Report of the Secretary General: The rule of law and transitional justice in conflict and post-conflict situations*, 2004, S/2004/616, 2.

¹¹² Government of Uganda, “PRDP,” 113-114.

¹¹³ Government of Uganda and Lord’s Resistance Army/Movement, “Annexure,” Art.20.0.

¹¹⁴ Government of Uganda and Lord’s Resistance Army/Movement, “Principal Agreement,” Art.4.4, 5.1.

existing mechanisms. Or, it could formalize the existing mechanisms and force changes to the ways in which they operate.¹¹⁵

Fifth, the Government guaranteed in the “Annexure” that it will establish a special division of the existing High Court to try “individuals who are alleged to have committed serious crimes during the conflict.”¹¹⁶ This will strengthen Uganda’s claim that its institutions are capable of dealing with the types of crimes specified in the Rome Statue. Other countries have passed similar legislation before proceeding with trials of major war criminals; Canada, for example, passed the Crimes Against Humanity and War Crimes Act, to formalize its obligations to the International Criminal Court in 2000.

Accountability Framework

The “Accountability Agreements” specify two modes of accountability: criminal and civil justice, and traditional justice. The “Principal Agreement” recognizes the complexity that this duality will create, and “acknowledge... the need for an overarching justice framework that will provide for the exercise of formal criminal jurisdiction, and for the adoption and recognition of complementary alternative justice mechanisms.”¹¹⁷ It further concedes that “modifications may be required within the national legal system to ensure a more effective and integrated justice and accountability response.”¹¹⁸ In parts of the “Accountability Agreements,” these are referred to as

¹¹⁵ Ibid., Art.3.1.

¹¹⁶ Government of Uganda and Lord’s Resistance Army/Movement, “Annexure,” Art.7.0. Art.8.0-9.0.e spell out the functionality of this new division.

¹¹⁷ Government of Uganda and Lord’s Resistance Army/Movement, “Principal Agreement,” Art.5.2.

¹¹⁸ Ibid., Art.5.1.

“formal and non-formal” measures¹¹⁹—terms that are, at the very least, problematic, if not incorrect.¹²⁰

The criminal and civil justice framework corresponds closely with the legal system already in place in the country. Investigations and prosecutions, focusing on Geneva Conventions violations,¹²¹ will be overseen by the Directorate of Public Prosecutions.¹²² Those charged with crimes will appear before a judge, and be tried and sentenced.¹²³ “Formal criminal and civil justice measures shall be applied to any individual who is alleged to have committed serious crimes or human rights violations in the course of the conflict”¹²⁴—yet the agreement lacks “explicit provisions on other important matters like measures to ensure respect for international fair trial standards and adequate penalties.”¹²⁵ “Formal courts provided for under the Constitution shall exercise jurisdiction over individuals who are alleged to bear particular responsibility for the most serious crimes, especially crimes amounting to international crimes, during the course of the conflict. Formal courts and tribunals established by law shall adjudicate allegations of gross human rights violations arising from the conflict.”¹²⁶ That is, those “big fish” who have committed the worst crimes will be tried in a court of law—or, rather, in the

¹¹⁹ Ibid., Art.2.1.

¹²⁰ The formal/informal dichotomy is carelessly and erroneously used, here and elsewhere. Mechanisms that may seem at first to be informal are often formal because they are adopted by the state apparatus, have *de facto* authority, are used formally, have codified procedures, or are considered informal solely because of a cultural bias toward a different kind of mechanism. See Joanna R. Quinn, “Comparing Formal and Informal Mechanisms of Acknowledgement in Uganda: Truth commissions and traditional practices,” a paper presented at International Studies Association Annual Meeting, San Diego, CA: March 22, 2006, 5-10.

¹²¹ Government of Uganda and Lord’s Resistance Army/Movement, “Annexure,” 14.0. The specification might better have referred to the Rome Statute, but this was likely left out since the LRA is determined to avoid ICC prosecution, and the GOU is desperate to reach a deal.

¹²² Ibid., Art.12.0-13.0.

¹²³ The PRDP outlines the shortage of qualified Chief Magistrates and Grade I Magistrates, as well as inadequate, and/or non-existent courts in northern Uganda. Presumably, unless these needs are addressed, magistrates from other areas of the country will have to be used. This poses serious problems for the fairness of such trials, including judges from elsewhere who misunderstand the context of war, as well as potential biases. See Government of Uganda, *PRDP*, 45.

¹²⁴ Government of Uganda and Lord’s Resistance Army/Movement, “Principal Agreement,” Art.4.1.

¹²⁵ “Uganda: New Accord Provides for War Crimes Trials.” *Human Rights Watch*, 19 February 2008; [article online]; available from http://hrw.org/english/docs/2008/02/19/uganda_18094_txt.htm; accessed 22 March 2008.

¹²⁶ Government of Uganda and Lord’s Resistance Army/Movement, “Principal Agreement,” Art.6.1-6.2.

newly-created special division of the High Court, as outlined above. Elsewhere, these have been presented as “special war crimes courts [set up locally] for serious crimes.”¹²⁷

The “Accountability Agreements” further specify the use of “customary processes of accountability,”¹²⁸ although with “necessary modifications.”¹²⁹ “The choice of forum for the adjudication of any particular case shall depend, amongst other considerations, on the nature and gravity of the offending conduct and the role of the alleged perpetrator in that conduct.”¹³⁰ This implies that the “small fry” perpetrators will not be tried in a court of law. Rather, they will be held accountable through “traditional justice processes, alternative sentences, reparations, and any other formal institutions or mechanisms.”¹³¹

These two processes are intrinsically linked. It is certainly not the first case in which greater and lesser crimes have been adjudicated differently; in Sierra Leone, for example, the Special Court for Sierra Leone operated in tandem with the Truth and Reconciliation Commission, and the complexity of their relationship was, in the end, dealt with satisfactorily, at least by most standards. And so allowances have been made to ensure that the two systems in the Ugandan case can, similarly, work compatibly. For example, the High Court has been authorized to recognize “traditional and community justice processes.”¹³² The specification of alternative sentencing¹³³ is also, presumably, a nod to traditional practices within the criminal justice framework. And provisions have been put in place to prevent people from being

¹²⁷ Isaac Vuni, “Ugandan rebels quit peace talks demanding ministerial posts,” *Sudan Tribune*, 21 February 2008; [article on-line]; available from www.sudantribune.com/spip.php?page=imprimable&id_article=26073; accessed 18 March 2008.

¹²⁸ Government of Uganda and Lord’s Resistance Army/Movement, “Principal Agreement,” Preamble.

¹²⁹ *Ibid.*, Art.3.1.

¹³⁰ Government of Uganda and Lord’s Resistance Army/Movement, “Principal Agreement,” Art.4.3.

¹³¹ *Ibid.*, Art.5.3.

¹³² Government of Uganda and Lord’s Resistance Army/Movement, “Annexure,” Art.9.0.e.

¹³³ Government of Uganda and Lord’s Resistance Army/Movement, “Principal Agreement,” Art.6.3-4.

“compelled to undergo any traditional ritual”¹³⁴ and to protect perpetrators from double jeopardy.¹³⁵

Implications

In many ways, the Government needs the “Agreement on Accountability and Reconciliation” and the “Annexure to the Agreement on Accountability and Reconciliation” to accomplish two things simultaneously: First, the Government needs to get the fighting in northern Uganda stopped. Until 2005, there seemed to be no real pressure in this regard. The fighting had been going on for twenty years, at various points with greater or lesser intensity. And the Government’s only real responses had been the application of greater or lesser force, such as was the case with the military’s launch of Operation Iron Fist in 2003, which inflamed an already fiery situation.

The international community, though, has been invaluable in this regard, and has begun to apply pressure on Museveni. Several international aid agency officials have stated to me that Museveni is no longer seen as the darling of the international community, and that aid considerations are changing as a result. In 2005, for example, the British government cut its assistance to Uganda, citing Museveni’s undemocratic governance as its rationale.¹³⁶ In early 2006, a “Group of Seven Plus One” states banded together to support the idea of “peace” both morally and financially.¹³⁷ The United Nations, too, has increased its involvement in the region.

¹³⁴ Government of Uganda and Lord’s Resistance Army/Movement, “Annexure,” Art.22.0.

¹³⁵ Government of Uganda and Lord’s Resistance Army/Movement, “Principal Agreement,” Art.3.10.

¹³⁶ “U.K. aid cut pressures Uganda,” BBC News [article on-line]; available from <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/africa/449838>; accessed 1 May 2005.

¹³⁷ The Group of Seven Plus One is composed of Belgium, Germany, Ireland, the Netherlands, Norway, Sweden and the United Kingdom and Canada. The Government of Canada pledged \$1.5 million to the process in December, 2006, and an additional \$2.5 million in February, 2007. Government of Canada, “Canada calls on Ugandan parties to maintain commitment to Juba peace talks and announces \$2.5 million toward peace efforts,” available from

The Security Council formally expressed its support for “bringing to justice LRA leaders responsible for war crimes” and called on the Ugandan government “to ‘commit themselves fully’ to a long-term and peaceful solution to the conflict” in November, 2006.¹³⁸ The United Nations High Commission for Human Rights, and the Office for the Coordination of Humanitarian Affairs (OCHA), too, have exercised considerable influence in the region. The United States has become involved, though somewhat haphazardly.¹³⁹ For example, although the United States has openly supported the prosecution of the LRA, although not necessarily through the ICC, it has also chosen to support Museveni’s offer of amnesty.¹⁴⁰

Second, the Government’s commitments to the International Criminal Court leave the Government in an especially difficult position. Articles 17.2 and 17.3 of the Rome Statute are clear that the ICC can and will intervene in cases where state institutions are either unwilling or unable to proceed with prosecutions. In acknowledgement of that fact, as detailed above, Museveni referred the situation in northern Uganda to the ICC in December 2003. At that time, Museveni formally requested that the International Criminal Court investigate the actions of the Lord’s Resistance Army in northern Uganda, an act made public by the Prosecutor in January 2004. The Chief Prosecutor of the ICC determined that there was a reasonable basis to open an investigation, and did so in July of 2004. Warrants were issued in October 2005. In that same month, the Chief Prosecutor issued warrants for the arrest of Joseph Kony and four other senior members of the LRA.¹⁴¹ Clearly, Museveni is bound by this obligation to the International

<http://www.reliefweb.int/rw/RWB.NSF/db900SID/RMOI-6Y22R5?OpenDocument>; accessed 20 Feb. 2007. The *PRDP* states that only the first allotment has been received. Government of Uganda, *PRDP*, 60.

¹³⁸ “UN wants LRA to release captives,” *New Vision (Uganda)*, 17 Nov. 2006.

¹³⁹ Caroline Andresen and Chrissie Coxon, “The Myth of U.S. Engagement in Uganda,” Think Progress [article online]; available from <http://thinkprogress.org/2006/07/24/uganda-us/>; accessed 18 May 2007.

¹⁴⁰ “Uganda: US gov’t demands trial for rebel leaders,” IRIN CEA Weekly Round-up 338 for 1-7 July 2006.

¹⁴¹ At the time of writing, none of these warrants has been executed.

Criminal Court, not only by Uganda's ratification of the Rome Statute, but also by the signing of the referral.

Yet the Government negotiating team has gone some distance toward attempting to disengage from the ICC process. The Government has argued that it could "sign a deal, undergo national tribunals for crimes, and then approach the international criminal court's judges" to have the referral revoked.¹⁴² Museveni claimed in 2004 that the GOU would withdraw its referral if the LRA agreed to the use of traditional forms of justice and reconciliation like *mato oput*.¹⁴³ Museveni has, on a number of occasions, promised "a full and guaranteed amnesty"¹⁴⁴ "if the rebel leader 'responds positively to the talks... and abandons terrorism,' despite the ICC indictments."¹⁴⁵ The promised amnesty amounts to a blanket amnesty for the LRA.¹⁴⁶ "We have already committed ourselves and in Africa we keep our word... a statement from Museveni's press secretary... said."¹⁴⁷ Nonetheless, Museveni and the GOU have waffled on this principle a number of times. In April 2006, the GOU passed the Amnesty Amendment Bill (2003) to enable the Minister of Internal Affairs, with Parliamentary approval, to prevent specific people from being granted amnesty. The Bill reportedly "excludes Lord's Resistance Army (LRA) chief Joseph Kony and his top commanders from being eligible for amnesty under the Act."¹⁴⁸ The President has also continued to threaten the LRA with prosecution, saying that the indictments

¹⁴² Tim Cocks, "Uganda, rebels agree local justice for war crimes," *Reuters Africa* 02 July 2007 [article on-line] available from <http://africa.reuters.com/wire/news/usnL02700067.html>; accessed 18 March 2008.

¹⁴³ Alex B. Atuhaire, "LRA probe still on, says AI," *The Monitor (Kampala)*, 20 Nov. 2004.

¹⁴⁴ "Tense start to Uganda peace talks," *BBC News Online*, 15 July 2006; [article on-line]; available from <http://news.bbc.co.uk/go/pr/fr/-/1/hi/africa/5183656.stm>; accessed 17 July 2006.

¹⁴⁵ "Uganda LRA rebels reject amnesty," *BBC News Online*, 07 July 2006; [article on-line]; available from <http://news.bbc.co.uk/go/pr/fr/-/1/hi/africa/5157220.stm>; accessed 07 July 2006.

¹⁴⁶ "Uganda" LRA leader moves toward assembly point," IRINnews.org (20 Sep. 2006); available from www.irinnews.org/print.asp?ReportID=55651; accessed 6 Dec. 2006.

¹⁴⁷ "M7 rejects Kony hunt," *New Vision (Uganda)*, 17 Nov. 2006.

¹⁴⁸ Apollo Mubiru and Cyprian Musoke, "Kony denied amnesty," *New Vision (Uganda)*, 20 Apr. 2006.

would not be rescinded until a peace deal is reached.¹⁴⁹ The “Principal Agreement” and the “Annexure” both reflect this scattered position.

The LRA/M, too, badly needs the two sides to come to some agreement which is favourable to its position. First, the LRA has exhausted the majority of its other options. When Kony approached Riek Machar and the GOSS in May, 2006, his troops were reportedly starving. At that time, Machar gave the LRA \$20,000 USD in cash.¹⁵⁰ The LRA has since asked for \$2 million to house and feed those members of the LRA who have gathered at Ri-Kwangba.¹⁵¹ And reports have surfaced that suggest that the LRA “appears to be disintegrating... Support is dwindling from within Kony’s own camp... pointing out that Kony undermined his standing by ordering last year’s execution of his deputy commander, Vincent Otti.”¹⁵² The other factor that has squeezed Kony and the LRA considerably is the new-found resistance to the LRA presence in neighbouring countries, including Democratic Republic of Congo, Sudan, Central African Republic, and Chad, where he has fought or may soon be planning to fight.¹⁵³ Kony has nowhere left to hide. Many deem that “a final peace agreement will be signed due to the insistence from neighbouring countries, such as south Sudan [*sic*]... Countries like the Democratic Republic of Congo and southern [*sic*] Sudan, where the LRA has... reportedly killed people, are going to work together to ensure that the LRA signs the agreement, to rid them from their countries.”¹⁵⁴

¹⁴⁹ “Uganda: ICC indictments against rebels should stay, says President,” IRINnews.org (21 Sep. 2006); available from www.irinnews.org/print.asp?ReportID=53402; accessed 6 Dec. 2006.

¹⁵⁰ “Ugandan rebel chief in peace plea,” *BBC News Online*, 24 May 2006; [article on-line]; available from <http://news.bbc.co.uk/2/hi/africa/5014520.stm>; accessed 13 June 2006.

¹⁵¹ Achire Charles Lino, “LRA: We need US\$2 Million for Food and Tents,” *Juba Post*, 10 August 2007; available from <http://www.k2-media.org/jubapost/go/record.php?cat=13&recordID=185>; accessed 23 March 2008.

¹⁵² Caroline Ayugi, “Scepticism Over Juba Accord.”

¹⁵³ Idem, “LRA Split a Tactical Ploy.”

¹⁵⁴ Idem, “Scepticism Over Juba Accord.”

The second reason that the LRA may be forced to sign an agreement is that Kony and the other remaining LRA deputies do not want to face the ICC. They have long demanded that the ICC drop the arrest warrants before any deal can be signed.¹⁵⁵ Indeed, the ICC warrants are “widely credited with helping to move the parties to the negotiating table.”¹⁵⁶ The Government’s position has been, and continues to be, that “the LRA’s only hope of avoiding the ICC warrants [is] to sign a deal, undergo national tribunals for crimes, and then approach the international court’s judges.”¹⁵⁷ And LRM negotiators have walked out of the Juba talks over the inclusion of ICC indictments in the various agreements.¹⁵⁸

The question, though remains: Just why did the LRM accede to the inclusion of prosecutions as part of the negotiated “Accountability Agreements,” detailed above? The answer remains unclear. To be sure, the reported disconnect between the LRA and its political wing may be surfacing. Kony’s actions are anything but clear: “Kony turned down [UN-appointed negotiator] Chissano’s offer to give him and his wives and children a safe haven for his own reasons which nobody knows.”¹⁵⁹ As with any negotiated political agreement, it is the case that both the Government and the LRA/M have been forced to acquiesce on some points, at least a bit. This agreement, however, seems too good to be true, and may well be the point on which the whole of the peace agreement falls apart.

¹⁵⁵ Ibid. See also “Katy Glassborow and Peter Eichstaedt, “Ugandan Rebels to Appeal ICC Warrants,” *IWPR*, 12 March 2008; [article on-line]; available from http://www.iwpr.net/?p=acr&s=f&o=343316&apc_state=henh; accessed 20 March 2008.

¹⁵⁶ “Uganda: New Accord Provides for War Crimes Trials.” See also “Uganda: Challenges of Peace and Justice.”

¹⁵⁷ Cocks, “Uganda, rebels agree local justice for war crimes.”

¹⁵⁸ Milton Olupot, “Government rejects LRA demand on ICC case,” *Acholinet*, 27 February 2008; [article on-line]; available from <http://www.acholinet.com/index.php?action=recent;start=20>; accessed 18 March 2008.

¹⁵⁹ “Kony not part of Juba Peace talks, says Ochora.”

The third party in all of this, of course, is the International Criminal Court. Indeed, it is the elephant in the proverbial room. For the International Criminal Court has its own agenda.¹⁶⁰ “The arrest warrants remain valid and enforceable, and the expectation from the court is that the government of Uganda should enforce them. The matter came to the court through a legal process, and it can only go out of the court through a legal process.”¹⁶¹ The Court, of course, has a reputation to uphold. Uganda was the first situation referred to the Court, and it would be embarrassing for the Court to stumble on its first case. At the very least, proponents of international criminal justice argue that the Court has both a duty to prosecute, and an obligation to demonstrate to the world that the perpetrators of horrific crimes will be held accountable.¹⁶²

There is considerable confusion about the ICC on both sides of the negotiating table. Uganda’s Minister of Defence has stated that the provisions of the “Accountability Agreements” are sufficient, and that the ICC is no longer necessary.¹⁶³ International negotiators, too, have asked that the warrants be withdrawn.¹⁶⁴ The ICC’s senior legal advisor reported that “the delegation harboured several misconceptions about the way the court operates, and that the meeting was an opportunity to explain the ICC’s structure, the requirements governing the representation of suspects, and the procedure for filing motions with judges” after a meeting in March 2008 with a delegation of the LRM.¹⁶⁵

Another element in the process is the dichotomy between the “big fish” and the “small fry.” Although the “Accountability Agreements” specify that those who are charged with the

¹⁶⁰ Critics have argued, for example, that the Prosecutor’s actions, both in accepting the referral in the first place—excluding GOU/NRM/UPDF prosecutions—and appearing to endorse this kind of selectivity, along with their interference in the peace talks, amount to bias. See Sriram, “The ICC Africa Experiment,” 7.

¹⁶¹ Glassborow and Eichstaedt, “Ugandan Rebels to Appeal ICC Warrants.”

¹⁶² See Martha Minow, *Between Vengeance and Forgiveness* (Boston: Beacon Press, 1998).

¹⁶³ Dworkin, “The Uganda-LRA War Crimes Agreement and the International Criminal Court.”

¹⁶⁴ “Uganda may consider LRA ceasefire,” *BBC News Online*, 02 August 2006; available from <http://news.bbc.co.uk/go/pr/fr/-/2/hi/africa/5235642.stm>; accessed 23 March 2008.

¹⁶⁵ Glassborow and Eichstaedt, “Ugandan Rebels to Appeal ICC Warrants.”

most heinous crimes will be tried in criminal courts, while those who have committed lesser crimes may be held accountable through traditional mechanisms, just how this will be sorted out remains a mystery. “The precise division between crimes that will be handled by the war crimes court and by traditional justice is not explicitly spelled out in the accord.”¹⁶⁶ The Government’s position on this is not clear, yet Rugunda has said openly:

At no point can the Government of Uganda ever condone impunity, but by adopting the traditional system, we can deal with many issues in a traditional way. We want to enjoy peace, freedom, and security together. The Government means business, not trickery; we do not contemplate this Charles Taylor [SCSL] business. We believe this is the best option for our country.¹⁶⁷

The inclusion of the word “but,” following his statement that the Government cannot condone impunity, speaks volumes. It appears that the Government may be willing to look the other way on issues of accountability. However, it is simply not acceptable for those who have committed gross violations of human rights, let alone war crimes, crimes against humanity, or genocide, to be held to a lesser standard.

One last concern relates to the inclusion of traditional justice in the “Accountability Agreements.” For, while it is important for solutions to be both understood and embraced by the grass-roots populations, the idea of delivering “alternatives” to justice,¹⁶⁸ rather than carrying out the rule of law is, simply, wrong. Specifically because the “Accountability Agreements” clearly exclude the prosecution of children,¹⁶⁹ there is no reason for sentences for the perpetrators of crimes to be dealt lesser sentences, or none at all.

¹⁶⁶ Anthony Dworkin, “The Uganda-LRA War Crimes Agreement and the International Criminal Court,” *Global Policy Forum*, 25 February 2008; available from <http://www.globalpolicy.org/intljustice/icc/investigations/uganda/2008/0225dworkin.htm>; accessed 22 March 2008.

¹⁶⁷ Hon. Ruhukana Rugunda, Public Lecture, *A Search for Durable Peace in Uganda: Stakeholders’ Consultative Meeting on the Juba Peace Talks*, Kampala, 30 August 2006.

¹⁶⁸ Government of Uganda and Lord’s Resistance Army/Movement, “Principal Agreement,” Art.3.1; see also Government of Uganda and Lord’s Resistance Army/Movement, “Annexure,” Art.9.0.

¹⁶⁹ Government of Uganda and Lord’s Resistance Army/Movement, “Principal Agreement,” Art.12.0-12.iv.

Traditional mechanisms have always been involved in the business of retributive justice. Yet they are portrayed simply as mechanisms of “reconciliation” in the “Accountability Agreements.” Both the Government and the LRA/M appear to conflate reconciliation with traditional mechanisms, and imply that there could, therefore, be no other purpose for these mechanisms than to promote reconciliation. This position that is incorrect, and has no basis in the history of traditional practices in northern Uganda and around the world. Indeed, reconciliation may be evinced by use of a variety of other mechanisms and procedures.

The implications of the process for accountability and reconciliation that is meant to come from the Juba talks, as outlined above, are serious. The errors and omissions in the “Accountability Agreements” jeopardize the peace process in its entirety. They also place enormous pressure on northern Uganda as it seeks to rebuild after conflict.

Conclusions

There is no question that justice needs to be done. Those who have perpetrated abuses and violence in northern Uganda must stand before their communities and be dealt with. But justice must also be seen to be done. And that may be an entirely different matter. For the constituencies that must be appeased by the systems of justice that will be implemented pursuant to the “Agreement on Accountability and Reconciliation” and the subsequent “Annexure to the Agreement on Accountability and Reconciliation” are many.

The Government is certainly obligated to discharge its responsibilities, and to look after the citizens of Uganda, which certainly should take place through national mechanisms, if at all possible. The difficulty lies, in part, in the divisions that exist within the population of Uganda: Those in the south of the country have identified Kony and his deputies as criminals in need of

prosecution at the highest levels, and do not seem to differentiate between those “big fish” at the upper echelons of the LRA and those “small fry” who have served as the footsoldiers of the rebellion. Many living in the north have likewise decided on a path of retributive justice for Kony and friends, but have difficulty assigning blame to those who were abducted and otherwise conscripted into the LRA’s ranks. These see some value in the reconciliation that can come from the use of traditional practices. Contrary to Article 2.4 of the “Principal Agreement,” there is no “national consensus” in Uganda as to what should be done.¹⁷⁰

At the same time, the Government has committed to the processes of the International Criminal Court, the body that has agreed to step in because Uganda was unwilling and unable to provide the mechanisms necessary to ensuring that justice is done. As such, they have neither the capacity nor the ability to simply “call off” the ICC at will. The power to revoke the ICC investigations rests with the Pre-Trial Chamber of the Court, not with the Prosecutor, and certainly not with the President of Uganda. And the international body must be seen to be doing justice as well, if it is to have any hope of being taken seriously in the years to come.

The “Accountability Agreements,” therefore, must be implemented in such a way as to take the wishes of each of these different constituencies into consideration. And not simply to reduce the commitments contained therein to the lowest common denominator.

¹⁷⁰ See Tim Allen, *Trial Justice* (London: Zed Books, 2006).