

Problematizing the Formal/Informal Distinction in Customary Justice: Mechanisms of Acknowledgement in Uganda¹

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Introduction

Protracted war devastates societies. In order to rebuild the social infrastructure, and to help the people within these communities grapple with the consequences of the wrongs that have been perpetrated, “acknowledgement” has been identified as a necessary condition for peacebuilding, reconciliation and the development of the democratic process. Acknowledgement is a process whereby society as a whole, including victims and perpetrators, actively admits the crimes that have been committed. Acknowledgement can lead to the generation of social capital, the social currency which allows any of a variety of outcomes to develop. These outcomes might include reconciliation, restitution, apology, democracy and justice.

This paper provides a discussion of four mechanisms that have been utilized in Uganda to bring about this kind of acknowledgement: a truth commission, an amnesty, the International Criminal Court, and customary practices. It is based on interviews that I have conducted in Uganda in several “waves” of research stretching from June 2001 to July 2009, which consider the means to achieving this kind of societal acknowledgement, through both the Commission of Inquiry into Violations of Human Rights (detailed below) and the use of customary practices. And it is written in the context of the conflict that has been on-going in northern Uganda.

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Formal vs. Informal Mechanisms

For purposes of clarification, both here and elsewhere, I have sometimes found the categorization of mechanisms of transitional justice as “formal” or “informal” to be a convenient tool. This taxonomy has the virtue of affording a quickly-accessible conception of the various kinds of mechanisms that are available to be used. Mechanisms are considered to be “formal” by virtue of their connection to the governing body (or an international body) and because of the codified practices that assure both procedural fairness and standards of accountability, based upon a collection of cultural norms. “Informal” mechanisms, by contrast, are required to meet none of these standards, and are not formally codified.

Societies around the world are by now familiar with “formal” mechanisms of justice. In the West, the trial is the most recognizable of these. Although mostly used to prosecute a citizen of a particular state at the national level within that state, permutations of this form have begun to arise. Among these are efforts by a national court in one state to prosecute a citizen of another state for crimes committed elsewhere, such as in Belgium, where *génocidaires* from Rwanda have been successfully tried for war crimes and crimes against humanity committed by foreigners outside its territory under Belgium’s universal jurisdiction laws.³ Other efforts in this direction have taken the form of international tribunals, modeled in part after the post-war Nuremberg trials and Tokyo tribunal; these include the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), and the recent initiation of the International Criminal Court (ICC).

At other times, states have opted to implement other mechanisms to affect this kind of social rebuilding. Broadly, these may take the form of official apologies or financial restitution.

³ “Belgium Trials ‘Good Thing for Rwanda’ Says Top Prosecutor,” Hirondele News Agency, 27 April 2005; available from <http://www.globalpolicy.org/intljustice/tribunals/rwanda/2005/0427belgtrials.htm>; accessed 21 February 2006.

Again, states have implemented many variations of these two different methods of reparation. Beginning 26 May 1998, the Australian government annually holds National Sorry Day to “participate and be involved in activities to acknowledge the impact of the policies of forcible removal on Australia’s indigenous populations.”⁴ The restitutive example most often cited, and which is frequently touted as a success, is of the Canadians and Americans of Japanese descent who were interned during the Second World War. In 1988, the American government gave those Japanese who had been interned USD \$20,000 per survivor as a form of compensation under the Civil Liberties Act, while in the same year, the Canadian government awarded CAD \$21,000 under the Japanese Canadian Redress Agreement.⁵

Another of the formal mechanisms that has been implemented in the modern era is the truth commission. The first-ever truth commission was convoked in Uganda in 1974, although the first-ever truth commission to fulfill its mandate and complete its work was not begun until 1982 in Bolivia. Since that time, more than 20 truth commissions have been appointed by national governments, among them highly successful commissions in Argentina, Chile, and South Africa.

Informal mechanisms, however, are often much less familiar to those who live in the West. In many cases, these mechanisms follow “traditional” practices that were used to keep order within societies and to provide socialization into the accepted norms of the community. These are found in societies around the globe, and include a type of traditional psychological healing called *conselho*, practiced by war-affected people in Angola.”⁶ Holistic purification and

⁴ “Sorry Day,” [article on-line]; available from <http://www.cultureandrecreation.gov.au/articles/sorry/>; accessed 9 Dec. 2004.

⁵ *Final Report on the Implementation of the Japanese Canadian Redress Agreement, 1988* (Ottawa: Japanese Canadian Redress Secretariat and Canadian Heritage, Nov. 1997) 5.

⁶ Carola Eyber and Alastair Ager, “Conselho: psychological healing in displaced communities in Angola,” *The Lancet* 360 (Sep. 14, 2002) 871.

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.⁷ In Western Kenya, traditional conflict resolution mechanisms are used by the Pokot, Turkana, Samburu and Marakwet tribes.⁸ And 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.⁹

A Problematic Distinction

Yet this distinction between “formal” and “informal” is problematic for a number of reasons. First, it is often the case that customary mechanisms are recognized and adopted by the state apparatus, thereby becoming “formalized”. For example, Rwanda has chosen to utilize its tradition of *gacaca*, a form of traditional dispute resolution mediated by chiefs and tribal elders, now re-vamped and codified into state law,¹⁰ to deal with those who perpetrated crimes of genocide.¹¹

Second, many customary mechanisms already operate at a level that is highly respected by the community in which they take place. In many parts of Uganda, such practices, in fact,

⁷ 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.

⁸ 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).

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

¹⁰ The *gacaca* courts are said to be “neo-traditional”. See Stephen Brown, “Forging National Unity in Rwanda: Government Strategies and Grassroots Responses,” a paper presented at *Reconciliation*, a conference held by the Nationalism and Ethnic Conflict Research Centre at The University of Western Ontario, May 14-15, 2005. See also Priscilla Hayner, *Unspeakable Truths* (New York: Routledge, 2001), 192.

¹¹ See, for example, Peter E. Harrell, *Rwanda’s Gamble: Gacaca and a New Model of Transitional Justice* (New York: Writers Club Press, 2003).

have more *de facto* authority than comparative Western models. Particularly among the Sabiny¹² and the Karamojong,¹³ this is the case. It was frequently reported to me that councils of elders hold more sway within the community than do government-appointed law enforcement officers, and that such councils have the authority to override police sentences: “For example, a clan may come to the police to demand a prisoner’s release because conditions in prison are too good. So they will go to the prison and pull him out. And the police don’t dare say no because they will have to deal with 500 armed warriors!”¹⁴

Third, many of these mechanisms are utilized by different groups at different times. And so they do not remain static in their categorization as formal or informal. The truth commission provides an apt example. In South Africa, truth commissions have been both formal and informal. In 1992 and in 1993, two truth commissions were carried out during the era of *apartheid* by members of the African National Congress (ANC);¹⁵ by my own “formality” criteria laid out above, these two truth commissions were “informal”. Then, when the ANC came to power in 1995, it convoked the much-publicized Truth and Reconciliation Commission, a formal body.

Fourth, it is often the case that mechanisms that are considered “informal” at first glance may actually have codified procedures. Customary mechanisms are built on ceremonies and traditions that have evolved over time into precise instruments that are carried out in an almost “formulaic” manner at times, much as ceremonies of liturgy or eucharist are carried out within Christian religious observances. As such, these traditional mechanisms are strictly organized.

¹² Confidential interview by author with Sabiny man studying at Makerere University, 7 Nov. 2004, Kampala, Uganda.

¹³ Peter Otim, Inter-Governmental Authority on Development, interview with author, 23 Nov. 2004, Kampala, Uganda.

¹⁴ *Idem*.

¹⁵ Priscilla Hayner, “Fifteen Truth Commissions—1974-1994: A Comparative Study,” *Human Rights Quarterly* 16 (1994): 597-655.

This is true among the majority of traditional ceremonies practiced among the different ethnic groups within Uganda; among the Karimojong, for example, the *akiriket* meetings are very stratified, and “everyone knows his position and where to sit.”¹⁶ Likewise, Acholi mechanisms are carried out in a clearly defined manner.¹⁷ “The actual reconciliation ritual [for example] to redress the wrongs of a killing between clans is complex and sophisticated. The ritual involves many people and takes a full day. Before the actual ritual, however, many things must be arranged, discussed and decided upon. The ritual can be preceded by weeks, months or even years of careful negotiations.”¹⁸

The fifth problematic element of this distinction between formal and informal is that the lens that is often used to decide between formal and informal presents a kind of cultural bias. So-called international standards – as stated above, a collection of cultural norms from a select group of nations – are being used as benchmarks. Indeed, the inverse might actually be ideal. That is, some of the questions arising from the on-going conflict in northern Uganda and other transitional situations should inform current international law, rather than constantly having to fit these complex situations to fit “international standards”. Indeed, traditional mechanisms provide a strong system of governance and jurisprudence, outside of the formal mechanisms imposed by the Western world. And, while the more formalized Western models often allow for only one form of justice – retributive, restorative, or reparative – these traditional institutions seek to combine various of these and other elements in keeping with the values of the community.

¹⁶ Middle-aged professional Karimojong man working in Kampala, interview with author, 13 Nov. 2004, Kampala.

¹⁷ Geresome Latim, Executive Secretary, *Ker Kwaro Acholi*, interview with author, 22 Nov. 2004, Gulu, Uganda.

¹⁸ 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), 291.

Competing Efforts at Social Rebuilding in Uganda

There have been a number of efforts to deal with the fractured Ugandan society, both relating to the ongoing conflict and to the many conflicts of the past. Museveni's NRM government has famously appointed many different commissions to look into various aspects of Ugandan politics. At the same time as the appointment of the truth commission, for example, Museveni was appointing Commissions in many other fields. In 1986, the Commission of Inquiry into Local Government was established, followed in 1988, by the Interim Electoral Commission and the Constitutional Commission. Ugandans were overwhelmed with commissions since 1986 to the point where, when I asked anyone about the Commission of Inquiry into Violations of Human Rights, I was invariably asked, "Which one?"

It is certainly the case that the Government of Uganda has paid a lot of lip service to the idea of social rebuilding. In an statement released in October, 2005, for example, a government official spoke of the success of Museveni's government in "achiev[ing] peace, reconciliation and security,... and reiterate[d] its commitment to national reconciliation."¹⁹ Yet government spending in the area of social and physical reconstruction does not bear this out. In the 2004-2005 budget, the government allocated only \$164,239 CAD, which represents a scant 0.01% of the national budget, to reconstruction efforts in Northern Uganda, and only \$87,075 to resolve the conflict in Karamoja, just 0.00015% of the total national budget.²⁰

As an example, the government points to the monuments that have been built to the fallen comrades of President Museveni in Luweero district, as somehow representative of its efforts at

¹⁹ "State funeral for Uganda's Obote," BBC News, 12 October 2005; available from <http://news.bbc.co.uk/2/hi/africa/4333618.stm>; accessed 12 October 2005.

²⁰ Confidential interview by author with Office of the Prime Minister official, 30 October 2004, Kampala, Uganda.

“national” reconciliation.²¹ In truth, the people of Luweero have erected 26 memorials in 22 sub-counties, each containing between 1,000 and 80,000 skulls²² from the victims of the war that was waged between 1980-1985, during which time an estimated 500,000 people were killed. Museveni claims that this is “national” reconciliation, even though these monuments honour the heroes of a few ethnic groups, and castigate others, out of the 56 ethnic groups that co-exist within the country.

As such, the following section highlights four of the competing efforts that have been put in place in Uganda in the vein of transitional justice,²³ the overall aim of which is social rebuilding.

Uganda’s truth commission (1986-1994)

The Commission of Inquiry into Violations of Human Rights (CIVHR) was appointed on 16 May 1986, three months after Museveni took office. The Commission was inaugurated one month later, on 13 June 1986.²⁴ Until the tabling of the Report on 10 October 1994, the Commission worked to gather evidence and testimony relating to the events of 1962 to 1986. Thousands of people completed questionnaires with regard to their recollection of particular events, many of which were then investigated in the field with the thought that they could be recommended for prosecution. From these, particularly strong and representative cases were

²¹ Natalie Clancey, “Uganda’s Haunted Children: The Hard Road Home,” *Correspondent*, (CBC Television Documentary), 23 February 2006.

²² Abdul Nadduli, Luweero LC5 District Chairman, interview with author, 17 November 2004, Luweero, Uganda.

²³ Transitional justice is engaged in helping societies move either from war to peace, or from a repressive or authoritarian regime to democracy, while dealing with resulting questions of justice, and what to do with social, political and economic institutions. Taken from Lucy Hovil and Joanna R. Quinn, “Peace First. Justice Later: Traditional Justice in Northern Uganda,” *Refugee Law Project Working Paper Series*, Working Paper No. 17, 8 July 2005, 10.

²⁴ Although the CIVHR was named and appointed in May, it was not until June that its work officially began. This is common for truth commissions, who must first design a mandate for themselves, find office space and furniture, and hire staff. For a more in-depth discussion, see Joanna R. Quinn and Mark Freeman, “Lessons Learned: Practical Lessons Gleaned from Inside the Truth Commissions of Guatemala and South Africa,” *Human Rights Quarterly* 25.4 (Nov. 2003): 1117-1149.

chosen to appear before the Commission. In all, 608 witnesses appeared before the CIVHR, from 11 December 1986 to 7 April 1993.²⁵ The Commission travelled to many regions of the country, holding hearings and collecting testimony in seventeen districts.²⁶ This testimony was gathered and bound into eighteen volumes. Today, one set of these volumes is housed at the Uganda Human Rights Commission. Each of the commissioners displays his or her set proudly in their homes and offices. Two complete sets reside in a locked closet at Makerere University wherein almost all of the material remaining from the Commission has been discarded. The final report is more than 720 pages long, and contains testimony, analysis, and recommendations, along with lists of names of those who were subjected to torture and abuse.

In 1986, Museveni outlined a ten-point programme in which he emphasized democracy, security, national unity, independence, restoring and rehabilitating social services, ending corruption and misuse of power, dealing with the plight of displaced people, pan-African cooperation and pursuing a mixed economy as the basic tenets of his philosophy.²⁷

In seeking to understand this process much more clearly, I spent nearly three months in Uganda in the summer of 2001. While there, I carried out archival research and conducted a series of open-ended elite interviews that focused specifically upon the Ugandan experience of coming to terms with its past, and which looked for evidence of acknowledgement, and the social trust which might be expected to result from the process. I spoke with truth commissioners, government and opposition officials, members of the NGO community, and representatives of civil society. In the end, I was able to interview nearly forty people. To date, this represents the only study that has ever been undertaken of the Ugandan Commission of Inquiry into Violations of Human Rights.

²⁵ The Republic of Uganda, *The Report of the CIVHR*, Appendix 10: xxx.

²⁶ *Ibid.*, Table Three: V-VI.

²⁷ Museveni, *Sowing the Mustard Seed*, 217.

But like so many institutions implemented by regimes facing deficits in virtually all areas, the path of the truth commission was not easy. The Commission faced a number of significant impediments throughout its difficult existence. Although it had been scheduled to complete its work within a couple of years, it did not actually finish until eight years later. Despite the best efforts of those who saw the work of the commissions through to their final conclusion, ultimately the commission faced political and practical limitations that would prove to be its un-doing.

One of the biggest institutional constraints that beleaguered the Commission was adequate funding. The government, which appointed the Commission, was not willing or able to contribute the monies required to employ staff, acquire office space, or conduct investigations. As a result, the Commission was chronically short of staff. Even the basics, such as stationery, were in short supply. And the printing of the findings of the Commission was significantly delayed until money could be found. In the end, it was the international donor community, both governmental and NGO, that came to the rescue. It was only after several large infusions of cash, along with supplies and expertise, were dispatched, that the work was able to continue.

Similarly, the overall capacity of the Commission was extremely limited. The commissioners themselves had left professional, prominent and often well-paying jobs, and had set aside family and other social obligations in order to carry out the work of the Commission. Moreover, their work was not easy. They faced significant opposition by those both within and outside of the very governments that had appointed them, which often translated into death threats and the disappearance of key evidence. Other agencies which should have been able to provide support were themselves in disarray, and unable to provide the institutional safeguards that are necessary to ensure the success of such commissions. And the public at large, which

had for so long been disenfranchised, seemed reluctant to talk about what had happened, and sensed that their participation in the work of the commissions could lead to renewed retribution.

Time itself proved to be an insurmountable difficulty. Particularly where the abuses under consideration were sometimes more than twenty years old, details had become blurry and evidence which might once have existed in support of the testimony given had disappeared. And the various delays faced by the commission contributed substantially to this.

Additionally, a lack of political will and commitment to the mandate of the Commission severely limited its success. The Commission quickly realized that the government, under whose auspices the commission had, in fact, been created, had merely been paying lip service to the idea of a commission. And the Commission found it extremely difficult to investigate the former political elites, and were mostly unable to do so.²⁸

Ultimately, the Commission's legacy is small. The majority of Ugandans appear to be unaware of the Commission and its work. And those who do know of it are critical of its findings, which they see as inherently biased toward the NRM. It seems that there has been little, if any, acknowledgement, either in influencing the outcome of the commission or in the subsequent rebuilding undertaken in its wake. In fact, the Commission is seen by many to have been a bureaucratic panacea that turned out to be almost universally unsuccessful for a variety of reasons, including those listed above. The modest and still-growing civil society indicates that some acknowledgement had taken place. But democracy was not firmly entrenched, and Museveni shows no sign of allowing it to take hold. As a result, growth of civil society in the

²⁸ These limitations are discussed in greater detail in Joanna R. Quinn, "Constraints: The Un-Doing of the Ugandan Truth Commission," *Human Rights Quarterly*, 26.2 (May 2004), 401-427 and in Joanna R. Quinn, "The Politics of Acknowledgement: Truth Commissions in Uganda and Haiti," (Ph.D. diss., McMaster University, 2003).

country remains stunted. It seems that the Commission was unable to affect real and lasting political stability, let alone foster social trust and social capital.

Amnesty Act (2000)

In November 1999, the Government of Uganda passed the Amnesty Act, which was subsequently enacted in January 2000. Under the terms of the Act,

An amnesty is declared in respect of any Ugandan who has at any time since the 26th day of January, 1986 engaged in or is engaging in war or armed rebellion against the government of the Republic of Uganda by:

- (a) actual participation in combat;
- (b) collaborating with the perpetrators of the war or armed rebellion;
- (c) committing any other crime in the furtherance of war or armed rebellion; or
- (d) assisting or aiding the conduct or prosecution of the war or armed rebellion.²⁹

By July 2008 the Amnesty Commission had received 22,107.³⁰

The Amnesty Act was enacted within the ongoing context of violent armed conflict in Uganda, “after a great deal of activism from civil society groups, NGOs and concerned politicians.”³¹ It is applied equally to all regions of the country, to all combatants and ex-combatants involved in any of the more than 22 armed insurgencies that have risen up against Museveni’s NRM government since it came to power in 1986.³² And it “was conceived as a tool

²⁹ The Republic of Uganda, *Amnesty Act 2000*, Part II, 3(1).

³⁰ Moses Draku, Principal Public Relations Officer, Amnesty Commission, interview by author, 07 July 2008, Kampala, Uganda.

³¹ 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), 31.

³² 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, “Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda,” *Refugee Law Project Working Paper Series*, Working Paper No. 11, February 2004, 4; and Hovil and Lomo, “Whose Justice? Perceptions of Uganda’s Amnesty Act 2000,” 6.

for ending conflict... a significant step towards ending the conflict in the north and working towards a process of national reconciliation.”³³ The Amnesty Act claims to address “the expressed desire of the people of Uganda to end armed hostilities, reconcile with those who have caused suffering and rebuild their communities.”³⁴ As the Chairman of the Amnesty Commission, P.K.K. Onega, expressed to me, “national reconciliation is especially important and must be promoted.”³⁵

Effectively, the Act allows rebels to receive amnesty if they voluntarily come “out of the bush”—a local colloquialism for the theatre of war—and renounce rebellion. Much more practically, however, the Amnesty Act provides for the material needs of those who are given amnesty—colloquially known as “reporters”:

Reporters denounce their activities by signing an affidavit, after which they are registered, receive an Amnesty Certificate, and then, in theory, a package. A standard package contains 263 000 [Ugandan shillings] in cash (equivalent to 3 months salary of a policeman or teacher at the time the Commission began plus 20 000 [Ugandan shillings] transport money), and a home kit, which includes a mattress, saucepans, blankets, plates, cups, maize flour and seeds. Each package costs the equivalent of 600 000 [Ugandan shillings].³⁶

This conception of amnesty is substantially different than amnesties that have been implemented in other situations of transitional justice. The amnesty granted in Chile, for example, was granted to military personnel *after* the conflict was finished, and in *blanket* form, to keep them from being prosecuted in the trials that would come after. The amnesty granted in South Africa as part of the Truth and Reconciliation Commission process was granted on an *ad hoc* basis in exchange for testimony. The amnesty in Uganda has been declared *before* the end

³³ Hovil and Lomo, “Whose Justice? Perceptions of Uganda’s Amnesty Act 2000,” 6.

³⁴ The Republic of Uganda, *Amnesty Act 2000*, Preamble.

³⁵ P.K.K. Onega, Chairman of The Amnesty Commission, interview by author, 28 Oct. 2004, Kampala, Uganda.

³⁶ Hovil and Lomo, “Whose Justice? Perceptions of Uganda’s Amnesty Act 2000,” 7.

of the conflict. While people in Uganda appear to perceive of the amnesty as having been very much a tool to end the war, there is less clarity over the consequences it might have afterward.

Yet, as one study reported early in 2005, “Amnesty was seen to be a mechanism that formalised a process that was already taking place. Many informants [in an RLP study] referred to the fact that they had been “doing” Amnesty before it had become law, as it was a culturally recognised approach to carrying out justice within the specific context.”³⁷ Consequently, many Ugandans appear to support the process of amnesty, and “there is passionate support for the Amnesty amongst political activists, churches, NGOs and an influential group of ‘traditional’ leaders.”³⁸

One of the greatest supporters of the Amnesty has been a radio station located in Gulu, northern Uganda. Originally established with the help of a grant from the British Department of International Development, MEGA FM was constructed to play a key role in solving the current LRA conflict. One of its most effective programmes, *Dwog Paco* (literally “come back home” in the Acholi language), is broadcast three times each week. Its programming is specifically tailored to be heard by the rebels; it broadcasts former LRA fighters, abductees, and “wives” who give live testimonies about living in the bush and how they escaped from the LRA. Especially important in each broadcast is an appeal to those still in the bush to come home. Between December 2003 and November 2004, more than 1200 children had come out of the bush as a result of these broadcasts—thanks, in large part, to the Amnesty available to them.³⁹

Nonetheless, others are reluctant to embrace the Amnesty. As one Christian NGO official said, “The Amnesty Commission must try to redefine its mandate because there are too many loopholes in the system. And there is no element of confession, which is important to add.

³⁷ Ibid., 10.

³⁸ Allen, *War and Justice in Northern Uganda*, 33.

³⁹ Confidential interview with MEGA FM producer by author, 20 November 2004, Gulu, Uganda.

But at least people will admit to taking part in atrocity. After that, though, they must then confess. Only then will they have healing. The way it is, when they are absolved by the Amnesty, the healing process is destroyed.”⁴⁰ Another reported that “the Amnesty Commission is returning kids on an Amnesty ticket, but then they are being charged with treason and put into jail.”⁴¹

Others are more forceful in their objection to the Amnesty Act. Some have argued that the Amnesty is simply a means of “buying peace.” “Since coming to power, the government has had a policy of buying rebels out of the bush in order to end conflict, creating a culture of entitlement that has only been reinforced by attaching a package to the Amnesty process.”⁴² However, “[t]he President[’s]... attitude to the Amnesty is more equivocal. Museveni was always rather reluctant to accept it for the LRA, and he has stated that he wants the Act to be amended... He, like his military officers, continues to assert the need for a military solution.”⁴³ And, although it has been clear from the outset of the Amnesty that Museveni intended the programme to end the conflict, he is not at all pleased with the process, nor the speed with which the conflict in northern Uganda is ending. As an indication of this unhappiness, government funding for the “packages” promised to reporters has been slow in coming, and many have received nothing at all.⁴⁴

International Criminal Court (2003 to present)

The ultimate expression of Museveni’s displeasure with the Amnesty process, however, came in December 2003. At that time, Museveni formally requested that the International Criminal

⁴⁰ Confidential interview with Christian NGO worker by author, 28 October 2004, Kampala, Uganda.

⁴¹ Confidential interview with Christian NGO worker by author, 10 November 2004, Kampala, Uganda.

⁴² Hovil and Lomo, “Whose Justice? Perceptions of Uganda’s Amnesty Act 2000,” 24.

⁴³ Allen, *War and Justice in Northern Uganda*, 34.

⁴⁴ Clancey, “Uganda’s Haunted Children”.

Court investigate the actions of the Lord's Resistance Army in northern Uganda, an act made public by the Prosecutor in January 2004.⁴⁵ This meant that the future of the Amnesty process was put in doubt. It also effectively meant that “the ICC is in [a] sense acting on behalf of the Ugandan state, even though the Ugandan government is itself involved in the conflict... [This] has certainly created an awkward impression.”⁴⁶

The ICC process moved along quickly. The Chief Prosecutor of the ICC determined that there was a reasonable basis to open an investigation, and did so in July of 2004. In that same month, the Chief Prosecutor issued warrants for the arrest of Joseph Kony and four other senior members of the LRA.⁴⁷ These warrants, as well as several others, however, remained sealed until October 2005. Individually, each of the five warrants details the atrocities attributed to the LRA, and to each of the five men, including 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.”⁴⁸

The Republic of Uganda had become a signatory to the Rome Statute on 17 March 1999, and deposited its instrument of ratification of the Rome Statute on 14 June 2002. Uganda has since signed the Declaration on Temporal Jurisdiction, allowing the ICC jurisdiction retroactive to 1 July 2002, the date on which the ICC came into force—even though the investigation of the Chief Prosecutor did not begin until July 2004. As such, Uganda and the other 99 States Parties

⁴⁵ 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 prosecutions and beyond.

⁴⁶ Allen, “War and Justice in Northern Uganda,” 39.

⁴⁷ At the time of writing, none of these warrants has been executed.

⁴⁸ 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.

to The Rome Statute⁴⁹ have agreed to a slate of actions that will be punishable if committed. These include “the most serious crimes of concern to the international community.: (a) the crime of genocide; (b) crimes against humanity; (c) war crimes.”⁵⁰ And yet the Rome Statute and ICC have not yet been tested in any way. No precedents exist. The Ugandan case is the first to “test” the process.

All of this has garnered much debate in Uganda, as it has around the world. While aid agencies and human rights groups were enthusiastic about the ICC announcements, “Ugandan organizations tended to be rather more assertive, even openly hostile. Those promoting the Amnesty and negotiating a ceasefire made it plain that they viewed the ICC as a liability, and argued that prosecution could well make circumstances even worse.”⁵¹ This position was reiterated as such:

The issuing of... international arrest warrants would practically close once and for all the path to peaceful negotiation as a means to end this long war, crushing whatever little progress has been made during these years... Obviously, nobody can convince the leaders of a rebel movement to come to the negotiating table and at the same time tell them that they will appear in courts to be prosecuted.⁵²

⁴⁹ As at 14 November 2005, 100 countries are States Parties to the Rome Statute of the International Criminal Court. See “The States Parties to the Rome Statute,” International Criminal Court, 14 November 2005; available from <http://www.icc-cpi.int/asp/statesparties.html>; accessed 22 February 2006.

⁵⁰ Rome Statute of the International Criminal Court, Article 5.1. Aggression presently stands as a fourth listed crime, but is undefined. Accordingly, individuals cannot yet be investigated and prosecuted by the ICC for the Crime of Aggression. As per section 5(2) of the Rome Statute, the ICC will have jurisdiction over Aggression if and when a definitional provision is adopted in accordance with the Rome Statute’s amendment provisions. Pursuant to section 123, in 2009 there will be a major Review Conference of the Assembly of States Parties at which time any amendments to the Rome Statute may be made, including the definition of crimes. Meanwhile, a special working group within the Assembly of States Parties has been charged with formulating draft proposals. Aggression will likely remain undefined for some time to come. Many thanks to Adrian Jones of McMaster University for this clarification.

⁵¹ Allen, “War and Justice in Northern Uganda,” 43.

⁵² Father Carols Rodriguez, “Public Statement,” in Adam Branch, “International Justice, Local Injustice: The International Criminal Court in Northern Uganda,” *Dissent Magazine*, Summer 2004.

A conference was held in The Hague, the seat of the Court, to help frame the discussion.⁵³ And delegations of Ugandans have gone to The Hague to discuss the implications of the investigations and eventual prosecutions. In March 2005, ICC officials held invited talks with leaders of the Acholi community in northern Uganda. During the meeting, the delegation and Court representatives “exchanged views on matters of mutual concern in regard to the interests of victims and justice, building on previous discussions in Uganda between officials of the Court’s Victim sections and the local communities in northern Uganda. Strategies for communicating information about the Court to the communities in northern Uganda were also discussed.”⁵⁴ A subsequent delegation of leaders from northern Uganda met with Court officials in April 2005, and “agreed to work together as part of a common effort to achieve justice and reconciliation, the rebuilding of communities and an end to violence in Northern Uganda... and to integrate the dialogue for peace, the ICC and traditional justice and reconciliation processes.”⁵⁵

These talks revealed grave concerns on the part of those from northern Uganda. Some of the concerns include the potential bias of the ICC, the spoiling of the peace process, and disempowering local justice mechanisms.⁵⁶ However, since the complications of war are still a reality, one major concern is the guarantee of security for Ugandans, and for particularly exposed people, like those witnesses who will be called to testify. The situation on the ground is already violent, and they want to ensure that the investigations and ensuing testimony will not cause an

⁵³ John Mary Waliggo, “Analysis of the Human Rights Situation in Northern Uganda and Position of the Main Actors,” a paper presented at the Round-table on Northern Uganda and the International Criminal Court at the Centre for Justice and Reconciliation, The Hague, Netherlands, 25 May 2004.

⁵⁴ “Delegation from Uganda holds talks with the Registrar of the ICC,” International Criminal Court, 18 March 2005 (ICC-20050318-94-En); available from http://www.icc-cpi.int/pressrelease_details&id=97&l=en.html; accessed 22 February 2006.

⁵⁵ “Joint Statement by ICC Chief Prosecutor and the visiting Delegation of Lango, Acholi, Iteso and Madi Community Leaders from Northern Uganda,” International Criminal Court, 16 April 2005 (ICC-OTP-20050416-99-En); available from http://www.icc-cpi.int/pressrelease_details&id=102&l=en.html; accessed 22 February 2006.

⁵⁶ Allen, “War and Justice in Northern Uganda,” 44.

escalation in violence. The Court has attempted to address such concerns at several points to date. In December 2005 and January 2006, the Court held status conferences to determine whether or not to proceed based on the underlying concerns for insecurity. Ultimately, on both occasions, the Court ruled that it “intends to continue the process of gathering and analysis of information in relation to the cluster of alleged crimes in the coming months.”⁵⁷

The other main concern, of course, is the interaction of the work of the Court with the Amnesty process that is already underway. Understandably, many who have already been granted amnesty are scared that the ICC investigations jeopardize their own status. This appears to be a minor concern, since the Court has only issued warrants for the top five LRA leaders, and has shown no interest in prosecuting those lower down in the chain of command. But for others, including Brigadier Sam Kolo, the alleged “second-in-command” of the LRA who left the LRA, and then sought and received amnesty in March 2005,⁵⁸ the ICC process has major implications. And which process, if any, is to receive precedence has yet to be decided.

Customary Mechanisms

Traditionally, cultures and societies around the world had highly complex, highly developed systems for dealing with conflict and conflict resolution—and for dealing with the social deficits brought about by conflict. In traditional times, these systems carried out a number of functions, including mediation, arbitration, adjudication, restitution, and punishment—the same retributive

⁵⁷ “OTP Submission Providing Information On Status of the Investigation In Anticipation of the Status Conference To Be Held on 13 January 2006,” International Criminal Court, 11 January 2006 (ICC-02/04-01/05-76); available from http://www.icc-cpi.int/library/cases/ICC-02-04-01-05-76_En.pdf; accessed 24 February 2006.

⁵⁸ Jenny Cuffe, “Uganda torn over price of peace,” BBC News, 31 March 2005; available from <http://news.bbc.co.uk/2/hi/africa/4394923.stm>; accessed 24 February 2006.

elements included in the kinds of systems familiar in “modern” justice. They often also included elements of restoration and reconciliation.⁵⁹ And these elements typically functioned in tandem.

In many parts of the world, these practices were shoved aside to make way for modern, Western ideas and practices. Colonial rulers disparaged such traditional customs, and allowed only “natives” within the colonies to utilize them, setting up separate mechanisms for use by “non-natives,” effectively creating a dual system.⁶⁰ In Uganda, traditional practices were officially prohibited in 1962, at the time of Independence, in favour of a harmonized court system modeled on the British system.⁶¹ The 1967 Constitution, promulgated by Obote, outlawed the many Kingdoms and traditional cultural institutions across the country. Yet the kingdoms and other traditional cultural institutions remain, and traditional practices have continued to be used in different parts of the country.⁶² Traditional cultural institutions themselves have special status under Article 246 of the Constitution.⁶³ Traditional practices are now legally provided for under legislation including Article 129 of the 1995 Constitution, which provides for Local Council Courts⁶⁴ to operate at the sub-county, parish and village levels;⁶⁵ and the Children Statute 1996, which grants these courts the authority to mandate any number of things including reconciliation, compensation, restitution, and apology.⁶⁶ And the Government of Uganda has subsequently included these practices in the recent Agreement on Accountability

⁵⁹ 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.

⁶⁰ Mahmood Mamdani, *Citizen and Subject* (Kampala: Fountain Publishers, 1996), 109-110.

⁶¹ The British Colonial Office, *Report of the Uganda Relationship Committee*, 1961.

⁶² Philip Briggs, *Uganda* (Old Saybrook, CT: The Globe Pequot Press, 1998), 22.

⁶³ Government of Uganda, *Constitution*, 1995.

⁶⁴ 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 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.

⁶⁵ “Uganda: Constitution, Government & Legislation,” [article on-line]; available from <http://jurist.law.pitt.edu/world/uganda.htm>, accessed 30 April 2005.

⁶⁶ Government of Uganda, *The Children’s Statute*, 1996.

and Reconciliation and the subsequent Annexure, which emerged out of the Juba Peace Talks.⁶⁷ Although these mechanisms broadly fit within very different approaches to justice, whether retributive or restorative, and fulfill different roles within their respective societies, from cleansing and welcoming estranged persons back home to prosecution and punishment, what they have in common is that they draw upon traditional customs and ideas in the administration of justice in modern times.

These institutions are still widely used throughout the country by many of the 56 different ethnic groups.⁶⁸ Among the Karamojong, the *akiriket* councils of elders adjudicate disputes according to traditional custom⁶⁹ which include cultural teaching and ritual cleansing ceremonies.⁷⁰ The Acholi use a complex system of ceremonies in adjudicating everything from petty theft to murder;⁷¹ in the current context, at least 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

⁶⁷ These documents form one part of a five-part agreement that was signed in June 2007 and February 2008, respectively. Although the agreements were signed, at the time of writing, the final agreement has not been signed and both parties have walked away from the talks. See Joanna R. Quinn, "Accountability and Reconciliation: Traditional Mechanisms of Acknowledgement and the Implications of the Juba Peace Process," a paper presented at the conference, "Reconstructing Northern Uganda," held by the Nationalism and Ethnic Conflict Research Group, The University of Western Ontario, London, ON: 9 April, 2008. The Government of Uganda, through its Justice, Law and Order Sector Transitional Justice Working Group, is, at the time of writing, trying to determine the modalities of the inclusion of these practices within the War Crimes Division of the High Court and elsewhere. Christopher Gashirabake, Ministry of Justice and Constitutional Affairs, interview by author, 04 July 2008, Kampala, Uganda and Hon. Jus. James Ogoola, Principal Justice, High Court and Chairman, Transitional Justice Working Group, interview by author, 25 Sep. 2008, Kampala, Uganda.

⁶⁸ For a more in-depth discussion of the use of traditional mechanisms in Uganda, see Joanna R. Quinn, "What of Reconciliation? Traditional Mechanisms of Acknowledgement in Uganda," in *Reconciliation(s)*, ed. Joanna R. Quinn (Montreal: McGill-Queen's University Press, 2009).

⁶⁹ Bruno Novelli, *Karimojong Traditional Religion* (Kampala: Comboni Missionaries, 1999), 169-172, 333-340.

⁷⁰ Peter Lokeris, Minister of State for Karamoja, interview by author, 18 Nov. 2004, Kampala, Uganda.

⁷¹ 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).

stepped on over an *opobo* twig).⁷² These ceremonies are similar to those used by the Langi, called *kayo cuk*, the Iteso, called *ailuc*, and the Madi, called *tonu ci koka*.⁷³ The Lugbara, in the northwest of the country, maintain a system of elder mediation in family, clan and inter-clan conflict.⁷⁴ And in 1985, an inter-tribal reconciliation ceremony, *gomo tong* (bending the spear) 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.”⁷⁵ A similar ceremony, *amelokwit*, took place between the Iteso and the Karamojong in 2004.⁷⁶

In some areas, however, these practices are no longer used regularly. I posit that traditional practices are, in fact, used far less widely in the “greater south” and among Ugandans of Bantu origin.⁷⁷ From time to time, however, the Baganda use the traditional *kitewuliza*, a juridical process with a strong element of reconciliation, to bring about justice.⁷⁸ Among the Bafumbira, land disputes, in particular, are settled through traditional practices, with Local Council officials adjudicating.⁷⁹ The “Annexure to the Agreement on Accountability and Reconciliation” also lists those mechanisms used by the Ankole, called *okurakaba*⁸⁰—although I have uncovered only weak anecdotal evidence of their continued use.⁸¹

⁷² 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.

⁷³ Government of Uganda and Lord’s Resistance Army/Movement, “Annexure to the Agreement on Accountability and Reconciliation” (Juba, 19 Feb. 2008), Art.21.1.

⁷⁴ 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.

⁷⁵ Finnstrom, *Living With Bad Surroundings*, 299.

⁷⁶ Iteso focus group, conducted by author, 31 Aug. 2006, Kampala, Uganda.

⁷⁷ See Joanna R. Quinn, “Here, Not There: Theorizing about why traditional mechanisms work in some communities, not others,” a paper prepared for presentation at the International Studies Association Annual Meeting, 15 February 2009.

⁷⁸ Waliggo, “The Human Right to Peace for Every Person and Every Society,” 7. Also, idem, “On Kitewuliza in Buganda, 3 May 2005,” author’s collection, 1.

⁷⁹ Hon. Jus. Patrick Tabaro, High Court Justice, interview by author, 14 July 2008, Kampala, Uganda.

⁸⁰ Government of Uganda and Lord’s Resistance Army/Movement, “Annexure,” Art.21.1.

⁸¹ G. William Katatumba, *Enganzi* (Prime Minister), Ankole Kingdom, and Chairman, Nkore Cultural Trust, interview by author, 24 June 2008, Kampala, Uganda.

People from nearly every one of the 56 ethnic groups in Uganda have reported to me that “everyone respects these traditions,”⁸² and that reconciliation continues to be an “essential and final part of peaceful settlement of conflict.”⁸³ But many, particularly young, educated Ugandans who live in the city, have also reported to me that they have never participated in such ceremonies.⁸⁴ Even still, 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.

Conclusions

Clearly, the mechanisms that have been employed do not go far enough. There have been calls for more rigorous solutions to the conflict in northern Uganda. Peace talks between the Government of Uganda and the Lord’s Resistance Army/Movement began in 2006 and petered out in late 2007. And the Government of Uganda, through its Justice, Law and Order Sector Transitional Justice Working Group has established the War Crimes Division of the High Court, and is attempting to sort out the modalities of its mandate.⁸⁵

There have been a number of attempts made to resolve the conflict in northern Uganda. And concerns have been raised. Alongside these, there are calls for further action. The first of these concerns is the interaction between the mechanisms themselves. The expected outcomes of each of these mechanisms differs considerably, and the implications of each are worrying. The amnesty, for example, conveys a very different message and outcome than the International

⁸² Confidential interview by author with Sabin man studying at Makerere University, 7 Nov. 2004, Kampala, Uganda.

⁸³ Waliggo, “The Human Right to Peace for Every Person and Every Society,” 9.

⁸⁴ Northern Uganda focus group, conducted by author, 23 Aug. 2006, Kampala, Uganda.

⁸⁵ Christopher Gashirabake, Ministry of Justice and Constitutional Affairs, interview by author, 04 July 2008, Kampala, Uganda and Hon. Jus. James Ogoola, Principal Justice, High Court and Chairman, Transitional Justice Working Group, interview by author, 25 Sep. 2008, Kampala, Uganda.

Criminal Court's potential prosecutions. This proliferation of approaches is representative of the pattern of non-coordination of Uganda's programmes that has been demonstrated repeatedly since Museveni's accession to power in 1986. However, the importance of this is that it may undermine the confidence of those who are involved in the conflict to lay down their weapons, particularly since they cannot be assured of what will happen upon their surrender.

This gives rise to a pressing question of transitional justice, and the second concern: sequencing.⁸⁶ Scholars and practitioners are still trying to determine the order in which the various elements of social rebuilding ought, ideally, to occur. For example, should trials come before some kind of judicial overhaul in the months and years following the cessation of conflict? There is an inherent tension in having both the Amnesty Act and ICC processes run concurrently, as has been mentioned above. More than that, however, many have questioned whether any of the above mechanisms ought to be operating at all before the conflict is ended. As one report said, "Peace first. Justice later."⁸⁷

The third concern relates to Museveni's own understandings of the implications of calling in the International Criminal Court. It is not clear whether Museveni fully appreciated the contradictions that would arise.⁸⁸ Or, conversely, whether he did understand, and the resulting quandary is just what he had hoped for. As one opposition politician who represents a riding in northern Uganda:

Museveni knows that the north/Gulu/Acholi is full of opposition. If they were pacified, they would mount serious opposition [to him, politically], so it is much better to keep them disconnected and devastated politically/socially/economically. He will be looked at as a saviour when he makes a show of trying to fix the situation. Meanwhile, the opposition is made impotent. He is promoting a scorched earth policy. Ideologically, people believe that an impoverished society is easier to manage, so it is better to keep the

⁸⁶ See Joanna R. Quinn, "Chicken and Egg? Sequencing in Transitional Justice: The Case of Uganda" *International Journal of Peace Studies*, 14.2 (Autumn/Winter 2009): *forthcoming*.

⁸⁷ Hovil and Quinn, "Peace First. Justice Later."

⁸⁸ Allen, "War and Justice in Northern Uganda," 42.

situation in the north in turmoil – that way, Museveni can come with a master serving spoon and everyone has to come to him. To look for anything at all, they must come to him.⁸⁹

As such, the organizations, both formal and informal (if such a distinction is to be made) are multi-faceted and many-layered. The response of the Government of Uganda is disjointed, at best. And the conflict continues.

⁸⁹ Confidential interview with opposition politician, 3 November 2004, Kampala, Uganda.