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Traditional Justice and War Crimes in Northern Uganda

JRP-IJR POLICY BRIEF

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This policy brief assesses the continuing relevance of traditional justice in Northern Uganda. Over two years after the dissolution of the Juba peace negotiations in November 2008, several questions continue to remain unanswered regarding how traditional justice mechanisms can be utilized to promote accountability and reconciliation. More specifically, questions persist as to whether traditional justice can be utilized to address war crimes and crimes against humanity. There is still uncertainty in the field as to how traditional approaches can complement the wider national and international processes of transitional justice.

Between November 2010 and February 2011, the Justice and Reconciliation Project (JRP), in collaboration with the Institute for Justice and Reconciliation (IJR), organized a series of consultations with victims of conflict in Northern Uganda, entitled 'Enhancing Grassroots Involvement in Transitional Justice Debates.' The consultations, held in the Acholi/Lango, Teso and West Nile sub-regions, focused on truth-telling, traditional justice, reparations and gender justice within the context of Uganda's transitional justice processes.² Based on views from grassroots communities, this policy brief notes that traditional mechanisms are still considered by many in Northern Uganda as mechanisms that can promote reconciliation and healing within war-affected communities. It concludes with a series of recommendations to the Government of Uganda, cultural institutions and the International Criminal Court.

Introduction

In 2003, the issue of traditional justice gained prominence in Uganda when the Government referred the situation in the northern part of the country to the International Criminal Court (ICC). There was a sense among some sectors of society that the ICC's intervention would entrench, and not end, the conflict. Traditional justice mechanisms quickly gained prominence as alternatives or complements to the ICC intervention.

Proponents of the use of traditional justice mechanisms, mainly traditional and religious leaders, advanced a number of key arguments questioning the appropriateness of the ICC intervention. During this period of referral, an amnesty had been declared by the Government of Uganda (GoU), which had enticed a number of senior Lord's Resistance Army (LRA) commanders to surrender themselves to the national authorities. There were concerns that the parallel ICC intervention would jeopardize the initiative to grant amnesties.³ Another concern was that international approaches to prosecutorial justice in Northern Uganda could in effect undermine efforts to promote restorative justice through traditional processes.⁴

Despite these objections, the ICC proceeded with its investigations of the LRA. In July 2005, the Court issued arrest warrants for the LRA's top leadership: Joseph Kony, Vincent Otti, Dominic Ongwen, Raska Lukwiya and Okot Odhiambo. Lukwiya's arrest warrant has since been rendered without effect as the

¹ The authors would like to acknowledge the comments and suggestions provided by Friederike Bubenzer and Allan Ngari of the Institute for Justice and Reconciliation; and Lindsay McClain, Sylvia Opinia and Boniface Ojok of the Justice and Reconciliation Project.

² Respondents participated in these consultations on the basis of anonymity.

³ Uganda's *Amnesty Act of 2000* offers amnesty to 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. See Section 3 of the *Amnesty Act of 2000*.

⁴ See *Roco Wat i Acholi: Restoring Relations in Acholiland: Traditional Approaches to Justice and Reintegration*, Justice and Reconciliation Project and Liu Institute for Global Issues, September 2005.

suspect is deceased.⁵ These events initiated a ‘peace versus justice’ debate. Some sections of the population in Northern Uganda perceived the ICC as an obstacle to the Juba Peace Talks between the Government of Uganda and the LRA, which were at the time due to commence. It also led to comparisons between formal justice and traditional justice mechanisms. The controversy centered on whether traditional justice approaches could or could not be utilized in dealing with war crimes and crimes against humanity. This debate became infused into the Juba Peace Talks, which commenced in June 2006 and were aborted prematurely in November 2008. Ultimately, the LRA refused to sign the final peace agreement. The Uganda People’s Defence Force (UPDF) subsequently launched a military offensive against the LRA, code named ‘Operation Lightning Thunder,’ which further diminished the hopes of reaching a negotiated settlement.

Despite the unfortunate outcome of the Juba Peace Talks, characterized by suspicion of a lack of good faith between the parties and the resumption of hostilities, a number of stakeholders across the country agree that the provisions within the agenda items which were negotiated remain relevant and critical for the promotion of peace and recovery in Northern Uganda.⁶ The GoU has proceeded to implement certain provisions within the agreement such as the *Peace, Recovery and Development Plan* (PRDP) for Northern Uganda. In this regard, the *Agreement on Accountability and Reconciliation* calls for the utilization of traditional justice mechanisms as practiced in the communities affected by the conflict.⁷

Traditional Justice in Northern Uganda

Traditional justice mechanisms include those traditional and customary practices which have been utilized by different ethnic groups in Northern Uganda over centuries for the purposes of resolving conflict and maintaining social order. The analytical study of traditional justice in Northern Uganda gained currency with the initial assessments of the Acholi mechanism for resolving disputes known as *Mato Oput*. Other traditional approaches to the administration of justice in Northern Uganda also include mechanisms found among a range of other ethnic groups, including *Kayo Cuk* found among the Langi; *Ailuc* among the Iteso; *Ajupe* among the Kakwa; *Ajuje* among the Lugbara; *Aja* among the Alur; and *Tolu Koka* tradition found among the Madi. Although these approaches

vary in the way they are practiced across the different communities, they share certain similar principles which include:

- i) Voluntary aspect of the process;
- ii) Establishment of truth;
- iii) Apology and acknowledgement of wrongdoing by perpetrators; and
- iv) Payment of symbolic compensation or reparation to victims by perpetrators.

These approaches also share similar practices and rituals, such as the ceremonial sacrificing of livestock and their utilization in ritual cleansing processes. However, by far the most significant aspect of these traditional justice approaches is the participation by a large number of people, often a wide selection of representatives of the community, in the process. Here traditional approaches to justice demonstrate how they significantly differ from formal prosecutorial judicial processes, through their inclusive nature which creates a more sustainable platform for reconciling victims and perpetrators.

Traditional Justice and War Crimes

Northern Uganda is temporarily experiencing a transient peace as a result of the LRA’s relocation to the Central African Republic, Southern Sudan and the Democratic Republic of the Congo (DRC). The timing may therefore be right for the pursuit of justice and accountability using traditional justice mechanisms. The challenge is that the practical use of traditional approaches to administer justice for crimes that fall under the modern category of war crimes and crimes against humanity remains an abstract endeavor. To date, there is little evidence that traditional approaches have been utilized to administer justice for the nature of crimes which are being committed as a result of the emergence of the modern post-colonial state in Africa. The fact that there is no historical precedent to provide guidance for the use of cultural approaches to address crimes of a more serious nature does not necessarily elevate the use of national or international criminal justice institutions and negate the use of traditional practices to address the issue of impunity and lay the foundations for a non-recurrence of atrocities. Some of the atrocities being committed are a direct result of the emergence of the post-colonial state construct within the African continent with its exclusionary logic of governance. Therefore, traditional justice approaches may still have a role to play in providing insights into how to administer restorative justice.

Article 8(e)(vii) of the *Rome Statute of the International Criminal Court* describes a war crime as a violation “of the laws and customs applicable in armed conflict not of an international character,” including “conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.”⁸ The LRA has

⁵ Vincent Otti is also believed to be deceased, but public records at the ICC indicate an outstanding warrant for his arrest.

⁶ The LRA appended their signature to six agenda items, including the *Agreement on Accountability and Reconciliation*. LRA leader Joseph Kony, however, declined to sign the final peace agreement, which was a collection of all the agenda items.

⁷ See *Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord’s Resistance Army/Movement*, Clause 3.1, June 2007.

⁸ *Rome Statute of the International Criminal Court*, Article 8(e)(vii), July 1998.

consistently committed this war crime through its historic and ongoing recruitment of child soldiers.

Traditional justice ceremonies such as *Nyono Tongwenno* or *Moyo Piny* have been utilized to facilitate the reintegration of formerly abducted children into communities and to cleanse areas where massacres have occurred. *Nyono Tongwenno* is a traditional Acholi ritual which was historically used for welcoming and cleansing people who have been away from the community for an extended period of time. It was adapted for use in reintegrating children abducted by the LRA. This traditional practice enabled children to feel the restorative embrace of the society despite their abduction and coercion to engage in conflict by the LRA command. *Moyo Piny* involves using the ritual sacrifice of livestock to cleanse areas where mass massacres have occurred or in areas where human cadavers have been left unburied. The Acholi community, from which these traditions emanate, believe that these processes serve the function of repairing the human bonds which were broken by the atrocities that were committed as well as laying the foundation for healing not only the land but also fabric of society. In this respect, traditional justice processes have been utilized to mitigate the effects of the war crime of conscripting child soldiers, and to lay the foundation for the restorative processes so that these children can rejoin their communities. These traditional justice processes seek to address the plight of victims which is also stipulated in Article 75 of the *Rome Statute*, when it states that the ICC “shall establish principles relating to reparations to, or in respect of victims, including restitution, compensation and rehabilitation.”⁹

There is therefore a precedent for using an aspect of traditional justice mechanisms to mitigate the effects of war crimes which fall under the jurisdiction of the ICC. By extension, the traditional elements of the establishment of the truth and the acknowledgement of wrongdoing by the perpetrators can also be utilized to establish a process of restorative justice between perpetrators of war crimes and their victims. In this regard, traditional justice processes can hold perpetrators accountable for war crimes and also facilitate the payment of compensation or symbolic reparations to victims. The challenge is that there is an intellectual bias towards prosecution processes through formal court systems. There is a dearth of analysis to be undertaken on the role that traditional justice approaches can play in dealing with the past.

The Remit of Traditional Justice Mechanisms

The issue of how traditional justice processes can address situations in which a victim and a perpetrator originate from

different ethnic groups still remains contested. Would this require a harmonization of cultural traditions? This issue is not as controversial as it would first appear. In Uganda, individuals from different cultural backgrounds are subject to state-led judicial processes, which draw their inspiration from British and Roman legal traditions and a Judeo-Christian heritage. So it is not beyond the realm of possibility for one traditional justice mechanism to be used by individuals or groups that come from different ethnic groups. There is no hierarchy of knowledge between different ethnic groups. The important issue is that these aspects of implementing traditional restorative justice can be utilized in different contexts, independent of the ethnic group from which they originate. The prerequisite is that all the parties have to agree on the modalities of the traditional justice approach that they are going to use.

There is also the issue of whether the insights from a traditional justice process can be utilized in promoting national reconciliation. Of equal importance is the question of how traditional justice can complement national processes, such as the trials at the International Crimes Division (ICD) of the High Court of Uganda. Unlike Rwanda, for example, which had two dominant ethnic groups, namely the Hutu and the Tutsi, Uganda has over fifty different ethnic groups, each with their own traditional mechanisms. There are insights and practices to be gained from traditional approaches which can contribute to the transitional justice aspects of truth-telling, acknowledging of harm done, or offering to make reparations as a basis for restoring and healing relationships. These insights can be utilized and even codified in national constitutions for the purposes of embedding a transitional justice framework within the legislation of countries. Traditional justice mechanisms have attracted more questions than answers with regard not only to their relevance in the contemporary settings, but also in their ability to deal with grave crimes that were committed during the conflict. There is a need for further analysis on this issue.

JRP and IJR interviewed victims in Northern Uganda and compiled their views on the role that traditional justice processes can play in enabling their societies to move forward in the aftermath of the atrocities that were committed in their regions. The discussions focused on whether traditional justice mechanisms were still considered relevant by the people primarily affected by the conflict. Key questions explored in these consultations included:

- i) Whether or not these mechanisms could deliver justice for crimes committed during the conflict;
- ii) The kind of crimes and categories of perpetrators that should be handled using traditional justice;

⁹ Ibid., Article 75.

- iii) How to foster participation of all people in the community including women and other vulnerable groups such as children.

The following sections will discuss the outcomes of these consultations and then conclude with recommendations to the Government of Uganda and other stakeholders.

Key Findings from the Regional Consultations

*Traditional customs have been erased. People must be educated about them, and there is need for sensitization of the young ones. Culture must be revived. Culture is important because it is part of our identity.*¹⁰

The victim consultations revealed that the utilization of traditional justice mechanisms had declined substantially due to the brutalizing effects of the conflict on all aspects of socio-cultural life in Northern Uganda. Specifically, the conflict had forced the migration of people and generated a significant number of internally displaced persons (IDPs) who were confined to camps for more than ten years. Due to their confinement in these camps, the local population remained unable to perform rituals and ceremonies as naturally and as frequently as they used to in the home settings. Displacement also led to the emergence of a new generation of youth who were born and raised in these IDP camps, and therefore they never had a chance to learn and internalize the traditional cultures of their societies. In fact, the performance of traditional rituals is rare in urban centers. As one participant in Gulu noted, *“Traditional justice rituals are still performed in villages where people are still deeply rooted to tradition. But in urban areas, people have changed and don’t really follow tradition so much.”*¹¹

Traditional Justice and Community Reconciliation

Despite some of the sentiments that were expressed, a section of the participants at these consultations revealed that traditional justice mechanisms still continue to be practiced on a significant level. These participants reported that community cleansing ceremonies have been carried out in their villages by elders of Ker Kwaro Acholi, the Acholi cultural institution, which has in effect enabled them to return to their villages.¹² Several participants also highlighted the importance of traditional justice mechanisms in promoting community-level

reconciliation between victims and perpetrators at a local level. Many participants pointed out that traditional justice mechanisms are understood by the communities in which they are practiced, and in addition to promoting reconciliation, they also foster participation and ownership of the process, unlike formal mechanisms which are often detached from the people and difficult to access. Most of the traditional justice mechanisms take place between clans instead of between individuals, which implies that many members of the community can participate in their proceedings. In contrast, formal court processes generally tend to be limited in terms of who can participate and attend. Formal court processes also proscribe those who are ‘legally’ qualified to act as the key interlocutors and intermediaries in the legal proceedings, which in effect usurps the ownership of the conflict and assigns it to expert lawyers and judges on behalf of the victims and perpetrators.

The majority of respondents during the consultations concurred that traditional justice could deliver some form of justice to them, although they were not clear how this would occur. When pressed to elaborate, most of the respondents cited reasons such as traditional justice mechanisms being less costly and less complicated to access and utilize when compared to formal judicial and court processes. Others also pointed out that traditional justice processes generally tend to be participatory, based on truth-telling, and ultimately geared towards promoting reconciliation. As one participant from Teso region stated, *“The traditional justice system is rich enough to put my heart at peace. The labor needed in formal justice is a lot and you even find that truth is sometimes eluded by the perpetrators. There are so many steps in traditional justice that it is rich enough to bring victims and perpetrators together to have a ‘heart-to-heart’ exchange. Traditional justice is a wholesome and holistic approach. It seeks to bring a lasting and sustainable solution. It makes sure the conflict is addressed completely and the parties reconciled.”*¹³

Traditional Justice and Reparations

What emerged from the consultations was that a majority of respondents equated their understanding of justice with the promotion of reconciliation between perpetrators and victims. They also felt that with regard to their traditions, justice is not done unless some form of compensation or reparation from perpetrators is received by the victims for the lost lives of their families or community members. As noted above, the *Rome Statute* makes a similar provision for victims. Specifically, Article 75(1) stipulates that the ICC may “either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims.”¹⁴ This suggests that the key elements of traditional

¹⁰ Respondent, JRP-IJR Victims’ Consultations in Teso, Northern Uganda, 8-9 February 2011.

¹¹ Respondent, JRP-IJR Victims’ Consultations in Acholi/Lango, Gulu, Northern Uganda, 2 December 2010.

¹² In Acholi culture, areas in which massacres occur need to be cleansed, and the bones of the dead have to be buried before people can resettle in these regions. The elders of Ker Kwaro Acholi, with support from the Northern Uganda Transitional Initiative (NUTI), have been able to conduct hundreds of cleansing rituals all over Northern Uganda.

¹³ Respondent, JRP-IJR Victims’ Consultations in Teso, Northern Uganda, 8-9 February 2011.

¹⁴ *Rome Statute of the International Criminal Court*, Article 75(1), July 1998.

justice are not alien to the provisions of the *Rome Statute* and can therefore play a complementary role to the proceedings of the ICC.

In reality, the payment of compensation, as many participants rightfully recognized, is often complicated by the fact that the majority of perpetrators belong to a low-income bracket and often do not have the financial means to make restitution. After several decades of conflict, a significant proportion of people in Northern Uganda, victims and perpetrators alike, are impoverished. In many traditional justice cultures, symbolic reparation is an expensive venture because it often involves the payment of large numbers of cattle or their equivalent in cash to victims by perpetrators as a form of compensation for crimes committed.

Capacity of Local Mechanisms to Handle War Crimes

The consultations also broached the issue of whether traditional justice mechanisms can be utilized to deal with war crimes and crimes against humanity as now defined and proscribed by the *Rome Statute*. The jurisdiction of the ICC is limited to the most serious crimes of concern to the international community and has the authority to pursue perpetrators of war crimes, crimes of aggression, and genocide. During the consultations, respondents were asked whether they thought that war crimes should be handled by traditional justice mechanisms. Ultimately, there was no consensus among participants on the extent to which traditional justice mechanisms could be used to deal with grave crimes such as mass massacres and forced marriages. Even though the respondents from the different sub-regions of Northern Uganda agreed that traditional justice has a role to play in administering some form of redress and ensuring accountability by the perpetrator for their crimes, they could not agree on the extent of the crimes which these mechanisms could address.

The conflict in Northern Uganda has been characterized by the commission of a number of war crimes including child abduction and conscription, mutilation, rape and the pre-meditated targeting of civilian populations. Therefore, it is legitimate to interrogate whether traditional justice mechanisms can address such crimes. The discussion earlier in this policy brief illustrates how the traditional restitution process of *Moyo Piny* and *Nyono Tongwenno* have been utilized to address the effects of crimes that fall under the category of war crimes. The fact is that traditional justice mechanisms can only be applied in a context-specific approach. It is self-evident that traditional justice processes are not geared towards addressing some of the atrocities that fall under the category of war crimes or crimes against humanity as defined by the *Rome Statute* simply because some of these violations have only begun to manifest themselves

following the imposition of the nation-state in Africa.¹⁵ One respondent from Teso observed that, “*I am not sure if our culture knows how to deal with the issue of child abduction, or whether it can handle mutilations and other such crimes.*”¹⁶

This phenomenon of child abduction and conscription is not recognized by the majority of cultural forms, and it therefore remains a nascent feature of modern state and non-state warfare.

The fact that traditional justice approaches have not been utilized to deal with certain forms of war crimes and crimes against humanity does not render them completely ineffectual to deal with these violations. The key components of traditional justice listed above, including truth-telling, perpetrator acknowledgement of wrongdoing and the payment of reparations as a basis for redress and restitution, should be able to address a selection of this category. Ultimately, the efficacy of traditional justice in dealing with war crimes can only be assessed through the deployment of these approaches in administering redress between the perpetrators and victims in specific contexts. There is a precedent in this regard in terms of the use of the *gacaca* process in Rwanda to in effect address war crimes in a cultural setting. There is evidently a need for further analysis on whether traditional justice can effectively deal with war crimes and ensure redress for the victims by preventing impunity from prevailing.

Traditional Justice and the Category of Perpetrators

Related to the question of accountability is the issue of the category of perpetrators who should be engaged with using traditional justice. The ICC has “the power to exercise its jurisdiction over persons” who commit “the most serious crimes of international concern.”¹⁷ The consultations also addressed whether senior commanders or junior officers are the appropriate referents for traditional justice processes. Participants also expressed doubt about how traditional justice could be pursued in situations involving crimes committed by state actors such as government soldiers. One respondent in Teso noted that, “*The Government is so tricky that if you get involved in a case involving government soldiers, you will be implicated or interrogated, and so*

¹⁵ In a 2005 study, many elders across Acholi agreed that there is little sense in pursuing *Mato Oput* on a case-by-case basis since too many people have been killed and it is difficult to trace who killed who and therefore which clans to engage, and how to pursue matters such as the payment of symbolic compensation. See Justice and Reconciliation Project. *Accountability, Reconciliation and the Juba Peace Talks: Beyond the Impasse*. Field Note No. 3, October 2007.

¹⁶ Respondent, JRP-IJR Victims’ Consultations in Teso, Northern Uganda, 8-9 February 2011.

¹⁷ *Rome Statute of the International Criminal Court*, Article 1, July 1998.

*traditional justice is not applicable to state actors.*¹⁸ The respondents felt that the traditional approach was appropriate for administering restorative justice in the context of perpetrators who were children when they committed the crimes as well as junior personnel of the LRA or government forces. However, the majority felt that senior LRA commanders could not adequately be adjudicated by traditional justice processes, mainly because of their strategic role in creating and sustaining the conflict. Respondents felt that traditional justice processes require a face-to-face interaction between perpetrators and victims and their communities, and this provision may not be sustainable in the case of senior LRA or government commanders who victims would identify directly with their suffering. Respondents felt that the role of traditional justice is primarily to achieve reconciliation and the healing of communities and there might be constraints in achieving this with senior commanders. The Rwandan experience in this regard is also informative. The *gacaca* process was largely geared towards dealing with alleged perpetrators who were not involved in the most serious crimes of international concerns. The most responsible perpetrators were subjected to the International Criminal Tribunal for Rwanda (ICTR), based in Arusha, Tanzania. The issue of the category of perpetrators who can be adjudicated utilizing traditional justice mechanisms is another issue that requires further analysis and research.

Traditional Justice and the Ugandan International Crimes Division (ICD)

The establishment of a national jurisdiction to adjudicate crimes that would typically be addressed by the ICC is recognized through the principle of complementarity. The establishment of the International Crimes Division (ICD) of the High Court of Uganda has in effect sought to domesticate the provisions in the *Rome Statute*. The ICD is intended to administer justice to perpetrators of war crimes, crimes against humanity and genocide. The relationship between the ICD and traditional justice mechanisms is still undefined. Some of the respondents stated that there was a role for national courts, particularly in instances in which traditional justice systems have not adequately delivered redress to the grievances of victims and prevented impunity, specifically in cases in which perpetrators are non-compliant or when they reject the process. Respondents in Teso argued that if perpetrators refused to genuinely engage in truth-telling processes and confessions in traditional courts, then there should be an appropriate redress process including the use of national courts such as the ICD.

¹⁸ Respondent, JRP-IJR Victims' Consultations in Teso, Northern Uganda, 8-9 February 2011.

Traditional Justice, Inclusivity and Participation

The consultations also explored the issue of participation and inclusivity with specific reference to women and children. Respondents acknowledged that traditional justice approaches were historically patriarchal and that women and youth were often marginalized at the expense of men who played more significant roles. Respondents felt that if these traditional justice approaches are to adequately address the needs of the whole community, then there is a need to establish a more prominent role for women and youth. This is not a problem that is unique to African societies, even European, Asian, and North and South American societies are also afflicted with an over-emphasis on patriarchy in their cultures. Respondents suggested that women should be represented in committees or on panels of elders during the implementation of traditional justice mechanisms. Others stressed the need to sensitize the youth so that they can acquire a more nuanced historical appreciation of traditional justice. One respondent in West Nile noted that, *"The young generation has only been exposed to the traditions of the church and legal justice. These days there is a rift between the youth and the elderly. The youth feel like they went to school and that they therefore do not need to be involved with traditional ceremonies."*¹⁹ An appreciation of one's culture while recognizing some of its limitations, particularly on the issue of inclusivity and participation, is an important objective for education institutions and societies across Africa.

The ICC Statement on Traditional Justice

In September 2007, the Office of the Prosecutor issued a policy paper on the interests of justice, in which it noted that the ICC "fully endorses the complementary role that can be played by domestic prosecutions, truth-seeking, reparations programs, institutional reform and *traditional justice mechanisms* in the pursuit of broader justice."²⁰ The ICC therefore recognizes that there is a specific role and place for traditional justice in the wider national transitional justice framework. However, beyond this policy paper pronouncement, the ICC has not yet articulated how it sees traditional justice complement the work of the Court. This suggests that there is additional work to be undertaken by the Office of the Prosecutor to engage with communities in which traditional justice processes are still functional, such as in Northern Uganda.

¹⁹ Respondent, JRP-IJR Victims' Consultations in West Nile, Northern Uganda, 24-25 November 2010.

²⁰ Office of the Prosecutor. *Policy Paper on the Interests of Justice*. Hague: International Criminal Court, September 2007, pg.8. Emphasis added.

Recommendations

The 2004 UN Secretary General's Report, entitled *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, recognizes the centrality of transitional justice in ensuring post-conflict reconstruction.²¹ The UN report states that, "We must learn better how to respect and support local ownership, local leadership and a local constituency for reform, while at the same time remaining faithful to United Nations norms and standards."²² The *Agreement on Accountability and Reconciliation* from the Juba process further outlines the significance of traditional justice mechanisms. There is a case to be made for pursuing justice and reconciliation through traditional justice mechanisms in war-affected communities in order to enable victims and perpetrators to deal with the past. Based on the responses generated through the JRP-IJR consultations, the following policy proposals are recommended:

To the Government of Uganda through the Justice and Law Order Sector (JLOS):

1. There is need to expedite the process of developing a policy and guidelines to regulate the use of traditional justice in Northern Uganda.

JLOS is the official government body that has been tasked with the creation and implementation of a transitional justice framework in Uganda, which includes guidelines on how to use traditional justice mechanisms. In 2011, JLOS embarked on a process of national consultations aimed at building consensus on traditional justice, including developing guidelines on how traditional justice can be used at the community, regional, or national level. This initiative is hereby acknowledged and applauded. JLOS needs to expedite the process of passing national legislation or issuing guidelines for the use of traditional justice. In the absence of this guidance from JLOS, traditional justice in Northern Uganda will continue to be perceived with a degree of bemusement, which will ultimately not contribute towards utilizing different approaches to promoting reconciliation.

2. There is need for consensus-building among the war-affected populations of Northern Uganda about the role of traditional justice.

There is a need to promote the sensitization and consensus-building particularly among the youth and other groups about the historical relevance of

traditional justice processes. This process should seek ways of ensuring that vulnerable groups such as women and children are fully involved in traditional justice processes.

3. There is need to provide funding and support for the implementation of traditional justice mechanisms in order to facilitate the prospects for promoting reconciliation.

The Juba Peace Agreement on Accountability and Reconciliation calls for the utilization of both formal and informal mechanisms of accountability and reconciliation. While the Government has been instrumental in setting up and funding the International Crimes Division of the High Court, no funding to date has been allocated for traditional justice mechanisms. The Government therefore needs to explore and create a framework to provide financial support to traditional justice mechanisms.

4. There is need to empower, support and strengthen cultural institutions to take the lead in the articulation and implementation of traditional justice.

Cultural institutions such as Ker Kwaro Acholi were deliberately targeted during the conflict. The stature of traditional chiefs in Northern Uganda in particular has therefore been undermined by the crisis. In order for societies to recover their heritage, it is necessary for the Government to support cultural institutions without viewing them as a threat or a parallel center of authority. The implementation of traditional justice cannot be done in isolation from the cultural institutions, and as such, the Government needs to explore ways of reinforcing and working with the traditional institutions.

5. There is need to articulate how traditional justice can complement other local or national processes of transitional justice.

Traditional justice can contribute toward strengthening national processes of accountability, truth-seeking and reparations. Traditional justice mechanisms, for example, can complement the ICD with the vital element of reconciliation, which is often lacking in judicial processes. In addition, since the ICD is likely to handle a limited number of cases, traditional justice can be instrumental in dealing with other persons whom the court is not likely to engage with, including children and junior personnel

²¹ United Nations Security Council. *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*. Report of the Secretary-General, S/2004/616, 23 August 2004.

²² *Ibid.*, pg..3.

soldiers. The aspect of making reparations within traditional justice approaches can also provide insight toward the articulation of a national reparations program for Uganda.

To Traditional Cultural Institutions:

- 1. There is need to the take the lead in advocating for the implementation of traditional justice mechanisms in the respective sub-regions.** While the role of traditional leaders in conflict resolution and leadership was drastically affected by the conflict, many people within the different sub-regions still look to the cultural leaders for direction and guidance for a variety of issues, including traditional justice mechanisms. Cultural institutions therefore need to play a key role in defining how traditional justice should be administered.
- 2. There is need for cultural institutions to address the historical exclusion of women and youth.** As revealed by our consultations, many respondents felt that women and children were often marginalized and relegated to playing minor roles in implementing traditional justice mechanisms. Cultural institutions therefore need to come out and clearly articulate how traditional justice will be made all-inclusive. Among other measures, this could be done by establishing cultural panels that are more inclusive of all groups.

To the International Criminal Court:

- 1. There is need for the Office of the Prosecutor and the Assembly of State Parties of the International Criminal Court to engage with the traditional justice processes and frameworks.** This will allow for the ICC to more coherently coordinate initiatives so that efforts to administer justice in war-affected societies are not working across purposes and undermining each other.
- 2. There is need for the Office of the Prosecutor to work with governments, civil society and academic institutions to issue a policy paper on traditional justice and how it can complement the activities of the ICC, particularly in Northern Uganda.**

About the Authors

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About JRP and IJR

The Justice and Reconciliation Project (JRP) has played a key role in transitional justice (TJ) in Uganda since 2005 through seeking to understand and explain the interests, needs, concerns and views of communities affected by the LRA conflict. JRP promotes locally sensitive and sustainable peace in Africa's Great Lakes region by focusing on the active involvement of grassroots communities in local-level transitional justice. To learn more, visit <http://www.justiceandreconciliation.com>. For comments, email info@justiceandreconciliation.com.

The Institute for Justice and Reconciliation (IJR) was launched in 2000 in the aftermath of South Africa's Truth and Reconciliation Commission with an aim of ensuring that lessons learnt from South Africa's transition from apartheid to democracy be taken into account in the interests of national reconciliation. IJR's Transitional Justice in Africa Programme works with partner organisations across Africa to promote reconciliation and socio-economic justice in countries emerging from conflict or undergoing democratic transition. IJR is based in Cape Town, South Africa. For more information, visit <http://www.ijr.org.za> and for comments or inquiries contact info@ijr.org.za.