

TRANSITIONAL JUSTICE –THE NORTHERN UGANDA PERSPECTIVE

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Introduction

A situational analysis of Northern Uganda shows that there is a marked improvement in the security situations. This is because of the peace talks between the Government of Uganda and the Lord's Resistance Army (LRA) which officially opened on 14th July 2006 in Juba. The parties signed a formal cessation of hostilities agreement that facilitated some peace that the society in Northern Uganda now enjoys. Since July 2006, the peace talks are going on with breaks between the sessions giving the parties involved time to consult and reflect on issues being discussed. The peace talks have lasted with some issues being resolved while others are still being discussed. The society is concerned about the prospects of the peace talks and the challenges that may result. Marked improvement in the security situation are in the following areas:

- No gun shots heard in the area
- The Internally Displaced people (IDPs) are evacuating the camps and returning to their original homes
- Resumption of agricultural activities and getting farm produce that make the population turn their attention away from food provided by World Food Programme (WFP)

Transitional Justice

Transitional justice refers to a range of approaches that societies undertake to reckon with legacies of widespread or systematic human rights abuse as they move from a period of violent conflict or oppression towards peace, democracy, the rule of law, and respect for individual and collective rights. In implementing such a transition, societies must confront the painful legacy, or burden, of the past in order to achieve a holistic sense of justice for all citizens, to establish or renew civic trust, to reconcile people and communities, and to prevent future abuses.

Tools or Mechanisms used for transitional Justice

A variety of approaches to transitional justice are available that can help wounded societies start anew. The major approaches to transitional justice include truth-seeking, prosecutions and criminal justice, institutional reform, reconciliation, and reparations. While all of these mechanisms should be present in any given situation, they may be combined in unique ways as each country

crafts its own approach to dealing with a painful history. These approaches are both judicial and nonjudicial, and they seek to encompass broadly the various dimensions of justice that can heal wounds and contribute to social reconstruction. Transitional justice incorporates a realistic view of the challenges faced by societies emerging from conflict or repression, and an appreciation of their unique cultural and historical contexts, without allowing these realities to serve as excuses for inaction. All stakeholders in the transition process must be consulted and participate in the design and implementation of transitional justice policies.

The approaches to transitional justice are based on a fundamental belief in universal human rights, and rely on international human rights and humanitarian law in demanding that states halt, investigate, punish, repair, and prevent abuses. Transitional justice approaches consistently focus on the rights and needs of victims and their families.

The major approaches to transitional justice include the following:

- Domestic, hybrid, and international prosecutions of perpetrators of human rights abuse
- Determining the full extent and nature of past abuses through truth-telling initiatives, including national and international commissions
- Providing reparations to victims of human rights violations, including compensatory, restitutionary, rehabilitative, and symbolic reparations
- Institutional reform, of which one measure is the vetting of abusive, corrupt, or incompetent officials from the police and security services, the military, and other public institutions including the judiciary. Vetting refers to the process of excluding from public employment those known to have committed human rights abuses or been involved in corrupt practices.
- Promoting reconciliation within divided communities, including working with victims on traditional justice mechanisms and forging social reconstruction
- Constructing memorials and museums to preserve the memory of the past
- Taking into account gendered patterns of abuse to enhance justice for female victims.

Understanding the Concept of Transitional Justice from the Ugandan Perspective

The concept of transitional justice involves those ideas that predispose and envisage restorative democracy, governance, rule of law, economic prosperity to the community that has largely suffered from brutal human rights abuses. This

would mean therefore the community must be free from crimes, reveal truth of the past and then proceed with forgiveness and comprehensive national peace, recovery and economic development. In regard to Uganda's situation of transitional justice, there are two types of transition: first, transition from authoritarian rule to democracy and second, transition from war to peace. The path of transition whether as a result of intervention, armed rebellion, negotiation, etc determines to a larger extent the consolidation of democracy or peace of mind, in turn, the likelihood of advancing to national reconciliation. The aim of transitional justice is to confront the legacies of abuse in a broad and holistic manner, encompassing criminal justice, restorative justice, social justice, traditional justice and economic justice. It recognizes that a responsible justice policy must include measures that seek to achieve both accountability for past crimes and prevention of new crimes. It also recognizes that the demand for criminal justice is not an absolute, but instead must be balanced with the need for peace, democracy, equitable development and the rule of law.

The reality is that countries recovering from the periods of mass abuse face almost certain prospect of 'flawed justice'. This is because those governments take the law in their hands and tend to manipulate it. In a significant number of cases, transitional governments are also forced to choose between justice and the continuation of peace, or justice and the maintenance of democracy. Even where the threats are less prominent, the massive scale of past abuse, the weakness of the local justice system, the adoption of amnesty laws, and severe limitations in relation to human and financial resources often make ordinary justice impossible: invention and compromise becomes a dual imperative. The fact is that justice systems are designed for crimes as an exception, not as a rule. If crimes become the rule, no system is robust enough to cope. Consequently, in most, if not all, transitional contexts, other accountability tools will be required, going well beyond the courts.

In theory and in practice, transitional justice focuses on four main instruments or mechanisms: trials (whether civil or criminal, national or international, domestic or foreign); fact findings bodies (including truth commissions and similar national or international bodies); reparations (whether compensatory, symbolic or rehabilitative in nature); and institutional reforms (including reforms of laws, institutions and personnel). Transitional justice may also encompass other topics such as amnesty, corruption, disarmament and governance. As Uganda faces numerous challenges regionally, there is need to look at all the instruments and accorded status of practice that will usher healing to the society. This can only be achieved with the views and the interest of communities to choose forms of transitional justice.

Transitional Justice and its implication for Northern Uganda; the Case of Acholi Justice System.

What we here call transitional justice is a term out of the ordinary practice of judiciary we are used to. Similarly truth seeking is a new term coined to express

a new reality in the context of conflict. Reconciliation is also a new term in the same context.

All these terms are employed to address a broader reality than they describe. And so we can say they have local and international dimensions. The conflict in Sierra Leone is a local reality which disturbed the whole human community. The countries in conflict remain individually distinct but at the same time organically woven to the whole in what an African wisdom calls *vital force*.

1. Truth Seeking: In the Sierra Leonean experience, the truth seeking is an independent organization that was created by the Lomé Peace Agreement of July 7th 1999. It was established by an act of parliament on February 10, 2000.

Mandate: The truth seeking was established firstly to create an important historical record of violations and abuses of human rights and international humanitarian law related to the armed conflicts in Sierra Leone from the beginning of the conflict in 1991 to the signing of the Lomé peace agreement in 1999. And secondly to address impunity, responding to the needs of victims in order to promote healing and reconciliation and prevent a repeat of violations and abuses suffered.

Function: the function of the truth seeking was to investigate and report on the causes, nature and extent of the human rights violation and abuses and the context in which these violations and abuses occurred. The truth seeking also examines and reports on culpability of individual and group acts.

2. Truth and Reconciliation (TRC):

Before the Sierra Leonean truth and reconciliation there existed numerous approaches to address impunity including the United Nations approaches (1949 and 1977). But in Article XXVI (1) of the 1999 Lomé peace Agreement something new was provided for a particular conflict experience. It was the “forum for both the victims and the perpetrators of human rights violations to tell their stories, get a clear picture of the past in order to facilitate genuine healing and reconciliation.” The novelty of the Sierra Leonean truth and reconciliation was the common ground for both the offended and the offender or victims and perpetrators of human rights violations and abuses. It was possible to have this common ground because Sierra Leoneans felt together the need for peace and unity. They needed to be one in their nation and with the rest of the world beyond their nation. Truth became an obligation, a moral question to Sierra Leoneans who under the truth and reconciliation Act of 2000 in section 8 (1) “compelled persons to appear before the commission where the commission found that necessary for arriving at the truth.”

3. Special Court

The Lomé Agreement made it clear that the TRC was not a judicial body in the ordinary sense of the word. It was just a fact finding body with the additional responsibility to set up a follow-up process to bring unity back to Sierra Leone

(section 17 and 18 of the Act).

But the Special Court needed be in place to address issues of impunity according to the right of the UN.

Under the proposed Agreement the Special Court was granted power to prosecute:

- Persons most responsible for serious violations of international humanitarian law committed from 30th Nov. 1996 after the first peace accord signed in Abidjan.
- Persons for violations of Sierra Leonean law in few cases where those violations occurred in the territory of Sierra Leone after July 7 1999.

We can therefore see the interplay between TRC and the Special Court in addressing impunity. This is what we call transitional justice.

TRC holds a person accountable for truth and show of compassion for his victim in the name of reconciliation.

Special court holds a person accountable as principals for gross violations of international humanitarian laws and the criminal law of Sierra Leone involving crimes of particular gravity specified in e.g. Art 5 and 7 of the Act.

So while the TRC took care of Sierra Leone's national peace and unity and remained subject to the laws of Sierra Leone, the Special Court was to operate as international entity subject to international criminal law.

What Implication is that for Northern Uganda?

The Northern Uganda conflict is feared more ethnical than political in nature. If it is the former then it will need some special thought substantially similar approach to address impunity as did that of Sierra Leone. Yet, the Northern Uganda conflict has much in common with the Sierra Leone in as much as it leave in the Ugandans and indeed the whole world a yearning for justice, peace and unity. In volume one of Northern Uganda Internally Displaced Persons The department of Disaster Preparedness and Refugees, the Ugandan Prime Minister's office published a profiling study of northern Uganda internally displaced persons in 2005 to this effect.

The international community has also expressed grave concern over the Northern Uganda conflict the best of which I can refer to is that of Jan Eageland.

Today, the Gulu non-governmental organizations Forum (NGO Forum) is asking if Uganda might not need to learn from Sierra Leone's experience. I personally think that Uganda in general and Northern Uganda in particular has a lot of valuable things to learn from Sierra Leone's TRC and Special Court in order to get Uganda set on resolving the conflict. There has already been a great deal of talk and I think the Gulu NGO Forum wants us to stop talking and move on. We could look at this workshop initiative on the part of Gulu NGO Forum as beginning of the Northern Uganda Truth and Reconciliation Commission.

4.The Acholi traditional method of Truth and Reconciliation (TRC)

There is enough information on the approaches to seek truth and address impunity to establish a Northern Uganda Truth and Reconciliation.

Let me give you the Acholi Truth and Reconciliation (TRC) method without having to go to details which you will find annexed (on page 17 of this document) The Acholi people of northern Uganda had many forms of disputes and infightings. In resolving the disputes and infightings the rite of reconciliation was applied. The rite which was a long process ran through life proportionate to the offence committed. Thus the rite of cleansing one who returns to the folk after a long absence (*nyonno tong-gweno*) differed from the rite of paying indemnity (*Cullu kwor*) committed by killing a person etc.. The consequences of the disputes and infightings were not only detrimental to the Acholi social and political systems but constituted an insult to the Acholi deity, jok, who always wished the Acholi to live harmoniously with one another in unending happiness. When applied the rite always did justice to and addressed the Acholi person both as an individual and community and it aimed at the well being of both the offender and the offended. This holistic anthropological approach to conflict transformation made the Acholi rite of reconciliation unique and better method than the *reductionist*¹ one of the international court of justice (ICC) which appears to look only at the legal, retributive aspect of the act of the offender.

The main forms of reconciliation rites have: a) individual (psychic) nature to purify i.e. to cleanse and thus reconcile an Acholi individual with his own conscience. This is the rite of purification which consists in the symbolic act of breaking the egg (*nyonno tong-gweno*) and b) communal nature i.e. i) reconciling the Acholi individual to another individual say - husband and wife (*tummu kir and tummu buru*) or ii) group of persons involving even clans and chiefdoms (*matto opwut and gommo tong*). Underlying the concept of reconciliation is the Acholi moral understanding of collective responsibility according to which a sin committed by an individual has bearing on the whole society

All these forms of reconciliation are still in practice today. But the rite cannot be understood without knowledge of the Acholi social and political system. Like any other human society, the Acholi society has existed for years since its beginning and there might have been something keeping it in existence. We must attempt to discover and re-propose it for the well being of modern Acholi.

In the Acholi case I think we need to ask

1)What the role of the UN or may be even the nation should be in bringing about peace, unity and reconciliation. Such role will add on to the Acholi role. And the way it will be done is what I have described in the roles of Acholi social system.

2)Let us also ask where the Sierra Leoneans lived when they started their Truth and Reconciliation project. The answer to this question will shed light on whether to set people free from the camps before starting the Truth and Reconciliation project here.

There is to begin with a recognition that 1) the unabated war has cost Uganda as a nation tremendous loss of human lives and 2) this war can be expeditiously abated. The way to go about it is a TRC.

I want also to say that when the Acholi talk of justice he has one thing in mind and when the European and elite Acholi talk of justice s/he has another different thing. The European or elite Acholi has principally the retributive *justice*. The

¹ *Reductionist* world view looks at things in terms of substances, essences and accidents. It is representational in character and so has no place in the Acholi life force.

Acholi concept of justice is loaded with symbols, persons and well being of the entire society. In applying his justice the Acholi people's attitude to the offender is like that of the creator God in the Bible which says "God does not take pleasure in the death of his creature".

Can the wounds of conflict be healed?

It is possible to heal the wounds of conflict, restore trust, confidence, harmony and peaceful coexistence between individuals, communities and nations, if only the conflicting parties are given room to examine their antagonistic and painful past, come to terms with it and with time reconcile with each other.

To be sure, the argument of this article is not about mechanisms to eradicate conflicts or wars, but mitigating present and past conflicts from escalating or re-emerging. It is about coming to terms with the past, in order to create room for the birth of new communities and societies. It is about healing the wounds of conflict through reconciliation with special emphasis on Africa's unique contribution to this quite often neglected and yet efficient and effective mechanism of building lasting peace in ongoing but most especially post-conflict situations.

Similarly the article takes cognizance of the fact that while violent conflicts may last as long as man is, they are not a destiny for humanity. It argues that many conflicts can be resolved using peaceful means leading to sustainable peace, though healed and reconciled relationships. This is to the effect that human beings have capacity to exercise reason and manage and resolve conflicts through negotiations and other peaceful means of conflict resolution, much of which is already provided for by custom and practice especially in Africa, which resource should be tapped by Africans themselves and share it with the rest of humanity.

Basing on the African Philosophy of Communitarianism of "I am because we are and since we are therefore I am" (John Mbiti), this easily translates to "an injury to one is an injury to all." With this foundational philosophy, Africans (especially Black Africa, south of the Sahara) have over the centuries developed context specific mechanisms of resolving and transforming conflicts and restoring harmony (peace) and order at the family, clan, community and inter-tribal/ethnic levels.

The guiding principles for amicably resolving conflicts; big and small, though evolving, have in essence remained the same (whether it is at the *Gacaca courts in Rwanda or Mato Oput* among the Acholi of Gulu, Uganda).

a)On the side of the Offending Party the expectations are:

- ◆ Voluntary Confession

◆ Truth telling: what exactly happened? This is one of the most difficult moments and sometimes this is expressed emotionally, by the offender simply bursting into tears

◆ Accepting responsibility and accountability

◆ Repentance

◆ Asking for mercy and forgiveness

◆ Accepting to go through the “cleansing” rituals (where applicable)

◆ Agreeing to compensate the aggrieved party

b) On the side of the Offended/Grieved Party

• Coming to terms with the loss/offence/crime committed against him/her/them

• Preparedness to forgive (though may not forget)

• Prepared to reach out to the offender to amend the broken relationship (reconciliation)

c) On the side of the Mediating Party (whose composition has been shifting poles over years: council of elders, religious leaders, now sometimes local government leaders get involved or a combination of all or some of the above categories). What has been the role of the council of elders?

• Promoting dialogue between the parties

• Listening to both parties

• Allowing each to tell his/her/their story

• Providing impartial counsel

• Overseeing the reconciliation process (may involve certain rituals)

• Determining an appropriate compensation (restorative justice) where applicable

All in all we can say that dialogue, truth telling, forgiveness, reconciliation and compensation/reparation, are the five pillars of the African conflict transformation and peace-building paradigm. Needless to say, like any other social system in the world, there are inherent limitations and shortfalls within the traditional systems of peace-building and conflict resolution. The most evident and perhaps the most contentious limitation is how issues of accountability, impunity and

justice are handled. The current controversy between the ICC indictments for the top five LRA commanders and the call for application of Acholi ***Mato Oput*** traditional mechanisms to resolve the 20 year old war in northern Uganda is a case in point. Our own guarded view on this is that *mato oput or gacaca* courts should be acknowledged as *alternative justice systems* since they have similar elements with international systems such as, independence and transparency where the council of elders acts as a neutral arbitrator of disputes. What is more and a contribution to humanity, is the fact that the core or guiding principle of traditional systems is restoration of broken relationships based on core principles of truth telling, acknowledgement, accountability and compensation, ultimately leading to genuine reconciliation.

Indeed, despite some inherent weaknesses and limitations, the argument here is that where traditional mechanisms have been applied effectively, they have transformed antagonistic families, clans, communities and tribes into healed, reconciled and vibrant communities. Since humanity is one and shares the same destiny and as such there has always been cross-fertilization of cultures and civilizations, this article is of the opinion that indeed the rest of humanity that has until now resorted only to retributive justice, may wish to borrow a leaf from the African restorative justice system of addressing grieved members of society and communities to experience the healing power of truth telling, forgiveness and reconciliation.

Relationship between the Juba Peace Process and Transitional Justice in Uganda

The North has experienced a lengthy period of war, and the issue of Accountability and Reconciliation is central to the negotiations in Juba, under Agenda Item 3. Ideally, the talks would result in a framework for accountability and reconciliation that has the consensus of the parties, the blessing of the affected population, and is condoned by the international community which has been watching this closely. Such a solution may involve mechanisms on the local level, such as *Mato Oput*, but also on the national level. But it must be stressed that Transitional Justice should go beyond Juba in terms of its application in Uganda. Building a sustainable peace requires a process of reconciliation within affected communities, and among regions. Given the complex history and nature of the war, accountability and reconciliation would have to be national in scale. Transitional justice should allow for Ugandan society as a whole to look at its history and to decide to steer a new course in certain areas, and forge a new relationship between citizen and state. This must by definition include a much wider group of actors than are currently represented at Juba. The question of whether Uganda is ready for such a wider process should be evaluated independently from what transpires at Juba, although a positive outcome at Juba may serve to inspire a wider approach.

People Responsible for implementing Transitional Justice

Transitional Justice may be relevant at many levels, including at a local level, where traditional and religious leaders as well as civil society groups such as women's groups may play a critical role; the national level, and the international level. In most societies such as South Africa, civil society has been a key actor in the promotion of Transitional Justice. Victim populations should also be closely consulted in the formulation of a strategy. However, ultimately a Transitional Justice program also needs the support of government. The role of the international community is to facilitate or assist processes that are embarked upon at the national level, but it is important that Transitional Justice is a domestic choice, led and driven by local actors. It is important that those actors are adequately prepared before embarking on any such process.

The Relationship between Truth and Accountability

One concern that arises when determining the truth about certain events in history is how to address those crimes that are revealed. Is the truth enough or is there need to be a level of accountability? In South Africa this question was confronted when it implemented a Truth and Reconciliation Commission that allowed individuals to apply for amnesty in exchange for a full disclosure of their crimes. However, the circumstances in South Africa were unique and its approach has not been followed elsewhere. Many examples since South Africa demonstrate that the truth is often not sufficient and that prosecutions or criminal proceedings are necessary to both demonstrate political support for victims and serve as a deterrent for future crimes. For instance, in Sierra Leone a Truth and Reconciliation Commission functioned simultaneously with a Special Court established with the assistance of the United Nations. In Liberia, the Truth and Reconciliation Commission has the power to recommend prosecutions.

Amnesty and Transitional Justice

Amnesties for insurgencies (as opposed to grave violations of human rights) are generally lawful under international law. Amnesty has been the government policy most used for dealing with insurgents who may have committed crimes. The Amnesty law of 1987 excluded genocide, war crimes and rape. The Amnesty Act 2000 makes no such exceptions, but individuals may be excluded at the discretion of the Minister of the Interior. The implementation of Transitional Justice measures in Uganda would indicate a change in policy from the current amnesty, which may cover grave violations. While such measures may not necessarily need an amendment of the Amnesty Act, it may affect future eligibility for some categories of people.

What war victims want

According to a survey by the Human Rights Center at Berkeley, 2500 respondents in Gulu, Kitgum, Lira and Soroti were asked what they would like to see happen to those who have committed violations in the war in the North. The report, "Forgotten Voices: a Population-Based Survey on Attitudes about Peace and Justice in Northern Uganda" found that of the total respondents,

approximately 66% believed that LRA leaders responsible for violations should be given trial and punished. Regarding those abuses committed by the Uganda People's Defence Forces, 51% felt there should be a trial and punishment. The point is that victims will always want different things. Some will emphasize forgiveness and reconciliation whereas others would prefer punishment.

What is the relevance of the International Criminal Court to Transitional Justice?

The International Criminal Court reflects a commitment by all its State Parties that certain crimes need to be addressed. However, the ICC is a "Court of Last Resort" so that it gives preference to national efforts to deal with crimes. When the ICC issued arrest warrants for senior LRA leaders, made public in Oct. 2005, these were widely seen as controversial. It was able to do so because the Ugandan government argued that it was unable to investigate the LRA itself since they were not within its territory. The situation may change if there is an Agreement signed at Juba and the LRA returns to Uganda. In that situation, Uganda may then argue that it is able to implement its own investigation. The Rome Statute allows for countries to make this argument even after arrest warrants have been issued, under the concept of "complementarity." However, these issues may be unlikely to be fully resolved during the talks themselves.

Traditional Justice and Transitional Justice

Traditional Justice Mechanisms have a limited geographic remit and are generally not implemented by the Government or through legislation. In this sense, they belong to a more informal category of mechanisms that seek to prevent or resolve conflicts at the local level. However, potentially traditional justice mechanisms may meet some of the goals of Transitional Justice, including truth-seeking and reparations. They may also play an important part in achieving post-conflict social cohesion and reintegration. A lot would depend on how they are implemented in practice, and whether those mechanisms meet some of the standards that are important for Transitional Justice mechanisms, including transparency, inclusiveness, avoiding further stigmatization and allowing for voluntary participation

Traditional Justice and Reconciliation

The reintegration of former LRA will remain a significant challenge. There are concerns that people might seek revenge against those they can identify as having killed their loved ones, or more generally that the LRA returning from the bush will be ostracized. The "Forgotten Voices" report found that for the perpetrators to be allowed back to their communities, 34% of the total respondents emphasized confession by the perpetrators as a pre-condition, whereas 56% would require an apology. It may be difficult to meet these expectations, but Transitional Justice mechanisms can play a role in assisting reintegration through allowing for acknowledgement of crimes on a broader level.

Significance of Reparations

Reparations should be defined to include compensatory, restitution, rehabilitative, and symbolic reparations. In northern Uganda, people frequently cite reparations as a means to reconciliation. Reparations can be given directly by perpetrators, although they most often lack the resources for this. More likely, the government will play an important part in providing reparations, either for violations committed in its name, or in acknowledgement that its policies to protect its citizens have failed. Considering the plight of the internally displaced, reparations may be a particularly appropriate measure for Northern Uganda. Reparations is an element common to traditional justice systems and the ICC, which has a Trust Fund for Victims. The most important point about reparations is that they should be given to victims not because they need it but because they deserve it. Our survey research in the “Forgotten Voices” demonstrated that 52% of respondents wanted to see financial compensation for victims, but a majority of respondents also indicated that they would be content with community, rather than individual, measures.

National Reconciliation is not only playing an important role in the Juba Peace talks. It is also very high on the Agenda of the common people all over Uganda. The discussions held and the results of the 12-14th Feb. 2007, consultative conference on the need for national reconciliation in Uganda that was spearheaded by the MA Peace and Conflict Studies Programme Makerere revealed that there is genuine interest in the national reconciliation process.

What needs to be done to reconcile Uganda?

- 1. Developing a shared vision of an interdependent and fair society in Uganda:* The development of a vision of a shared future requiring the involvement of the whole society, at all levels. Special attention should go to the narrow and confused concept of national identity mainly in terms of where one comes from. Subjective remembered history is a big hindrance to creation of a united Uganda. Inappropriate post conflict healing contributes significantly to bitterness among Ugandans.
- 2. Acknowledging and dealing with the past:* Acknowledging the hurt, losses, truths and suffering of the past. The Experience of armed political conflict has divided Ugandans. People have to acknowledge their role in conflicts, they have to learn from their past in a constructive way.
- 3. Building positive relationships:* Relationship building or renewal following violent conflict addressing issues of trust, prejudice, intolerance in this process, resulting in accepting commonalities and differences, and embracing and engaging with those who are different to us. Leaders in Uganda contribute significantly towards the narrowness in perception of national identity. There is need for the political leadership at various levels (national, religious, civil society, etc.) to agree that national reconciliation is an important issue in Uganda.
- 4. Significant cultural and attitudinal change:* Many Ugandans know very little about other groups of people who live in other parts of the country. People need to change their attitudes towards one another. The culture of suspicion, fear and

mistrust should be broken down and opportunities and space opened up in which people can hear and be heard. Dialogue on the issue of national reconciliation would be important for promoting unity and a shared national identity.

5. *Substantial social, economic and political change*: The social, economic and political structures are identified, reconstructed or addressed, and transformed. For example: The Media should start giving factual information of all parts of the country and hence dispel some stereotypes among Ugandans. Perceived lack of service by central government lessens a sense of belonging to Uganda .

The current Juba peace talks and negotiations between the Government of Uganda (GoU) and the Lord's Resistance Army (LRA) offers the grandest opportunity ever, to peacefully resolve the 20-year Northern Uganda insurgency frequently regarded as the Kony war. The above is attested to by the drastic increased interest of and several regional African governments like though not limited to Sudan , Kenya and South Africa , international bodies like the UN, AU and ICC, local and international humanitarian agencies, religious movements and many other institutions. They have unceasingly made efforts compelling the parties (GoU and LRA) to talk peace until a compressive peace agreement has been reached. This scenario has positively contributed to creating a peaceful environment vital for the psychological boost of the Internally Displaced Persons (IDPs) in the process of return to their original homes. However, there are still typical and critical points of departure on the desirable outcomes of the peace talks, in order to heal in a significant and sustainable manner the psychological, socio-economic and political wounds of this conflict. Ideally, accountability and reconciliation agenda item 3 of the Juba peace talks is an opportune moment to contribute to healing some of these wounds.

Aware that at the point of writing, the reflections in this paper are speculative, considering that the parties in the talks are yet to start discussing this agenda item, it is imperative now for peace scholars and implementers to ponder over these reflections to inform the Juba debates and post Juba implementation protocol on the issue of accountability and reconciliation. Although the two terms of accountability and reconciliation have been well studied by many scholars on transitional justice, in the case of northern Uganda and the Juba peace talks, the basic problem of these terms is that not all involved stakeholders as already mentioned are agreed on how to define or implement them. A careful trend analysis of the debates on accountability and reconciliation within northern Uganda and Uganda at large indicates shifts from reliance on such earlier mechanisms like the International Criminal Court (ICC), whose arrest warrants are now perceived by many in the talks as a stumbling block for the success of the peace talks. The shift from the ICC created a strong affection towards the traditional justice mechanism "*mato oput*", viewed as a way of reconciling the war affected communities through forgiveness and rebuilding broken relationships, while the ICC perceived to be retributive and punishment driven. In what seems to be pre-emptive of the Juba peace talks agenda item 3, both the GoU and the LRA seem to support this option.

Concurrently, academic and political discourse is seemingly changing the goal posts from *'peace first, justice later'* to *'peace at all costs'* debates. The pressure is mounting on the Juba peace process protagonists, especially GoU delegation, which has been compelled not to leave Juba until they bring a peace deal for Northern Uganda. Peace for Northern Uganda is a paramount need. There is a danger here of sweeping under the carpet the element of accountability for the horrendous atrocities committed on the innocent civilians of Northern Uganda in pursuit of peace at all costs. Coupled with this is the danger of collapsing the Juba peace talks into an amnesty process, to accommodate the war rather than setting the ground to create an enabling environment for healing the wounds of the war victims through an open space for accountability on both sides of GoU and the LRA.

To contribute meaningfully to the Juba and post Juba peace process, we need to ask ourselves some of these hard questions and attempt to explore possible actionable response. When we talk of reconciliation for Northern Uganda and Uganda at large, at what point in our history do we seek redress to start the healing of the conflict wounded Ugandans? Who is reconciling with whom? At and beyond Juba, when victims are put at the center, who should account to who? For sustainable reconciliation to ensure there is need for reparations. The challenge is who will meet them and in what format? Further reflection is needed on how all the above will be implemented.

The general agreement, which is also the task of the peace talks, is to arrive at an integrated comprehensive position to embrace all these concerns including the ICC. Though this is easily said, there is need to unpack this proposal, starting from the conceptual interpretation of what we are tasking Juba to package under agenda item 3. Whereas there are constitutional provisions (State objectives 3 of the 1995 Uganda Constitution) to address conflict resolution, security and disaster management, apparently, Uganda has institutions to deal with security and disaster management but not conflict resolution. With such an omission, can the implementation protocol of the Juba Peace process especially agenda item 3 be properly institutionally grounded? Furthermore, from a peace practitioner's view in Uganda, there is a conceptual dilemma wherein many people attempt to push both historical and contemporary national political and economic malfunctions into the basket of reconciliation for redress.

To support and meaningfully enrich further the Juba peace process and agenda item 3 in particular, there is need of a more pro-victim engagement with the agenda item. This could take the trend of creating awareness over the issues and the benefits of supporting the agenda items and how these will translate into healing and community development. The government ought to expedite the legislation implementing the traditional justice systems starting with those of war affected communities in North and North Eastern Uganda. Emphasis herein should focus on substantial realisation and incorporation of the rights of women and children within the context of Juba agenda item 3. The peace process at Juba should be linked to some of the international development in transitional justice, such as UN Security Council resolution 1325 to incorporate women in

conflict resolution, which in the case of Juba peace talks; many gender activists are conspicuously absent.

Women and traditional forms of Justice

Some general trends can be identified that affect women:

- Women tend to be absent as decision makers, judges or prosecutors
- Gender based violence is often not recognized as a crime and therefore is not addressed
- For a variety of reasons including social pressure, and fear of bringing shame, women are often reluctant to come forward and make accusations of rape and other forms of sexual assaults.

How do women contribute to transitional justice?

Although very little has been documented, women have a positive impact in a number of ways:

- Women as planners and designers
- Women and judges and commissioners
- Women as witnesses
- Women as perpetrators
- Women as civil society advocates
- Women as bridges to local communities

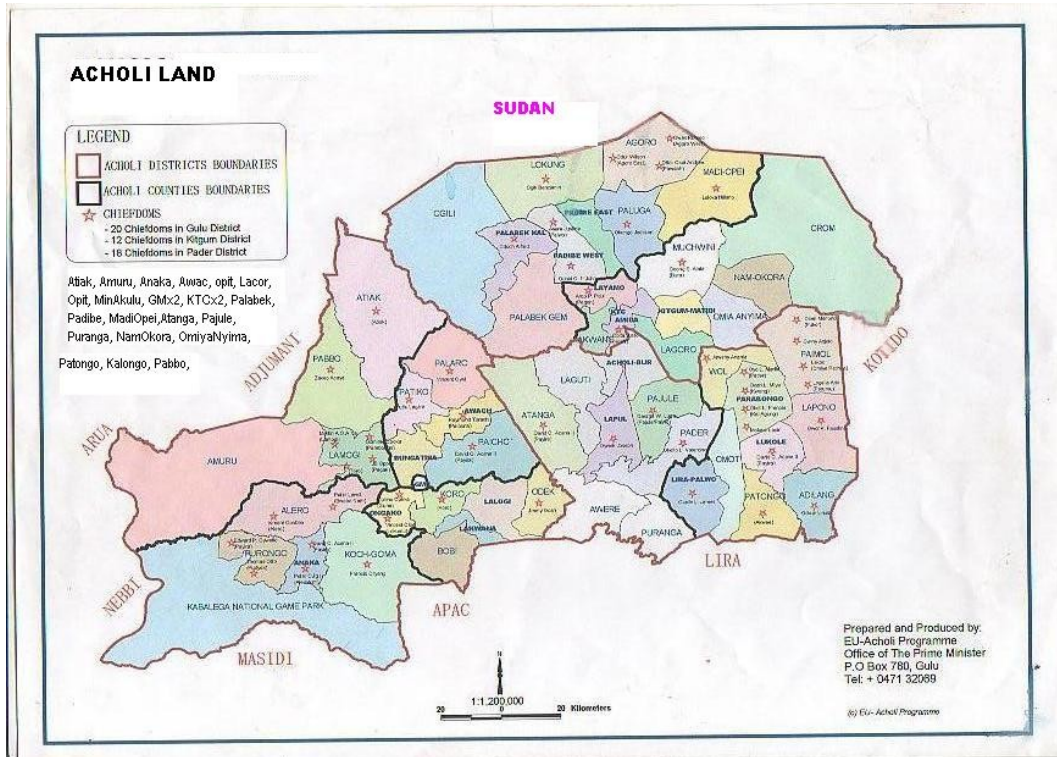
Taking strategic action: what can women peace builders do?

- Advocate for women's participation in transitional justice mechanisms at international, national and local levels
- Connect with international women's gender justice organization for resources, tools, models, lessons learned and information on international law.
- Ensure that women are directly involved in the design and establishment of the transitional justice mechanisms so that women are represented in their structures and a gender's perspective and women's concerns are reflected in their mandate.

- With other women groups, strategize to determine how women's needs can best be addressed in transitional justice mechanism, whether through women's specific components like special hearing or integrated throughout the programme.

- Provide materials and workshops for judges, prosecutors, advocates, commissioners and genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard, *stresses* other leaders to raise awareness of women's issues and concerns with regard to transitional justice and about the lessons learned in other cases and models.
- Engage with the media to disseminate information.
- Inform the public of the importance of transitional justice and of the critical role of women in these processes.
- Conduct awareness raising events and call for open hearings to ensure that the public is informed and can engage with the criminal justice process and to ensure that expectations regarding its outcomes are appropriate.
- Encourage dialogue and public debate on transitional justice, including amnesty and reparations.
- Actively participate in transitional justice mechanisms. Engage directly with the process;
- Gather and disseminate information
- Provide testimonies and include direct experiences, as well as those of friends and family members
- Develop victims support and empowerment measures

Annex



The Acholi ritual of reconciliation at all levels of Acholi social and political systems

I. Breaking the egg²

This is how the rite is performed:

The news has just come over the local FM radio station that Otim (not real name) who had been abducted and detained by rebels of the Lord's Resistance Army (LRA) of Joseph Kony some ten years ago in 1994 escaped and would soon be home. He gave himself up to the Uganda regular army, Uganda Peoples Defence Forces, UPDF through a Local councillor I (LCI) of Paibona location in Aswa county of Gulu district. The army kept Otim in Lugore army detach for some weeks until there was a vehicle to transport him to Gulu. Otim's parents heard that their only son has finally returned after million earnest prayers they offered to God for his safety.

Otim's father Oto (not real name) and his mother Aber (not real name) reported

² Significance of this rite.

The rite of breaking the egg has the meaning of restoring psychological and moral confidence in a person as an individual and community. The acholi group of people believes strongly in communal life. "I am because we are, we are because I am" as African philosophers are often correctly quoted to put it. Whenever someone leaves the common life and lives outside wilfully or un-wilfully the person becomes unclean and in need of cleansing before re-unification. Common life must be guarded very scrupulously.

the safe return of their son to an elder³ of their homestead to make arrangements to receive and eventually reunite Otim with the community. Everyone of Oto and Aber's neighbours who heard of Otim's safe return were coming to share the great news. A courtyard is fully packed with well wishers from all over the neighbourhood who want to see and hug Otim after ten years. Otim's parents belong to the Pa-Atiko clan in the Ajulu hills.

One thing is sure, Otim has stayed a whole decade away and he has grown up with all sorts of experiences which have made him unclean. He needs purification.

Preparations:

The elder has prepared an egg and a tender plant "pobo" generally known for its strong but slippery fibres to tie objects together. The fresh egg is placed down visibly on the pathway leading into the homestead. The "pobo" is split into two and placed on the same pathway leading into the homestead keeping the fresh egg in the middle. There is a new calabash, a local water container. It contains water and some pieces of a creeping plant, anyero⁴.

The water container is held by both hands of the elder with a small bunch of wet grass prepared to sprinkle-bless Otim. Otim meets the elder just a few meters from the standing egg. The congregation of well wishers are standing behind the elder in the courtyard. The congregation is the clean welcoming end Otim the unclean receiving. The elder daringly approaches Otim, holds him back as he approaches the entrance into the homestead. The elder blesses Otim with water by sprinkling water on the chest and on both legs and his feet symbolizing a washing act of the heart and feet. He then shows Otim the standing egg and Otim steps over breaking it⁵ open. He then enters and joins his people in the courtyard where he like them enjoys a life free of sins committed and of omissions. The congregation welcomes Otim with shouts of joy and ululations. Otim now joins members of his family in the homestead.

Spontaneous individual confession⁶

While here in the homestead Otim begins to freely interact with the community members, talk freely and confess all he had committed and omitted while in rebels' captivity. The elders and parents listen carefully and attentively with gestures to encourage Otim to confess all he has to confess. Finished the confessions, Otim is assured of a warm welcome and pardon. He is still accepted as one of the family he left against his will. The listeners assure Otim they too need his pardon for not having done enough in their power to protect Otim at the time of abduction by the rebels.

³ The elder is an authorised master of ceremony of the Acholi ritual of purification known as "nyonno tongweno".

⁴ Anyero is a noun from Acholi word infinitive ka nyero which means to laugh. So anyero is a creeping plant that causes laughter, brings joy and happiness.

⁵ The fresh egg symbolizes innocence and newness of life. Otim's life has been purified and now returned to the innocence like that of an egg in his homestead.

⁶ Although the Acholi fights and may even kill a person he or she believes that such act is the greatest offence that heavily weighs on the killer. The only way to get its anger out of ones life it is to confess it and have it compensated. Any killing pre-meditated or not haunts an Acholi who wastes no time to have it appeased.

In his confession Otim said he had been ordered by the rebels high command to abduct some children of his village. He and other six rebels came to his own village, got and killed one Okeny son of Odongtoo of Pa-Cwa in Pader who had come to visit his aunt in Paibona. He confessed to personally killing the boy. The elders of Pa-Atiko must know of this capital offence immediately. The following week there would be an assembly of all the clan leaders of Pa-Atiko to address the issue. The understanding is that Otim of Pa-Atiko clan has killed someone of Pa-Cwa, therefore the whole of Pa-Atiko has killed someone. The Pa-Cwa people must be informed immediately by the reconciliation committee (*kal-kwaro*⁷) of Pa-Atiko⁸.

The committee meets the Pa-Cwa *kal kwaro* and breaks the sad news of the capital offence committed by the Pa-Atiko clan.

Before the *Pa-Cwa kal kwaro*:

“We unfortunately abducted and killed your son Okeny and now we have come to humbly beg for pardon and declare that we are ready to pay compensation for such capital offence, *cullu kwo*⁹”.

Bending the spear (or Gommo tong).

The bending of spear by warring factions in Acholi is the culmination of conflict resolution between one state and another. In order to help foreigners comprehend this last ritual in the process of reconciliation we need first to know how the Acholi states distinguished themselves from members of the other ethnic groups who lived round them.

After stopping the battles the heads of member states of the confederacy would convene a big meeting to ascertain the cause of the conflict and usually resolve it to the satisfaction of both parties. The state which was found to be wrong would sincerely acknowledge the verdict and repent. Likewise the other party would accept the repentance of the aggressor wholeheartedly. Thereafter, the diviners would prescribe the appropriate rite of reconciliation. This usually ended with both sides making solemn vow never again to allow recalcitrant youths to cause conflict. In most cases the elders would chant together “You spirits of our forefathers, the great misfortune which befell us was the work of reckless youths who have not lived on earth long enough to know good and evil deeds. They have plunged us into undesirable mutual self destruction which has claimed so many lives. We now vow severely to discipline these youths and ensure that they never again plunge our society into a dark period in which blood could be shed for no cause. To affirm this vow, we now bend the blades of our spears to make them unusable to pierce human flesh. And you our sons who have died in the senseless war come into the shrines of our forefathers and help to heal the wounds. Those who wish our two people bad luck, let the ill will be carried by the sun to the west and sink with it, deep and deep, deep down...”.

Making compensation or *Cullu kwor*.

⁷ “Kal-kwaro” is Acholi word for clan tribunal”.

⁸ Once Otim has confessed to the killing he as an individual goes into the background of responsibility. His clan assumes the killing in preparation for expiation.

⁹ The Acholi expression *cullu kwor* literally means paying compensation. But it may also mean taking revenge. IN petty quarrels Acholi people do not make allowance for forgiveness. “Kwor pe top i koma they would say. In the context of reconciliation the expression means admitting guilt, seeking purification and making up for the damage.

“Compensation had to be paid for the killing of a member of the village-lineage by a stranger. This took the form either of cattle which would enable the lineage to replace the dead member through contracting another union, or by the handing over a girl, *nyako kwor*, directly as wife for the lineage. This is known as *culo kwoo*, payment for a life”.¹⁰ Paying compensation is of two kinds; for a purposeful offence committed, *cullu kwor* and for an unwillful occurrence, *tobong*. Let me describe the first one: On hearing the confession of the Pa-Atiko clan from their representative committee Pa-Cwa in a reflex mood is enraged. Anger and shouts of cry are heard all over. The elders of Pa_Cwa move in immediately to restrain mourners and calm the situation. The elders of Pa-Atiko are assured of their safety to stay with the Pa-Cwa and return to their clan to prepare for the rite of compensation and reconciliation (*matto opwut*). So both committee of the Pa-Atiko killer and the victim of Pa-cwa clan reach an accord to have Okeny’s killing compensated. On the committee’s return to Pa-Atiko a compensation tax is levied on every Pa-Atiko house hold¹¹. A sum of Uganda shillings 5,000.00 five thousand would be collected by the representative of all households of Pa-Atiko to pay compensation to Pa-Cwa usually in the next dry season. The payment would be made contemporarily with the rite of reconciliation *matto opwu*^{12t}. The second compensation is paid when one kills a person unintentionally. For example, a aunt goes to fetch water in some distant well leaving her own niece asleep in the house. While she is still away the child wakes up and begins to search the aunt but tumbles into an oven built on the ground in the house and dies. The aunt will pay compensation to the family of the niece child and because the death of the niece was not intended the aunt is made to pay a less severe punishment, *tobong*.

II. Reconciliation, *Matto Opwut*.

The Acholi rite of reconciliation is a long process of purification for psychological, moral and social re-integration. The process has the initial purification rite, preparation of the reconciliation mix of “acuga”, fruit juice, “opwut” roots.

A. Preparation:

Preparing the reconciliation mix for drink is done by an elderly person (senior of all in age). The elder prepares from the roots of the opwut plant a drink. The roots are dug up and pounded on a stone to form some sort of powder. The powder is mixed up with the acuga fruit juice in a new calabash carefully placed on the ground.

B. Short rite of purification:

Before the family of the killer sets to go to the designated village site of reconciliation, a brief rite of purification is performed by simply spitting into the mouth of the reconciliation sheep. The killer holds open the mouth of the sheep

¹⁰ GIRLING F.K. (1960) *The Acholi of Uganda*, London p.66.

¹¹ Before the coming of the British Administrators in Acholiland a person killed is compensated by a girl. But since 1934 a compensation of ten cows have replaced that of a girl by order of the colonial administrators. One wonders why the compensation was so severe as to give a girl in place of a person killed. To the Acholi life is sacred and when lost it cannot be found again except in another life for the posterity of the bereaved clan.

¹² *Matto Opwut* are Acholi words for drinking the bitter roots.

he is leading and spits some saliva¹³ into it. That done, he then leads the black sheep to the farmyard of the mother of the person killed. On reaching the farmyard, the sheep is laid on its back on the ground and its head in the north direction. The sheep is then stabbed by one of the elderly persons, master of the ceremony with a sharp knife. Successively another of the elderly persons lay another redish-white sheep on its back on the ground, its head in the opposite south direction. This sheep is presented to the elderly persons by the family of the person killed. The elder then stabs it also with a sharp knife . The close relatives of the killer gather in the north direction of their slain sheep and like wise the close relatives of the person killed gather on the side of their sheep. The two opposite direction, north and south of the heads of the ritual sheep signify the diversification of enmity which must be brought close together and the families of the two will no longer entertain hostilities but become reconciled and entertain peace among themselves.

C. Drinking the reconciliation mix, *matto opwut*.



The elderly persons, masters of ceremony, will take the blood of the two slaughtered sheep and pour it into the *opwut* and *acuga* mix to form a single mix of reconciliation drink. The close relatives of the person killed and that of the killer come close to each other from their different directions in a gesture signifying end to hostilities and beginning of reconciliation.

Having converged on the calabash containing the mix of the reconciliation drink, the killer and a close relative of the one killed begin to drink.

They both kneel down and close on to the calabash, their hands are folded behind and they bend on to drink from the calabash without holding it by hands. In this way they drink from the calabash three times and then leave way to their close relatives who have come to witness the ritual ceremony. The killer will always drink first followed by the relative of the one killed. The mother of the one

¹³ It is to be noted that the Acholi people considers saliva a holy thing of human person. Saliva is always friendly and is not poisonous. It is used for blessing. An elderly person or any person wanting to bless his or her child would often spit into the hands and chest of a person to be blessed.

killed always stands by bitterly weeping her slain son or daughter. The elders will always keep her company in an effort to show kindness and affection and restrain her from excessive mourning which could otherwise provoke the close relatives of the slain into revenge. They also invite her to partake of the *opwut* reconciliation mix.

D. Consuming the liver of the sacrificial sheep

Afterwards the elders roast the liver¹⁴ of the two sheep, cut them into pieces and put them on the fresh hides of the slaughtered sheep and then eat them. The killer takes a piece of liver and feeds it into the mouth of the close relative of the slain person who consumes it. Likewise the close relative of the slain takes a piece of liver and feeds it into the mouth of the killer who consumes it. Meantime the rest of the meat of the sheep is cooked for consumption.

E. Examination of and blessing the indemnity

Meanwhile the meat is cooking in the fire some elders come up to examine the indemnity which the family of the killer must pay to the family of the slain person. They are two fat and healthy cows which have become substitute of paying indemnity with a person namely a girl. When accepted, the elders bless the indemnity by smearing the chest of each person present with the content of the entrails of the sheep. The content is put on the chest of all persons present saying:

“Let these cows produce many and only female off-springs.
We all do mistakes, May peace and calm now return among us”.

E. Celebrating the reconciliation:

In this way reconciliation rite is accomplished. An older person begins to drum from the royal *bwola* drum. The women shout ululations and clan mottos while an old man drums. On hearing the drums sounded the people from all over the neighbourhood come and join in the happy dance and merry making. The feasting continuous even for a second day when more bulls are slaughtered to feed the people who have witnessed the reconciliation. Like the funeral rites, the Acholi reconciliation rites are generally celebrated during the dry season to allow longer festivity.

¹⁴ Why do they roast the liver in particular? To the Acholi liver is an important organ. It is the seat of joy, happiness, love and hatred – thus the common Acholi expressions are: *Cwinya yom*, I am glad or I am happy, literally my liver is soft or joyful. In case of hatred the Acholi expression is *cwinya dag in*, I hate you or literally my liver hates you. It is therefore understandable that the Acholi considers liver some organ of importance.

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