

Alternative Criminal Justice Approaches to Gross Human Rights Violations [Case of northern Uganda]

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Introduction

Northern Uganda experienced over two decades of violent conflict by various armed groups which started as a rebellion by the Uganda People's Democratic Army (UPDA) comprised mostly of army officers who had been defeated and had fled the capital city Kampala when Uganda's current President Yoweri Museveni, leader of the National Resistance Army/Movement (NRA/M), took power in 1986.² Of these groups the most vicious were remnants of the rebels who did not surrender under the 1988 peace accord between the UPDA and NRA with time transformed into a highly structured rebel army and durable movement with cult-like qualities called the Lord's Resistance Army (LRA).³

With financial and military support from Khartoum, and by using South Sudan as a launch pad for its operations, the LRA waged a campaign with frequent use of terror tactics. Civilians, often accused of collaborating with the government, were their main target and atrocities included killings, abductions, and horrific mutilations such as cutting off of limbs, ears, noses, or lips. The atrocities of the LRA and the violence was deliberately aimed at instilling terror, violating local values or power structures, swelling their ranks through abductions, and reinforcing internal cohesion. The United Nations estimates that over 1.6 million people were displaced from their homes and forced to live in squalid conditions in camps for internally displaced persons and about 30,000 children have been abducted by the rebels⁴.

Views on how the conflict could be resolved were always drastically divided between northern Uganda, where the conflict was playing out, and the rest of the country, which was generally prospering.⁵ In the North, religious and traditional leaders increasingly came together to try to find peaceful local solutions to the conflict, involving dialogue and a focus on reintegration of former LRA combatants.⁶ They were soon joined by coalitions of non-governmental organizations who have been very vocal about the continued need for dialogue and the need to use traditional ceremonies to deal with LRA crimes. This is not to suggest that views in the north have been uniform; there are drastic differences between regions. It is also important to note that there was a robust local debate on accountability that preceded the involvement of the International Criminal Court (ICC) in Uganda.

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² Yoweri Museveni leader of the rebel NRA/M took power after a five-year protracted war in Luwero Triangle against the Obote II Government. He overthrew the Tito Okello Military Junta in January 1986.

³ The name is thought to be a parody on the National Resistance Army/Movement . Ruddy Doom and Koen Vlassenroot,"Kony's message: A new Koine? The Lords Resistance Army in Northern Uganda," 98 *African Affairs* 98, 1999, at 22.

⁴ United Nations "Child Soldiers at Centre of Mounting Humanitarian Crisis"

⁵ The dividing line is often said to run along the river Nile in the north.

⁶ ARLPI, CSOPNU etc. See Barney Afako, *Reconciliation and Justice: Mato Oput and the Amnesty Act*, Conciliation Resources 2002.

Passage of the Amnesty Act cap294

One such effort was the passage of a comprehensive Amnesty Act in 2000. The Amnesty Act is unique because: (1) it was initiated by affected groups and was supported by a countrywide consultation prior to coming into force;⁷ and (2) the amnesty continues to enjoy a level of support including among populations most affected by the violence.⁸ The amnesty was construed as a gesture to reach out to those who have been abducted, as a measure of confidence for choosing a path alternative to the LRA.⁹ Reporters under the Amnesty Act are simply required to renounce rebellion and are then eligible for reintegration—they are not required to divulge information about atrocities or participate in any other kind of justice process and for this reason it has been criticized. Some also believe that the amnesty has focused more in facilitating the reintegration of perpetrators at the expense of the victims. The Amnesty Commission hands out certificates and reintegration packages. So far about 26,000 ex-combatants have so far benefitted from the amnesty process in Uganda half of whom are from the LRA alone.

Role of Traditional Justice

A second approach promoted by traditional and religious leaders including civil society activists in the north is the use of traditional restorative justice ceremonies to reintegrate former LRA members in the communities. In the local traditional justice measures, crime is viewed as a violation of communities and the relationships among the people. Its objective is to address the violations and restore social relationships. It allows the individual perpetrator to accept his mistakes, take responsibility for his/her actions and seek forgiveness. These ceremonies can be found in part of Acholi traditions and encompass a wide array processes, ranging from the simple cleansing ceremonies to the more elaborate ceremony of the *Mato Oput*. *Mato Oput* refers to the “drinking the bitter root” and is both a process and a ritual ceremony that aims at restoring relationships between clans that would have been affected by either an intentional murder or accidental killing¹⁰. It involves an extended negotiation between the clans of the perpetrator and the victim, to arrive at a common version of events; an agreed compensation; and a reconciliation ceremony which culminates in the mutual drinking of the crushed bitter root. It is believed that the process can bring true healing and contribute to restoring social harmony in communities.

Despite their valuable contribution to justice and conflict resolution traditional justice still faces challenges; For instance they were applied in situations where the perpetrator and victims can easily be identified but in situations of mass crimes given the scale and nature of the atrocities, it might pose a challenge to know who the perpetrators of a particular violation were. They have also been criticized for being male dominated and that they provide less room for women to

⁷ Unlike many other amnesties, this amnesty was not requested by those who would seek to benefit from it.

⁸ ICTJ and the Human Rights Center at University of California, Berkeley, “Forgotten Voices, A Population-Based Survey on Attitudes about Peace and Justice in Northern Uganda.” July 2005; Conciliation Resources and QPSW, “Coming Home: Understanding why Commanders of the Lord’s Resistance Army Choose to Return to a Civilian Life.” May 2006. Uganda had several amnesties before the Amnesty Act of 2000, including an Amnesty Statute in 1987, but it excluded genocide, murder, kidnapping, and rape.

⁹ Amnesty Act (2000): Preamble: “[I]t is the expressed desire of the people of Uganda to end armed hostilities, reconcile with those who have caused suffering and rebuild their communities.”

¹⁰ Liu Institute for Global Issues and Gulu District NGO Forum, “Roco Wat i Acoli” Restoring relations in Acholi-land Traditional Approaches to Reintegration and Justice

participate as decision makers and as a result, their valuable contribution to the process could be missed. Given their informal nature, they lack formal recognition as a complimentary arm of administering justice.

The Juba peace talks and the accountability debate

On June 29, 2007, the Lord's Resistance Army and the Government of Uganda signed an Agreement on Accountability and Reconciliation, and on 19 Feb. 2008 an Annexure was signed. Compared to other peace agreements, the Juba Agreement is very comprehensive and may be seen as exemplary in laying out an approach to accountability and reconciliation. It is also highly significant in terms of acknowledging the need for a variety of mechanisms to be implemented simultaneously.

The Agreement on Accountability and Reconciliation (Agreement) and its Annexure are the driving force behind the government and international community's current exploration of implementing transitional justice today in Uganda. Additional transitional justice issues, pertaining to root causes of the conflict, reparations, and the reintegration of former LRA fighters can also be found in the Agreement on Comprehensive Solutions¹¹ and the Agreement on Disarmament, Demobilization, and Reintegration,¹² respectively, but the main issues are contained in the Agreement and its Annexure.

The Agreement seeks to balance two essential notions: justice on the one hand, and the “restoration of broken relationships” on the other.¹³ The Annexure further specifies the mechanisms that will form part of an “overarching justice framework”, and the ways in which they relate to each other¹⁴. An important decision that was taken at Juba was that no single mechanism would suffice but that multiple mechanisms were necessary, including mechanisms dealing with formal justice, traditional justice, truth-seeking, reparations, Amnesty and Ugandan Human Rights Commissions. These institutions are envisaged to function in a complementary fashion to form an integrated approach to justice, avoiding overlaps and concerns about double jeopardy.

The Juba Agreement on Accountability and Reconciliation also designates traditional justice as a “central part of the framework for accountability and reconciliation.” It recognizes the diversity of mechanisms available, making specific reference to *Culo Kwor*, *Mato Oput*, *Kayo Cuk*, *Ailuc* and *Tonu ci Koka*.¹⁵ Under the Annexure, the Government is under an obligation to examine these mechanisms “with a view to identifying the most appropriate role for such

¹¹ See Agreement on Comprehensive Solutions, 2 May 2007. In particular, the Agreement makes reference to Return, Resettlement and Rehabilitation of IDPs, the re-stocking of livestock to the North, and the restoration of land lost or damaged during the conflict (Paragraphs 9.0-14.6).

¹² See Agreement on Disarmament, Demobilization and Reintegration, 29 Feb 2008.

¹³ The Agreement on Accountability and Reconciliation defines reconciliation as the “process of restoring broken relationships and re-establishing harmony.” (see Definitions).

¹⁴ Agreement s. 5.2.

¹⁵ Agreement s. 3.1. For a more in-depth look at these mechanisms, see Baines, Erin. “Roco Wat I Acholi: Restoring Relationships in Acholiland: Traditional Approaches to Justice and Reintegration.” Justice and Reconciliation Project, 15 Sep 2005.

mechanisms.”¹⁶ There are some references intended to bring these processes within a human rights framework. To combat concerns that such measures may be coercive, the Annexure specifies that participation in these mechanisms will be voluntary.¹⁷ The Annexure specifies that the impact on women and children should be considered.¹⁸

The balance between accountability and reconciliation may play out between different mechanisms or even within the same mechanism. For instance, in the case of traditional justice, there may be an emphasis on accountability on the one hand, in the form of seeking truth through confession of particular offences, while also promoting reconciliation and reintegration of perpetrators and compensation of victims. However, the Agreement recognizes the inability of one mechanism to meet all justice needs. For example, if the overall devastation of the region is preventing traditional justice from having adequate resources to incorporate reparations, this could be met through another process such as a reparations program at the government level.¹⁹ Crucial to the balance between accountability and reconciliation will be a division of labor between the mechanisms and questions on how they combine.

During the negotiations there were epic struggles between those favoring international justice and the ICC as the ultimate instrument to combat impunity, and those favoring traditional or African forms of justice and the debates about which of these is superior dominated the talks themselves. Questions like “Whose Justice?” became a popular mantra,²⁰ about what was more appropriate: “Western-style” retributive justice or “African-style” restorative justice. At times, the discourse became dogmatic, as each side sought to prevail over the other. Traditional justice became identified with local ownership and the ICC with foreign imposition. However, proponents of the ICC argued that traditional justice was being used to disguise impunity. While this polarization was certainly evident in the discourse before the talks, and is still reflected in some literature, the talks themselves fortunately cast the debate in broader, more sophisticated terms which avoided this very stark dichotomy.

Both sides of the debate tried to romanticize their own system of justice. Those who showed strong support for traditional justice at times neglected the fact that certain ceremonies had not been regularly used and that infrastructure would need to be put in place to allow for their activation in response to mass crimes. This in turn raised complex questions regarding the legitimacy of traditional systems and their suitability to accommodate concerns particular to women and children; the need for voluntary participation; their interplay with other mechanisms; etc. In turn, supporters of the ICC also romanticized that system of justice, at times neglecting

¹⁶ Annexure s. 20.

¹⁷ Annexure to the Agreement on Accountability and Reconciliation, s. 22. Several reports have noted the diversity of opinions regarding traditional reconciliation ceremonies, including “Sharing the Burden of the Past: Peer Support and Self-Help Amongst Former Lord's Resistance Army Youth.” Justice and Reconciliation Project and Quaker Peace and Social Witness. May 2008.

¹⁸ Annexure s. 20.

¹⁹ For a discussion of the balance of reparations and reconciliation within a traditional justice process, see “The Cooling of Hearts: Community Truth-Telling in Acholiland.” Justice and Reconciliation Project, Special Report, July 2007.

²⁰ See for instance *Whose Justice? Perceptions of Uganda's Amnesty Act 2000: The Potential for Conflict Resolution and Long-Term Reconciliation*, Refugee Law Project Working Paper (Kampala, 2006).

the fact that most people in northern Uganda at the time had never heard of the Court before it became involved, that some perceived the ICC as biased; that people were very disappointed that the ICC itself could not arrest the LRA; and that socio-economic harms or indirect deaths attributable to the conflict due to the conditions in IDP camps could not easily be charged – and that as a consequence, one side of the conflict was not being investigated.

The Juba peace talks did not approach the issue as one of dichotomy, but rather as a menu of options. Traditional justice and other forms of accountability were not seen as mutually exclusive, but rather as potentially reinforcing principles. After all, the matter of the legal responsibility of senior LRA leaders was a relatively small part of the puzzle: and the focus was more about what should be done with the large number of former LRA combatants who had been abducted against their will, many of whom were underage, and who should be returned to the communities? What about the victims of the conflict- what should be done for them? These were some of the very difficult questions that the Agreement on Accountability and Reconciliation of the Juba peace negotiations sought to address and those involved in lending advice directly to the negotiations tended to grapple with these questions together, without dividing among local, national or international perspectives. Individuals like Barney Afako, legal advisor to the Mediator, and an excellent Ugandan human rights lawyer, played a key role. In the words of the head of the Ugandan Government delegation to the talks , Hon. Dr. Ruhakana Rugunda observed that:

“We have to find a solution that will be satisfactory to the vast majority of the victims. The objective is to come up with a solution that will not only be acceptable to the victims, but also acceptable to the affected, the country and the international community”.²¹

The final approach taken to the issue of accountability and reconciliation as reflected in the Agreement completely avoided an “either/or” approach. It respected the contours of the Rome Statute while also taking into account other important human rights principles, to suggest a comprehensive framework for transitional justice in Uganda. Since conclusion of the talks, the government through the Justice Law and Order Sector (JLOS)²² established a transitional justice working group to establish a legal framework for implementing transitional justice which provides for a comprehensive approach to justice, tackling the causes and consequences of the conflict through measures such as truth-seeking, amnesty, traditional justice, reparations including criminal justice.

JLOS has already prepared a draft national transitional justice policy which is due to be approved by Cabinet that captures these proposals. On the use of traditional justice, the government proposes to recognize the role of traditional justice for conflict resolution and put in place safeguards that protect the rights of parties that shall seek redress and to develop legislation

²¹ Address delivered by the Hon. Minister of Internal Affairs, Hon. Ruhakana Rugunda at the launch of the Transitional Justice Project of the Faculty of Law, Makerere University “Update on the Juba Peace Process and the Challenges Ahead” undated.

²² JLOS is a sector wide approach and includes institutions of government tasked with ensuring justice , law and order in the country

for guiding principles and jurisdiction of traditional justice measures. Uganda's struggle with peace and justice is not yet over, but future steps on justice should take into account this broader political context and the views of the most affected populations.

Conclusion

While there are sometimes tensions between requirements of the formal criminal justice system and those of alternative approaches to gross and systematic human rights violations, like traditional justice, they can play a complementary role in redressing harm to victims; involvement communities in seeking justice solutions as well as holding perpetrators accountable for their actions. Alternative criminal justice processes can also be empowering to communities and a reflection of their shared values.