



# **MOVING FORWARD**

**TRADITIONAL JUSTICE AND VICTIM PARTICIPATION IN NORTHERN UGANDA**

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# Contents

Abstract	iv
Introduction	1
Transitional justice and prosecutions	3
Amnesty	4
Community truth telling and reconciliation	5
Community reparations	7
Traditional justice: Clinging to the past?	9
References	12

## **Abstract**

Traditional justice practices are increasingly considered as a potential mechanism for conflict resolution and transitional justice. Northern Uganda is a case in point: traditional justice practices such as *Mato Oput* are about to be used for resolving war crimes and crimes against humanity committed during 22 years of conflict. Unfortunately traditional rituals and ceremonies are often presented in their 'ancient' and 'archaic' formats as they used to be practised in the past. Yet times have changed: new conflicts including mass atrocities have sprung up and new generations have been born who are not familiar with traditional practices. This has led traditional mechanisms to be viewed by many as at best supplementary to more direct western justice models. In moving forward, we need to ask whether traditional justice mechanisms can evolve and be adapted to take into consideration contemporary realities on the ground in ways which can complement the limitations of more standard forms of transitional justice.

## Introduction

Northern Uganda has been the scene of civil war since 1986, when the National Resistance Army (NRA) led by President Yoweri Museveni seized power in a military coup. Various rebel groups, composed mainly of ex-soldiers from northern Uganda, sprung up to resist the NRA. While most of these groups did not last long, the rebels of the Lord's Resistance Army (LRA) proved to be resilient and have resisted the government to date. During the conflict numerous atrocities have been committed on a scale that surpassed previous conflicts in the history of northern Uganda. Thousands of children were abducted to serve within the ranks of the LRA as child soldiers, porters and 'wives' for rebel commanders. In addition, over 1.8 million people were displaced and had to live in the squalid conditions of internally displaced persons' (IDP) camps.

In a bid to find a peaceful solution to the conflict, the Juba peace talks commenced in June 2006, under the auspices of the government of Southern Sudan.<sup>1</sup> From the outset, the Juba peace talks were complicated by the 'peace versus justice' dilemma. In October 2005 the International Criminal Court (ICC) issued arrest warrants for the five top commanders of the LRA. In the context of the Juba peace talks, peace-minded actors called for the suspension of these warrants to allow the negotiations with the LRA to progress. Probably in a bid to create a win-win situation, the June 2007 agreement on accountability and reconciliation stipulated the use of both formal and non-formal mechanisms.<sup>2</sup> At the centre of the formal mechanisms referred to in the agreement is the Special Division of the High Court (SDHC),<sup>3</sup> set up with the intention of prosecuting individuals alleged to have committed serious crimes during the conflict. The non-formal mechanisms refer to traditional justice mechanisms in northern Uganda, that is, traditional and customary practices which have for ages been used by local tribes for conflict resolution and the maintenance of social order. They include *Mato Oput* of the Acholi, *Kayo Cuk* of the Langi, *Ailuc* of the Iteso, *Ajupe* of the Kakwa, *Ajufe* of the Lugbara, *Aja* of the Alur, and the *Tolu Koka* of the Madi among others. Across the African continent, similar traditional justice mechanisms have been revived such as *Inkundla* in South Africa, *Gacaca* in Rwanda, *Magambo* in Mozambique, and *Bashingantahe* in Burundi. In their diversity these traditional justice mechanisms have all been associated with the concept of *Ubuntu*,<sup>4</sup> since most of them focus on the restoration of broken relations.

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1 At the time of writing, the final peace agreement had still not been signed although negotiations were concluded in April 2008.

2 Clause 21, 'Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement', June 2007.

3 Clause 7, 'Annexure to the agreement on accountability and reconciliation', February 2008.

4 See for example Nabudere (2004).

The use of these traditional mechanisms as measures of transitional justice has not been welcomed, especially by human rights purists who prefer the more direct punitive models. Despite advocacy by many civil society organisations<sup>5</sup> and other local actors for the inclusion of traditional mechanisms in transitional justice strategies – also with regard to war crimes and crimes against humanity – the reality on the ground remains that the traditional mechanisms are still largely viewed as supplementary measures, rather than as equivalent to formal mechanisms. The Ugandan government for example has long viewed the use of such traditional mechanisms as a ‘soft landing’<sup>6</sup> intended to allow the leaders of the LRA to escape punishment. In July 2008, the government of Uganda, through the Justice, Law and Order Sector (JLOS) began developing a transitional justice framework in anticipation of the signing of the final peace agreement. However, it was never considered a priority to include consultation with traditional leaders and researchers from civil society who are knowledgeable in traditional justice. Furthermore, while there has been a lot of activity since July 2008 to prepare the ground for the establishment of the SDHC, very little work has been done as far as traditional justice is concerned.

Another trend across the continent has been the tendency to view African traditional justice mechanisms as separate from alternative transitional justice processes such as truth seeking processes. The preparations by the Government of Uganda and JLOS indicate that they view alternative justice mechanisms such as amnesty, truth seeking and reparations as distinct from traditional justice mechanisms rather than as interdependent with these. In 2005, for example, a study by the Refugee Law Project found that ‘amnesty was taking place within local communities in which the possibility of legal and social pardon was seen to address the need for long term reconciliation more effectively than the more tangible forms of punishment meted out within the legal structure’ (Lomo and Hovil, 2004:5). Studies also indicate that the conflict resolution mechanisms of local communities in Uganda and elsewhere in Africa have been reinforced by truth telling and the opportunity for perpetrators to confess.<sup>7</sup> In traditional justice, reparations (or the payment of symbolic compensation) are also key determinant factors for reconciliation and the restoration of relations. Taken together a strong case could thus be made that transitional justice actors need to consider integrating traditional mechanisms into their strategies to foster victim participation and ownership more seriously.

Perhaps the reason why traditional justice mechanisms have not been taken more seriously is because most of them are still presented and discussed in their ‘ancient’ and ‘archaic’ formats without due regard to the challenges presented by contemporary conflicts and the environments within which they would have to operate. In northern Uganda, for example, *Mato Oput* is often presented and discussed in a manner that leads outsiders to conclude that it will remain ‘as it was in the beginning, is now and forever, amen’. This has consequently led many writers and researchers to dismiss traditional mechanisms as unsuitable for dealing with contemporary war crimes and crimes against humanity. And yet as lessons from Rwanda and the *Gacaca* indicate, traditional justice mechanisms can indeed be remodelled to deal with the challenges of contemporary conflicts. This paper argues that traditional justice mechanisms can and will need to be adapted in order to address contemporary challenges of transitional justice.

The following sections of this paper examine the potential role of traditional mechanisms in the contemporary setting of transitional justice. It first considers some of the key challenges faced by the standard approaches of retributive models of justice which are commonly

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5 These include, for example, the Refugee Law Project, the Justice and Reconciliation Project, the Office of the High Commissioner for Human Rights, the Northern Uganda Peace Initiative, and the Civil Society Coalition for Northern Uganda.

6 President Yoweri Museveni has always spoken of amnesty and traditional justice as outlets for granting the LRA a soft landing.

7 See for example Justice and Reconciliation Project (JRP) (2007a); Muruthi (2006).

preferred to restorative mechanisms. The paper then examines some of the major alternatives of restorative justice approaches – amnesty, truth seeking and reparations – and their nexus to traditional justice mechanisms. In this connection it then addresses the problematic way in which traditional justice mechanisms still tend to be presented in contemporary settings as clinging to the past. Overall, the paper suggests the need to remodel traditional justice mechanisms to adapt to contemporary settings, and the need to consider them as alternative justice mechanisms equivalent to, rather than as supplements for, Western models of justice.

## Transitional justice and prosecutions

Recent experience and ongoing research in the field of transitional justice support the use of alternative and restorative justice mechanisms rather than an exclusive reliance on retributive justice. In principle restorative justice need not be viewed as an alternative to the established criminal justice system. In refusing to reduce justice to retribution it asserts an inclusive and holistic notion of justice, while also recognising the need to hold perpetrators accountable for the crimes and atrocities they committed (Villa-Vicencio, 2004:33).

However, there still is an overall tendency by many nations to focus almost exclusively on retributive measures at the expense of promoting reconciliation and restoration despite the many weaknesses which have become evident. Trials, for example, are costly and their outcomes are uncertain. In South Africa, for instance, the former minister of defence and several notorious members of the apartheid defence force were tried and acquitted at great expense to the state (Doxtador, 2004a:39). Moreover, tribunals and criminal prosecutions have an almost exclusive focus on the perpetrator(s), often to the detriment of the victims (Borraine, 2004:69).

This is not to say the restorative mechanisms of traditional justice do not have their limitations and weaknesses as well. As the late South African jurist and a former minister of justice, Dullah Omar, suggests, ‘there is no such thing as pure justice in the real world. It is about fair play and the need to do what we can to balance the books as best as we can’ (Villa-Vicencio, 2004:33). So why, as the case of northern Uganda will illustrate, is more effort and attention put on ensuring that judicial mechanisms are functioning while restorative mechanisms such as traditional justice are often left to ‘sort themselves out’? Why are more resources channeled to the former than the latter?

In northern Uganda, for example, the Juba Peace Agreement on accountability and reconciliation calls for the use of both formal and non-formal mechanisms, the former being represented mainly by the SDHC, and the latter by the traditional justice mechanisms of northern Ugandan tribes such as the *Mato Oput* rituals of the Acholi. However while the government has gone ahead to make arrangements for the establishment of the SDHC, little has been done to prepare the groundwork for using traditional justice, let alone allocating budgets for it.

Yet as statistics indicate, a large percentage of ex-combatants are always not prosecuted and then have to be handled through restorative mechanisms. In Rwanda for example, six years after the genocide, approximately 120 000 Rwandans still remained in prison and it was estimated that it would take approximately 180 years to deal with all these individuals through the regular court system (Quinn, 2005). Even so, more resources were allocated to the criminal tribunals than to developing the *Gacaca* courts.

In northern Uganda, it is already evident that the majority of ex-combatants will have to go through the non-formal system, or traditional justice, as opposed to the SDHC. The principle judge of Uganda’s High Court declared that the SDHC would only prosecute a few senior commanders of the LRA and that this would either be equivalent to the five senior

LRA commanders indicted by the ICC or slightly more.<sup>8</sup> So assuming ten individuals were prosecuted under the SDHC, with the LRA's strength currently estimated at 4000 combatants, it would represent less than 1 per cent of the LRA, or to be more precise 0.25 per cent. The rest would be sent back to the communities to undergo traditional reconciliation processes.

Both retributive and restorative approaches have their respective roles in the field of transitional justice, with one focusing on ending the culture of impunity, and the other focusing on the restoration of broken community relationships. The prosecution of less than 1 per cent of the LRA would not make a big difference in fostering grassroots reconciliation. At the same time this kind of selective prosecution also undermines the norm of accountability itself. In the words of Boraine, 'this vexed question of selective prosecution is the one that seems to undermine the very idea of individual criminal responsibility so fundamental to the rule of law' (2004).

In concluding this section, it may be suggested that there is an urgent need to begin considering traditional justice mechanisms at least as equally significant to formal judicial justice mechanisms. Not only should the relevance of traditional mechanisms be recognised, but significant resources and time need to be channelled towards their development. In addition, there is a need to ensure that traditional justice mechanisms are integrated in the design of other established alternative transitional justice mechanism such as amnesty, truth recovery and reparations.

## Amnesty

Amnesty is acknowledged by many scholars as a key component in the peaceful resolution of ongoing conflicts. By blocking the prosecution of the perpetrators of atrocities and gross violations of human rights, amnesty also amounts to giving them impunity and so amnesty is highly controversial for transitional justice. For countries divided by civil war, wracked by atrocity and faced with the daunting task of moving from a criminal regime to democracy, the contradictions of amnesty are not easy to resolve (Doxtador, 2004a:39). South Africa's amnesty process, in the work of the Truth and Reconciliation Commission (TRC), has garnered substantial praise in that it provided for an individual and conditional form of amnesty rather than a blanket amnesty by decree. It also sparked significant controversy (Institute for Justice and Reconciliation [IJR], 2003). While some have argued that the disclosure by applicants presented to the Amnesty Committee has helped to uncover past atrocities, others argue that perpetrators offered relatively little new information (IJR, 2003).

In addition, critics ask to what extent the South African amnesty process actually contributed in promoting reconciliation, and whether it made a difference in reconciling victims and perpetrators. In practice as Mary Burton, one of the commissioners of the TRC lamented, 'amnesty was the price we paid for peace'.<sup>9</sup> Would South Africa's amnesty process have made a difference if it had had a 'compulsory' provision for perpetrators to dialogue with victims? The same questions can be asked of Uganda's amnesty process, which leaves a lot to be desired, especially with regard to promoting reconciliation between ex-combatants and victim communities. Since it came into effect in 2002, the Ugandan amnesty process has been pursued largely as a top-down approach irrespective of the perceptions of war-affected communities about the process.

Amnesty is compatible with various African traditional cultures of forgiveness and restoration of relations. Archbishop Desmond Tutu, the chairperson of the South African TRC, admitted that in leading the TRC he drew upon both his Christian and African values (Murithi, 2006). Accordingly amnesty was embraced by the war-affected communities in northern Uganda due both to its congruity with cultural values of forgiveness, and

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8 He made this statement at a workshop organised by Acholi Religious Leader's Peace Initiative on 12 September 2008.

9 In conversation on 23 October 2008.



as a mechanism for ending the conflict. This is why, when elders in northern Uganda are asked about their perceptions of amnesty they typically respond by saying ‘amnesty is our culture’.<sup>10</sup>

However, amnesty and forgiveness (much as it was embraced) is perceived by many people only as a willingness by perpetrators to engage in the process of *Mato Oput* or reconciliation and not necessarily as an indication that all has been forgiven (Justice and Reconciliation Project [JRP], 2007b). A population-based survey with over 2 585 respondents from northern and eastern Uganda established that people would like to see the Amnesty Act amended to require confession, and to include a request for forgiveness, reparations, traditional rituals and punishment (JRP, 2007b). The granting of amnesty is thus conceived as the beginning of heated and sometimes divisive debates about what the past (now) can and should mean, the ways in which we are obliged to remember and to carry history into the future (IJR, 2003:V).

As such, the amnesty process in Uganda is viewed by many people as a ‘benign forgiveness from above’, and not as the forgiveness which can only be granted by victims. Traditional justice depends on perpetrators voluntarily coming forward to confess their roles in the commission of crimes. This therefore raises the question whether ex-combatants who have been granted amnesty are immune from the proceedings of traditional justice. Many senior ex-LRA commanders who were granted amnesty are currently afraid to return to their communities because they are not sure how they will be received. So they live in urban centres such as Gulu town under the protection of the government, which further diminishes any hopes of promoting reconciliation between the ex-commanders and victim communities. Matters are not helped by the fact that the government has endowed many of these senior commanders with privileges such as housing, allowing them to keep the ranks they held while in the LRA, provision of support to enable them and their children to access education and health services, and granting them a pension or monthly stipend. One senior commander was even allowed to keep an underage girl with whom he returned from the LRA as his wife, albeit a transgression of Ugandan laws. Thus Uganda’s amnesty process and the manner in which it is has been pursued may in the long run may be a setback to initiatives for grassroots reconciliation and the pursuit of traditional justice.

Therefore, for the Amnesty Act to be relevant and to serve the interests of reconciliation using traditional justice, it may need amendment to require perpetrators to cooperate with proceedings. Otherwise traditional leaders will have to look for ways of persuading ex-combatants who have already been granted amnesty to voluntarily engage in processes of reconciliation with local communities. But this is counter-productive. As long as amnesty remains separate from community driven processes, it will be viewed as ‘forgiveness from above’, and not as a community owned and accepted process. Communities will continue feeling excluded from the amnesty process. Amnesty therefore needs to be amended to foster community participation and ownership of the process of forgiveness. More emphasis should therefore be directed towards reconciling the grassroots communities with ex-combatants using culturally appropriate mechanisms, for it is at the grassroots that the need for reconciliation is most urgent.

## Community truth telling and reconciliation

The relevance of traditional justice mechanisms in contexts of transitional justice should not be viewed in isolation; rather such traditional justice approaches can serve to complement more familiar truth and reconciliation mechanisms. Where a truth commission or TRC is initiated, it will be more effective if it builds upon established practices of healing and social coexistence (Shaw, 2005:2).

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<sup>10</sup> More detail can be derived from a paper entitled ‘Amnesty is Our Culture’ (forthcoming) by Boniface Ojok, project officer, JRP.

In Acholi tradition, and in many other African cultures, truth telling forms the bedrock on which traditional justice relies for reconciling victims and perpetrators. This is the reason why in Uganda calls for the integration of traditional truth telling mechanisms into a national truth telling process are becoming more pronounced. In its proposals for future truth telling mechanisms, the Refugee Law Project (RLP) recommended the need for 'a specific mechanism that allows for dialogue and the telling of truth within communities' (Lomo and Hovil, 2005:25). Another report by the Justice and Reconciliation Project (JRP) established that local mechanisms for truth telling in times of ordinary conflict continue to exist and function in northern Uganda despite decades of war (JRP, 2007a). While traditional mechanisms cannot be adopted in their unchanged entirety, a national truth telling process could draw on some of their principles to foster participation and inclusivity. Put differently, a national process will be more meaningful if it takes a bottom-up approach, starting as a community driven process at the grassroots and building up to a national climax.

There are also risks and pitfalls to be avoided in any national truth telling and reconciliation process. It is vital that a community truth telling process takes place in the very communities in which atrocities were committed. Indeed, a community truth telling process held outside northern Uganda would attract sympathy rather than empathy and would leave many communities feeling further marginalised and excluded. Many areas in northern Uganda such as Atiak, Corner Kilak, Barlonyo, Acolpii, and others have been scenes of massacres. It would make more sense if hearings were held in such places and commanders who perpetrated these massacres came and narrated their roles to community members. It is therefore vital that the truth telling process is localised as much as possible and appropriate channels through which ex-combatants can confess are established in the community.

In Acholi, as in many other societies, the family is the smallest and most significant unit in the development and growth of children. It would therefore be natural that the family serves as the basic channel for truth telling. Ex-combatants can be encouraged to reveal the crimes they committed, or the horrendous experiences they underwent, to their parents or immediate family elders. Beyond the family, a middle ground could be social structures located at village or parish level. Committees could be set up in every village and parish consisting of elders, religious leaders and local government leaders who hail from those communities. The village/parish committees would therefore be responsible for mapping issues in their villages and passing them on to a higher level. At a higher level, district committees could be established throughout northern Uganda. In addition to traditional and religious leaders all these committees should comprise individuals who can offer technical guidance and support. All the above structures would then build up to a national process of truth seeking to promote national reconciliation. If established, the above structures would ensure that community truth telling processes are not only located at the heart of the community, but that they are also locally driven and owned.

They would also require the right methodology: it would be vital that the sessions promote participation and dialogue of the community members as much as possible. As the JRP established in 2007, the majority of respondents (61 per cent) believed that the process of truth telling should be held in public view of all (JRP, 2007a). This is in accordance with Acholi tradition where truth seeking and reconciliation processes were held in the open and everyone who attended had the right to cross-examine victims and perpetrators.

As far as investigations are concerned, it is important that a community truth telling process focuses on documenting atrocities at the local level, identifying victims and perpetrators within communities, and calling them to account. In the traditional justice setting investigations aimed at establishing the facts surrounding a crime were always carried out during the cooling down period when neutral mediators would shuttle back and forth between the victim and perpetrator's clans to cool tensions and eventually bring the two conflicting parties together for a *Mato Oput* ceremony. In the current context, however, many unknown killings have taken place and perpetrators who committed the crimes are spread out in all corners of northern Uganda. Furthermore these perpetrators committed multiple crimes in multiple places, which in the traditional sense would mean that one perpetrator

would have to attend numerous ceremonies in various places. Investigations and linkage of perpetrators and victims will therefore be a challenge. However if the truth telling process is localised at community level, some of these challenges could be mitigated.

In a localised process of this kind communities would be able to participate in documenting historical violations which occurred in their own communities, including the compilation of a record with the names of missing persons. Indeed official records of the details of missing persons and atrocities which have been committed over the years in the IDP camps are either not available or not comprehensive. Coming up with such a list would enable the conflict to be viewed in a new light by many people. Perpetrators and their victims would be locally identified and their locations established. In many instances communities know perpetrators who committed crimes against them, or at least they know commanders who led massacres. Perpetrators in some instances know their victims. They would therefore be granted the opportunity to confess crimes they committed. The committees at village level would then forward information regarding perpetrators and victims to the district committees, who would draw up an overall plan for a *Mato Oput* ceremony in northern Uganda. At the appropriate time, victims would meet with perpetrators and carry out the ceremony of *Mato Oput*.

## Community reparations

The United Nations' Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims Gross Human Rights Violations calls upon states to make available adequate, effective, prompt and appropriate remedies.<sup>11</sup> Given the intensity of human rights violations, destruction, and loss of property which has occurred over more than two decades of conflict in northern Uganda, reparations will be central in determining and sustaining stability in the region. The difficulty, however, is that reparations are never enough (Doxtador, 2004b:25). In northern Uganda, so much damage has been inflicted on so large a scale that it is impossible to come up with a definite figure that can be deemed as adequate. The war-affected population in northern Uganda often recounts tales of cattle which were forcefully taken by the thousands and of numerous other forms of losses which were incurred.

However debates on reparations have always been shunned by the government of Uganda. Moreover government led programmes aimed at poverty alleviation in northern Uganda have always been riddled by corruption and the inability to benefit grassroots populations.<sup>12</sup> The Peace Recovery and Development Plan (PRDP) which has been announced by the government as a 'commitment to stabilise and recover the north' is also strangely silent when it comes to the question of reparations. For example one of the most important pillars of the PRDP, that of peace building and reconciliation, constitutes only 2.7 per cent of the entire budget of 606 million USD. This raises the question whether the government does in fact have the political will to make reparations.

Nevertheless, questions on reparations – what forms they should take, whether they should be collective or individual, who qualifies as a victim – will remain an issue of contention in northern Uganda. This is not helped by the fact that many grassroots communities have a limited understanding of what forms reparations could take. In numerous discussions on reparations held with grassroots communities, many suggested the construction of infrastructure such as roads, health centres, sanitary facilities and schools as forms of reparations. They do not consider the fact that, with or without peace, the government has the obligation to provide its citizens with social services such as health, education and infrastructure. Maybe after so many years of civil war, the local people have come to view

11 'UN Principles and Guidelines on the Right to a Remedy and reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations on International Humanitarian Law', Resolution adopted by the general assembly, sixtieth session, agenda item 71, 21 March 2006.

12 The Northern Uganda Social Action Fund, for example, is one of these programmes.

good social infrastructure, which exists in other parts of the country, as a form of reparation because it is precisely what the government has denied them for so long.

If reconciliation, healing and the rebuilding of the society in northern Uganda are to succeed, then more meaningful reparations must be mainstreamed as part of any post-conflict recovery strategy. Community reparations can take various forms including: the construction of memorials in places where mass killings or massacres occurred; starting up micro-finance projects for survivors of the conflict in order to enable them to sustain meaningful livelihoods; the construction of rehabilitation centres where victims can receive treatment; the construction of museums or community memorial centres in IDP camps and areas where mass killings or massacres occurred in memory of those who died; and the funding of commemorative events in local communities. A reparations fund could also provide for key rituals that can be helpful for fostering reintegration, community cohesion and solidarity. These ceremonies include, for example, *Moyo Piny*, a ceremony used to cleanse an area of evil spirits that are believed to have come about due to the occurrence of mass killings or massacres in those areas (JRP, 2007b). For example, in conducting research, the JRP discovered over 85 sites in which more than four thousand people had been massacred in Acholi land and are in need of cleansing ceremonies (Liu Institute et al, 2005:22).

At an individual level, there is a need to explore the payment of compensation to facilitate reconciliation using traditional justice processes. In Acholi culture the reconciliation process cannot be considered complete unless a perpetrator pays death compensation or *Kwor* to the victim's clan. In research conducted by the JRP in 2007 many respondents stated that they expected a truth telling process to be accompanied by the payment of compensation by perpetrators (JRP, 2007a). Otherwise, as most of them reasoned, such a truth telling process would not hold any meaning for them.

However, the pursuit of individual compensation can be a complicated matter because of the costs involved and also due to the fact that it is often difficult to define who qualifies as a victim and who does not. Many people in northern Uganda for example acknowledge the fact that, if traditional justice is to be used, many ex-combatants and their clans do not have the resources to pay *Kwor* or death compensation because of the numerous killings which have taken place. A 2006 study by Civil Society Organizations for Peace in Northern Uganda (CSOPNU) found that 70 per cent of northern Ugandans have no access to monetary income, while 90 per cent live in absolute poverty. The obvious other source for reparations would be the state or the international community but again this is complicated by the fact that many cultural leaders across northern Uganda feel perpetrators and their clans should take responsibility for mobilising the resources. So this raises a basic issue regarding the appropriateness of traditional justice practices as far as the payment of reparations is concerned. Indeed many ex-combatants may be willing to come forward and confess but may be hindered by the fear of paying the huge sums of compensation involved. This is made even more obvious by the scenario that many ex-combatants in most cases have killed not one or two people but tens or even hundreds. Furthermore, the perpetrators of many killings remain unknown.

Despite the above challenges, individual compensation, however complicated, can be crucial for facilitating reconciliation. Given the economic difficulties mentioned above many people in northern Uganda agree that traditional justice processes can only be feasible with the aid of the government or of international donors. This would again call for a change in cultural tradition where ex-combatants would be aided either in part or in whole by the government and the international community to enable them to pay reparations to their victims. In fact many people in northern Uganda, including victims and perpetrators themselves, reason that since it was the government who failed in its responsibility of protecting them from the LRA in the first place, it ought to be responsible for funding traditional justice ceremonies as well as reparation. However it is worth noting that the cost would still be too high even if the government were to step in. This therefore necessitates the exploration of the idea of 'symbolic compensation'.

In Acholi culture, crimes of homicide are categorised in two classes: intentional and non-

intentional, with the former carrying a heavier fine. The chief item in effecting compensation is cattle and in the past it varied across different clans. This variance was made uniform by Ker Kwaro Acholi (KKA),<sup>13</sup> who made the price for symbolic compensation uniform across all clans. The fine for an intentional crime was set at ten head of cattle while the fine for an unintentional crime was three head of cattle. At the current market price, one head of cattle costs approximately 400 000 Uganda shillings or the equivalent of 220 USD. However Ker Kwaro Acholi reduced this figure to 50 000 Uganda shillings or the equivalent of 27 USD and that is the rate that prevails today in Acholi land (Ker Kwaro Acholi, contact author for further details). Lessons from Ker Kwaro Acholi therefore indicate that if *Kwor* cannot be paid as it used to prior to the conflict, laws can certainly be stipulated to optimally exploit the notion of symbolic compensation. In fact many studies of northern Uganda indicate that people who lost loved ones are more than willing to accept symbolic compensation, not as an equivalent of the lives which were lost, but as a gesture of acknowledgement. As one victim of a massacre said, 'if possible the government should think of compensating the victims who lost family members. It should find a way of cooling our hearts' (Interview, 2008).

In conclusion, future debates in northern Uganda will focus on defining who is a victim and who deserves reparations. By channelling funding to traditional justice ceremonies to help communities come to terms with losing their loved ones, we shall be going a step forward towards creating that definition. It may also be a means by which traditional justice processes can address mass killings or massacres which occurred. Many elders across Acholi for example agree 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 (JRP, 2007b). In many instances community members know which senior commanders led massacres in their villages. If symbolic compensation is to be paid, then these senior commanders could represent the perpetrators of the massacre and hold *Mato Oput* ceremonies between themselves and victims in areas where mass killings occurred. Whether this suggestion is feasible or not, the fact remains that reparations in northern Uganda remain urgent and that traditional justice mechanisms provide a way of addressing this issue.

## Traditional justice: Clinging to the past?

Across the African continent traditional justice mechanisms are increasingly being explored as potential mechanisms for conflict resolution. The trouble, however, is that many of these traditional mechanisms are presented in their 'ancient' and 'archaic' formats as they used to be practised in the past. Except for a few attempts such as the *Gacaca* in Rwanda, many African cultural mechanisms have not been adapted to suit contemporary environments and conflicts. Modern conflicts involve phenomena unfamiliar to traditional communities such as 'crimes against humanity', 'war crimes', and 'genocide', and the obvious conclusion is that these novel crimes must be beyond the capacity of traditional mechanisms.

Northern Uganda, home to a civil war that has lasted for over 22 years, presents one of the most topical examples. Numerous atrocities such as massacres, abductions, sexual slavery and mutilation of body parts have been committed; a whole generation of youth that has little knowledge of, or regard for, traditional ceremonies and rituals has been born and bred in settings of displacement and confinement. In characterising the ignorance of youth with regard to traditional culture, for example, an elder is said to have remarked that 'the youth do not know how to be Acholi' (Liu Institute et al, 2005:22). In addition, Western education, cultures and religions have also played a role in influencing peoples' perceptions; in these circumstances it is uncertain whether certain principles of traditional justice, such

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13 In the pre-colonial times the Acholi were ruled by chiefs (*Rwodi*) who domineered chiefdoms. KKA is the Acholi Cultural Institution which was formed in the late 90s to unite over 50 different traditional chiefs headed by the Paramount Chief or *Lawii Rwodi*. KKA is therefore the voice of the Acholi tribe in Acholiland.

as voluntary admission of guilt and confession of wrongdoing by perpetrators, still make sense. In Acholi culture, it is believed that perpetrators who do not voluntarily confess will be compelled to do so by *cen* or ghostly vengeance by spirits of their victims. *Cen*, however, can take several months, years, or even decades to manifest.<sup>14</sup>

Even more challenging is the fact that the rituals and ceremonies which have been proposed for conflict resolution are still discussed as though the conflict never occurred. The Acholi for example have several traditional rituals used for resolving crimes. However it is not immediately clear how the majority of these rituals like *Mato Oput* can be adapted to handle more serious crimes such as crimes against humanity. While *Mato Oput* was primarily used in Acholi culture for resolving cases involving murder or homicide, it is uncertain how it can be used for resolving the contemporary war crimes and massacres which were committed during the conflict. For example, for *Mato Oput* to take place, both the perpetrator and his/her victim must be known. But in the case of the northern conflict several massacres were committed by unknown killers in settings such as ambushes, which therefore brings in the question of who will *Mato Oput* with whom?<sup>15</sup> *Mato Oput* in the context of the conflict therefore may not be easily applicable for many of the cases which exist. Other rituals include *nyono tongweno* (stepping on the egg) which is used for welcoming people who have been away from home for an extended period of time; *moyo/yubu kum* (cleansing of the body) to relieve a person of *cen*; and *moyo piny*, or cleansing of areas where abominations such as mass massacres were committed. While some of the rituals such as *nyono tongweno* have since been adapted for the re-integration of ex-combatants, hundreds of other rituals are yet to be piloted.

The above are only a few examples of the hundreds of rituals which have been documented. Furthermore, these rituals can typically only be used for resolving a specific type of crime/transgression. Unlike formal mechanisms with well defined procedures, it is therefore not clear how such rituals can be 'coordinated' or 'organised' to facilitate the overall process of reconciliation. In their diversity the rituals can be described as a collection of remedies with no clear formula. This is the basis for critiques such as that of Tim Allen who has described traditional justice as no more than 'vaguely formulated conceptions about African ways of doing things' (Allen, 2008:51).

The challenges, critiques and controversies regarding traditional mechanisms, point to the need to evolve the mechanisms to suit contemporary conflicts. Mechanisms such as *Gacaca* demonstrate that traditional mechanisms can indeed be restructured to handle contemporary crimes and transitional justice needs.<sup>16</sup> This requires a change in methodologies and codification of different rituals and ceremonies to create a traditional reconciliation and accountability framework.

However, change – especially with regard to culture – is often associated with an erosion of cultural values and a fear of the unknown which makes custodians of culture cling to their ancient ways of doing things. Such cultural leaders are then accused of being conservative. However, the scenario presented by northern Uganda indicates that if traditional mechanisms are to remain relevant then this rigidity and conservativeness has to go. Traditional culture need not be static and unchangeable. It can be altered while maintaining its original values. This can be done in a number of ways.

First, there is a need to initiate programmes aimed at cultural revitalisation and consultation of estranged groups such as youth and born-again Christians. We cannot for example expect youth who have spent twenty years or more of their lives in an IDP camp to be conversant with all aspects of traditional culture, let alone embrace it in its entirety. In a similar way, we need to recognise that the tide of evangelism has led to the emergence of numerous

14 *Cen* can manifest itself in form of illness to the perpetrator or his clan members, sometimes even resulting in unexplained deaths. For more information see Liu Institute et al (2005:12).

15 For example 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 JRP (2007b).

16 See for example Clark (2008).

born-again denominations which have attracted a massive following among many people in the IDP camps of northern Uganda as elsewhere in Africa. These born-again faiths have a tendency of viewing African cultural practices in terms of evil or good. It therefore comes as no surprise when traditional justice, which sometimes involves practices such as consulting a spirit medium, is categorised as evil. Rather than asking them to unconditionally embrace traditional practices, we first need to make them appreciate and eventually embrace those aspects of traditional culture they feel are relevant. Otherwise we risk losing them altogether to the very ‘impurities’ that we perceive as dangerous.

Secondly, there is a need to alter the methods and procedures by which cultural rituals and ceremonies are currently conducted. Most traditional mechanisms in Africa are communal and take place between two parties – the perpetrator’s side and the victim’s side.<sup>17</sup> But in a situation of massacres or mass killings, it is difficult to have clear distinctions between victims and perpetrators. Formal mechanisms on the other hand focus on prosecuting those most responsible and therefore do not need to create these distinctions. In addition, the payment of symbolic compensation, a prerequisite for reconciliation in many African cultures, would be near impossible because of the large numbers of people who have been killed. However if rituals such as *nyono tongweno* and *moyo kum* can be altered to welcome ex-combatants back home and cleanse them of *cen*, then why not *Mato Oput* for dealing with war crimes? In many instances communities know the perpetrators who participated in mass killings against their villages, including the commanders who led the massacres. So as in the case of the *Gacaca*, why not create a new procedure where *Mato Oput* would take place between perpetrators or commanders who led the massacres and victim communities? Or, if the commanders who perpetrated these massacres are dead, then why not have the most responsible persons alive to represent perpetrators at *Mato Oput* ceremonies? Why not explore the possibility of aiding the payment of symbolic compensation through a reparations fund? Cultural leaders need to come forward and boldly propose changes in traditional mechanisms to enable flexibility in the use of these traditional rituals for war crimes.

Finally, as the case of northern Uganda illustrates, there is a need to reorganise and coordinate all existing rituals into one procedure that will facilitate the overall process of reconciliation. The rituals cannot continue being conducted in isolation if they are to cater for an overall collective community reconciliation process, let alone a national process. Steps, stages and procedures need to be defined including articulations of how the different rituals will fit together and for what purpose.

All the above however would only be possible with the realisation that times have changed, new conflicts have sprung up and a new generation has been born. If we propose that new methodologies be developed for doing things, it is not an indication that we are saying ‘do away with culture’. We are saying culture needs to be relevant to addressing our present needs. We cannot afford to remain stuck in the past. Traditional mechanisms must evolve – and evolve speedily – or risk becoming part of a ‘glorious past’, fit only for narration in folklores and folktales. We must move forward or risk being dragged along against our will.

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<sup>17</sup> *Mato Oput*, for example, takes place between two clans – that of the perpetrator and victim. See JRP (2007b:4).

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### *Interview*

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