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**ADDRESSING THE POTENTIAL
AND LIMITS OF THE 'MATO OPUT'
PROCESS AS A BASIS FOR
ACCOUNTABILITY, JUSTICE AND
RECONCILIATION FOR CHILDREN
IN NORTHERN UGANDA**

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INTRODUCTION

Traditional methods of justice and reconciliation can provide opportunities for children associated with armed groups to ask for forgiveness from their communities, for perpetrators to apologise to the children and may well lead to reconciliation and relieve children from psychosocial distress for crimes committed by and against them. These practices may inform and reaffirm truth commissions and other transitional justice processes. There have been several debates in the international arena as to whether child perpetrators would benefit from accountability measures for crimes committed during armed conflict. This paper takes the view that child perpetrators would benefit from a process that ensures accountability for one's actions, respects procedural guarantees appropriate in the administration of juvenile justice and takes into account the desirability of promoting communal reconciliation and the capacity of the child to assume a constructive role in society.

The Acholi people in northern Uganda have for centuries relied on traditional justice and reconciliation methods as a means of dispute resolution and communal reconciliation. In the wake of the two decade armed conflict between the Lord's Resistance Army (LRA) and the Uganda Defence People's Forces (UPDF), many Acholi people are looking at *mato oput* justice mechanism with core principles of apology, compensation and forgiveness as a form of accountability and a tool for generating acknowledgement and therefore, long term reconciliation.

Drawing on a review of existing literature and the author's field research on traditional justice and accountability in Northern Uganda,¹ this paper analyses the process and ethics of Acholi traditional justice and reconciliation in the context of transitional justice and international standards for children. The Acholi traditional justice ceremony of *mato oput* is highlighted and particular attention is paid to it considering children's role and potential of their participation to contribute to accountability and community reconciliation.

¹ Field Research was conducted in Gulu and Amuru in February 2008. A total of 43 children were interviewed, 10 focused group discussion and several individual interviews from 4 different camps in the two districts were held. 10 elders and traditional leaders were also interviewed in the 4 camps. The researcher also got information from 5 relief workers in Gulu.

In conclusion, the analysis considers how the process of *mato oput* could be used to meaningfully serve as a complementary or alternative justice process to judicial interventions, truth commissions and other transitional justice system in addressing grave violations of international law by children, including the crimes currently under investigation in Northern Uganda by the International Criminal Court.

I. CONTEXT - CHILDREN ASSOCIATED WITH THE LRA

In the last two decades, thousands of children in northern Uganda² became principal target and victims of a cycle of violence caught in the conflict between the LRA composed mostly of abducted children and the UPDF -the national army of Uganda. The LRA, who targeted mostly civilians, exhibited ruthlessness in war and the flaunting of the Geneva Conventions and International Human Rights Law. The LRA main mode of recruitment has been abduction of mostly children who are trained to become combatants, labourers or sex slaves.

The children with the LRA are required to perform atrocities against civilians, including, mutilation of body parts like: the lips, ears, hands, and legs to punish them for accepting the Uganda government's rule.³ The children are required to do this, to demonstrate loyalty to the 'Holy Spirit', which Joseph Kony, the LRA leader claims anointed him to start and sustain the war and it is also a tactic intended to make it difficult for the abductees to escape and return home because of the fear of reprisals from members of the community.⁴

The LRA used and maintained a spiritual dimension to the movement, continuing to instil both fear and respect for the commanders' powers among the abductees. Several of the children who escaped captivity reported to being terrified of Joseph Kony who, they believed, could read their minds and would kill them for thinking about running away.

² The most affected are the Acholi population of Gulu, Kitgum, Amuru and Pader districts but neighbouring areas like Lira, Apac, Oyam, Kumi, Adjumani, Amuria and Soroti mostly composed of the Langi, Itesot and Madi ethnic groups have also been affected.

³ Amnesty International (2002 Report), "Breaking God's Commandments".

⁴ Okello Lucima (ed.), Protracted Conflict, Elusive Peace: Initiatives to End the Violence in Northern Uganda, ACCORD, Conciliation Resources, London
<<http://www.cr.org/accord/uganda/acord11/index.shtml>>.

DRAFT: IRC Expert Paper Series

The children tell of how they were forced to club other children (who were not 'properly cooperating') to death, with the orders of rebel commanders.⁵

The children, who manage to escape LRA captivity and returned to northern Uganda, are commonly referred to as 'returnees'.⁶ The returnees often suffer from nightmares, sleeplessness, hallucinations, withdrawal, and a feeling of hostility and despair. Those who are no longer with the LRA fear the stigma of the past acts.⁷ Some of the children have no homes to return to, some families have not accepted their children and many others reportedly returned to the LRA (or felt inclined to) because they did not feel a sense of belonging and in the community.⁸

The return process is further complicated by challenges and difficulties encountered by both the returnees and community members in the camps and villages. One challenge identified by most of returnees interviewed is stigmatisation. The children indicated that on returning home, they did not feel comfortable and preferred to keep to themselves because people would point at them and refer to them as rebels and murderers. Even the children who managed to go to school indicate that the other pupils teased them and referred to them as rebels so they preferred and felt more comfortable with other 'returnees'.

The most commonly used term to refer to the returnees (within communities) is '*dug paco*' a term that the children admit to finding offensive. The people in the community often lace the phrase, *dug paco* with malice, sarcasm and bitterness.⁹ Other challenges faced by the 'returnees' include lack of economic and education opportunities, sexual abuse and exploitation, resentment from members of the community, health threats including HIV/AIDS and food insecurity.

⁵ World Vision, (2004) Pawns of Politics: Children, Conflict and Peace in Northern Uganda.

⁶ Returnees usually pass through one or a number of channels upon return from captivity depending on how they escaped. Those who are captured by the UPDF pass through the UPDF child protection unit before referral to a reception centre. While others literary escape from captivity and run home. These do not benefit from any of the services for example psycho-social support given by reception centres. Families & community have been known to take some such children to the centres themselves.

⁷ Beatrice Lamwaka, the power of story telling and reading in Healing children orphaned and traumatised by war in northern Uganda.

⁸ As above.

⁹ *Dug Paco* is a Programme that was started by amnesty commission, calling for rebels to come home. The returnees were usually provided with some packages, including school bags that have *dug paco* written on them. This is a source of bitterness to the local community who argue that they have suffered under the atrocities of the LRA and yet the returnees are rewarded for the crimes that they committed when they return from captivity

Within the IDP camps, cultural leaders and elders have assisted in the mediation of conflicts involving returnees. In many cases, families and elders have adopted rituals to welcome returnees home and also cleansing rituals to remove the *cen* (bad spirit)¹⁰ are performed. The *cen* is believed to cause disease and make people behave in a dangerous or abnormal manner, traits commonly seen in madness. Hallucinations, nightmares, violence, stress, chronic illness are all signs associated with *cen*. Some returnees have performed these rituals and to many it has led to communal reconciliation,¹¹ but many others, though interested have not had the benefit of undergoing these rituals because they don't have families or are too poor to purchase the necessary items to conduct the ritual, while others are not interested, do not identify themselves with the rituals, or shun them as satanic or backward.¹²

In a search for a solution to the conflict in northern Uganda, the government of Uganda (GoU) and the LRA in August 2006 started negotiating peace in the Southern Sudan capital, Juba. The LRA and GoU signed various peace agreements, including Cessation of Hostilities Agreement, Agreement on Accountability and Reconciliation¹³ and on an Agreement on Disarmament, Demobilization and Reintegration.¹⁴ However, on 11 April 2008, Joseph Kony declared in a communiqué that all the signed agreements were null and void, save for the cessation-of-hostilities (agreed upon to extend until 16 April 2008). On 14 December 2008 the armed forces of Uganda (UPDF), DRC (FARDC) and Southern Sudan (SPLA) launched a joint intelligence – led military operations military offensive on the LRA in Garamba forests of the DRC. The joint offensive against the LRA is ongoing at the time of writing this paper.

¹⁰ *Cen* is believed to be a bad spirit of a person who usually dies a violent and untimely death and is out to get revenge from the person that committed the killing, failed to stop it, or just happened to be around when the killing was committed or even those who just come across the dead body. The revenge is believed to be extended to family and clan members.

¹¹ See Caritas, 'Traditional Ways of Healing in Acholi' (2006).

¹² For further discussion on *cen* see the International Journal for Transitional Justice, Erin K. Baines, "The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda, 2007. The author tells the story of Alice, a former abductee who is seeking help from the elders to perform ceremonies to relieve her of the *cen* of her dead sister who she participated in killing when they were abducted by the LRA rebels.

¹³ Signed 29 June 2007 and on 19 February 2008 an annexure on the modalities of the Agreement was signed (hereinafter, annexure).

¹⁴ Signed 29 Feb 2008.

II. JUSTICE, ACCOUNTABILITY and RECONCILIATION

A search for a solution to the conflict in northern Uganda bearing in mind crimes committed by children leads one to the question on justice, accountability and reconciliation for the parties affected by the conflict. The Convention on the Rights of the Child (CRC) provides the state authority with two kinds of interventions for accountability for crimes committed by children. These are; measures without resorting to judicial proceedings and measures in the context of judicial proceedings. In either proceeding, the states must take outmost care to ensure that the child's human rights and legal safeguards are respected and fully protected.

In Uganda, both measures have been envisaged to deal with justice, accountability and reconciliation for the situation in northern Uganda. The International Criminal Court (ICC) following a referral made by GoU in 2003 is carrying out investigations and has issued 5 arrest warrants for LRA commanders; the indictment includes charges on war crimes and crimes against humanity including crimes against children but no child has been indicted by the Court.

The Ugandan parliament passed the Amnesty Act of 2000 and created an Amnesty Commission to oversee the amnesty process for former rebels that give up arms and return to Uganda and the process of reintegrating former rebels into their communities. The Agreement on reconciliation and accountability signed by negotiating parties in Juba in June 2007 further provides for both judicial and traditional justice intervention in the situation in Uganda. In this section, the paper briefly discusses mechanism involving judicial proceedings, then the non-judicial proceedings.

JUDICIAL INTERVENTION

International Criminal Court

In 2003, the ICC Prosecutor commenced investigations and in August 2005 announced the issuance of 5 Arrest Warrants for top LRA commanders.¹⁵ The indicted LRA commanders are Joseph Kony (the LRA leader), Vincent Otti (the second in command),

¹⁵ See <<http://news.bbc.co.uk/2/hi/africa/4317852.stm>> (accessed October 08 2005).

DRAFT: IRC Expert Paper Series

Okot Odhiambo, Dominic Ongwen and Raska Lukwiya. Raska Lukwiya was reportedly killed in a battle on 12 August 2006 and Vincent Otti was reportedly executed on or around 8 October 2007 over an internal power struggle with Joseph Kony, his death was confirmed in mid-January 2008.¹⁶ Okot Odhiambo was also reportedly killed by Joseph Kony, though his death is yet to be confirmed. None of those alive have been arrested and there is no evidence that the ICC will secure their arrest in the near future.

The LRA commanders face a 33 count indictment of war crimes and crimes against humanity¹⁷, some of the charges include, murder, pillage, sexual slavery, attacks against civilian population, use of child soldiers, cruel treatment, abductions, inhumane acts, enslavement, and rape amongst others. The charges are both on the command and individual criminal responsibility of the commanders is intended to take care of accountability for serious international crimes including crimes against children. In consonant with the Rome Statute, no arrest warrant has been issued and the court will not try children who were below 18 at the time the crimes were committed.¹⁸ Therefore, the ICC does not address the question of individual criminal responsibility for children who may have committed offences during the war.¹⁹

Special Division of the High Court of Uganda

The Agreement on accountability and reconciliation signed by the Juba Peace negotiators provides for a Special Division of the High Court of Uganda to try persons alleged to have committed serious crimes during the conflict.²⁰ The prosecution envisaged is to target persons alleged to have planned or carried out widespread, systematic or serious attacks directed against civilians or those alleged to have committed grave breach of Geneva Conventions.²¹

¹⁶ BBC News, Rebel Death May Hurt Uganda Talks.”

¹⁷ In accordance with article 7 and 8 of the Rome Statute.

¹⁸ See article 26 of the ICC Statute.

¹⁹ There have been a lot of debate as to whether

²⁰ See Legal and Institutional framework, Clause 7 of the annexure to the Principal Agreement.

²¹ See Clause 19 of the annexure to the Principle Agreement.

DRAFT: IRC Expert Paper Series

The agreement recommends that crimes against women and children during the war should be given particular attention²² and provides for the protection and participation of victims, witnesses, women and children during the proceedings.²³

It is not clear from this agreement whether alleged child perpetrators will be tried by this Special Division of the High Court of Uganda, the necessary legislation, including the substantive law to be applied is yet to be drafted.²⁴ That said, however, Ugandan Laws²⁵ provide that children of 12 year and below are not criminally liable for their actions. It remains to be seen if substantive legislation for purposes of prosecution for serious crimes will include children of above 12 or exclude all children.

NON-JUDICIAL INTERVENTION

Amnesty

Amnesty is also envisaged as a possible reconciliation and reintegration measure for former rebels. The Amnesty Act borrows largely from traditional approaches that emphasize ‘forgiveness’ and reconciliation. Children of 12 and below are not considered criminally responsible by the Act and therefore not granted amnesty but many above 12 have benefited from amnesty. The Amnesty Commission is mandated to work towards the reconciliation of the children with their communities and has many ongoing programs to ensure this.²⁶

Traditional justice

The Agreement on Accountability and Reconciliation recognizes traditional and community justice processes to form a central part of the alternative justice and reconciliation framework to the conflict in northern Uganda.²⁷ The agreement mandates the government in consultation with relevant interlocutors to examine traditional practices in the affected areas with the view of finding the most appropriate roles for

²² See Clause 13(c) of the Annexure.

²³ Clause 8 of the Annexure.

²⁴ See Clause 9(b) of the annexure.

²⁵ See the Penal Code Act of Uganda.

²⁶ The Amnesty Commission is engaged in mass education campaign to sensitise the community to reconcile with children and other former rebels and promote their reintegration in the community.

²⁷ Clause 19 of the annexure.

such mechanism, considering the impact of the process on women and children.²⁸ *Mato oput* is singled out as one Acholi traditional process for accountability and reconciliation in northern Uganda.²⁹

During interviews conducted, respondents were quick to point out that traditional justice mechanism is not performed on children because they are not considered to be responsible for their action. Further questioning revealed that adolescents are not necessarily considered children in Acholi cosmology. Childhood is not defined by age but rather passage from one stage of development to another.

A girl is considered an adult when she first gets her first menstrual period (the term used traditionally in Acholi is *otik*) and the boys too, when they reach puberty and start undergoing hormonal changes like developing deeper voices or growing beard, they are considered adults. It is therefore necessary that subsequent legislation to implement justice and accountability in the context of traditional justice, clearly investigate and recommend age of criminal responsibility for children taking part in traditional justice.

It is worth mentioning at this point that the agreement on reconciliation and accountability adheres to the legal principle of double jeopardy, ‘Where a person already has been subjected to proceedings or exempted from liability for any crime or civil acts or omissions, or has been subjected to accountability or reconciliation proceedings for any conduct in the course of the conflict, that person shall not be subjected to any other proceedings with respect to that conduct.’³⁰ Conversely, both the judicial and non-intervention discussed above complement and are not meant to overlap each other.

III. *MATO OPUT* – JUSTICE AND RECONCILIATION CEREMONY AFTER A KILLING

The two-decade conflict in northern Uganda, has resulted into a magnitude of killing never known before in Acholiland and yet many perpetrators of these crimes, both willing and unwilling are returning to the community. In Acholi cosmology, these issues

²⁸ Paragraph 20 of the annexure.

²⁹ Paragraph 21(i) of the annexure.

³⁰ Clause 3.10 of the Principal agreement.

pose immense psychological and social challenges for the affected individuals and their families.³¹

Today cultural activities are severely restricted in the camps as a result of the ongoing conflict, diminishing status of cultural leaders as a result of the war and displacement and poor living situation of the people in the camps, yet, many traditional healing and justice ceremonies continue to hold important value to the people. Poverty restricts many of the practices and the extent of the practice largely depends on availability of resources and the role of cultural leaders in a given situation.³²

Some of the cultural rituals that continue to be practiced in the camps for example *nyono tonggveno* translates to mean stepping on the egg, is designed to welcome home a member of the family who has been away for an extended period of time. It is performed to reconcile and remove feelings of alienation from that person and show that he/she is a full member of the family again. *Lwoko pig wang* – washing away tears, is performed when a person thought dead returns to the family alive. *Lwoko pig wang* literally refers to washing away the tears that a family shed in mourning the death of a person. Symbolically, it is to wash away the thought of death that may manifest in a bad omen or attract bad spirits to the family when a person returns.

Moyo kom literally translates into cleansing the body, the ritual is performed to denote cleansing the body from negative influence of spirit forces to prevent misfortune and ill health.³³ *Kvero merok* is a cleansing ceremony for warriors returning from war, traditionally, this ceremony is not applied on someone who kills members of his or her family or clan but currently, it is being performed on returnees who have done so and suffer from extreme psychological distress.³⁴ There is some debate as to whether this ritual should be performed on returnees because the war in northern Uganda is a war between family members and clans not enemies. Many propose the ceremony of *mato oput* to cleanse a killing that happens between family members and clans as opposed to enemies.

³¹ Traditional Ways, 64.

³² Ker Kwaro Acholi, Roco Wat I Acholi: Approaches to Justice and Reconciliation (September 2005) (Roco Wat, herein after) 26. If elders continue to play a prominent role, they are likely to perform and promote rituals when needed.

³³ Interview with Rwot Otinga Atuka Otto Yayi of Lamogi conducted in Lacor IDP camp on 12 February 2008.

³⁴ Traditional Ways 100.

Mato oput, is part of the Acholi culture of repentance, forgiveness, reconciliation and healing after a killing. In his book, *Bending of Spears*, Dennis Pain,³⁵ identified the process and ceremony of *mato oput* as an important component to fostering justice and peace in Acholiland. *Mato oput* is both a process and ritual ceremony to restore relationships between clans in the case of intentional or accidental killing. While the process is similar across the different clans in Acholi, the ceremony itself varies from clan to clan.

There is a need to point out on the onset that the notion of *mato oput* has been used metaphorically to refer to nearly every reconciliation process taking place in Acholi today, thus bringing confusion to the Scope and nature of *mato oput* as it should be properly understood.³⁶ “*Mato Oput*” literally means, “drinking *oput*”. *Oput* is a tree common in Acholi, its roots is grinded and used to prepare a bitter drink that is shared at the peak of the ceremony. *Mato oput* aims at re-establishing relationship suspended between two clans as a response to a killing, deliberate or accidental.³⁷ The ritual was traditionally not applied to killings that happened in a war but rather those occurring between clans that had up to that point maintained friendly relationships with each other.

The actual ritual takes place at the end of a long process of confession, mediation and payment of compensation (*culo kwor*) to reconcile two clans. Common characteristics of the ceremony include the slaughter of two sheep which are cut in half and exchanged by both clans and the drinking of a bitter herb, *oput* by both clans to ‘wash away bitterness’. The willingness of the offender’s clan (not the offender as a single person) to assume responsibility for the act committed, as well as readiness and ability to pay compensation is essential for a successful process leading to the ceremony. In earlier times, a young girl from the offender’s clan would be given as compensation for deliberately committed murder; this has been replaced by a system where cattle or money are used as forms of compensation.

Beyond facilitating a process of conflict resolution between two parties, the ritual also addresses a crucial spiritual concern. As long as the ceremony is not concluded, the *cen*

³⁵ 1997.

³⁶ Traditional Ways 79.

³⁷ As above.

would be expected to haunt the killer and cause diseases in his/her family or clan. This traditional belief has often been a strong motivation for someone who has killed to initiate and support the process leading to *mato oput*. This is especially so in cases where the offender has nightmares and disturbed by diseases that could be interpreted as spirit related. Whether or not the killer believes in the traditional interpretation of *cen*, escaping the social consequences of this still widely held belief is often difficult, as he might easily be accused of being the cause of diseases and misfortune befalling the family.

The Process of *mato oput*

As described by a number of respondents in Gulu,³⁸ *mato oput* process only starts when an individual confesses to a crime he committed to a member of his family and seeks their support and forgiveness. The family then meets with the elders in the community to discuss how to go about the problem. After a discussion and an agreement with the elders, a mediator is selected to approach the elders of the affected clan.

Alternatively, in cases of suspected murder, the elders usually study the suspected offender's behaviour, if he displays deviate behaviour; the elders may interpret this as a sign of the *cen* of the dead person disturbing him. The Acholi believe that if the person did kill and does not confess, he/she and her family and clan would be haunted and will suffer from sickness, psychological stress, fear and nightmares and even death making the truth known until confession is made and rectification is sought.³⁹

The elders will normally, talk to the individual and offer their help if he actually committed the offence. If the suspected offender confesses guilt (thus showing remorse) and seeks the forgiveness of the clan, the elders then go ahead, elect a mediator and approach the offended clan to ask for forgiveness. The offender does not at any one-time face the victim's clan alone.

Thereafter, a long mediation process begins between the affected clans, the offender, his/her family and all the extended relations of those affected are involved at all stages in

³⁸ Those interviewed and gave information and description of the process of *mato oput* include Rubangakene Paul, an employee of Caritas; Rwot Otinga Atuka Otto Yayi of Lamogi; Rwot Apige of Paicho, Ladit Oweka Layii of Lacor IDP camp; Ochora Walter the Resident District Commissioner in Gulu; and Mzee Obama Adam of Lacor.

³⁹ Interview with Rwot Otinga Atuka Otto Yayi in Gulu conducted on 12 February 2008.

DRAFT: IRC Expert Paper Series

establishing facts. The process only comes to an end when all the parties are satisfied with the account of what happened, including the reflection of the offender his/her motives for the crimes, the circumstance under which it was committed and expression of remorse.

The two clans then negotiate and agree on compensation for the alleged offence. Usually up to 12 cows and 3 goats are demanded for deliberate killing, while 6 cows are demanded for accidental killings. Should either of the parties wish to withdraw at any stage of mediation and negotiation, the elders give counselling services and/or suspend the talks until both parties are ready to resume talks. The negotiations may take up to several years or be concluded in a shorter period of time.

After specific amount of compensation is reached, a date is set for the two clans to meet for the compensation to be paid. The cultural ideal is that the offender and the responsible elders then consults other clan members to see how much each can contribute. In Principle each household would be required to make a contribution as the effects of the offence invade on the entire clan.⁴⁰ However, in the current circumstances of extreme poverty and many forces undermining clan cohesion and collective sentiment, this ideal is not always possible to implement.⁴¹

The two clans then agree on a day for the actual ritual of *mato oput* to mark the end of the dispute and resumption of good relations between the clans. One elder explained how and why the *oput* tree and a sheep is used to mark the end of this long process:

The *oput* tree grows in clusters; the clusters are considered a sign of reconciliation and togetherness. Its bitter root symbolises the bitterness and ill that death causes between people. This root is pounded and mixed with the blood from the sacrificed sheep and drunk by representatives of the two clans from the same pot symbolising unity while the elders mutter ritual words and caution both sides to unite and live together in harmony, the offender side is cautioned not to repeat act. A sheep is the animal used in this process because it is considered cold and its blood is meant to cool down the tension.⁴²

⁴⁰ Traditional Ways, 82.

⁴¹ As above.

⁴² Interview with Ladit Ocire Celestino in Amuru district conducted on 14 Feb 2008.

DRAFT: IRC Expert Paper Series

On the set day, the two clans and their elders meet in a neutral site for the ceremony. Mock fights and abuses are exchanged with the elders presiding and acting as mediators. Eventually, the participants from the offender's clan confess to having done wrong and offer to pay compensation to the people from the offended clan. When the elders confirm that the compensation is ready, they ask the victim's clan to hold back, accept compensation and appeal to the two groups that they should let go of any grudges. The mock fight, acceptance of guilt and compensation is repeated 4 times if the victim was female and 3 times if male.⁴³

Thereafter a sheep is brought for the final reconciliation and reunification of the two clans marked by the sharing of food. The sheep is cut in a ritual manner and cooked in a special way. This is followed by the final symbolic act of drinking juice made out of *oput* roots. After the juice is prepared people from the two clans drink the juice in pairs, from the same bowl until everyone who had participated in the ritual has taken a sip of the bitter juice.

While the meat cooks, representatives from the victim's clan accept and verify the compensation usually paid in monetary terms. The food is then eaten together by the two clans. After the meal, the ritual is considered a success and an informal celebration of sharing food and drink commences, the relationship between the two clans is now considered cemented. At the stage, the elders caution the people to let go of the past and not to harm each again.

Many elders and cultural leaders interviewed also indicated that, the process of *mato oput* is not formally completed until the life lost is replaced with a new one. Historically, a young girl from the offending clan was given as compensation to the victim's clan for marriage. The first-born child as a result of that marriage was given the name of the person killed. However, this practice has been replaced by giving cows or money for the purpose of bride price. The person receiving the bride price can marry a woman of their choice, and they are required to give the name of the deceased to the first-born.⁴⁴

***Gomo tong* – bending the spears**

⁴³ This gendered distinction in the pattern of repetition is common in all Acholi rituals generally.

⁴⁴ Roco Wat, 56.

DRAFT: IRC Expert Paper Series

Gomo tong was performed in the earlier times as a symbolic ceremony to mark the end of a war or a bloody conflict between different Acholi clans, chiefdoms or neighbouring ethnic groups. The ritual is a vow between two clans or ethnic groups engaged in a violent conflict to end hostilities. It is usually done in conjunction with *mato oput* and sometimes on its own.

Elders from conflicting clans get together to discuss source of conflict, develop prevention strategies and to warn their people to discontinue fighting. The mediator bends the spear to signify the end of discussions. In the act of bending the spear, the ancestors on both sides are evoked and promised that the killings would stop. If, without due course, conflict started again, the tip of the spear would turn against the aggressor.⁴⁵

This symbolic ritual was last performed in 1984 between the Acholi and Madi neighbours to address and stop the cycle of violence between the two groups that spiked after the fall of Idi Amin Dada in 1979.⁴⁶ This indicates that symbolic acts of reconciliation and peace building rooted deep in the past can still have relevance in the present, even if the preferred weapons of war have changed. Many respondents agreed that bending of spears could be done in conjunction with *mato oput* to mark the end of the present conflict and help in the restoration of reconciliation within the Acholi, neighbouring ethnic groups and perhaps even the current government with both sides vowing not to lift a spear against each other.⁴⁷

As discussed above, all Acholi traditional system share core principle of apology and forgiveness, which are seen as necessary precursors to reconciliation, based on the principle of restorative justice. Compensation is accompanied by requests for forgiveness and is intended to eliminate enmity between parties and restore harmony in the community.

Erin Baines, in reference to Hovil and Quin states that aspects of the local approaches to justice appear to meet both procedural and accountability standards set in the field of international justice, such as the provisions of the Rome Statute and of the International

⁴⁵ Roco Wat, 30.

⁴⁶ See Traditional Ways citing Finnstrom (2003), 92.

⁴⁷ For further reading on *mato oput* and other traditional justice rituals in Acholi see Caritas, Traditional Ways and Ker Kwaro Acholi, Roco Wat I Acholi.

Covenant on Civil and Political Rights (ICCPR). She further argues that in terms of accountability, the Acholi justice system ‘skilfully combines’ elements of retributive and restorative justice and that international standards of justice can be met through the process of *mato oput*.⁴⁸ The key question for discussion here is whether *mato oput* mechanism as practiced meets the international standard for a non-judicial intervention in juvenile justice in light of principles of the CRC as elaborated by the Committee on the Rights of the Child in General Comment 10.

IV. JUVENILE JUSTICE IN THE CONTEXT OF *MATO OPUT*

The Committee on the Rights of the Child in reviewing the States parties’ performance in the field of juvenile justice came up with General Comment No 10⁴⁹ which provides an elaborated guidance and recommendations to state parties in the establishment of an administration of juvenile justice in compliance with the CRC.⁵⁰ The General Comment integrates other international standards, in particular, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the ‘Beijing Rules’)⁵¹, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the ‘Havana Rules’), and the United Nations Guidelines for the Prevention of Juvenile delinquency (the ‘Riyadh Guidelines’) with the aim that states form a comprehensive juvenile justice policy.⁵²

General Comment 10 provides states with possibilities of resorting to alternative measures such as diversion and restorative justice to respond to children in conflict with the law in an effective manner serving the best interest of the child and the society at large.⁵³ The non - judicial proceedings should not only include protection guarantees provided for in articles 37 and 40 of the CRC but also general principles enshrined in article 6 (the right to life, survival and development); article 3 (the best interests of the child); article 2 (non-discrimination) and article 12 (the right to ‘participation’). Other

⁴⁸ See Erin K. Baines, “The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda, The International Journal of Transitional Justice, Vol 1 2007.

⁴⁹ CRC/C/GC/10, 25 April 2007.

⁵⁰ See paragraph 3 of GC 10.

⁵¹ These Rules were the first international legal instrument to comprehensively detail norms for the administration of juvenile justice with a child rights approach and many of the principles contained therein were incorporated in the CRC.

⁵² See paragraph 4 of GC 10.

⁵³ See paragraph 3 of GC 10.

DRAFT: IRC Expert Paper Series

relevant articles that should be taken into account are articles 4 (appropriate legislative and administrative measures) and 39 (measures to promote physical and psychological recovery and social reintegration).⁵⁴ The requirements are discussed below:

Use of alternative measures

In General Comment 10, the Committee on the Rights of the Child (Committee) recommends that alternative measures to judicial intervention should be used only when there is compelling evidence that a child committed the alleged offence. The child must freely and voluntarily admit responsibility, and that the admission will not be used against the child in any subsequent legal proceeding.

The agreement on justice and reconciliation clearly provides that a person shall not be compelled to undergo any traditional ritual.⁵⁵ The process only commences on the basis of information obtained from the alleged offender. The negotiations and mediation is done under the watchful eye of elders with the participation of many clan members, ironing out any doubts of unfair justice.

The information obtained and confession made is given voluntarily without any force or intimidation:

A forced confession is useless to the process and ritual of *mato opul*, a confession must be voluntary, that is the only way, you can know that the perpetrator is remorseful and wants to reconcile with members of the community, that is the only way that family members and elders can commence the process.⁵⁶

Several studies have shown that many ‘returnees’ conceal their identity for fear of being identified by victim’s family and that few former LRA youth attended the communal cleansing ceremony for this reason, because of fear of retribution by the victim’s clan or family and also fear of stigma by the community.⁵⁷ It is therefore unlikely that many of the perceived perpetrators will voluntarily admit responsibility for crimes allegedly

⁵⁴ See paragraph 4 of the GC 10.

⁵⁵ See Principal agreement clause 3. 1 and annexure paragraph 22.

⁵⁶ Interview with Robert Okeny, an officer at the GUSCO Reception Centre conducted on 10 Feb 2008 in Gulu.

⁵⁷ For example see Erin K. Baines, “The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda, The International Journal of Transitional Justice, Vol 1 2007.

DRAFT: IRC Expert Paper Series

committed by them unless given assurances and protection against retribution by the government and members of the community.

The agreement on reconciliation and accountability further spells out that a person can only undergo one processes for a particular offence but it is not clear whether evidence obtained in one proceedings could be used in another for instance to try a person for a difference offence. GoU must ensure that subsequent legislation dealing with this matter clarifies this issue to encourage people to take part in different proceedings without fear of what they say being used against them in another proceeding.

Informed Consent and Assistance

The committee in General Comment 10 recommends that the child freely and voluntarily give consent in writing to take part in the alternative system. In case of children of 16 and below, parents must give consent on their behalf. The consent must be based on adequate and specific information on the nature, content and duration of the measure, and on the consequences of a failure to cooperate, carry out and complete the measure. The child must also be given the opportunity to seek legal or other appropriate assistance on the appropriateness and desirability of the system and the possibility of review of the measure.

Traditional leaders and elders culturally, provide guidance and information to the community passing down community values and tradition from generation to generation. Children interviewed who have gone through traditional justice process indicated that their parents, family members and elders, informed them of the available processes, the nature, content and the benefit of the process offering their assistance before they agreed to take part.

When we returned home, we were asked to take part in the *nyonno tongwenno* ceremony, which our father told is to welcome us home. A few days later, my father and some elders came and asked my us to take part in the *mojo kom* ceremony, they explained to us

DRAFT: IRC Expert Paper Series

that this would cleanse us of the *cen* we may have contracted while with the LRA. We agreed and the ceremony was performed....⁵⁸

It is clear from the ongoing that the informed consent of the children is obtained before the ceremony though this consent is not usually in writing as elaborated in the General Comment, possibly because of the oral nature of traditional practices in Acholi and also as a result of illiteracy. The authorities may need to introduce a system where consent given by children and their parents is written.

The traditional process also affords children a level of comfort to the children as they are performed in their community, often comprised of people with whom they are familiar and has the benefit of operating in the mother tongue of the parties. The child gets all the assistance he/she needs to take part in the ceremony, as the entire clan is involved throughout the process. At no time does the child meet the victim's clan alone creating proximity, which is favourable in the current setting in northern Uganda.⁵⁹

That said, not every 'returnee' in northern Uganda has the benefit of being surrounded by family and clan, many lost their families during the war and a number of youth are now heading households and have no clear clan lineage. Many others were born in the captivity and have no known relatives or people to turn to for support in the community. While in the past, elders would offer such children and youth information and support, today, because of their prejudices and economic insecurities such help may not be forthcoming. It is therefore absolutely necessary that the government puts in a place a mechanism to inform the children on the nature, content duration of the measure and all possible consequences. There is also a need for a mechanism to give all the children who make an informed decision to take part in the process support and encouragement.

Protection from discrimination

In General Comment 10 the Committee elaborates that state parties have to take all necessary measures to ensure that all children in conflict with the law are treated equally and not subjected to discrimination for example in education and the labour market. It is

⁵⁸ Interview with two brothers who returned from LRA captivity in 2001 conducted in Lacor IDP camp in Amuru district.

⁵⁹ As described in Section III above.

DRAFT: IRC Expert Paper Series

necessary that measures are taken by the system adopted to prevent such discrimination, inter alia, as by providing former child offenders with appropriate support and assistance in their efforts to reintegrate in society, and to conduct public campaigns emphasizing their right to assume a constructive role in society.⁶⁰

According to Ladit Aciri Celestino, an elder in Amuru camp, *Mato oput* process does not discriminate or favour, male or female, young or old, and no matter where one comes from, as long as there is a killing; the offender is remorseful and asks for forgiveness, it can be performed to promote harmony in the community. The process fosters a culture of dialogue, inclusiveness and unity and aims at the rehabilitation of the offenders as well as the entire clan. It emphasizes harmonious living and co-existence and the end result is to give an opportunity to an offender to resume constructive role in society.

The ritual performers do not judge the offender; this serves to reinforce the dignity and worth of the child and the need to respect the human rights of others. The rehabilitation is a lesson learned by the whole community, not just the offender as clan members make a promise to ensure that the offence is not repeated.⁶¹

Suffice to say that the discussion above presents the ideal and not necessarily the reality of northern Uganda today. Traditional systems have broken down over the course of the conflict, raising concerns about the neutrality and capacity of elders and cultural leaders to adapt local approaches to crimes committed during the conflict.⁶² In addition, many studies report that women/girls are not involved in major decision-making, arbitration or negotiations in the *mato oput* process which suggests a degree of discrimination in the implementation of the process. There is a need for cultural revival and encouragement of women and youth to play a more active role in the issues of justice and accountability.⁶³

Finality to the case

⁶⁰ See article 40(1) of the CRC.

⁶¹ Traditional Ways of Healing.

⁶² For further reading, see Erin Baines, Eric Stover and Marieke Wierda, "War Affected Youth and Children in Northern Uganda: Towards a Brighter Future. An Assessment Report, 2006.

⁶³ See for example Erin Baines, Eric Stover and Marieke Wierda, "War Affected Youth and Children in Northern Uganda: Towards a Brighter Future. An Assessment Report, 2006 and Erin K. Baines, "The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda, The International Journal of Transitional Justice, Vol 1 2007.

The Committee in General Comment 10 provides that the completion of the diversion by the child offender should result in a definite and final closure of the case. Although confidential records can be kept for administrative and review purposes, they should not be viewed as “criminal records” and a child who has undergone such a process must not be seen as having a previous conviction. The Committee further explains that if any registration of this event takes place, access to that information should be given exclusively and for a limited period of time, for example for a maximum of one year, to the competent authorities authorized to deal with children in conflict with the law.

The agreement on justice and reconciliation partly takes care of this concern as it adheres to the legal principle of double jeopardy:

Where a person already has been subjected to proceedings or exempted from liability for any crime or civil acts or omissions, or has been subjected to accountability or reconciliation proceedings for any conduct in the course of the conflict, that person shall not be subjected to any other proceedings with respect to that conduct.⁶⁴

This is interpreted to mean that participation in the traditional process for particular conduct means finality to that particular case. Judicial proceedings, traditional justice and other alternative justice mechanism are all considered as alternatives to address crimes committed during the conflict, and only one can be applied for a particular conduct, meeting the requirement as elaborated in the General Comment.⁶⁵ That said, however, it is not clear whether a child who has undergone the traditional process will be seen as not having a previous conviction. GoU must ensure that subsequent legislation dealing with this matter adheres to this principle.

The Right to life, survival and development

The General Comment elaborates that the child’s basic right to life, survival and development should result in a policy responding to juvenile delinquency in ways that support the child’s development. The death penalty and a life sentence without parole are

⁶⁴ Clause 3.10 of the Principal agreement.

⁶⁵ See Paragraph 23 of the annexure.

explicitly prohibited⁶⁶ The Committee further elaborates that the use of deprivation of liberty has very negative consequences for the child's harmonious development and seriously hampers his/her reintegration in society therefore should be used only as a measure of last resort and for the shortest appropriate period of time, so that the child's right to development is fully respected and ensured.

Under Ugandan law, death penalty is not pronounced on crimes committed by children.⁶⁷ In addition, traditional justice mechanism as practiced among the Acholi abhors, death penalty and the question of deprivation of liberty does not arise. This is rooted in the belief that two wrongs do not make a right derived from the ancient myth that explains the division of the lwo-speaking people.⁶⁸ No death penalty is imposed on any person who commits the offence and undergoes the *mato oput* mechanism.

In *mato oput*, it is essential that the accused accepts guilt and confesses to his/her crime, which is seen, as a sign of acknowledgment of guilt and repentance, such a person is considered ready to make a contribution to the development of the society.

If someone does not accept guilt, he is left free, he is left alone but he does not enjoy good relations with his family and other members of the community who may blame him or her for any misfortunes that may occur in the homestead or clan but if he accepts guilt and undergoes the ritual, he is forgiven and he reconciles with members of the community.⁶⁹

Research suggests that taking part in the traditional rituals do not always lead to acceptance, many 'returnees' report ongoing stigma even after undergoing certain rituals and live in fear of reprisal from the offended family. There is a need for the government to hugely invest in sensitization programs to ensure the reintegration of such youth into society and enable them to lead a constructive life to ensure that their right to development is fully respected and ensured.

⁶⁶ See article 37(a) of the CRC.

⁶⁷ See Children Act and the 1995 Constitution of Uganda.

⁶⁸ The Acholi myth of Labong and Gipir explains the division of the lwo-speaking people in Uganda because of revenge undertaken by two brothers who made a vow not to speak to each other, leading to the creation of different groups.

⁶⁹ Interview with Mzee Petero Oloya, an elder in Lacor IDP Camp conducted on 14 Feb 2008.

Best interest of the child

In the General Comment, the Committee explains that in all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration. Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders.

The *mato opul* mechanism deals collectively with questions of accountability through compensation and restoration and inspires prevention of juvenile delinquency. The whole negotiation process and the final ritual is open and is in itself a deterrent to many who may have contemplated committing similar offences. There is a high degree of compliance with the agreement reached as the entire community and clan sanctions it. The final agreement reached recommends reconciliation and is normally unquestionable and implemented to the satisfaction of both the victim's and the offender's community.

The Committee further acknowledges that measures such as traditional justice may redress the stigma a child may be subjected to and promote reconciliation and reintegration of the child into the community that would best serve a juvenile. Indeed, at least majority of the children associated with LRA that were interviewed feel that way about the traditional justice mechanism. They indicated that they had undergone ceremonies such as *nyono tongwenno* and *lwako pig wang* but felt the need for more elaborate ceremonies to be performed for them to live comfortably with other members of the community.⁷⁰

If an elaborate traditional ceremony is done satisfactorily for me, then perhaps the people's feelings and attitudes towards me will change. I need a ritual like *mayo kom* to be

⁷⁰ Some of the children indicated that they have gone through the more elaborate rituals but many more cannot because of the cost of the items required for the ceremony.

DRAFT: IRC Expert Paper Series

performed for me to live comfortably in the community. But I don't have money to buy a goat and chicken for the ceremony and my mother does not have the money, so I continue to suffer.⁷¹

Many more children in northern Uganda echoed this child's sentiment. There is a need therefore, for the government, donors and aid agencies to support traditional rituals for children who crave them but cannot afford to participate because of financial constraint as participation in such rituals may work in their best interest.

Questions inevitably arise about how the community will perceive ceremonies supported by the government and aid agencies. One identified reason for stigma and hatred for returnees is the package they receive from the Amnesty Commission on return from the 'bush'. People resent such resettlement packages given to the returnees because they feel that while they bear the brunt of the conflict, the perpetrators are being rewarded.

Right to Privacy

The committee elaborates that all juvenile justice proceedings should be kept confidential and undertaken in the presence of only family members. To some degree, the child's right to privacy is respected in the *mato oput* and other Acholi traditional mechanism as described above. The process usually involves clan and family members of the offender and of the victim only.

That said however, it could be argued that the process violates the child's right to privacy as it takes place outside the homestead and in the open for any curious onlookers, photographers and other interested parties including the press. The child and family members do not seem to have a say on who should or should not attend.

Though none of the respondents, including children acknowledged that the right of a child to privacy is violated during the process, it is important for the government with the help of the elders to encourage and implement the adoption of a child-friendly process that also ensures privacy to safeguard the rights of children who become

⁷¹ Bob, 17 years old, resident of Lacor IDP camp interviewed on 28 Feb 2008.

involved. This can help build children's confidence and restore their sense of justice in the social and political order.

Participation of Children

The right of the child to express his/her views freely in all matters affecting the child and that view to be given due weight should be fully respected and implemented throughout every stage of the process of juvenile justice.⁷² The Committee in the General Comment, further notes that the voices of children involved in the juvenile justice system are increasingly becoming a powerful force for improvements and reform, and for the fulfilment of their rights. The agreement on reconciliation and accountability provides for internal procedures and arrangements for protecting and ensuring the participation of victims, women, and children among others in the proceedings.⁷³

Ideally a child's participation should strengthen and enhance his/her protection, and protection measures should enable participation. Most of the children interviewed expressed their desire to participate in the *mato oput* and other traditional process but due external influences they have not had the opportunity. This wastes their capacity and potential to serve as catalysts for reconciliation and peace building within their own communities.

For example children who have no known relatives and those born in captivity, whose parents may still be in the 'bush' or dead cannot take part in the traditional rituals that are all performed at the family or clan levels. In addition, many returnees have not been recognised or accepted by their families and relatives whose assistance they need to benefit from the process. These categories of children are often denied the benefit of taking part in such processes.

Rose (not real name) was abducted together with her sister when she was 11 in 2001. On the long journey to Sudan, a rebel commander forced her to kill her sister who was tired and could not go on. Rose left with no choice participated in cutting her sister into pieces with a machete. Since returning from the 'bush', in 2005, Rose has tried to make contact

⁷² Paragraphs 43 – 45 of GC 10.

⁷³ Paragraph 24 of the annexure.

DRAFT: IRC Expert Paper Series

with her family but they do not want anything to do with her, blaming her for the sister's death.

Rose is a very tortured child; she keeps to herself, does not go to school and has no friends. She has nightmares and vision of her sister demanding appeasement for her death. She sent word to her parents several times that she wants the ritual of *mato oput* performed so that she can reconcile with her clan members and appease her dead sister. This has been rejected; Rose does not know who to turn to.

Rose is one of the many children in this situation; for children who desire it, not taking part in traditional rituals increases the child sense of guilt and un-acceptance by the community. A possible solution to this could be mass cleansing ritual for all persons including children who desire to attend but such ceremonies have also been criticised by many in northern Uganda as ineffective as crimes committed may require different rituals and that the victims are different.

In a focus group discussion with 5 child-mothers, ages between 16 and 18 (though one is 20 years old now), they indicated that they all were abducted at different times and escaped LRA captivity at different times. They were all 'wives' of LRA commanders and all returned from the bush with children. Their families accepted none of the girls when they returned from captivity to Oyama IDP camp. Two are married now but state that they face a lot of stigmatisation from their in-laws. The five young mothers forged a friendship because of their similar and peculiar circumstances. They had a message for the elders and their families:

It was not our wish to be abducted, it was not our wish to commit crimes and have children, we were forced to do so, our families need to understand that and it is our prayer that the elders can plead on our behalf to our families to take us back home and treat us like their children again.

It is clear from the ongoing that the traditional mechanism are dependent on family/ community willingness to accept the children and perform the rites and in many cases, this acceptance is not forthcoming. It is therefore necessary that cultural and other leaders, aid workers with full support of the government increase and give full momentum to sensitisation and education work being done to promote reconciliation in

the society. This must be followed by effective follow up to ensure that those who want to take part in traditional process are given the opportunity to do so.

Further limiting the right to participation, is information on cultural ceremonies provided by faith based NGOs operating reception centres where many returnees go through. Formally abducted children who go through a reception centre ran by a faith based international NGO in Gulu explained that they are specifically told not to participate in cultural rituals, as they are satanic and ungodly.⁷⁴ The children are 'born again' and taught to shun traditional rituals.

From the interviews conducted, it is not clear whether it is the desire of the children not to take part in traditional rituals or whether they are just responding to the teachings they received from the reception centre. During interviews, a few children specifically stated that they were told by officers at the reception centre not to take part in cultural rituals because it would not be beneficial to them, they were advised to pray and forgive and forget what happened to them while in the 'bush'. Asked whether they actually felt that way, one boy stated that if he met his commanding officer from the 'bush', he would kill him; he cannot forgive the commanders for what was done to them in the bush. Another boy stated that he would take part in the ceremony, if it were not ungodly.

Returnees are extremely vulnerable and susceptible to external influence during the initial return and need to be given room to make decisions they feel are appropriate for their circumstances. One child interviewed is torn apart by this alleged contradiction between traditional practices and her religious belief. While her family members insist that she should undergo the rituals, the teaching she got at the reception centre is that she should not. This has become a source of distress to her.

It is important to understand that many Acholi people strongly identify themselves with Christian teachings, while they are also still rooted, to one degree or another, in traditional practices and beliefs.⁷⁵ Therefore pitting Christian teachings against any traditions irrespective of the concrete practice in question often promotes confusion, disorientations and conflicts within and among people.⁷⁶

⁷⁴ See Roco Wat I Acoli.

⁷⁵ See Caritas, Traditional Ways.

⁷⁶ As above.

Conversely, as much as traditional practices are still meaningful and important to many people in Acholi, they are also less relevant to others. This may be especially true of young people who have grown up during war with restricted possibilities to experience and appreciate these practices.⁷⁷ In the past, traditional education was a nightly process with youth sitting around compound fireplace (*wang-oo*) with the elders, who would impart knowledge and wisdom on cultural laws and traditions. Living in overcrowded camps and fearing LRA attacks and the UPDF curfew, *wang-oo* was discontinued as a practice. So the youth, who are the main victims and perpetrators do not necessarily appreciate or understand the Acholi traditional norms.⁷⁸

That said however, without allowing justice and reconciliation processes to be driven by religious and other fundamentalism, the government, elders, members of the community and all stakeholders should give information of the available mechanism to the children and give them room to make decisions on what they believe suits their situation best. They should further try and support children in whatever decision they make to facilitate their successful reconciliation with their families and members of the community.

Acholi traditional justice mechanism is characterised by orality, elder's council, reconciliation and informal dispute resolution procedures, which would be well suited for children who want to take part. The system is flexible, adaptable and tailored to local beliefs and conditions and remains a popular venue of choice for the people in northern Uganda. GoU and other international actors should seize upon the strengths of the traditional system in this transitional justice process acknowledging its vital role both as a reality and an opportunity. If successful, this approach may hold lessons for other post conflict states.

V. LIMITS OF MATO OPUT AS A TRANSITIONAL JUSTICE MECHANISM FOR NORTHERN UGANDA

⁷⁷ See Caritas, Traditional Ways of Healing in Acholi.

⁷⁸ James Ojera Latigo, Northern Uganda: Traditional Based Practices in Acholi Region, Chapter 4 from IDEA, Traditional Justice and Reconciliation after a Violent Conflict: Learning from African Experiences, 2008.

Nature of offences

It is apparent during the research that many people feel that traditional justice mechanism of *mato oput* cannot adequately deal with issues of accountability for all the crimes committed in northern Uganda. For example, the process is designed and intended to deal with the crime of murder and manslaughter only and not conceptualised as a method of dealing with systematic crimes of forced marriages, and other sexual offences, abductions, use of child soldiers, mutilation, pillage, looting, destruction of property and massacres among others.⁷⁹

Some of the offences committed like abductions and use of child soldiers are new and not defined as offences in Acholi traditional society, yet these crimes have been rampant during the two-decade conflict in northern Uganda. There is no doubt these offences must find a venue to be addressed if question of impunity will be dealt with. This issue just supports the emphasis that *mato oput* and other traditional mechanism, cannot stand on its own but must be supported by other judicial intervention.

In addition, sexual offences such as rape and sexual slavery are and not defined in the Acholi cosmology, from field interviews, it is apparent that no particular attention has been paid to such offences and it is not clear from the discussion with traditional leaders, how traditional justice would go about addressing them.

Many women including abducted girls were forced into relationships with the LRA commanders and other fighters; no bride wealth was paid when they “married”. Children resulted from some of these marriages; no *luc* (compensation to a girl’s family for a child born in wedlock) was paid. These are some of the difficulties that traditional leaders and other stakeholders, need to carefully consider and find a solution.

A cultural analysis in consultation with the community, including victims and witnesses, would be required to define and categorise the atrocities involved and to assign proper and acceptable types of rituals and compensation according to the crimes committed.

⁷⁹ Crimes described in international law as war crimes and crimes against humanity, see articles 6 and 7 of the Rome Statute of the International Criminal Court.

Magnitude of offences

Many respondents expressed reservations as to whether the traditional justice mechanism of *mato oput* could adequately deal with the magnitude of killings that has taken place in northern Uganda. *Mato oput* in its original form is a ritual performed between two clans that know each other and used to have a good relation that is broken by a killing.

As a result of the sheer magnitude of the killings in northern Uganda, respondents felt that it would not be possible to perform the ritual for all the victims, including the many children and compensate the clan members for all the dead. A number of respondents also expressed fear that it would be impossible to compensate for these types of crimes, due to the amount of suffering that has been caused.

There has never been any killing to this magnitude in the history of the Acholi, so how do we go about drinking the *oput*. There are so many deaths that cannot be accounted for, so many children missing, nobody knows where they are, nobody is admitting responsibility. By 2006, Kony claimed to have 832 children in captivity, in Soroti, they claimed that 2000 of their children are missing, how do we account for this, how do we go about drinking *oput*?⁸⁰

The ongoing raises several complex questions with no clear answers, very critical is the question of compensation. Traditionally, the responsible clan raises compensation as a means of punishment but also as a symbolic act of replacing the life that was lost. It is not clear if the clans of those responsible would pay such compensation. Even more complex is the question of those children who have not been accepted by their clans or families, who would pay compensation for them, who would carry out the negotiations for them, or drink the bitter root on their behalf?⁸¹

Requirement of confessions

⁸⁰ Interview with Ochora Walter, RDC Gulu conducted on 10 Feb 2008.

⁸¹ See James Ojera Latigo, Northern Uganda: Traditional Based Practices in Acholi Region, Chapter 4 from IDEA, Traditional Justice and Reconciliation after a Violent Conflict: Learning from African Experiences, 2008.

DRAFT: IRC Expert Paper Series

In addition, the ongoing nature of the war also creates a problem when adapting *mato oput* as a justice mechanism. Although the exact figure is not known, a core component of the LRA remains in the 'bush'. It is not clear, if and when they will come out and whether they will be ready to confess guilt for *mato oput* to commence, if they ever return to the communities.

In addition, many respondents were quick to point out that not only the LRA have committed the atrocities, some of the killings were committed by the UPDF and common thieves, posing as the LRA, these would also be required to face guilt for *mato oput* to succeed.⁸²

Identity of victims

Central to the success of *mato oput* is that, the perpetrator's clan must reconcile with the victim's clan; this cannot happen unless the perpetrator can identify the victim. The LRA move around over several districts in Uganda⁸³ as well as Southern Sudan, abducting children and committing atrocities.⁸⁴ They are often unfamiliar with the persons in the districts and villages that they attack and raid. Some of the atrocities are committed against travellers on the roads, so in most cases origin of the victim and the location of the crime may be unknown to the perpetrators.

The conflict is so big, it has involved so many deaths, and it is hard to identify and relate who is responsible for each death. It is impossible to come up with a correct list of victims. Without the victim's identity, the perpetrator is unable to confess his/her crimes and to ask for forgiveness from the victim's clan or to pay compensation to the clan. Confession, Compensation and Reconciliation are central to the success of *mato oput*, but how can they be achieved in the LRA crimes?⁸⁵

Capacity and independence of traditional elders to take on this role

Another reservation expressed by a number of respondents is the capacity of Acholi elders and chiefs to take up the traditional role of leading an independent and neutral

⁸² Interview with Ochora Walter, RDC Gulu conducted on 10 Feb 2008.

⁸³ These include, Gulu, Kitgum, Pader, Lira, Apac, Soroti, Moyo, Nebbe and Adjumani.

⁸⁴ Recent reports indicate that the LRA has extended its activities to the Democratic Republic of Congo and the Central African Republic.

⁸⁵ Opoka Vinango, LC III Chairman, Paicho sub-county conducted 24 Feb 2008.

justice system. Many were sceptical about this as the chiefs have lost the aura and respect they held among the population in the past. Many have suffered trauma, live in extreme poverty, turned to alcohol and lost the respect of younger generations. Many fear that the main drive for such leaders to take part in the ceremonies would be for economic gain.⁸⁶

In a conference held by Acord in September 1999, the agency noted that traditional structures in northern Uganda were weak and fragmented and that many of the cultural leaders were not sure and knowledgeable on how to carry out traditional rituals.⁸⁷ There are also several debates in northern Uganda on who real traditional leaders are. For instance the paramount chief, Rwot David Achana, is not recognised by many who claim that the title of a paramount chief is new and not part of the Acholi heritage.

Cultural leaders were not officially recognized in Uganda until 1995 Constitution that reinstated their place in society. As much as many of such leaders in Uganda, regained their position and glory, this has not been true of northern Uganda that has been embroiled in conflict since the reinstatement. In addition, many of those reinstated assumed the position of cultural chief based on political connections to the government, not on heritage or community recognition therefore people question their competence to take on such a role.⁸⁸ This does not mean that it impossible to train the cultural leaders in their role and for them to regain their status in Acholi society and to build the trust and confidence of their people but resources need to be invested for them to fulfil this role.

The reservations expressed by the respondents on the adequacy of traditional justice were mainly due to the scale and nature of atrocities committed, identity of victims and the requirement of confession of perpetrators to ignite the process. This just goes to confirm that traditional justice can only form a part of the transitional justice process in northern Uganda and judicial intervention should not be overlooked to ensure justice and reconciliation.

⁸⁶ See the Haunting of Alice for further reading.

⁸⁷ See Tim Allen, "The International Criminal Court and the Invention of Traditional Justice in Northern Uganda", Making reference to Acord, Background papers presented to the conference on "Peace research and the Reconciliation Agenda, 2000.

⁸⁸ See Erin Baines, the Haunting of Alice

CONCLUSION

The complex nature of the conflict in northern Uganda heightened by 21 years of displacement means that there are no easy answers as to what could bring about justice and peace and reconcile the broken society. Many children who have undergone the process attest that it has been helpful in restoring their psychological being and communal reconciliation and recommend it for the rest of the children in similar circumstances. Without romanticising the traditional justice mechanism as the answer to the justice and reconciliation in northern Uganda, one cannot overlook the trust it has earned among some people in the region. Therefore, the government of Uganda, national and international actors should seize upon the strength of the system in pursuing justice and reconciliation in northern Uganda.

That said, however, traditional practices worked well historically but times have changed, the cultural identity of the Acholi people today is shaped not only by tradition but also religious faith and judicial processes. When developing interventions to support justice and reconciliation, the complex and dynamic blend of identities and beliefs must always be kept in mind. Over reliance on traditional approaches as the only cure for this war-torn society could lead to devastating results, referring to them as the territory of the devil or as totally useless is not a solution to the problem either. It is important to acknowledge all the potential of traditional rituals as well as religious approaches and the more formal judicial systems as complementary and not contradictory approaches.

Suffice to say that, the legal base that developed in the recent past in Uganda already provides for that. The Amnesty Law provides for total amnesty and forgiveness to end the conflict and ensure reintegration of former combatants, the Principle Agreement on Accountability and Reconciliation and its annexure provides for a Special Section of the High Court of Uganda to try those most responsible for the crimes committed during the conflict. This is in addition to the adaptation of traditional justice to promote reconciliation in the area. The government of Uganda, NGOs and other developmental partners should utilise all these opportunities to their fullest potential, systematically collecting disaggregated data on all aspects of the different form of justice and reconciliation mechanism and to regularly evaluate the practices and its effects, invariably involving children, with due respect to their privacy, and other safeguards.