CHAPTER 7

ACCOUNTABILITY AND RECONCILIATION IN NORTHERN UGANDA

ACCOUNTABILITY FOR SEXUAL AND GENDER-BASED CRIMES BY THE LORD’S RESISTANCE ARMY

Khristopher Carlson and Dyan Mazurana

THE POTENTIAL AND LIMITS OF MATO OPUT AS A TOOL FOR RECONCILIATION AND JUSTICE

Prudence Acirokop
This chapter examines crimes committed against children and youth, in particular sexual and gender-based crimes against girls and young women, in northern Uganda by the Lord’s Resistance Army (LRA) over the past twenty years. It raises some of the issues currently being debated on accountability for crimes committed by children in armed conflict, adequate responses to sexual violence and inhuman acts, and the appropriateness and efficacy of traditional justice or judicial redress in these situations.

The authors – Khristopher Carlson with Dyan Mazurana and Prudence Acirokop – present two separate essays that address traditional, national and international responses to the abductions, systematic rape, sexual abuse, forced recruitment, enslavement and forced labor that have been perpetrated by members of the LRA on the children and youth of northern Uganda. After more than two decades of atrocities, affected communities, the national Government and international justice processes have begun to consider how to bring those responsible to justice and ensure some level of redress for the victims of these crimes and human rights violations.

Carlson and Mazurana explore the implications of accountability, in particular through the traditional justice systems of northern Uganda. They argue that the scale and nature of the sexual and gender-based crimes committed against girls and young women are too egregious to be adequately addressed by traditional justice and reconciliation systems. They further contend that traditional processes, and particularly those that have been shown to operate against the best interests of girls and young women for many generations, cannot provide adequate accountability for victims or cope with the level and nature of atrocities committed by the LRA.

Acirokop agrees that the crimes committed against children in her native Acholiland call for effective mechanisms to hold perpetrators accountable, but she argues that traditional processes have a place within a wider transitional justice response. Following an analysis of the traditional process of *mato oput* and an examination of its weaknesses, she argues that the system has strengths and elements that make it relevant to the experiences of
the young people who have managed to escape the LRA and find
their way home. Acirokop posits that mato oput cannot on its own
bring accountability for the heinous sexual crimes committed, but
as part of a system of multiple responses, it has, she argues, the
potential to bring some measure of community understanding and
reintegration.

One of the most difficult questions – acknowledged but not
answered by the authors – concerns what is the appropriate form of
accountability for the crimes committed by children abducted and
forced to become members of the LRA. The LRA is known to be
composed of many children and youth who were forcibly recruited.
The authors describe the targeting of children by the LRA for
abduction, forced recruitment, rape and enslavement. These
children are then forced to commit crimes, many deliberately
planned to alienate the children from their communities so they
have nowhere to run if they manage to escape their captors. Any
attempt to escape is punishable by death, and often the senior
commanders force new abductees to carry out the killings. The
result is that children held as captives of the LRA grow to adulthood
committing the same crimes and atrocities against other children
that were committed against them.

Ultimately, although both essays argue in favor of a specific
approach to addressing accountability for crimes in the conflict,
neither proposes a solution that can fully address or remedy the
horror experienced by thousands of boys and girls in northern
Uganda. The two essays together strengthen the argument that the
most effective transitional justice processes are those that use a
combination of mechanisms and processes to deal with differing
elements of the transition from war to peace and that encourage a
range of responses to improve accountability.
ACCOUNTABILITY FOR SEXUAL AND GENDER-BASED CRIMES BY THE LORD’S RESISTANCE ARMY

Khristopher Carlson and Dyan Mazurana

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INTRODUCTION

This section focuses on the crimes committed against captive girls and women by the Lord’s Resistance Army (LRA) and options for coming to terms with these violations, including through the use of traditional justice systems. It includes an analysis of the nature of the crimes to give context to the complications of addressing sexual and gender-based offenses within traditional justice systems. It concludes that while traditional justice methods have a role to play in dealing with some violations committed during the war, they are not appropriate for addressing the sexual and gender-related crimes committed against captive girls and women. This is especially true given that traditional structures and authority have been weakened due to the war and other factors. Adjudicating the LRA’s heinous crimes against girls and women is a task more appropriate for the Ugandan High Court and international judicial authorities.

The LRA, a rebel force fighting the government of Uganda, has abducted more than sixty thousand Ugandan children and youth over the duration of the northern Uganda armed conflict that has spanned more than twenty years. Among the war-affected population of northern Uganda, one in six female adolescents has been abducted by the LRA.2 Taken to rebel camps, the female abductedees have been forced to cook, provide nursing services, farm, collect water and serve as armed fighters. Many of them have been bound by slavery-like conditions to boys and men within the LRA, used for sexual purposes and forced to perform domestic labor.

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Half of these “forced wives”\(^3\) have given birth to children fathered by their captors.\(^4\)

Evidence collected from former captives reveals that sexual and gender-based violence is part of a systematic practice perpetrated by the order of LRA leaders. To date, no one has been held accountable for the abduction, forced marriage, rape, sexual slavery, forced pregnancy, torture or forced labor of thousands of girls and women held captive by the LRA. The LRA continues to commit widespread crimes and violations of customary international and humanitarian law.

Some progress toward ending the conflict took place between 2006 and 2008, when the LRA and the Government of Uganda engaged in peace negotiations brokered by the Government of Southern Sudan in Juba. As part of the peace process, the LRA and the Government of Uganda signed the Agreement on Accountability and Reconciliation, which calls for the creation of accountability and reconciliation institutions and procedures. Although attempts are being made in northern Uganda to move forward with some of the Agreement’s provisions, LRA leader Joseph Kony has refused to fulfill the commitments made or to sign a final peace agreement.

In fact, during peace negotiations in 2007 and 2008, the LRA continued to kill, abduct and loot the property of people from Southern Sudan, the Democratic Republic of the Congo (DRC) and

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\(^3\) Within this paper, the terms “forced wives” and “forced marriage” refer to situations in which girls or women are held captive and, by threat or force, pressed into slavery-like conditions and made to perform domestic and sexual acts for male members of the LRA. The terms are used to distinguish between captive girls or women who were not taken exclusively by one man and those who were. While the Special Court for Sierra Leone has defined forced marriage as a crime against humanity, it is important to identify that none of these so-called “marriages” have validity within the LRA. Although not examined in detail within this paper, it is also important to recognize the challenges stemming from developing international criminal law that defines forced marriage within the context of armed conflict. This development has the potential to raise the threshold of what constitutes forced marriage within human rights law as it pertains to protecting females against forced marriage within a non-conflict context.

\(^4\) *The State of Female Youth in Northern Uganda.*
the Central African Republic,\textsuperscript{5} and it moved its encampments to the DRC. Since September 2008, the LRA has carried out a series of attacks, including massacres, resulting in the displacement of over one-hundred-fifty thousand Congolese and Sudanese and the abduction of hundreds of adults and children. On 14 December 2008, the governments of Uganda, Southern Sudan and the DRC launched major military operations against the LRA, destroying five of its main bases. The LRA responded with a series of vicious massacres against civilian populations.\textsuperscript{6}

The Agreement emphasizes the role that traditional justice mechanisms should play in achieving accountability and reconciliation. Many people in northern Uganda’s traditional leadership, local government, civilian population and civil society organizations voice support for traditional justice mechanisms to operate parallel to national justice systems, such as those called for in the Agreement. However, there is no consensus among these groups regarding what role traditional mechanisms should have or which LRA crimes and violations would fall within their jurisdiction. Traditional mechanisms can and should play an important role, but it is unclear how they should be used for accountability procedures, particularly with respect to sexual and gender-based crimes. Furthermore, there is some doubt, particularly among girls and women formerly held captive by the LRA, that these systems should be used at all for such crimes.

The gravity of the sexual and gender-based crimes warrants serious attention respective to the potential mechanisms for holding the LRA accountable. The crimes are similar in some aspects to those perpetrated in other conflicts. The jurisprudence developed in regard to girls’ and women’s rights by the Special Court for Sierra


Leone and the tribunals for Rwanda and the former Yugoslavia provide legal definitions for the types of crimes perpetrated by the LRA. In February 2009, the Special Court for Sierra Leone convicted three Revolutionary United Front (RUF) commanders for their responsibility in overseeing forced marriage in that rebel group.\(^7\) The context in Sierra Leone is different from that in Uganda, but the effects of the experience and the subsequent sexual and non-sexual dimensions of the crimes are strikingly similar.

The Special Court for Sierra Leone established a precedent by distinguishing between forced marriage and other crimes of a similar gravity. The crime of forced marriage in armed conflict, a crime against humanity, is now a codified violation of customary international law.\(^8\) The Appeals Chamber of the Special Court for Sierra Leone concluded in its ruling that, while the crime of forced marriage contains elements of sexual slavery, it has additional elements: a forced conjugal relationship between a man and woman that, by its exclusivity, demands loyalty to the captor. To defy one’s captor is to risk punishment, including beating and death.\(^9\) Former forced wives in Uganda have clarified that the LRA operates similarly in terms of forced marriage.\(^10\) Within the LRA, sexual

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\(^7\) Special Court for Sierra Leone, Case 15: The Prosecutor vs. Sesay, Kallon and Gbao (RUF Case) available at www.sc-sl.org/CASES/ProsecutorvsSesayKallonandGbaoRUFCase/tabid/105/Default.aspx

\(^8\) “Sierra Leone: ‘Forced Marriage’ Conviction.”

\(^9\) AFRC Appeals Chamber, SCSL-04-16-A (SCSL 3 March 2008). The Appeals Chamber further commented that forced marriage describes a situation in which the perpetrator, through words or conduct or through those of someone for whose actions he is responsible, compels a person by force, threat of force or coercion to serve as a conjugal partner, resulting in severe suffering or physical, mental or psychological injury to the victim. See Prosecutor v. Brima, Karama and Kanu, SCSL-04-16-T (SCSL February 2008).

\(^10\) Interviews with former forced wives, 2005 and 2007, Gulu, Lira and Kitgum Districts. Girls and women forced into marriage are commonly but mistakenly referred to as sex slaves. This inaccurate categorization perpetuates a common misunderstanding about their roles and experiences. This in turn leads to inappropriate responses in (a) addressing the realities girls and women face in reintegrating and (b) developing accountability mechanisms to address the multitude of crimes and rights violations they have experienced.
crimes are committed almost exclusively within the context of forced marriage.\textsuperscript{11}

**Methodology**

Fieldwork conducted between 2002 and 2007 in northern Uganda served as the basis for this chapter. The fieldwork consisted primarily of interviews with one hundred and three girls and female youth who were abducted, forced into “marriage” with LRA combatants and subsequently raped, in some cases forcibly impregnated and forced to perform domestic labor and serve the larger fighting force. Also interviewed were parents and family members of abducted females; ex-LRA combatants; religious and community leaders; local government officials; Acholi and Lango clan leaders; lawyers; and local, national and international non-governmental organizations (NGOs) working in northern Uganda. Interviews were conducted in a variety of settings, including villages, camps for the internally displaced and towns in the five most war-affected districts: Apac, Gulu, Kitgum, Lira and Pader.\textsuperscript{12}

All interviews were transcribed, and the principal investigators managed all data during the fieldwork. Triangulation was used

\textsuperscript{11} There may be some exceptions to this, however. Alleged LRA attacks in late December 2008 in the DRC reportedly involved the mass rape and murder of girls and women. Because any use of rape by the LRA outside of forced marriage was previously unheard of, for the purpose of this report, the authors focus only on those sexual crimes perpetrated against abducted girls and women. See *The Christmas Massacres*.

\textsuperscript{12} An additional district, Amuru, is also considered part of Acholiland along with Gulu, Kitgum and Pader. However, since the district was created after field data in that area were collected, Amuru is not discussed in this report. A total of 210 people were interviewed for this paper between June 2001 and April 2007. They included 103 formerly abducted girls and women who had served as forced “wives” in the LRA; seven formerly abducted boys and men; four former LRA commanders or officers; fifteen parents or relatives of girls or women subjected to forced marriage by the LRA; eighteen local government officials; twenty-eight religious, clan and community leaders; twenty-three NGO staff; seven lawyers working with former abductees; three officials with the Ugandan Human Rights Commission; three officials with the Uganda Amnesty Commission; and seven residents of camps for internally displaced persons.
throughout the study to check data validity and consistency. Data were analyzed primarily using text analysis through deductive coding. Most of the informants providing information for this work were Ugandan citizens, and all “forced wives” were Ugandan. The authors also consulted a small but growing body of literature on girls and women associated with fighting forces.

The information gathered regarding forced marriage covers LRA crimes in the larger camps in Southern Sudan from the mid-1990s to 2004, when the camps were broken up. Many of the informants were residents of these larger camps, including those that housed LRA top leaders, including Joseph Kony.

13 Briefly, triangulation refers to the use of a combination of research methods in a study to corroborate results. In this study, we used observation, in-depth interviews, surveys and life histories.

14 Text analysis using deductive coding refers to analyzing the text based on codes already established by certain hypotheses around the data collected. We also used inductive coding, in which we grounded ourselves in the texts and then let meanings arise from the text itself, a more open way of exploring the data and allowing the text to generate meanings.


16 The authors have not interviewed girls or women subjected to forced marriage or other crimes in LRA camps now located in the DRC and the CAR. But Human Rights Watch’s recent report details such practices in LRA camps in the DRC as of December 2008, which suggests that the practice is still taking place. The information collected from individuals who had spent significant amounts of time (several years in a number of cases) in the larger LRA camps in Southern Sudan was triangulated with other testimony and reports.
ARMED CONFLICT IN NORTHERN UGANDA

The conflict in northern Uganda began shortly after current President Yoweri Museveni took power by military coup in 1986. Museveni’s National Resistance Army seized power after years of political, military and social turmoil. Museveni’s army defeated the Ugandan National Liberation Army, comprised mainly of Ugandans from northern Acholi and Lango. Fearing retribution from Museveni, many soldiers fled to northern Uganda, where some demobilized and others sought refuge in Southern Sudan. Various opposition movements emerged in the 1980s, when the future LRA leader, Joseph Kony, began his armed opposition to the National Resistance Army. The LRA was organized in 1987.

After a number of Ugandan military offensives against the LRA in northern Uganda and Southern Sudan, which dislodged it from its Sudanese bases, the LRA relocated its bases more permanently to the northeastern region of the DRC. In early 2008, the LRA established camps in the southeastern region of the Central African Republic (CAR). The LRA is still active today and has made recent attacks in the CAR, the DRC and Southern Sudan.

In trying to overthrow the Museveni Government, the LRA lost popular support among the Acholi (who make up 90 percent of the population of northern Uganda) and other northern populations. Unable to secure enough volunteers and angry that the Acholis would not support their movement, the rebels purposely targeted those civilian populations. Attacks intensified in the 1990s, swiftly spreading into the Lango and Teso subregions. In response, the Ugandan army, now the Uganda People’s Defence Forces (UPDF), forced populations into “protected villages.” People who had previously lived among family and clan were now living in crowded camps among relative strangers, with little if any access to land.

The Government’s justification for this initiative was that it was easier to protect larger groups of people in these villages, referred to as camps for internally displaced persons (IDPs). Yet many of the most serious massacres and waves of abductions occurred after people were forced into these camps. Despite the humanitarian efforts of numerous international organizations, disease and
destitution were widespread. At the height of the conflict, up to one thousand people were dying weekly in Acholiland – a rate well above emergency levels.\(^\text{17}\)

The conflict has also affected northern Uganda socially and culturally. Displacement has splintered clans and village communities, disrupting social organization and causing a general breakdown of moral character among youth, according to Lango and Acholi cultural leaders.\(^\text{18}\) Limited by the constraints of camp living, elders have found it difficult to impart traditional knowledge and cultural values to the young.\(^\text{19}\)

**CRIMES PERPETRATED AGAINST FEMALES IN LRA CAPTIVITY**

Prior to the twentieth century, females were abducted and “married” to their captors as part of intertribal warfare in East Africa.\(^\text{20}\) However, such abductions happened on a relatively small scale, nothing like the massive scope of abductions carried out by the LRA. Perhaps the strongest similarity between abductions for forced marriage then and now is that such relationships are coercive and nonconsensual – a central element of forced marriage within any context – and violate customary practice. LRA forced marriage clearly violates both customary law and international law.

The LRA has abducted girls and women from Acholiland, Lango, Teso, West Nile and other areas in northern Uganda, as well as from the CAR, the DRC and Southern Sudan. It is estimated that

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\(^\text{19}\) Ibid.

while in captivity a quarter of all female abductees have experienced sexual abuse or rape or witnessed the rape or other sexual abuse of another female.\textsuperscript{21} Although abduction of females from Uganda since 2006 has all but ceased, it continues in other countries, namely the CAR, the DRC and Southern Sudan. The LRA practice of forced marriage is unique not only in the volume of abducted and forcibly married girls and women but also in its use of these captives to enable the rebel fighting force to function. It is unknown how many of the girls and women abducted from outside Uganda have experienced forced marriage to LRA fighters; it is known that girls and women, including those from Uganda, continue to be held within LRA ranks. It is unknown how many males or females remain in captivity, in part because the LRA continues abductions.

Of those girls and women abducted, the most at risk for being forced into marriage are over the age of fifteen who are held in LRA captivity for two weeks or longer.\textsuperscript{22} LRA leaders control the females’ sexuality through the group’s rigid hierarchical structure and strictly enforced regulations, using intimidation, discrimination and violence. Strict rules govern how abductees may interact with each other and behave. The captor “husbands” exercise exclusive sexual access to the abductees. LRA leadership also exercises sexual control, through enforcing pregnancy and child-bearing (for example, exacting severe punishment for attempted abortions). Rules dictating interpersonal conduct are enforced by LRA leadership through beatings and killings; abducted females are sometimes forced to beat or kill other abducted females.\textsuperscript{23} The “wives” and other abducted children who behave favorably are rewarded with material goods, including loot, food or access to medicine. This makes the captives dependent on their captors for basic provisions such as food and medicine. Those who resist are

\textsuperscript{21} The State of Female Youth in Northern Uganda.

\textsuperscript{22} Ibid.

\textsuperscript{23} Former forced wives interviewed March and April 2007 by Carlson, Pader and Kitgum Districts, Uganda.
singled out for punishment and sometimes death.\textsuperscript{24}

The high rate of rape within the LRA has resulted in many pregnancies. The longer girls and women have been held captive, the greater the likelihood they have children born of rape. One report estimates that nearly 40 percent of the captives had one child and another 15 percent had two or more children.\textsuperscript{25} Interviewees reported that girls and women who failed to conceive were punished and those caught trying to prevent or abort pregnancies were killed.

Pregnancy further increased dependence on their captors for support and protection. They also had to ultimately confront the prospect of leaving the LRA and reintegrating into their communities with a child. These dependencies reinforced the forced conjugal relationship, making it difficult to exit the LRA. Most former forced wives left the LRA by escaping; more rarely it was through capture by UPDF soldiers.\textsuperscript{26}

Abductees can suffer emotional distress from their captivity. One interviewee reported experiencing nightmares five years after her release. She said, “When I am sleeping I cry out at night. There is yelling. In a vision sometimes I can see that man scaring me. I see terrible things. That man comes to me and tries to pull me out of my body.”\textsuperscript{27}

**RULINGS BY INTERNATIONAL COURTS**

In February 2009, the Special Court for Sierra Leone convicted three Revolutionary United Front commanders for their responsibility in overseeing forced marriage within that rebel

\textsuperscript{24} Ibid.

\textsuperscript{25} *The State of Female Youth in Northern Uganda.*

\textsuperscript{26} Ibid.

\textsuperscript{27} Former forced wife interviewed on 11 March 2007 by Carlson, Pader District, Uganda.
The context in Sierra Leone is different from that in Uganda, but the effects of the experiences and the subsequent sexual and nonsexual dimensions of the crimes bear important similarities.

Examining the criminal components of forced marriage in light of the ruling by the Sierra Leone court clarifies the magnitude of what it means for a captive to be forced into sexual and domestic servitude. This form of slavery subjects the victims to beatings, rape, forced impregnation, torture, disabling physical and mental injury, psychological distress and death. These crimes contribute to physical, emotional, social, economic and spiritual suffering.

Most of the crimes perpetrated against forced “wives” in the LRA are codified violations of international customary, humanitarian and human rights law. The severity and frequency of beatings of girls and women in captivity is on par with inhumane acts as determined, for example, in cases judged by the International Criminal Tribunal for the former Yugoslavia. There the Trial Chamber determined that the link between sexual violence and physical beatings amounted to crimes against humanity.29

Judgments from the international criminal tribunals for Rwanda and the former Yugoslavia linked rape and sexual violence with torture.30 The rape of women and girls carried out under the order of commanders gave rise to mental and physical pain and

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28 Special Court for Sierra Leone, Case 15: The Prosecutor vs. Sesay, Kallon and Gbao (RUF Case).

29 In Tadic, sexual violence was charged as willful killing and torture. See Prosecutor v. Dusko Tadic, IT-94-1-T (ICTY 7 May 1997).

30 The International Criminal Tribunal for the former Yugoslavia in the Foca case, for example, concluded that rape and sexual violence equate to torture and enslavement. Rape was also recognized as torture in the Furundzija and Delalic cases. The Foca case indictments concluded that rape and sexual violence equated to torture and enslavement. See Prosecutor v. Furundzija, IT-95-17/1-7 10 (ICTY 10 December 1998) para. 176; Prosecutor v. Delalic, Mucic, Delic and Landzo (Celebici case). Case No. IT-96-21-T, Trial Chamber (16 November 1998) Prosecutor v. Delalic, Mucic, Delic and Landzo (Celebici case), IT-96-21-T (ICTY 16 November 1998), paras. 941, 963.
suffering.\textsuperscript{31,32} In addition, forced pregnancy is a war crime and a crime against humanity.\textsuperscript{33} Rape is a war crime and a crime against humanity, and under Ugandan law it carries a maximum penalty of death. Ugandan law also allows the death penalty for the defilement of any girl under the age of eighteen. Other crimes perpetrated by the LRA can be characterized as torture, including repetitious beatings and deprivation of food and water as a punishment for “bad behavior” or failure to heed the commands of “husbands.”

A defining characteristic of forced marriage as determined by the Special Court for Sierra Leone is the forced imposition of being a “wife”; by contrast, forced conjugality is not present in enslavement or sexual slavery. Forced marriage has been codified in international law as a crime against humanity.\textsuperscript{34}

All of the girls and women abducted by the LRA were subject to forced labor, which is a violation of the Ugandan Constitution. It is also analogous to enslavement,\textsuperscript{35} a crime against humanity.\textsuperscript{36} Girls and women report being beaten for not performing domestic duties to the satisfaction of their captors.\textsuperscript{37} Forced labor included carrying heavy equipment, building huts and carrying out agricultural work

\textsuperscript{31} See the \textit{Foca} case, \textit{Prosecutor v. Kunarac, Kovac and Vukovic}, IT-96-23 and 23/1 (ICTY 12 June 2002). Sexual violence necessarily gives rise to severe pain or suffering, whether physical or mental, and in this way justifies its characterization as torture. Severe pain or suffering, as required by the definition of the crime of torture, can thus be said to be established once rape has been proved, since the act of rape necessarily implies such pain or suffering.

\textsuperscript{32} \textit{Prosecutor v. Akayesu}, ICTR-96-1-A (ICTR 1 June 2001), paras. 505-509, 516, 594, 597 and 688.

\textsuperscript{33} Rome Statute, articles 7 and 8.

\textsuperscript{34} AFRC Appeals Judgment, para.184.

\textsuperscript{35} See \textit{Foca} case (12 June 2002), para. 543.

\textsuperscript{36} Rome Statute, article 7.

\textsuperscript{37} Former forced wife interviewed on 10 March 2007, by Carlson, Pader District, Uganda.
for the “wives” of higher-ranking commanders. These grave violations of the rights of girls and women and the magnitude of the crimes, require the application of international human rights standards to achieve justice.

MECHANISMS FOR SEEKING JUSTICE

For former captives, family or community support is critical to transitioning back into normal life and a new home. Upon returning from captivity, the former forced wives and their children may face stigma and verbal and physical abuse and threats from family. Children born in captivity also are vulnerable to rejection by the extended family, often regardless of whether the mother is accepted back. Girls and women report hesitation about revealing what they have experienced. Those unable to return to their communities typically face greater difficulties finding a means of livelihood.

A representative study found that 90 percent of former forced wives in Acholiland wish to remain separated from their LRA captors. Some prominent Acholi leaders, however, believe that such separations would infringe on the rights of LRA men. One official of Uganda’s Amnesty Commission believes that the fathers of children born in captivity have a right of access to those children.

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38 Former forced wife interviewed on 8 March 2007, by Carlson, Pader District, Uganda.


40 Former forced wives interviewed on 12 March 2007, by Carlson, Kitgum District, Uganda.

41 The State of Female Youth in Northern Uganda.

42 The Amnesty Commission oversees the issuance of amnesty certificates. Under the Uganda Amnesty Act of 2000, any person who ceases to engage in armed opposition against the State can qualify for a pardon from criminal prosecution for their involvement in armed conflict. Amnesty can apply to both abducted and non-abducted members of the LRA.
and that girls and young women who return from captivity with children become a “social problem” when they separate from these men.43 Her sentiment is echoed by a member of Women in Peacebuilding, a group affiliated with the Acholi Religious Leaders Peace Initiative (ARLPI). This official believes that “in the African context the children of returnee mothers should belong to their respective LRA husbands that father the child” and that “the parents of [the returnee forced ‘wife’] should accept the father of their daughter’s children.”44 The ARLPI can significantly influence people’s perceptions about forced marriages and the acceptable role of returnee girls and women.

Although the impact of religious groups on traditional justice mechanisms in regard to LRA crimes is somewhat uncertain, it must be assumed they will have a good deal to contribute. The ARLPI is largely dominated by Catholic and Anglican clergy in northern Uganda, who cooperate closely with Acholi traditional leaders’ associations. Together, they have issued joint statements – amounting to a consensus among religious and traditional leaders – calling for Acholi customary justice systems to be favored over nonlocal and nontraditional systems such as the International Criminal Court (ICC).45

Opinions differ about the roles of clans in the LRA. According to three interviewed clan leaders from Gulu, some clans bear more responsibility than others because of their support of LRA activity, meaning they should accept responsibility for some of the crimes perpetrated by the LRA and provide compensation for those crimes. Although the leaders did not specifically mention sexual crimes, they agreed that forced wives should not be encouraged to

43 M. Oker, Amnesty Commission, interviewed on 31 January 2006, by Carlson, Gulu, Uganda.

44 K. Lanyero, Women in Peacebuilding, interviewed 24 June 2006 by Carlson in Gulu, Uganda. Customary law in northern Uganda is clear that a child does not belong to its father if no dowry or compensation of any kind has been paid to the family of the mother in cases where children are born of rape or outside marriage.

return to their LRA captors if they have the capacity to live on their own. At the same time, they felt that former captives who cannot provide for themselves should, in most cases, go back to their captor-husbands if they are willing.\textsuperscript{46}

According to one scholar on Acholi culture, clan elders are trying to determine how to apply traditional justice mechanisms to the LRA crimes. But there is uncertainty about how clan leaders will respond to sexual crimes perpetrated by the LRA. Developing a cohesive strategy will require extensive dialogue among clans.\textsuperscript{47} However, there appears to be little discussion on sexual and gender-based crimes among clan leaders.\textsuperscript{48}

When former forced wives speak of accountability, they rarely prioritize traditional justice systems. Most of those interviewed believe that such mechanisms will not serve to adequately punish the LRA commanders. The ICC has indicted the LRA leader Joseph Kony and four top commanders on charges of war crimes and crimes against humanity.\textsuperscript{49} Some of the interviewed survivors of forced marriage hope to see significant punishments for top LRA leaders and other ranking members of the group not indicted by the ICC.\textsuperscript{50} When asked to describe what kinds of punishments they would choose, these women describe everything from long-term imprisonment to execution.

Other former forced wives also wish to see their lower-ranking captors face punishment. One said she wished for paid compensation, while another was relieved to hear that her “husband” had been killed, adding that “he received what he

\textsuperscript{46} Three clan leaders, interviewed on 1 February 2006 by Carlson, Gulu, Uganda.

\textsuperscript{47} R. Atkinson, Professor of History and Director of African Studies, University of South Carolina, personal communication with Carlson, 10 March 2009.

\textsuperscript{48} Ibid.

\textsuperscript{49} Of the five indictees, Joseph Kony, Okot Odhiambo and Dominic Ongwen remain at large, while Raska Lukwiya is dead, and Vincent Otti was reportedly executed.

\textsuperscript{50} Interviews with former forced wives, 2005 and 2007, Gulu, Lira and Kitgum Districts.
deserved.” However, it seems that most former forced wives and community members agree that lower-ranking fighters, most often abductees themselves, were forced into taking captive wives. They feel that the commanders should be blamed for those crimes as well. The former female captives imagine punishments beyond the scope of the restorative objectives of traditional justice systems in northern Uganda.

Challenges in the Use of Traditional Justice Mechanisms

The dilemmas posed by the return of abducted females have led to varied responses from key stakeholders – the Government of Uganda, NGOs, religious and clan leaders, parents and other relatives and the ICC and other members of the international legal community. The issue is complicated when former combatants live in close proximity to former captives. Increasingly, the LRA’s top leadership, the president of Uganda and a group of religious and traditional leaders are calling for the use of traditional and customary practices of the Acholi, Lango and other affected groups to deal with the harms committed during the conflict.

The 2007 Agreement on Accountability and Reconciliation called for traditional accountability and reconciliation processes to be “promoted to become a central part of accountability and

51 Former forced wife interviewed on 14 March 2007 by Carlson, Kitgum District, Uganda.

52 Respondents gave mixed answers when asked what kind of punishments should be given to those responsible for sexually abusing them. While most felt that lower-ranking fighters (most often abductees themselves) should be granted amnesty, they felt differently about commanders and those they felt were responsible for ordering the abuse of girls and women. For commanders, respondents called for punishments including death by hanging, beating or other non-specified public execution. Other respondents felt that commanders should be arrested and made to pay compensation. Of those who blamed commanders, they specifically named Kony. Punishments for Kony included public hanging “like Saddam Hussein” and “something satanic.” (Four former forced wives interviewed 3 February 2006 by Carlson, Lira District; two former forced wives interviewed 4 February 2006 by Carlson, Lira District; one former forced wife interviewed 8 March 2007 by Carlson, Pader District; one former forced wife interviewed 10 March 2007 by Carlson, Pader District; and two former forced wives interviewed 13 March 2007 by Carlson, Kitgum District.)
reconciliation” in northern Uganda. The Agreement addresses crimes and rights violations against women, youth and children – a significant precedent in a post-conflict mandate. But it is important not to allow grave crimes of international law to be subsumed into traditional processes. While Acholi traditional systems can serve some aspects of reconciliation between the LRA and Acholi people, they cannot be expected to address crimes committed outside the Acholi region or to non-Acholi victims and their families or to fully address the crime of forced marriage and the other gender-based and sexual crimes carried out by the LRA. It is also crucial to apply Ugandan national law and a broad, regional accountability and reconciliation process informed by all war-affected regions of the north. National and international systems must work parallel to traditional mechanisms and in some cases take precedence over them.54

Customary laws have governed the conduct of the ethnic groups of northern Uganda for centuries. Among the issues addressed by the laws of the Acholi and Lango people are marriage, transfer of material wealth for dowry, divorce and custody of children. They contain penalties, including compensatory payments, for crimes including abduction, murder, rape and pregnancy out of wedlock. In general, when such laws are broken, clan leaders bring the relevant individuals together, and rituals are performed to resolve the conflict or hostility. Such processes are effective when the parties are willing to participate and do so in accordance with tradition.

One of the dilemmas in using traditional means to resolve the LRA’s sexual and gender-based crimes is that these crimes have


54 The Ugandan Constitution recognizes differences of cultural and customary values among the many ethnic groups in Uganda, and it voids all laws or customs inconsistent with its provisions. This can be particularly important when considering challenges girls and women may face when seeking redress from former captor-“husbands” and their clans when customary laws conflict on such matters. Constitution of the Republic of Uganda (1996), Sec. 2.2.
been perpetrated at unprecedented levels, and the perpetrators and victims, numbering in the tens of thousands, are scattered throughout northern Uganda and across international borders. Because customary practices have not previously had to deal with forced marriage and similar crimes, using them to address such crimes would require substantial modifications or an entirely new system.

A second dilemma is the decline in traditional authority and rituals resulting from war, population displacement, loss of land and livestock and decades of economic decline. Also contributing to the decline are the influences of modernization, shifting livelihoods and lifestyles and allegations of corruption. The lack of resources strains the ability to pay compensation, a central part of traditional methods of conflict resolution.

Third, traditional justice is administered within a patriarchal clan structure that is biased against women’s and children’s rights and weak in addressing violence against women and girls. It is difficult to imagine how such a system could address the rights of women and girls competently and fairly. For example, in a number of domestic violence cases documented in Acholiland, girls and women reported that traditional processes only made their situations worse. To illustrate, according to some community-elected female members of a Pader District Local Council, the traditional systems in the north are antiquated in their ability to

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55 An officer with the Amnesty Commission explained that all former “forced wives” can choose either to formalize marriage with their LRA “husband” or to separate from him. Such notions are naive, simplistic understandings of the reality facing returnee “forced wives” and further complicate their return, as the Amnesty Commission, among other prominent organizations in the north, turn the other way and largely ignore the rights of former “forced wives.” Statistics officer, Amnesty Commission, interviewed 31 January 2006 by Carlson, Gulu Town, Uganda.

consider the rights of girls and women in situations involving sexual abuse (among other areas). Given that these systems lack a precedent in dealing with the widespread sexual and gender-based crimes of the LRA, these female leaders believe that formal legal mechanisms should be used to adjudicate cases of grave crimes and determine punishments proportional to their severity.\textsuperscript{57}

Given that the Agreement, as well as officials and citizens, has called for the use of traditional justice mechanisms, it is likely that they will be used in some form in northern Uganda. Addressing the needs of victims of sexual and gender-based crimes must shape these forms, and international child protection standards must be respected. Local mechanisms will need to work along with formal systems and other mechanisms, such as truth-telling bodies.\textsuperscript{58}

Joseph Kony is the only living LRA commander charged with crimes specifically perpetrated against female victims.\textsuperscript{59} The ICC’s indictments fail to recognize the breadth of the forcible marriage crimes committed by the LRA, although there is the possibility of amending the indictments. Likewise, the Ugandan Government can draft legislation to enable the national court system to handle the types of crimes perpetrated against forced wives. Indeed, some of these acts, such as rape and forced labor, are already criminalized. But it seems unlikely that customary laws in northern Uganda will be amended to address forced marriages and other sexual and gender-based crimes.

Acholi and Lango clan and village leaders share some customary practices on child custody, maintenance, sexual violence, compensation and enforcement. However, they have different approaches to handling crimes and violations that occurred as a result of forced marriage within the LRA. A majority of the LRA

\textsuperscript{57} Three female Local Council members, interviewed 30 March 2007, by Carlson, Pader District, Uganda; Female community leader, interviewed 9 March 2007, by Carlson, Pader District, Uganda; E. Opio, Director, Forum for Peace and Development, interviewed 18 March 2008, by Carlson, Lira, Uganda.

\textsuperscript{58} See Key Principles for Children and Transitional Justice, Annex.

\textsuperscript{59} Those charges are sexual enslavement and rape as crimes against humanity.
male fighters are Acholi, which may account for some of the differences of approach.

Generally, Lango leaders see the abduction and forced marriage of women and girls as a broader regional issue that should be a part of peace-building and reconciliation discussions in the north. Many Acholi community and religious leaders interviewed for this study are focused more on issues affecting the Acholi people and less on how neighboring tribes are coping with the return of former captives. Lango leaders want Acholi clans to accept some responsibility for actions by Acholi LRA fighters and captor-husbands. For traditional forms of justice to apply to Lango females, the Acholi would have to be involved when the captor-husbands are Acholi. Such an arrangement will not easily be organized.

The customary practice in cases of rape is to facilitate a cleansing ritual to help the victim overcome the experience. Such rituals should not be confused with traditional justice practices, but they share common roots. Like traditional justice practices, cleansing rituals include the participation of clan elders and other family or community members. For such rituals to apply in cases of rape, the victim and the facilitators of the ritual must travel to the location where the rape took place, which would obviously be problematic given the multiple experiences of rape in various countries by individual forced wives.60 The survivor and her family and other community members would also need to encounter the perpetrator. Concerns have been expressed that such a ceremony might enable the perpetrator to identify the clan and living situation of his former forced wife and then to pursue her or her children.

Many Acholi rituals are used to foster reconciliation and harmony between families, clans and different ethnic groups. The most widely known is mato oput, which literally means “drinking the bitter root.” Typically used to reestablish harmony after a murder or unintentional killing, it is performed after a mediation effort has brought hostile parties together to resolve differences. The offending party must accept responsibility for the crime; when the parties work out their differences, the bitter drink is consumed as a

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60 Four clan leaders, interviewed on 9 March 2007, by Carlson, Pader District, Uganda.
gesture of forgiveness and reconciliation. *Mato oput* traditionally includes payment of compensation by the offending parties.\(^{61}\)

**Women’s Dissatisfaction with Traditional Ceremonies**

Women are typically left out of traditional decision-making processes, and *mato oput* is no exception; it assigns a minor role for female participants. Therefore, unless traditional systems evolve to incorporate international human rights standards, which is doubtful, they will not achieve justice for the widespread rights violations perpetrated against women and girls.\(^{62}\)

*Mato oput* is not applicable to rape, forced marriage, slavery, forced pregnancy, torture or any other crimes perpetrated against former captive “wives” within the LRA. Nor do clan elders have any experience overseeing justice processes to deal with these mass crimes.

The Acholi have other customary practices for dealing with various violations, but they do not address sexual and gender-based crimes. One such practice is *nyono tonweno* (stepping on the egg to cleanse someone who has been away from home for an extended period of time). It is the ritual most likely to be practiced by former forced wives and other male and female abductees. Stepping on an egg serves as a symbolic gesture of leaving behind the experiences of the LRA and starting a new life in a new community.

The Lango, Madi and Iteso all also have their own systems of accountability. It is unclear to what extent, if any, these groups would be willing to accept Acholi rituals to achieve accountability and reconciliation.

In some cases the rituals have provided relief and alleviated guilt on the part of returnee women and girls. But most of the women and girls interviewed by the authors said they found little meaning in the ceremonies and derived little relief from them. A

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\(^{62}\) Ibid.; “Beating ‘Wives’ and Protecting Culture.”
recent study also found that “forced wives” were the least likely of any category of former captives to participate in traditional cleansing ceremonies.\(^63\) Some have described these ceremonies as “wasteful” and “useless.”\(^64\) One former forced wife and young mother in Kitgum District spoke for many when she said she had been forced to participate in the ceremony because “it is what the community people want, not what I need.”\(^65\) These women are aware of the services provided by international NGOs and other groups, which brings expectations of having access to them. Part of the disappointment many have in traditional ceremonies may be related to the limited or nonexistent follow-up or other supplemental services. Perhaps increased accessibility to professional services addressing the experiences of these former captives would give traditional ceremonies greater significance.

Clan elders say that compensation for crimes such as rape is unlikely unless the rape resulted in the birth of a child. Even then, they say, compensation would be paid not for the rape, but for the care of the child born of the relationship, as per customary practice. Therefore, rape remains unpunished and inculpable under customary Acholi practices. Furthermore, Uganda’s Amnesty Act shields most returnees from prosecution by national laws for crimes committed while with the LRA.

Female leaders in Kitgum and Pader Districts express frustration with the ossified and arcane nature of traditional ceremonies, saying that they seldom address the root of crimes committed against women and girls. One female local council member explained that the welcoming ceremonies for women, including those raped and forcibly married, are:

...old and untouchable ceremonies that cannot be adapted to fit the needs of the girls returning or [address] the crimes committed in the bush...These

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\(^63\) *The State of Female Youth in Northern Uganda.*

\(^64\) Former forced wives, interviewed in March and April 2007 by Carlson, Pader and Kitgum Districts, Uganda.

\(^65\) Former forced wife, interviewed on 11 March 2007 by Carlson, Kitgum District, Uganda.
ceremonies are the same ceremonies that have always been carried out by the elders and there is nothing that we, as women, can do to change them.\textsuperscript{66}

Another female council member said the male elders will not allow Acholi rituals to be changed because doing so would be considered an insult to Acholi culture and ancestral custom.\textsuperscript{67}

Under Acholi and Lango customary law, the parent or guardian brings a case forward. This adult is most likely to receive the monetary or material compensation and determine how it will be used; minors usually do not receive compensation for violations committed against them. Where a violation has been committed against an adult, the head of the family brings the case forward. This would typically be a man, but in the absence of a male head of household, a woman could bring the case forward. When an individual commits an offense against a fellow clan member, the clan elders mediate a resolution between the two families. If the offense is committed against a member of another clan, the offender’s clan is also held responsible. It is thus the responsibility of the clans as a whole to resolve violations of customary practice through their leaders. Significantly, this dialogue must produce admission of guilt by the offending party and a verbal gesture of forgiveness by the violated party.\textsuperscript{68} In the case of forced marriage, captor-husbands are responsible for the offense of forcibly

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{66} S. Latigo, Local Council official, interviewed on 30 March 2007 by the authors, Pader District, Uganda.
\item \textsuperscript{67} M. Ayo, Local Council official, interviewed on 30 March 2007 by the authors, Pader District, Uganda.
\item \textsuperscript{68} Two clan leaders, interviewed on 9 June 2005 by Carlson, Lira District, Uganda; Bau-Okol, Local Council official, interviewed on 10 June 2005, Carlson, Lira District, Uganda; Y. Odur, Paramount Chief, Lango, interviewed 14 June 2005 by Carlson, Lira District, Uganda; see E. Baines, \textit{Roco Wat I Acoli: Restoring Relationships in Acholi-land: Traditional Approaches to Justice and Reintegration} (Vancouver, British Columbia: Lui Institute, 2005) [hereinafter \textit{Roco Wat I Acoli}]. For most important elements of traditional justice, the establishment of truth, the voluntary nature of the process, the payment of compensation and the restoration of social relations among family and clans.
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“marrying” abducted women and girls, and their clan is liable for compensation for these acts under Acholi and Lango customary laws.

Restoring Traditional Justice Mechanisms

Historically, when disputes were left unsettled, compensation unpaid or revenge killings carried out, clans would arm themselves with spears and confront each other.69 Though conflict is no longer resolved in this manner, regional instability and armed conflict have disrupted traditional systems of resolution. Rebuilding traditional methods of negotiating, paying or collecting compensation will take time. Until these systems are restored and relations among ethnic groups and clans strengthened, it is likely that violations of women’s and girls’ rights will be of secondary concern for clan and tribal leaders.

Ethnic groups have lost their authority and ability to consistently enforce customary norms.70 Insecurity has impeded communication among clans, and this is compounded by the fragmentation of clan unity due to displacement throughout the north.71 As a result, clan authority to enforce customary law is weak, which allows local councils to play a greater role in addressing clan issues, and disputes remain unsettled between clans and ethnic groups, increasing mistrust and resentment.72 The weakened state of Acholi and Lango customary systems is reflected in the normative

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69 H. M. Odngo, clan leader, interviewed on 10 June 2005, by Carlson, Lira District, Uganda.

70 Clan leader interviewed on 9 June 2005 by Carlson, Lira District, Uganda. Apart from the Local Council Courts mentioned above, there are informal customary courts established at multiple levels. They include family courts, clan courts, interclan courts and intertribal courts. These are headed by the elder within each respective group, with each working toward the same general concepts of justice, including truth, compensation and restoration. (For more on Acholi justice, see Roco Wat I Acoli.)

71 Ibid.

72 Ibid.; Father of former forced wife interviewed on 10 June 2005 by Carlson, Lira District, Uganda.
attitudes and practices for dealing with crimes and violations that have occurred within forced marriages.

Traditional methods for bringing offenders before the clans are further weakened because the LRA fighters responsible for these violations are often well outside the influence or control of their clans. As long as they remain in the bush, it is extremely difficult for their clans to hold them accountable. As a result, the former “forced wives” may have little redress through customary law. They may choose to leave the matter altogether and move on with their lives, hoping the captor-husband never reappears.

However, this does not change the fact that the clan of the offending male is responsible for addressing violations of customary law. As one clan leader said, “Each clan is responsible for bringing in their [LRA affiliated] clan member. Whatever clan one LRA fighter is from, that clan needs to be responsible for his behavior and must do what it can to bring him in.”

Informants contend that such efforts by clan leaders and elders are necessary, given the scale of involvement in the LRA by young men of particular clans and ethnic groups. If such efforts are not made and apparent, it may appear that one clan or ethnic group is not giving full respect to the laws and customs of others. This may foment resentment toward that clan or toward an entire ethnic group. Given existing resentments between ethnic groups or clans, it will be difficult to develop effective means of addressing the widespread sexual and gender-based crimes within traditional justice systems.

Acknowledging that sexual and gender-based crimes have been perpetrated against thousands of women and girls of all different ethnic groups and clan affiliations in northern Uganda could have positive outcomes. It could change negative attitudes about individual returnees and raise awareness more broadly of sexual and gender-based violence of all kinds. However, at present there is little discussion among clan leaders on how to move forward at regional or even district levels.

In the forums that will come to grips with accountability and

73 Clan leader, interviewed on 9 June 2005 by Carlson, Lira District, Uganda.
reconciliation issues in conflict-affected ethnic communities, it is important for women and girls to have designated safe spaces where they can speak among themselves and be heard. Male elders dominate traditional justice mechanisms in Uganda, and women have rarely fared well within them. Parallel processes for women and girls are necessary to provide a forum in which they could speak out about their experiences and their needs for justice.

It is also important for male leaders to hear what these women and children have to say. There are clan elders, parents and others in northern communities who will support women and girls in their pursuit of justice. A number of challenges hinder women’s and girls’ ability to influence traditional leadership and customs, but involving male elders in community-level action could help overcome them. Male elders will also be important in bringing issues of sexual and gender-based violence to the interclan table to foster regional reconciliation.

Public condemnation of the crimes suffered by women and girls at the hands of the LRA is more helpful than attempting to persuade them to return to their LRA “husbands.” Traditional, religious and social institutions can support these women and girls when they participate in public and legal forums and can advocate for robust accountability measures.

Clan leaders’ opinions mirror those of most of the former forced wives with whom the authors discussed accountability for LRA crimes. As one leader explained in Kitgum-Matidi, establishing the ladder of command responsibility is key to determining responsibility. Then it is necessary to look at how the chain of command organized the abductions and forced marriages and identify the perpetrators and commanders. Only then can a determination be made on how to go forward. This process could include clan elders, tribal leaders and other community leaders, in addition to the victims themselves and their families.74

Finally, without government action to uphold its protective obligations, customary laws remain difficult to enforce. As one clan leader explained:

74 Clan leader interviewed on 11 March 2007 by Carlson, Kitgum District, Uganda.
Customary laws are effective only to a point, and we can appeal for their relevance and enforcement. We cannot physically act on them in the state of things now. The government is government and we do not have the power to do what government can do. If [LRA fighters] should be [held accountable], we as a clan cannot enforce these decisions.75

Customary law in the north can be an effective tool to reconcile clans and ease the process of reintegrating former LRA commanders, male abductees and captor-husbands into clan communities. Through customary reconciliation, women and girls may be able to gain compensation. This could enable them to make decisions about where or with whom to live that are not driven by purely economic considerations. But how people work to restore harmony within and between clans may affect the avenues available to women and girls to seek redress and resolve their cases within customary law. Unless attitudes and current customary practices are modified to appropriately and effectively address forced marriages, the rights and welfare of forced wives and their children will be vulnerable to further crimes and violations.

CONCLUSIONS

The crimes perpetrated against girls and young women held in LRA captivity – which include abduction, rape, forced marriage, enslavement, sexual slavery and torture – amount to war crimes and crimes against humanity. The LRA leadership is responsible for perpetrating these crimes at unprecedented levels in the war-affected areas of northern Uganda and Southern Sudan. Millions of people have suffered injustices, and there is a great deal of discussion about crimes and accountability in northern Ugandan communities.

75 Clan leader interviewed on 9 June 2006 by Carlson, Lira District, Uganda.
The Juba peace negotiations and the Agreement on Accountability and Reconciliation call for the use of traditional justice measures along with national justice systems. But given their magnitude, the violations are beyond the range of issues typically addressed by customary law in northern Uganda. There should be no amnesty for perpetrators of grave international crimes, and that extends to the case of forced marriage imposed on girls and women.

Accountability and reconciliation processes need to consider the best interests of both the community and the individual. Female survivors of sexual and gender-based crimes by the LRA can benefit greatly from public condemnation of the crimes. It is vital to help them regain their sense of humanity, to reestablish trust within their homes and to have a voice in reconciliation forums. Traditional, religious and social institutions need to support these women and girls when they participate in public and legal forums and to advocate for robust accountability measures. It is also crucial for male leaders to hear what these women and girls have to say.

In light of the inadequacies of traditional measures to address forced marriage, rape, forced pregnancy and other similar crimes of equal gravity, there are two acceptable and adequate remedies: first, forced marriage should be considered a crime within the mandate of the special division proposed within the Ugandan High Court to handle prosecutable crimes, not a lesser offense to be dealt with through traditional measures; and second, the special division should prosecute not only top LRA leaders but also the commanders responsible for forced marriages, rape, forced pregnancies and the other violent gender-based crimes they ordered. In addition, the slavery crimes of forced labor and torture, which should include forced marriage, should be addressed at national and international levels.

Considering the insufficient capacity at the international level to try all those suspected of crimes against humanity and war crimes as well as the reluctance of political leaders in Uganda to allow for international trials, it is imperative for the proposed special division to ensure that the crimes perpetrated against women and girls in captivity are criminalized and addressed. Treating these crimes as international crimes and trying LRA commanders for them will not
reconstruct the lives of the girls and women who were the victims. But it will underscore the importance of national and international law in strengthening the protection of women’s and children’s rights during conflict. This still leaves space for customary practices and ceremonies to address the challenges facing former forced wives who have reintegrated.

Implementation of the Agreement on Accountability and Reconciliation requires amending Ugandan law to provide a basis for bringing charges that would reflect the scope and gravity of those crimes presently charged by the ICC. Either the ICC should retain jurisdiction over and prosecute these crimes, or the special division in Uganda’s High Court should be empowered through legislation to bring the same prosecutions. The statute for the special division should cover rape, sexual slavery, forced pregnancy and any other form of sexual slavery, indecent assault or forced marriage. Addressing sexual and gender-based violence should be an institutional priority. Traditional justice systems are not likely to prioritize it or to have the capacity to deal fairly and justly with it.

Former forced wives should be able to come forward and testify safely. They should have options for giving testimony: in camera before the commissioners or judges, at public hearings with their identity shielded, or at public hearings. The latter two options would help to break the silence and stigma around sexual crimes and violations and the myriad of abuses suffered during captivity.

Sierra Leone’s Truth and Reconciliation Commission made provisions for female witnesses to testify before a female commissioner or judge when giving testimony on sexual crimes and violations. Uganda should follow this example. Consideration should be given to holding special hearings on the situation of women and girls in northern Uganda and the crimes and violations they suffered, including forced marriage.

The Agreement on Accountability and Reconciliation also calls for a truth-telling body, and its final report should address the effects of armed conflict on women and children – as stipulated in the Agreement – and discuss the use of sexual and gender-based violence throughout the conflict by all parties. Recommendations arising from the report should also pay close attention to these
findings and propose ways to help survivors move forward during the post-conflict period.

The work of the special division and the truth-telling body needs to be widely publicized so that justice is not just done, but is seen to be done. They will need human and financial resources to ensure their ability to engage in outreach and information dissemination from the beginning to the end of their mandate. Outreach must be sensitive to gender and generation and should include concerted efforts to reach out to victims.
THE POTENTIAL AND LIMITS OF MATO OPUT AS A TOOL FOR RECONCILIATION AND JUSTICE

Prudence Acirokop ⁷⁶

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INTRODUCTION

Traditional methods of justice and reconciliation can provide opportunities for communities to heal from conflict. Through these mechanisms, children associated with armed groups can ask for forgiveness from their communities, and perpetrators can apologize to the children. This may lead to reconciliation and relieve children from psychosocial distress for crimes committed against them and by 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 can benefit from accountability measures for crimes committed during armed conflict. This author takes the view that such children can benefit from a process that (a) ensures accountability for one's actions; (b) respects procedural guarantees appropriate in the administration of juvenile justice; and (c) reflects the desirability of promoting communal reconciliation and the capacity of the child to assume a constructive role in society.

The Acholi people of northern Uganda have for centuries relied on traditional justice and reconciliation methods to resolve disputes and achieve communal reconciliation. In the wake of two decades of armed conflict between the Lord’s Resistance Army (LRA) and the Uganda People’s Defence Forces (UPDF), many Acholi people are considering a traditional justice mechanism, mato oput. With its core principles of apology, compensation and forgiveness, it can serve as a form of accountability and a tool for generating acknowledgement and long-term reconciliation.

Methodology

This chapter analyzes the process and ethics of Acholi traditional justice and reconciliation in the context of juvenile justice and international standards for children. It highlights the Acholi traditional justice ceremony of mato oput, paying particular attention to children's roles and their potential contribution to accountability and community reconciliation. The chapter is based
on a review of literature, the author’s insight as a member of the Acholi community of Uganda and field interviews conducted in Amuru and Gulu Districts of northern Uganda in February 2008. Individual interviews were held with forty-three children, and ten focus-group discussions were held with children and young people aged fifteen to twenty-one years. Other persons interviewed included local government officials, traditional leaders, aid workers and people living in towns and camps for internally displaced persons (IDPs).

This text does not fully represent the numerous voices and views on the use of *mato oput* as a process for reconciling the crimes committed in northern Uganda, but it highlights the many relevant issues. Due to the limited geographical focus of the interviews, the opinions of those living in two Acholi districts, Pader and Kitgum, are not represented. All interviews with members of the local community were conducted in the Acholi language.

**CHILDREN ASSOCIATED WITH THE LORD’S RESISTANCE ARMY**

Over the past two decades, thousands of children in northern Uganda became targets and victims of the conflict between the LRA, composed mostly of abducted children or adults abducted as children, and the UPDF, the national army of Uganda. About 90 percent of the affected population is Acholi. The children associated with the LRA have been forced to perform atrocities against civilians as punishment for accepting the Government of Uganda’s

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77 The most affected are the Acholi population of Gulu, Kitgum, Amuru and Pader Districts, but neighboring areas have also been affected, particularly Lira, Apac, Oyam, Kumi, Adjumani, Amuria and Soroti, which are mostly home to the Langi, Itesot and Madi ethnic groups.

rule.\textsuperscript{79} The tactic is intended to make it difficult for the abductees to escape and return home due to fear of reprisals from victims and members of the community.\textsuperscript{80}

The LRA movement claims a spiritual dimension, which also instills fear and respect for the commanders’ powers among the captives. Children are forced to carry out atrocities to demonstrate loyalty to the “Holy Spirit” that LRA leader Joseph Kony claims anointed him to start the war. Several children who have escaped captivity report being terrified of Joseph Kony. They believe he could read their minds and would kill them for thinking about running away.\textsuperscript{81} The children tell of being forced to club to death children who were not following the orders of rebel commanders.\textsuperscript{82}

Children who manage to escape LRA captivity and return to northern Uganda are commonly referred to as “returnees.”\textsuperscript{83} They often suffer from nightmares, sleeplessness, hallucinations, withdrawal and feelings of hostility and despair.\textsuperscript{84} Some of the children have no homes to return to; some families have not accepted their children; and some children reportedly have gone

\begin{itemize}
\item[\textsuperscript{82}] Ibid.
\item[\textsuperscript{83}] There are various channels for returning from captivity. Returnees captured by the UPDF pass through the UPDF child protection unit before referral to a reception center. Children who actually escape from captivity and run home do not benefit from the services, such as psychosocial support, provided at reception centers. Families and community members have been known to take some of these children to the centers themselves.
\end{itemize}
back to the LRA (or have been inclined to) because they no longer felt a part of their communities.85

The return process is further complicated by difficulties encountered by both returnees and the community in “protected villages”, camps for IDPs.86 A particular challenge for returnees is stigma. The returned children say they prefer to keep to themselves or to associate with other returnees because people point at them and refer to them as rebels and murderers or as duk paco (“return home”), which they find offensive. People often lace the phrase with sarcasm and bitterness, angry at having suffered because of atrocities perpetrated by the children who are now being “rewarded” (with modest assistance).87 The returning children also face a lack of economic and education opportunities, the risk of sexual abuse and exploitation, food insecurity and health threats, including HIV and AIDS.

Within the camps, cultural leaders and elders have assisted in mediating conflicts involving the returning children. In many cases, families and elders have adopted rituals to welcome them home and performed cleansing rituals to remove the cen (bad spirit).88 The cen is believed to cause disease and to make people behave in a dangerous or abnormal manner, traits commonly seen in people

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85 Ibid.

86 In response to the war, the Government of Uganda, in 1996, began a policy of forcing civilians out of their homes into what it termed “protected villages” on the grounds that it was a necessary military strategy to distinguish the LRA from the civilian population. These “protected villages” are commonly referred to as camps for internally displaced people or IDP camps.

87 Duk paco is a program started by the Amnesty Commission that calls for rebels to return home. The returnees were usually provided with a package of practical items, including schoolbags with duk paco written on them. This is a source of bitterness to communities, who say they have suffered from the LRAs atrocities, yet the returnees are rewarded for their crimes when they return home.

88 Cen is believed to be the bad spirit of a person who has died, usually a violent and untimely death, and is out to get revenge from the person who committed the killing, failed to stop it, happened to be present when it took place or simply came across the dead body. The revenge is believed to extend to family and clan members.
with mental illness. Hallucinations, nightmares, violence, stress and chronic illness are all signs associated with *cen*. For many children, these cleansing rituals have led to communal reconciliation. Others express interest but have not undergone such rituals because they don’t have families or are too poor to purchase the necessary items. Still others are not interested, do not identify themselves with the rituals or shun them as satanic or backward.

In the search for a solution to the conflict, in 2003, the Government of Uganda referred the situation to the International Criminal Court (ICC), which accepted the referral and started investigations. By 2005, the ICC had unsealed arrest warrants for the five top LRA commanders. The indictments cover war crimes and crimes against humanity, including charges of murder, pillage, sexual slavery, attacks against civilian populations, use of

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90 Ibid.

91 For further discussion of *cen*, see Erin K. Baines, “The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda,” *International Journal for Transitional Justice*, 2007 [hereinafter “The Haunting of Alice”]. It tells the story of a former abductee who asks elders to perform ceremonies to relieve her of the *cen* of her dead sister. Alice had been forced to participate in killing her sister when they were abducted by the LRA rebels.


94 ICC press release, “Warrants of Arrest Unsealed Against 5 LRA Commanders”, ICC-CPI-20051014-110. The indicted LRA commanders are Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen and Raska Lukwiya. Raska Lukwiya was killed in 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. Of the three remaining, none have been arrested, and there is no indication that the ICC will secure arrests in the near future.

95 In accordance with articles 7 and 8 of the Rome Statute.
child soldiers, cruel treatment, abductions, inhumane acts, enslavement and rape.

Perhaps in response to the ICC warrants, the LRA expressed willingness to engage in peace talks with the Government. These began in August 2006, mediated by the Government of Southern Sudan in the capital, Juba. The LRA and the Government signed various agreements, including a Cessation of Hostilities Agreement, an Agreement on Accountability and Reconciliation96 and an Agreement on Disarmament, Demobilization and Reintegration.97 Throughout the process, the LRA demanded the withdrawal of the arrest warrants for its leaders and called for matters of justice and accountability to be dealt with locally.98 In several public statements, President Yoweri Museveni promised to request a withdrawal of arrest warrants when the LRA signed a comprehensive peace agreement.99 But on 11 April 2008, Joseph Kony declared in a communiqué that all the signed agreements were null and void, except for the Cessation of Hostilities, which he agreed to extend for five days, and that the Juba peace talks were ended.

On 14 December 2008, the armed forces of Uganda (UPDF), the DRC and Southern Sudan launched a joint intelligence and military offensive against the LRA. It did not succeed in its intended purpose of capturing LRA commanders and ending the war. The LRA commanders are still at large; reports indicate they are roaming the forests in the CAR, the DRC, and Southern Sudan. There have been reports of the LRA abducting children in the DRC and committing atrocities against civilians, though the abductions in Uganda have stopped.

96 Signed on 29 June 2007; on 19 February 2008, an annexure on the modalities of the Agreement was signed [hereinafter, Annexure].

97 Signed on 29 February 2008.


JUSTICE, ACCOUNTABILITY AND RECONCILIATION

Bearing in mind crimes committed by children, the search for a solution leads to questions of justice, accountability and reconciliation for the people affected by the conflict. The Convention on the Rights of the Child (CRC) provides for both judicial and nonjudicial proceedings to achieve accountability for crimes committed by children. In both cases, the state must take utmost care to ensure respect and protection for children’s human rights and legal safeguards. In Uganda, both judicial and nonjudicial measures have been envisaged to deal with questions of justice, accountability and reconciliation.

The Agreement on Accountability and Reconciliation and its annexes provide for a special division of the High Court of Uganda to try persons alleged to have committed serious crimes during the conflict. The prosecutions will target persons alleged to have planned or carried out widespread, systematic or serious attacks directed against civilians or those alleged to have committed a grave breach of the Geneva Conventions.

The Agreement recommends that crimes against women and children during the war should receive particular attention. It provides for the protection and participation of victims and witnesses, including women and children, during the

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100 The Court has been established administratively, but its framework and processes have not been agreed upon. See Legal and Institutional Framework, Clause 7 of the Annexure to the Principal Agreement. It is not clear whether the special division of the High Court will target the commanders already indicted by the ICC, but in the recent ICC adjudication on admissibility, Uganda submitted that its situation was still admissible before the ICC. For details, see “Situation in Uganda,” in the case of Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen, Public Document, and “Decision on Admissibility of the Case under Article 19(1) of the Statute,” Pre-Trial Chamber II, 10 March 2009, No. ICC-02/04-01/05.

101 See Clause 19 of the Annexure to the Principle Agreement.

102 See Clause 13(c) of the Annexure.
proceedings.\textsuperscript{103} It is not clear from the Agreement whether alleged child perpetrators would be tried by the special division. The Ugandan penal code specifies that children aged twelve years and below are not criminally liable for their actions. It remains to be seen if substantive legislation for prosecution of serious crimes will include children above age twelve or exclude all children.

Amnesty is also seen as a possible reconciliation and reintegration measure for former rebels, although the Government has suggested that LRA commanders indicted by the ICC would not be eligible. The Amnesty Act borrows largely from traditional approaches emphasizing forgiveness and reconciliation.\textsuperscript{104} It extends amnesty to all those who voluntarily surrender arms and renounce rebellion and provides for a resettlement package.\textsuperscript{105} Children above the age of twelve have benefited from the amnesty. The Amnesty Commission is mandated to work toward reconciling children with their communities.\textsuperscript{106}

The Agreement on Accountability and Reconciliation recognizes traditional and community justice processes as a central part of the alternative justice and reconciliation framework in northern Uganda.\textsuperscript{107} The Agreement mandates the Government to examine traditional practices with the aim of finding an appropriate mechanism. It also takes into consideration the impact of the process on women and children.\textsuperscript{108} \textit{Mato oput} is singled out as one

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\textsuperscript{103} See Clause 8 of the Annexure.

\textsuperscript{104} See S. 16 of the Amnesty Act.

\textsuperscript{105} The resettlement package includes a sum of $150, a blanket, a mattress and other household items and is in accordance with S. 17 of the Amnesty Act.

\textsuperscript{106} The Amnesty Commission is engaged in a mass education campaign to encourage the community to reconcile with children and other former rebels and to promote their reintegration into the community.

\textsuperscript{107} See Clause 19 of the Annexure.

\textsuperscript{108} Para. 20 of the Annexure.
\end{flushleft}
Acholi traditional process for accountability and reconciliation in northern Uganda.  

People interviewed as part of this research were quick to point out that traditional justice mechanisms should not apply to children accused of crimes because they are not considered to be responsible for their actions. Further questioning revealed that adolescents are not necessarily considered children in Acholi culture. Therefore, all assessments to be carried out in the context of traditional justice must clearly investigate and recommend an appropriate age of criminal responsibility for children taking part in such processes.

THE MATO OPUT JUSTICE AND RECONCILIATION CEREMONY

The magnitude of killing in northern Uganda is unprecedented. The fact that many perpetrators of these crimes are returning to the community poses immense psychological and social challenges. Life in the camps has diminished the status of traditional leaders, and war, displacement, poor living conditions and poverty have reduced the extent of traditional practices.

Yet many cultural rituals continue to be practiced in villages and camps for internally displaced persons (IDPs). Nyono tonggweno – stepping on the egg – is designed to welcome home a family member who has been away for an extended period of time. Lwoko pig wang – washing away tears – is performed when a person thought dead returns to the family alive. Moyo kom – cleansing the body – is performed to remove the negative influence of spirit forces and to prevent misfortune and ill health. Kwero merok is a

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109 Para. 21(i) of the Annexure.

110 A Traditional Justice Committee has been set up by the Judicial, Law and Order Sector in Uganda to assess the viability of using traditional justice as a transitional process.

111 See Traditional Ways of Coping in Acholi, at 64.

112 Rwot Otinga Atuka Otto Yayi of Lamogi, interviewed on 12 February 2008 by the author in Lacor IDP camp.
cleansing ceremony for warriors returning from war. Traditionally it was not performed on a person who killed members of his or her family or clan, but it is being used with returnees who have done so and who suffer from extreme psychological distress. 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.

The phrase mato oput has been used generically to refer to nearly every traditional ritual taking place in Acholi today, causing confusion. Mato oput literally means “drinking bitter root,” as it is made from the ground, bitter roots of the oput tree, which is common in Acholi. The ceremony aims at reestablishing relationships suspended between two clans in response to a killing, whether deliberate or accidental. Participants share this bitter drink at the peak of the ceremony, at the end of a long process of confession, mediation and payment of compensation. Essential to the process is the willingness of the offender’s clan (not the offender as an individual) to assume responsibility for the act committed and a readiness and ability to pay compensation.

The ritual also addresses a crucial spiritual concern. Until the ceremony is concluded, the cen would be expected to haunt the killer and cause diseases in his/her family or clan. This belief has been a strong motivation for initiating mato oput, especially when the offender has nightmares or diseases that could be interpreted as spirit-related. Even if the killer does not believe in the traditional interpretation of cen, escaping its social consequences is often difficult, as he/she could be accused of causing disease and misfortune in the family.

The ceremony was usually performed in conjunction with gomo tong, a symbolic ceremony to mark the end of a war or a bloody conflict between different Acholi clans, chiefdoms or neighboring

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113 See Traditional Ways of Coping in Acholi, at 100.

114 Ibid., at 79.

115 Ibid.
ethnic groups.\textsuperscript{116} Elders from conflicting clans meet to resolve the conflict, and the mediator bends the spear to signify the end of discussions. If the conflict starts again, it is said that the tip of the spear will turn against the aggressor.\textsuperscript{117}

As this demonstrates, all Acholi traditional systems share core principles of apology and forgiveness, which are seen as necessary precursors to reconciliation, based on the principle of restorative justice. Accompanied by requests for forgiveness, compensation is intended to eliminate enmity between parties and to restore harmony in the community.

Erin Baines states that aspects of these traditional approaches appear to meet both the procedural and the accountability standards of international justice, such as those of the Rome Statute of the International Criminal Court and the International Covenant on Civil and Political Rights. Regarding accountability, she argues that the Acholi justice system combines elements of retributive and restorative justice and that international standards of justice can be met through the process of \textit{mato oput}.\textsuperscript{118}

The key question this chapter addresses is whether the \textit{mato oput} mechanism as practiced meets the international standard for a nonjudicial intervention in juvenile justice in light of CRC

\textsuperscript{116} Sometimes the ritual is performed on its own.

\textsuperscript{117} The Liu Institute for Global Issues and the Gulu District NGO Forum, with the Support of Ker Kwaro Acholi, 'Roco Wat I Acoli: Traditional Approaches to Justice and Reintergration (September 2005) at 30. This symbolic ritual was last performed in 1984 between the Acholi and Madi neighbors to stop the cycle of violence between the two groups, which spiked after the fall of Idi Amin Dada in 1979. 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 weapons of war have changed. Many respondents agreed that the bending of spears could be done in conjunction with \textit{mato oput} to mark the end of the present conflict and to help in achieving reconciliation within the Acholi, neighboring ethnic groups and perhaps the government, with both sides vowing not to lift a weapon against the other. For further reading on the traditional rituals of Acholi, see \textit{Traditional Ways of Coping in Acholi} and \textit{Roco Wat I Acoli}.

\textsuperscript{118} See "The Haunting of Alice."
principles and as elaborated by the Committee on the Rights of the Child in General Comment 10, as discussed in the next section.\footnote{The Committee on the Rights of the Child, a body of independent experts, monitors implementation of the CRC by States parties. The Committee also monitors implementation of the Optional Protocols on the involvement of children in armed conflict and the sale of children, child prostitution and child pornography. The Committee publishes its interpretation of elements of the CRC in the form of General Comments on thematic issues, among other activities. For more information on the Committee, see www.ohchr.org.}

**JUVENILE JUSTICE AND **\textit{MATO OPUT} \textit{**}**

General Comment 10 provides guidance to States parties in establishing administration of juvenile justice in compliance with the CRC.\footnote{CRC/C/GC/10, 25 April 2007; see para. 3.} The General Comment references other international standards, particularly the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”),\footnote{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 their principles were incorporated into the CRC.} 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”). The aim is for states to develop comprehensive juvenile justice policy.\footnote{Para. 4 of General Comment 10.} The following discussion is based on General Comment 10.

**Use of Alternative Justice Measures**

A key goal of juvenile justice is to establish alternative measures, such as diversion and restorative justice, rather than deprivation of liberty for children in conflict with the law. These measures are meant to serve the best interests of both the child and the society at
Nonjudicial proceedings should reflect not just the protection guarantees in articles 37 and 40 of the CRC but also the 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 express their views). Also relevant are articles 4 (appropriate legislative and administrative measures) and 39 (measures to promote physical and psychological recovery and social reintegration). Accountability measures should be used only when there is compelling evidence that a child committed the alleged offense. The child must freely and voluntarily admit responsibility, and the admission may not be used against the child in any subsequent legal proceeding.

The Agreement on Accountability and Reconciliation clearly provides that a person shall not be compelled to undergo any traditional ritual. The mato oput process commences only on the basis of information obtained from the alleged offender. The information and confession should be given voluntarily without any force or intimidation. Negotiations and mediation take place under the watchful eye of elders and with the participation of many clan members, helping to eliminate any doubts about fair justice.

However, several studies have shown that many returnees conceal their identity for fear of being identified by family members of the victim(s) and fear of stigma. Therefore, few former LRA youth have participated in a communal cleansing ceremony. It is unlikely that many perpetrators will voluntarily admit responsibility for crimes unless given assurances and protection against retribution by the Government and the community.

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123 Para. 3 of General Comment 10.
124 Para. 4 of General Comment 10.
125 See Principal Agreement clause 3. 1 and Annexure, para. 22.
126 See, for example, ”The Haunting of Alice.”
Informed Consent and Assistance

The child should freely and voluntarily give informed written consent to take part in an alternative system, and for children aged sixteen and below, parents must also give consent. In addition, the child must be given the opportunity to seek legal or other appropriate assistance. In northern Uganda traditional leaders and elders pass down community values and traditions from generation to generation. Children who have gone through traditional justice processes indicated that their parents, family members and elders informed them about the process and offered 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 us to take part in the moyo kom ceremony. They explained to us that this would cleanse us of the cen we may have contracted while with the LRA. We agreed and the ceremony was performed.¹²⁷

However, not every returning child is surrounded by family and clan. In the past, elders would support these children, but such help may not be forthcoming given current prejudices and economic insecurities. It is therefore necessary for the Government to establish a mechanism to inform children of the nature, content and duration of the mato oput process and its possible consequences. Children without relatives also need support in deciding whether to take part.

¹²⁷ Interview with two brothers, ages fifteen and seventeen, who returned from LRA captivity in 2001, conducted in Lacor IDP camp in Amuru District.
Protection from Discrimination

States parties to the CRC should take all necessary measures to ensure that children in conflict with the law are treated equally and not subjected to discrimination, for example, in school or in the labor market. Measures are needed to prevent discrimination and to help former child offenders reintegrate into society. Public information campaigns should be conducted that emphasize children’s right to assume a constructive role in society.128

According to the ideal, the purpose of the mato oput ritual is not to judge but to reinforce the dignity and worth of the individual. It teaches the capacity for rehabilitation to the whole community, not just to the offender.129 However, traditional systems have broken down during the conflict, raising concerns about the neutrality and capacity of elders to adapt local approaches to crimes committed during the conflict.130 In addition, many studies131 report that women and girls are not involved in the processes of decision-making, arbitration or negotiations in mato oput. This suggests a degree of discrimination in implementation. Cultural revival is needed; women and youth need to be encouraged to play a more active role in issues of justice and accountability.

Finality to the Case

Diversion should result in final closure of the case. Confidential records can be kept for administrative and review purposes for a limited time, but they should not be viewed as criminal records. A child who has undergone a traditional process should not be seen as

128 See article 40(1) of the CRC.

129 See Traditional Ways of Coping in Acholi.


131 Ibid. and “The Haunting of Alice.”
having a previous conviction. The Agreement on Accountability and Reconciliation partly addresses this concern as it adheres to the legal principle of double jeopardy.\textsuperscript{132} Judicial proceedings, traditional justice and other alternative justice mechanisms are all considered alternatives for addressing crimes committed during the conflict. Only one can be applied to a particular event.\textsuperscript{133} That said, however, it is not clear whether a child who has undergone the traditional process will be seen as having a clean record. Given the stigma surrounding the children associated with the LRA, the community may still view them as offenders, even after the process is completed.

Furthermore, research suggests that taking part in the traditional rituals does not always lead to acceptance. Many returnees report ongoing stigma, even after undergoing such rituals, and live in fear of reprisal from the offended family. The Government needs to invest in communication programs to promote the reintegration of such youth into society and to promote their right to survival and development, as guaranteed under the CRC.

**Right to Life, Survival and Development**

Juvenile justice policies should respect and support children's development. The death penalty and life imprisonment without parole are explicitly prohibited by the CRC, and Ugandan law does not allow the death penalty for children.\textsuperscript{134} It is widely agreed that deprivation of liberty is bad for a child’s development and seriously hampers reintegration into society; therefore, it should be used only as a measure of last resort and for the shortest appropriate period of time. Acholi tradition abhors the death penalty – it does not impose

\textsuperscript{132} Meaning a person cannot be tried a second time for an offense for which he/she has been previously acquitted. See Clause 3.10 of the Principal Agreement.

\textsuperscript{133} See Para. 23 of the Annexure.

\textsuperscript{134} See article 37(a) of the CRC, Uganda’s Children Act and the 1995 Constitution.
the death penalty on any offender who undergoes *mato oput* – nor does it include deprivation of liberty.\(^{135}\)

### Best Interests of the Child

In all decisions taken in the context of juvenile justice, the best interests of the child should be the primary consideration. In the case of *mato oput*, careful consideration will be needed throughout the process and its outcome to ensure that children’s best interests are at the forefront and inform decision-making. The *mato oput* mechanism deals collectively with questions of accountability through compensation and restoration and helps prevent juvenile crime. The negotiation process and the final ritual are open to the community, with the process itself acting as a deterrent. The final agreement recommends reconciliation, and with the sanction of the entire community and clan, it is accepted without question and implemented to the satisfaction of both the victim’s and the offender’s communities.

The Committee on the Rights of the Child acknowledges that traditional justice measures may redress stigma and promote a child’s reintegration into the community. The majority of the children interviewed who were formerly associated with the LRA indicated having undergone traditional rituals, yet they felt the need for more elaborate ceremonies to live comfortably in their communities.\(^{136}\) Bob, a seventeen-year-old boy in the Lacor IDP camp put it this way:

> 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 performed for me to live

\(^{135}\) 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, which led to the creation of different groups.

\(^{136}\) Some of the children indicated they had gone through the more elaborate rituals, but many more could not because of the cost of the items required for the ceremony.
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.137

Many other children in northern Uganda echoed this child’s sentiment. The evidence demonstrates that participation in traditional rituals may work in the best interests of children returning from conflict and captivity, but there is an urgent need for the Government, donors and aid agencies to support such rituals for children who wish to take part but cannot afford to participate because of financial constraints.

Questions inevitably arise about community perceptions of ceremonies supported by the government and aid agencies. One reason identified for stigma and hatred of returnees is the package they receive from the Amnesty Commission. People resent such resettlement packages because they feel that the perpetrators are being rewarded while they (the people) bear the brunt of the conflict. Therefore, the Government needs to invest in widespread sensitization programs to help the community understand the need for government and donor involvement in the process to help support children and families who cannot afford to participate on their own.

**Right to Privacy**

The Committee recommends keeping all juvenile justice proceedings confidential and undertaking them in the presence of only family members. The *mato oput* process takes place outside the home and is open to any onlookers, which could be seen as conflicting with a child’s right to privacy. Though respondents did not raise concerns about this, the government, with help from the elders, should encourage the use of a child-friendly process that safeguards children’s rights. The importance of confidentiality requires further consideration.

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137 Interviewed on 28 February 2008.
Participation of Children

The children involved in the juvenile justice system have the right to be heard and to express their views in all decisions that affect them. The Agreement on Accountability and Reconciliation includes procedures to protect and ensure the participation of victims, including women and children, in all accountability and reconciliation processes.\textsuperscript{138}

Participation should strengthen a child and enhance his/her protection, and protection measures should enable participation. Because \textit{mato oput} is community-based and engages children together with their families and peers, it provides opportunities to enable both the participation and protection rights of children. Most of the children interviewed expressed their desire to participate in the \textit{mato oput} and other traditional processes but said external influences and lack of resources prevented it. This undermines their potential to serve as catalysts for reconciliation and peace-building in their own communities.

A number of factors may affect the eligibility of children to participate in traditional rituals performed at the family or clan level. In particular, children without known relatives, children born in captivity, children whose parents may still be in the bush or dead and returning children who have not been accepted by their families face obstacles in securing eligibility.

One such child is Rose (not her real name), who, with her sister, was abducted in 2001 when she was eleven. On the long journey to the Sudan, a rebel commander forced her to kill her sister, who was too tired to go on. Since returning from the bush in 2005, Rose has tried several times to make contact with her family, asking to have \textit{mato oput} performed so she can reconcile. But they blame her for the sister’s death and want no contact. Rose is a tortured child who keeps to herself, has no friends and does not go to school.

Another example involves five adolescent mothers aged sixteen to eighteen who participated in a focus-group discussion. They indicated that they were abducted at different times and escaped

\textsuperscript{138} Para. 24 of the Annexure.
LRA captivity at different times. They were all given as “wives” to LRA commanders and returned from the bush with children. None have been accepted by their families. Two are married but suffering from rejection by their in-laws. 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.

A possible solution for such children could be a mass cleansing ritual for anyone, including children, who desires to attend. However, such mass ceremonies have been criticized by many in northern Uganda as ineffective because the crimes committed require different rituals and because the victims are different for each case. A robust effort to educate society and promote reconciliation is therefore crucially needed and should be supported by the Government.

Faith-based non-governmental organizations (NGOs) operating reception centers that assist many returnees can further limit children’s right to participation. Returning children who found their way to such a center in Gulu said they were told the cultural rituals are satanic and ungodly and that they should not participate in them. The children were advised to pray and to forgive and forget what happened in the bush.

Recent returnees are extremely vulnerable and susceptible to external influences. They need to be given time to make decisions appropriate for their circumstances. Many Acholi people strongly identify with Christian teachings yet are also still rooted in traditional practices and beliefs. Pitting Christian teachings against

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139 See Roco Wat I Acoli.

140 See Traditional Ways of Coping in Acholi.
traditional beliefs results in confusion and conflict. Conversely, traditional practices are not relevant to all Acholi people, perhaps especially young people who have grown up during the war with few possibilities to experience such practices. These limitations underscore the importance of supporting children by giving them time to reflect and make decisions based on their beliefs and situation.

Acholi traditional justice mechanisms can be tailored to local beliefs and conditions and adapted for children who want to take part. They remain meaningful to the people of northern Uganda. The government and international actors should seize upon the strengths of the traditional system during the transitional justice process. This approach may also hold lessons for other states recovering from conflict.

THE LIMITS OF MATO OPUT

Nature of Offenses

Many people interviewed expressed doubts that mato oput can adequately address accountability for all the crimes committed in northern Uganda. One reason cited is that the process was never meant to address systematic crimes of rape and other sexual offenses, abductions, forced use of children in hostilities, mutilation, pillage, looting, destruction of property or massacres. Some of the offenses committed during the war with the LRA, such as abductions and the use of child soldiers, are not defined as offenses in Acholi society, and yet there is no question that these offenses must be dealt with. Mato oput and other traditional
mechanisms cannot stand on their own; they must be supported by judicial intervention.

Nor are sexual offenses such as rape and sexual slavery defined in Acholi society. Field interviews underscore that traditional leaders have paid no particular attention to such offenses, and it is not clear how traditional justice would address them. LRA commanders and other fighters kept many abducted women and girls in captivity and used them for sexual purposes and domestic labor. These relationships were enslavement, not marriage. In addition, no *luc* (compensation to the mother’s family for a child born in wedlock) was paid for the children born of these rapes. These are some of the difficulties that traditional leaders and other stakeholders need to carefully consider in seeking a solution. Consultations with the community, including victims and witnesses, would be required to define the atrocities involved and to develop acceptable rituals and compensation for them.

### Magnitude of Offenses

Many respondents also doubted that *mato oput* could adequately deal with the scale of killings that have taken place in northern Uganda. One respondent said:

> 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, while in Soroti they claimed that 2,000 of their children are missing. How do we account for this, how do we go about drinking *oput***144**

This raises complex questions with no clear answers. Another critical point is compensation. Traditionally, it was both a means of

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144 Ochora Walter, Resident District Commander, Gulu, interviewed on 10 February 2008.
punishment and a symbolic replacement of the life that was lost. It is not clear if the clans of those responsible for the LRA killings would pay such compensation. Even more complex is the question of the children who have not been accepted by their clans or families. Who would pay compensation, negotiate or drink the bitter root on their behalf?145

**Requirement of Confessions**

The fact that the war is ongoing also creates a problem for *mato oput*. 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 their guilt. Many respondents also pointed out that some of the killings have been committed by the UPDF and common thieves posing as the LRA. For *mato oput* to succeed, these perpetrators would also be required to face their guilt.146

**Identity of Victims**

Reconciliation between the clans of the perpetrator and the victim is central to *mato oput*, but this requires the perpetrator to identify the victim. The LRA have moved across several districts in Uganda, Southern Sudan and the eastern DRC, abducting children and committing atrocities.147 They often do not know the people they attack. Some of the atrocities are committed against travelers on the roads, whose origin may be unknown to the perpetrators.

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146 Ochora Walter, RDC Gulu interviewed on 10 February 2008.

147 Districts in Uganda include, Gulu, Kitgum, Pader, Lira, Apac, Soroti, Moyo, Nebbe and Adjumani. More recent reports indicate that the LRA has extended its activities to the CAR and the DRC.
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?  

Suitability of Elders for the Role

Another reservation expressed by respondents is whether Acholi elders and chiefs can lead an independent and neutral justice system. Many have suffered trauma or live in extreme poverty or have turned to alcohol, losing the respect of younger generations. Many respondents fear that economic gain would be the elders’ main motive for taking part in the ceremonies.

In addition, there are debates in northern Uganda as to whether some traditional leaders are part of the Acholi heritage. Cultural leaders were not officially recognized in Uganda until the 1995 Constitution reinstated their place in society. Many regained their position of respect, but this has not been the case in northern Uganda, where communities have been embroiled in conflict since the reinstatement. In addition, many were reinstated based on political connections rather than heritage or community recognition. Resources would be needed to train them to take on this role in the justice system and to regain their status in Acholi society.

148 Interview with Opoka Vinango, LC III Chairman, Paicho subcounty, conducted on 24 February 2008.

149 See “The Haunting of Alice.”

150 Ibid.
CONCLUSIONS

There are no easy answers for bringing about justice, peace and reconciliation in northern Uganda's broken society. Traditional rituals such as *mato oput* are one strategy. The process has been helpful in restoring the psychological well-being of many children and in reconciling communities. It is important to respect the trust it has earned among some people in the region. The Government of Uganda and national and international actors should seize on its strengths as one transitional justice process.

But it is also important to avoid viewing traditional mechanisms as the definitive answer to justice and reconciliation. Times have changed, and the cultural identity of the Acholi people today is shaped not only by tradition but also by religious faith and judicial processes. The complex and dynamic blend of identities and beliefs must be respected when developing interventions to support justice and reconciliation. Excessive reliance on traditional approaches as a cure for this war-torn society could lead to devastating results. But describing such practices as useless or antireligious only compounds the problems. It is important to acknowledge the potential of traditional rituals and religious approaches and to recognize that they can complement formal judicial systems.

Legally, Uganda already allows for the possibility of diverse approaches. The Amnesty Law promotes forgiveness to end the conflict and facilitate reintegration of former combatants. The Special Division of Uganda’s High Court is an important mechanism for trying those most responsible for the crimes committed during the conflict. Traditional justice is another opportunity to promote reconciliation. The Government, NGOs and other developmental partners should use all these opportunities to their fullest potential, systematically evaluating the effects of various justice and reconciliation mechanisms. The involvement of children as participants in these processes is crucial for their success. However, children's roles will need to be carefully considered and well-supported by family, community and government actors in order to ensure respect for children's privacy and to safeguard their rights.