



USIPeace Briefing

February 2008

For more information:
info@usip.org

The Justice Dilemma in Uganda

By Scott Worden

Introduction

On February 18, 2008 the Ugandan government and the Lord's Resistance Army (LRA) reached agreement on an accountability and reconciliation accord that would provide for prosecution in Uganda of senior LRA leaders most responsible for atrocities committed over the course of the country's 20-year long civil conflict. The agreement also provides that lower level perpetrators will be held accountable by traditional justice mechanisms indigenous to Northern Uganda, where much of the violence occurred.

Now detailed planning must begin to establish the judicial bodies created by the new agreement and to address the inevitable social problems that will arise when thousands of former fighters from the LRA return to live side-by-side with villagers who were victims of their attacks.

So far, the focus has been on how to hold the top LRA leadership accountable—including its head, Joseph Kony, and two others whom the International Criminal Court (ICC) has indicted for crimes against humanity. Less attention has been paid to the greater problems associated with the thousands of perpetrators who have committed terrible crimes for which prosecution is not envisioned. While the Accountability Agreement emphasizes that traditional reconciliation mechanisms practiced by tribes in conflict-affected areas will play a large role in addressing the atrocities committed on the part of the LRA, many questions remain unanswered as to the capacity, credibility, and compatibility of these mechanisms to deal with the large scale atrocities including rape, kidnapping and mutilation, that occurred frequently during the LRA conflict.

This briefing provides a background of the conflict and ongoing attempts at peace, reflects the diverse views expressed during the consultations about justice priorities, and offers recommendations on how to move forward with a comprehensive justice plan.

Over Two Decades of Violence

The current conflict traces its roots to 1986, when current President Yoweri Museveni's faction prevailed in a struggle to overthrow the Milton Obote regime. Northern Ugandan rebel groups organized to prevent Museveni from consolidating power. This armed insurgency was organized along ethnic and regional lines, with the rebels residing mostly in the North and comprised largely of the Acholi ethnic group. In time, the insurgency was taken over by Alice Lakwena, a

mystic who claimed supernatural powers and led poorly trained soldiers into battle under the banner of her Holy Spirit Movement, promising that spells and amulets could fend off enemy bullets. Lakwena's movement faltered in November 1987 but was taken over by her cousin, Joseph Kony. He also claimed spiritual powers and carried on the battle against the Museveni government as leader of the LRA, which, with rather tragic irony, purports allegiance to the Ten Commandments as a basis of government.

Extreme forms of brutality have characterized the LRA's insurgency. In the past 15 years, the group has kidnapped tens of thousands to be used as fighters, laborers, and concubines. In the process, thousands of others have been killed in attacks, or maimed to set an example for other civilians who would consider resisting. This violence, in turn, produced up to 1.8 million IDPs who were gathered in refugee camps throughout Northern Uganda. Meanwhile, the Ugandan army has also been accused of atrocities including rapes and killing of civilians, and many Northerners blame the Ugandan government for forcing them into inhumane camps and for failing to protect them from the marauding LRA.

Since a government offensive led to a new wave of violence and counterviolence in 2003, fighting has moved away from Northern Uganda. The LRA first relocated to bases in neighboring South Sudan, from which it led attacks against both Ugandans and Sudanese (causing the government of South Sudan to request reparations for harm done to their citizens). As support from Sudan waned, however, Uganda enlisted South Sudan as a broker of peace. (South Sudan has ethnic links to LRA fighters and has a strong incentive to intervene to end raids on its people and instability beyond its southern border.) In 2006, the government of Uganda and representatives of



A main street in the Pabo Camp for Internally Displaced Peoples 40 km North of Gulu, Uganda reflects the typical life of a village, but in supremely overcrowded conditions. Many have been living in the 40,000 person camp for more than 10 years.

the LRA began peace talks mediated by Riek Machar, Vice President of the Government of South Sudan, resulting in a framework peace agreement in June 2007 that lays the foundation for a cessation of hostilities, disarmament, return and rehabilitation of fighters, and justice and accountability. A key element of the June package was an Agreement on Accountability and Reconciliation (the Accountability Agreement). This document calls for barring impunity for atrocities committed during a twenty-year civil war, pursuing reconciliation through traditional justice mechanisms, and engaging in historical analysis of the causes and consequences of the conflict. (note: a separate *USIPeaceBriefing* on this topic, from an observer at the talks, can be found [here](#)).

In the last several years, thousands of LRA fighters have given up arms in return for a comprehensive government amnesty program. Those that remain in the movement under Kony have relocated to the jungles of the Democratic Republic of Congo, where they have begun to attack and kidnap Congolese civilians to sustain their movement even as the peace talks with the Ugandan government proceed. No one knows for certain, but credible estimates are that the LRA has only around 500 fighters remaining in the bush, with possibly double that number in family members and servants/slaves who support their camps. The Government of South Sudan has provided a safe haven in Ri-Kwangba, near the border of Congo, for the LRA to gather and negotiate for peace. But the senior leadership have remained in hiding.

Peace negotiations between the Ugandan government and the LRA resumed on January 29, 2008 in Juba, South Sudan, where negotiators are working out detailed protocols for implementing the June 2007 framework agreement. On February 19, 2008 the parties signed an annex to the Accountability Agreement providing further details on how accountability and reconciliation shall be achieved.

At the urging of the Ugandan government, a USIP delegation consisting of Senior Fellow Betty Bigombe, Associate Vice President Neil Kritz, and Rule of Law Advisor Scott Worden visited Uganda from December 9-19, 2007 to conduct consultations with a wide range of stakeholders in the peace process about the prospects for progress at the peace talks in Juba (the capital of South Sudan) and plans to implement the justice mechanisms outlined in the Accountability Agreement. The delegation met with government officials and negotiators, the LRA negotiating team, judges and other legal officials, the chairman of the Amnesty Commission, civil society organizations, religious and tribal leaders, members of the chief mediator's team for the talks, and victims of the conflict, in Kampala and in Gulu, the regional capital in the North and epicenter of Internally Displaced Persons (IDP) camps that still hold hundreds of thousands of Northern Ugandan refugees.¹

The Possibility of Peace

The talks that resumed in January 2008 are the continuation of a long and fitful attempt at peace that began when Betty Bigombe, then Minister for the North, initiated the first direct talks with the LRA in 1993. These talks ended with resumed fighting when the LRA failed to respond to a negotiation ultimatum in 1994. Bigombe then re-initiated talks on behalf of the government in 2003, which also ended without agreement. The current



Residents of an IDP camp met to discuss their views on justice for the LRA with USIP Fellow Betty Bigombe, who all know well from her prior service as Ugandan Minister for Northern Affairs.

Juba round is in many ways the most promising yet.

No element of the Accountability Agreement has been implemented yet, but it contains several promising provisions addressing the challenge of justice and accountability. First, the recently completed agreement on prosecutions states that "a special division of the High Court of Uganda shall be established to try individuals who are alleged to have committed serious crimes during the conflict." This special division will "have a registry dedicated to the work of the division and in particular, shall make arrangements to facilitate the protection and participation of witnesses, victims, women and children" and may use special procedures to account for the unique complexity of the conflict. Given limited resources and the complexity of proving cases of mass atrocity, these trial proceedings would not resolve the majority of crimes committed, but would only apply to a select few individuals "who are alleged to bear particular responsibility for the most serious crimes, especially crimes amounting to international crimes, during the course of the conflict."

For the broader range of crimes, the agreement introduces a role for traditional, community-based justice mechanisms as "a central part of the framework for accountability and reconciliation" which the latest agreement indicated would be applied to lower-level perpetrators and those who have already received amnesty.² The Accountability Agreement recognizes the need for "a comprehensive, independent and impartial analysis of the history and manifestations of the conflict, especially the human rights violations and crimes committed during the course of the conflict." The Accountability Agreement also recognizes "the need for an overarching justice framework" as well as the need for "modifications ... within the national legal system to ensure a more effective and integrated justice and accountability response." Finally, the agreement provides for a range of individual and collective reparations. But very little has been done to date to develop an overall justice framework or to work through the particulars of any component thereof.

USIP's consultations revealed a wide range of conflicting opinions among stakeholders and policymakers as to both the demand for justice and the ability of various institutions to deliver it. In the North, there was strong demand for peace at (almost) all costs. Many officials and observers the team spoke with had interesting ideas about possible paths to justice and reconciliation, but there is no consensus and many questions remain unresolved. Overall, it was clear that the problem is large, complex, and requires significant immediate attention.

Key Issues Affecting the Justice Framework

Beyond the provisions of the framework agreement, negotiators in Juba will have to recognize several legal and practical constraints in fashioning implementation mechanisms for accountability and reconciliation.

ICC Indictments: In 2003, the Ugandan government requested that the International Criminal Court investigate serious crimes committed during the LRA conflict. In 2005 the ICC announced five indictments against the following top LRA leaders: Joseph Kony, Okot Odhiambo, Raska Lukwiya, Vincent Otti, and Dominic Ongwen (although Ongwen has since died and Kony is believed to have killed Otti in November 2007).

The ICC indictments have been controversial. On the one hand, they served to put pressure on the LRA by turning their leadership into international outlaws and making it more difficult for countries like Sudan to harbor and support the movement. ICC engagement in the case was a crucial factor in weakening support for the LRA and moving them towards the current round of negotiations, and in then ensuring that the parties addressed the question of accountability mechanisms in the negotiations. This has been an extremely important precedent for this young new international institution. Many Ugandans also believe that the ICC trials would be more fair and credible than local trials.

On the other hand, the indictments have arguably made negotiations with the LRA more difficult, because Joseph Kony has declared that he will not surrender until the ICC indictments are lifted. This stance has led many in the North to view the ICC as an obstacle to peace – at least in the short term. The ICC’s current position is that the indicted individuals must be apprehended and tried by the international court and not in the courts of Uganda.

The ICC is also widely seen as biased because it has not indicted any military officials for what Northerners perceive to be widespread abuses.³ This attitude, however, may reflect general ignorance among the public as to the ICC’s mandate and jurisdiction as well. Although government abuses against civilians have occurred, the ICC’s jurisdiction only permits it to pursue crimes committed after July 2002, and the most significant of these abuses were perpetrated by the Ugandan military prior to that date. The ICC has been investigating atrocities on an ongoing basis, and has stated explicitly that it will consider any crimes committed by government that meet its jurisdictional criteria.

The Juba agreement acknowledges the ICC and obliges the government to “address conscientiously the question of the ICC arrest warrants.” At the same time, it invokes the ICC’s principle of complementarity – under which, at least prior to the launch of an ICC investigation, a case is inadmissible before the ICC if the local justice system is capable and willing to pursue the matter – and states that accountability will be pursued through national institutions “insofar as practicable.” The recent agreement on prosecutions signals that the Ugandan government anticipates its domestic trials of senior LRA leaders will meet international standards, and thus the government will have grounds to argue that the ICC need not pursue its own prosecutions.

In the end, the ICC indictments may turn out to be a moot point because it is doubtful that Joseph Kony or the other two remaining indictees will in fact turn themselves in, and capturing them has so far proved impossible. But the ICC may also pursue indictments against other LRA leaders that have committed grave crimes and are not prosecuted domestically, and the court will have a vital role in requiring that any such local proceedings satisfy international standards.

Comprehensive Amnesty: Another key component of the justice picture is the Amnesty Act, which the Ugandan government enacted in 2000 as a response to popular demand to end the stalemated conflict. The amnesty granted is exceptionally broad, stating that from 1986 onward “any Ugandan who has ... engaged in war or armed rebellion against the government by either participating in combat, engaging in any other criminal activity connected with the conflict, or aiding or abetting insurgents shall not be prosecuted or subjected to any form of punishment” as long as they agree to renounce their affiliation with rebel groups. Therefore, the state may not prosecute, even for such crimes as rape, mutilation, or murder, once amnesty has been given. The Amnesty Commission created to implement the law has no discretion to deny amnesty to

any applicant meeting these basic criteria. So far, 15,000 people have been granted amnesty under this law, more than half of whom are LRA fighters. Under a 2006 amendment to the amnesty law, the Minister of Internal Affairs can declare an individual ineligible if the parliament agrees, but this provision has never been invoked, even with respect to Joseph Kony and other ICC indictees.

The fact of the amnesty law presents two dilemmas for the overall policy on justice and reconciliation. First, it precludes prosecution or any other form of punishment from being assigned to thousands of perpetrators who have gone through the amnesty process, regardless of the gravity of their offense. Therefore, many heinous crimes will go completely unpunished, and victims may be inclined to resist reconciliation and possibly attempt revenge. This appears to contradict the statement in the Juba agreement that “formal criminal and civil justice measures shall be applied to *any individual* who is alleged to have committed serious crimes or human rights violations in the course of the conflict.” (emphasis added) The annex to the Accountability Agreement remains silent on the amnesty law, stating simply that “prosecutions shall focus on individuals who are alleged to have planned or carried out widespread, systematic, or serious attacks directed against civilians” – presumably leaving it up to the courts to sort out which provision takes precedence under Ugandan law.

Second, the act presents a challenge for dealing with LRA fighters who are still in the bush. On the one hand, the government actively encourages defections to avoid the need for further fighting, and the current amnesty is a key incentive. On the other hand, the parties have committed to no impunity for serious crimes in the Juba agreement, and the Amnesty Act is at odds with this principle. Even if exceptions are to be made for the most egregious offenders, there is no mechanism currently in place to evaluate the remaining fighters who may have committed grave offenses and therefore should be denied amnesty pending further investigation.

Perpetrators as Victims: One tragic aspect of the conflict that cannot be overlooked when considering appropriate justice and accountability mechanisms is that the majority of the LRA’s fighters over the years have been kidnapped, often as children, and thus can be considered victims as well as perpetrators. In fact, it has been standard operating procedure for the



A Ugandan boy waits in line for trucked in water at the Pabo Camp for Internally Displaced Peoples 40 km North of Gulu, Uganda. More than 40,000 people have lived in the camp for up to 10 years.

LRA to attack villages whenever it needed supplies or fighters. It would then kill or maim some members to spread fear, kidnap girls and women to serve as concubines, kidnap boys to become fighters, and men to serve as human mules transporting heavy loads through the jungle. In the case of young captives, they would often be forced to immediately commit atrocities themselves, both to prevent their ability to return to their communities, and to break down their resistance to committing violent acts. Therefore, when many Northerners talk about their desire to forgive the LRA, they are often speaking of their own children or those from their communities, many of whom had no choice but to fight. Separating more culpable leaders from relatively innocent fighters can be a morally arduous task.

The possibility of revenge: Stakeholders presented a significant range of views about the extent of the problems that will arise when thousands of ex-combatants return to villages and seek to live alongside victims of the conflict. For the past ten years, much of the population of Northern Uganda, particularly within the Acholi community, has been displaced. At the peak, 1.8 million people were internally displaced, and nearly one million people remain either in IDP camps or have relocated to cities and towns. In recent years, thousands of former LRA combatants have returned from the bush as part of the government's amnesty program, including some senior commanders. So far, there has been no retaliation against the returnees, although former fighters do report that they are ostracized in some communities.

This scenario gives rise to two competing schools of thought. The more optimistic view is that due to varying combinations of battle fatigue, longstanding tribal traditions of forgiveness, or out of sheer necessity there will be no significant retaliation or revenge. Members of this camp maintain that anger or a sense of injustice among victims can be dealt with through traditional justice mechanisms, symbolic reparations, and compensation from the government. This viewpoint is reinforced in the lack of retaliation so far against rebels who have been granted amnesty and have returned from the bush, as well as through surveys that indicate many Northern residents view forgiveness as a required price for peace.

On the other hand, several interlocutors pointed out that LRA returnees are mostly living in towns, where current residents were less affected by the conflict, and have not yet reintegrated into their own villages where they will be known by their victims, or lived among community members who are aware of what they have done. Moreover, although the situation in Northern Uganda has been peaceful in recent years, the fear of the LRA's return is pervasive, and victims are very cautious not to provoke new conflict with the future of the peace process so uncertain. Therefore, many are concerned that victims' true attitudes will only be known after there is a durable peace, and that if there is no visible and significant justice component to the peace agreement, they will take matters into their own hands. Some victims interviewed directly expressed the view that they are ready to forgive the LRA now in order to have peace, but that once they move home, killers and rapists must be punished, regardless of any amnesty that may have been given.

Conflicting ethnic and regional views: Stakeholders have considerably different perspectives on who should ideally be held accountable for the abuses that have occurred. In the South, including Kampala, the focus of blame is on the LRA, which is comprised mostly of Northern tribes, has committed the most visible atrocities, and has hindered the South's otherwise promising economic development. In the North, however, blame is expressed almost equally toward the LRA for its overt attacks and toward the Ugandan government, both for alleged abuses carried out against civilians by the Ugandan army and for the government's failure to

protect citizens from the LRA. Blame is also placed on the government for insisting that Northern Ugandans relocate into IDP camps, where they have remained for years in overcrowded conditions with poor education, health, and lack of other services. These differing perspectives on what is needed for justice is also framed by a northern general resentment of Kampala for a perceived exclusion of the northern population from the government and from the equitable distribution of national resources.

With respect to accountability for atrocities committed by the Ugandan military, the ICC, as noted above, will in all likelihood not be able to prosecute these cases because its jurisdiction does not extend to the time frame when the principal crimes occurred. The Juba agreement provides that “state actors shall be subjected to existing criminal justice processes and not to special justice processes under this Agreement.” From the perspective of many victims, the military justice system is not viewed as a credible and impartial option for dealing with these crimes. If trials of senior LRA are conducted in a national civilian court chamber (discussed below), a variety of interlocutors suggested that such chamber also be given jurisdiction over military atrocities during the conflict.

While expressing a desire for justice for LRA leaders, Northerners have also said that they are willing to forgive the LRA if it will bring peace. The sense of war fatigue is palpable among



Residents of the Pabo Camp for Internally Displaced Peoples 40 km North of Gulu listen to each other's views on peace and justice in Northern Uganda at a town hall-style meeting. Many demand peace now, but want justice later.

those affected in the North, and the expressed desire to have peace at any cost is understandable in that context. But the level of longer-term satisfaction with a reconciliation process that does not include accountability at either a high or low level is unclear. The official position of the government, as expressed in its signature on the June 2007 agreement, is that there will be no impunity for crimes committed by either side of the conflict. However, there have been discussions about including reduced penalties for senior LRA leaders that would amount to house arrest as an incentive to bring about a final peace agreement. Moreover, the government has been encouraging LRA commanders and fighters to defect now and return to Uganda from the bush, whereby they would benefit by the comprehensive amnesty law. The fact that former LRA commanders have not been punished reinforces the impression that prosecutions can, in fact, be avoided for peace.

How competent are the national courts? As noted, the annex to the Accountability Agreement establishes a special division of the Ugandan High Court to prosecute the most serious offenses. This court is generally well-regarded and can be a viable institution for fulfilling the prosecution provisions of the Accountability Agreement. Although the USIP visit did not include a formal assessment of the court, the Ugandan judiciary includes many highly qualified jurists with extensive national and international experience. The High Court and Supreme Court are viewed to have integrity and have an established record of judgments. And a sophisticated legal community of the bar, academics and NGOs can serve as an effective watchdog over the domestic court process. Each of these factors is a positive sign for establishing a court that could be as independent, impartial, and fair as international standards require.

Still, prominent members of the legal community readily admit that the Ugandan courts have never tried cases as large and complex as the atrocities, and the Ugandan courts have no experience in dealing with charges involving war crimes or crimes against humanity. In addition, the Ugandan criminal code lacks specific charges relating to international crimes. And some of those interviewed expressed a concern as to whether the Ugandan judiciary could remain completely independent in these high-profile cases.

Several legal adaptations may therefore be required to meet international standards, including training members of the special judicial chamber in international criminal law; providing for international participation both on the bench and within the prosecution and investigation services; and incorporating international crimes into Ugandan criminal law. Prosecutions may also require an amendment of the current amnesty law. Various legal officials suggested the need to have foreign experts serve not only as advisors but possibly as judges, prosecutors and investigators alongside their Ugandan counterparts, which follows a long tradition for foreign jurists sitting as members of the judiciary. These steps would be important to enhance both local capacity to try these complex crimes and the credibility of the process in the eyes of the local and international community.

How viable are traditional reconciliation mechanisms? Another wide divergence of opinion was the extent to which traditional justice mechanisms can be relied on to deliver justice for LRA atrocities. The Acholi and other Northern tribes do have a longstanding tradition of resolving intra-tribal disputes through apology, negotiation, compensation, and forgiveness. Many Northerners urge that these tribal ways are alive and well, and will serve as a firm foundation for peace. The government is hoping that tribal chiefs will be able to devise an effective system for mass reconciliation through traditional methods. The most carefully thought out

plans envision a large-scale buttressing of traditional institutions with outside funding and training, as well as modifications of customary methods to fit the LRA's massive crimes.

But critics point out that the traditional methods are in fact not widely practiced today, and are not well-suited to the scale and diversity of LRA crimes. Critics also point out that: the traditional dispute resolution mechanisms have not been used in years and are not familiar to the younger generations; that they do not include provisions for atrocities like rape, mutilation, and abduction (all frequently carried out by the LRA); and that women are under-represented and their rights are under-protected under the traditional system. Moreover, years of war and displacement from villages has weakened the knowledge and authority of the traditional chiefs upon whom the customary systems rely. A key element of traditional justice is the payment of compensation, generally in the form of livestock. Today, however, perpetrators generally do not have the resources to pay this compensation; in addition, the livestock population has been decimated and is unavailable.

It is clear that some modifications must be made to the traditional rituals for them to be a viable path toward reconciliation among thousands of perpetrators and victims. The question is who should determine which modifications are needed and who will implement them? On the one hand, communities lack the capacity to implement such a complex and important task. On the other hand, the government is greatly mistrusted by citizens in the North, and too much government involvement in a traditional system will eliminate the local trust and consensus that informal systems of reconciliation rely on to be effective.

An integrated approach to the massive challenge of justice and reconciliation in northern Uganda would likely entail the use of a combination of justice mechanisms, sequenced over a period of time. Traditional rituals might be relied on initially, to be followed later by criminal investigations and trials and or a truth commission or reparations program. A rule of traditional justice such as the Acholi *mato oput*, however, is that once the case has been addressed through the traditional process, the matter is put to rest and it is forbidden to speak of it again. This would significantly hamper any staggered approach to justice and reconciliation.

Truth processes: The June 29 Accountability Agreement calls for “a comprehensive, independent and impartial analysis of the history and manifestations of the conflict, especially the human rights violations and crimes committed during the course of the conflict” and states that “truth-seeking and truth-telling processes and mechanisms shall be promoted.” The February 19, 2008 annex goes further in establishing a ‘body’ that will examine the nature and causes of the conflict, the violations that occurred, hold public hearings, and make recommendations on reparations and governmental reforms. Thus, without calling it by name, the agreement provides the foundation of a truth commission.

For various reasons, a truth commission process appears to be warranted. The amnesty program, as well as the likely limits to any ICC or national trials, suggest that prosecutions will probably not be sufficient to address the challenge of justice and reconciliation. Local traditional justice will not establish the mandated national “analysis of the history and manifestations of the conflict.” It is worth noting, however, that some senior tribal chiefs propose introducing a more robust system of recording the facts established through traditional resolution of cases into a national database to contribute to the truth-telling process. As noted earlier, this may be

particularly relevant if traditional rules bar parties from discussing the case following its resolution through traditional justice.

Truth-telling can benefit from implementation of the provisions of the Accountability Agreement that would encourage confessions and other forms of cooperation with legal proceedings. In addition, if given power of subpoena as has been done in some other countries, a truth commission could require even those who have received amnesty to testify with respect to the crimes committed, thereby establishing a more complete record. Lastly, a truth commission process may be the most realistic venue through which to examine the broader issues of the nature of the LRA, abuses by the Ugandan military, and the broader social, political and economic inequities that were drawn upon by the LRA and that underlay continuing tensions and resentments between north and south Uganda. Almost nothing has been done to date to plan for the historical inquiry mandated in the June Accountability Agreement.

Justice and Economic Assistance. Regardless of whether LRA and government perpetrators are held accountable for atrocities, Uganda will struggle to deal with the massive costs of the conflict. There was terrible physical and mental destruction, and a nearly complete loss of material wealth. Most rural homes have been destroyed, fields lie fallow, and infrastructure such as roads and wells must be rebuilt. Moreover, the pastoral region has almost no livestock left, which had been the main form of wealth in the Northern communities and a key component of paying the compensation upon which the traditional justice reconciliation mechanisms. In short, a near total reconstruction will have to be accomplished in the North to enable IDPs to return home in large numbers.

The Ugandan government has announced a three-year, \$600 million plan to rebuild and rehabilitate the Northern regions affected by the conflict, and this will be the primary resource that resettled families will draw on to restart their lives. Little attention has been paid, however, to how this redistribution of wealth will impact the reparations and reconciliation process. One wonders whether questions of justice and blame will not become intertwined with competition for what will surely be scarce resources. For example, even if a victim's family is willing to initially forgive, what will their attitude be when an ex-LRA commander receives what they perceive to be a better plot of land, or begins a more successful business, if there has been no public accountability for past crimes?

Recommendations for Ugandan Accountability Mechanisms

Planning mechanisms for accountability and reconciliation are lagging far behind fast moving events on the ground, and the government and civil society must move now from ideas to action if they are to be prepared to deliver a form of accountability that is acceptable to victims of the conflict and can form the foundation for a lasting peace. The following recommendations suggest next steps to address a range of transitional justice challenges.

- Conduct an independent international assessment to determine the technical capacity of the Ugandan justice system to conduct trials of the most responsible perpetrators – possibly including the ICC indictees – that meet international fair trial and due process standards.

- Establish a ‘hybrid’ trial procedure that would try the most responsible perpetrators referenced in the Accountability Agreement in Ugandan courts, but with involvement of international participants, such as foreign judges or counsel.
- Conduct a legislative review to determine which Ugandan laws need to be modified to prosecute the “international crimes” that LRA perpetrators have committed, including crimes against humanity, war crimes, and command responsibility.
- Establish a high-level working group to assess the feasibility of relying on traditional justice mechanisms to resolve war-related crimes that are not within the jurisdiction of the courts that will prosecute the most responsible perpetrators.
- Modify the Amnesty Act to provide conditional amnesty for the remaining LRA fighters still in the bush, which would require truthful information about criminal activity and ensure that the most responsible perpetrators of the greatest crimes are not barred from prosecution.
- Ensure that equivalent investigation and accountability measures are taken for atrocities alleged on the part of the government/military as those committed by the LRA.
- Establish rules and procedures for the truth/historical examination process that is to evaluate root causes of the conflict and make policy recommendations on appropriate reparation and prevention measures as part of the overall justice and reconciliation strategy.
- Explore the means for compensation/reparation for past crimes and its interaction with the Ugandan government’s comprehensive redevelopment plan for the North.

Implementation of the principles outlined in the Accountability Agreement and its implementation annex will necessarily be thorny. And while each of these proposals has been considered to varying degrees by outside actors, they have so far been discussed in an ad hoc and unofficial capacity. The urgent next step is for these deliberations to occur at the highest levels within a framework that leads to concrete policy decisions.

¹ Specifically, USIP met with officials from the Ministry of [Interior], Ministry of Justice, High Court, Supreme Court, Prosecutor General, Amnesty Commission, Office of the Mediator of the Juba talks, the LRA Negotiation Delegation, and UN Office of the High Commissioner for Human Rights as well as representatives of non-governmental organizations including the Faculties of Law, Religious Studies and Institute of Peace and Strategic Studies at Makerere University, Acode, the Refugee Law Project, Gulu Forum, the Acholi Paramount Chief, and the Gulu Religious Leaders Forum, and the Gulu University Human Rights and Peace Center, residents of two IDP camps near Gulu, and former LRA fighters.

² The most prominent traditional mechanism is Matu Oput, which is practiced the Acholi people practice as a means to address cases of murder or theft. Traditionally, a perpetrator will fully confess his misdeeds to his family and clan, who then admit and apologize for the offence to the victim, and compensation is agreed. The parties will then reconcile without retribution or service of jail time. Other tribes affected by the conflict follow similar practices, but there are significant differences between the groups that will have to be respected.

³ The ICC’s image is still hurt by the fact that, after issuing indictments against the LRA, ICC Prosecutor Luis Moreno-Ocampo appeared at a press conference with Museveni, which many interpreted as indicating the ICC’s alliance with the government. The ICC has since clarified its independence, but the taint of bias remains.

Further Reading:

The text of the Agreement on Accountability and Reconciliation can be found [here](#) [pdf], and the Annexure on Accountability and Reconciliation is [here](#) [pdf].

The text of the 2000 Amnesty Act can be found [here](#) [pdf].

The text of the ICC indictments against LRA leaders can be found here: <http://www.icc-cpi.int/cases/UGD.html>

Human Rights Watch and the International Crisis Group have recently analyzed the justice provisions of the Juba Peace Agreement:

Human Rights Watch, *Uprooted and Forgotten* (2007)
<http://hrw.org/reports/2005/uganda0905/uganda0905.pdf>

International Crisis Group (ICG), *Northern Uganda Peace Process: The Need to Maintain Momentum* (September, 2007)
<http://www.crisisgroup.org/home/index.cfm?id=5078>

The following recent reports reflect broad surveys of Northern Uganda residents toward justice and reconciliation:

Office of the High Commissioner for Human Rights (OHCHR), *Making Our Own Peace* (2007)
<http://www.reliefweb.int/rw/rwb.nsf/db900sid/AMMF-763G7T?OpenDocument>

International Center for Transitional Justice (ICTJ), *New Population-Based Data on Attitudes about Peace and Justice* (2007) (follow up to *Forgotten Voices*, 2005)
<http://www.ictj.org/images/content/7/3/737.pdf>

A good analysis of the traditional justice systems employed by the Acholi people is: *The Cooling of Hearts*, Erin Baines, *Liu Institute Justice and Reconciliation Project* (July 2007) <http://www.liu.xplorex.com/?p2=/modules/liu/publications/view.jsp&id=2036>

A recent history and analysis of the conflict is *The pursuit of transitional justice and African traditional values: a clash of civilizations - the case of Uganda*, by Cecily Rose and Francis M. Ssekandi (Sur, No. 7 2007)
http://www.surjournal.org/eng/conteudos/getArtigo7.php?artigo=7.artigo_rose.htm