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Looking Beyond Amnesty and Traditional Justice and Reconciliation Mechanisms in Northern Uganda: A Proposal for Truth-Telling and Repartions

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LOOKING BEYOND AMNESTY AND TRADITIONAL JUSTICE AND RECONCILIATION MECHANISMS IN NORTHERN UGANDA: A PROPOSAL FOR TRUTH-TELLING AND REPARATIONS

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Abstract: This article examines the role that amnesty and traditional practices play in fostering justice and reconciliation in northern Uganda. Although the twenty-two year conflict involving the Lord's Resistance Army (LRA) in northern Uganda has only recently come to an end, many former LRA rebels have been returning returning for years to their communities after taking advantage of the amnesty offered by the government of Uganda. Consequently, reintegration, accountability, and reconciliation are currently prominent legal issues in northern Uganda. Literature on this subject, however, mainly touches upon how the amnesty process and the peace talks are in tension with the International Criminal Court's pending arrest warrants for LRA leaders. This article, by contrast, argues that given the shortcomings of the amnesty process and the traditional practices, a truth commission and a reparations process could play a critical role in northern Uganda's transition from conflict to peace.

Introduction

After twenty-two years of conflict in northern Uganda, a movement toward reconciliation has begun, even though the Ugandan government and the Lord's Resistance Army (LRA) have only recently concluded a peace deal. Although peace long eluded northern Uganda, literature on the subject has already begun to discuss how Uganda can foster long-term reconciliation.[1] While negotiators struggle to achieve

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[1] For literature discussing how Uganda might foster long term reconciliation, see Tim Allen, Trial Justice: The International Criminal Court and the Lord's Resistance Army 162–68 (2006) [hereinafter Trial Justice]; Tim Allen, War and Justice in North-

peace, victims of the LRA struggle to forgive and reintegrate thousands of former LRA rebels who have returned to their communities from the bush after taking advantage of the amnesty granted by the government of Uganda under the Amnesty Act of 2000.[2] In this context of reintegration, many non-governmental organizations (NGOs) and academics, within and outside of Uganda, initially seized on the potential for traditional Acholi ceremonies and conflict resolution methods to play a role in northern Uganda.[3] With the announcement that the International Criminal Court (ICC) would begin investigating the senior leaders of the LRA in 2004, intense speculation ensued about how the ICC's role might conflict with peace negotiations and the traditional justice and reconciliation mechanisms.[4] Uganda now faces the simultaneous operation of regional traditional ceremonies, a national amnesty process, and international criminal prosecutions.[5] To this already complex and controversial mixture of transitional mechanisms in Uganda,

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ern Uganda: An Assessment of the International Criminal Court's Intervention (2005), *available at* http://www.crisisstates.com/download/others/AllenICCReport.pdf [hereinafter War and Justice]; Citizens for Global Solutions, In Uncharted Waters: Seeking Justice Before the Atrocities Have Stopped 23 (2004), *available at* http://www.globalsolutions.org/files/general/uncharted_waters.pdf; Gilbert M. Khadiagala, The Role of the Acholi Religious Leaders Peace Initiative (ARLPI) in Peace Building in Northern Uganda, *in* The Effectiveness of Civil Society Initiatives in Controlling Violent Conflicts and Building Peace: A Study of Three Approaches in the Greater Horn of Africa, app. C, at 17 (2001); Liu Inst. for Global Issues & Gulu Dist. NGO Forum, Roco Wat I Acoli: Restoring Relations in Acholi-land: Traditional Approaches to Reintegration and Justice (2005) [hereinafter Roco Wat I Acoli]; Phuong Pham et al., Int'l Ctr. for Transitional Justice, Forgotten Voices: A Population-Based Survey on Attitudes About Peace and Justice in Northern Uganda 16–17 (2005), *available at* http://www.ictj.org/images/content/1/2/127.pdf; Barney Afako, *Reconciliation and Justice: 'Mato Oput' and the Amnesty Act*, 11 Accord 64, 64–67 (2002); Lucy Hovil & Zachary Lomo, *Whose Justice? Perceptions of Uganda's Amnesty Act 2000: The Potential for Conflict Resolution and Long-Term Reconciliation* 7–8 (Refugee Law Project, Working Paper No. 15, 2005), http://www.refugeelawproject.org/resources/papers/workingpapers/RLP.WP15.pdf.

[2] *See* Amnesty Act, 2000 (Uganda), *available at* http://www.c-r.org/our-work/accord/northern-uganda/documents/2000_Jan_The_Amnesty_Act.doc.

[3] For literature seizing on the role for traditional Acholi ceremonies and conflict resolution methods, see Dennis Pain, Int'l Alert, The Bending of Spears 58–60 (1997); Refugee Law Project, Position Paper on ICC 8–9 (July 28, 2004), http://www.refugeelawproject.org/resources/papers/archive/2004/RLP.ICC.investig.pdf; Lucy Hovil & Joanna R. Quinn, *Peace First, Justice Later: Traditional Justice in Northern Uganda* 23–30 (Refugee Law Project, Working Paper No. 17, 2005); Hovil & Lomo, *supra* note 1, at 5.

[4] *See, e.g.*, Pain, *supra* note 3, at 1.

[5] *See* Amnesty Act, 2000, pmbl.; Trial Justice, *supra* note 1, at 165–66; Pain, *supra* note 3, at 58–60; Press Release, Int'l Criminal Court, President of Uganda Refers Situation Concerning the Lord's Resistance Army (LRA) to ICC (Jan. 29, 2004), http://www.icc-cpi.int/press/pressreleases/16.html.

this article argues for two additions: a truth commission and a reparations system.

Ideally, reconciliation in post-conflict northern Uganda would involve admission of guilt by perpetrators and forgiveness by victims through some sort of dialogue. Communities would reintegrate former members of the LRA and victims would receive support to enable them to return to their homes and resume their lives. Communities would receive economic and social assistance so that the region as a whole could overcome a conflict that has left it impoverished and marginalized. Though methods of reconciliation necessarily differ according to the particular context, some tools foster it more successfully than others. This article examines how effectively Uganda's Amnesty Act and traditional justice and reconciliation mechanisms have fostered reconciliation both during and post-conflict.

Justice and reconciliation in northern Uganda require more than amnesty and the use of traditional mechanisms, which respectively work more toward ending the conflict and fostering reintegration of former combatants.[6] The prosecution of a handful of LRA leaders by the ICC could play a limited, though important, role in promoting accountability and reconciliation in Uganda.[7] To address the interests of victims of the conflict, however, a truth-telling process and reparations for victims and communities are necessary.[8] A complex and unprecedented blend of transitional mechanisms would better serve Uganda than the current combination of amnesty, traditional practices, and criminal prosecutions. Refining and adding to the current mixture will ultimately facilitate northern Uganda's transition from conflict to peace.

Part I of this article provides a sketch of the conflict in northern Uganda, from its origins in 1986, to the resumption of peace talks in Juba, Sudan in April 2007. Part II describes Uganda's Amnesty Act of 2000 as well as three traditional Acholi justice and reconciliation mechanisms, and then analyzes the problems with the amnesty process and the traditional mechanisms. In light of these shortcomings, Part III explains the need for a truth-telling process and a reparations system and explores the relevance of various mechanisms used previously in Uganda, Sierra Leone, South Africa, and Rwanda. Finally, Part IV examines the utility of ICC prosecutions, particularly in light of Sierra

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[6] *See* Amnesty Act; TRIAL JUSTICE, *supra* note 1, at 165–66.

[7] *See* Luis Moreno-Ocampo, ICC Chief Prosecutor, Statement at the International Criminal Court Concerning Arrest Warrants in the Uganda Situation 4–7 (Oct. 14, 2005), *available at* http://www.icccpi.int/library/organs/otp/Uganda_LMO_Speech_14102005.pdf.

[8] *See* PHAM ET AL., *supra* note 1, at 35–36.

Leone's experience with post-conflict criminal justice. Despite the amnesty process, traditional mechanisms, and ICC indictments, this article concludes that Uganda will only be able to effectively promote justice and reconciliation in northern Uganda through the addition of a truth-telling process and a reparations system.

I. Background on the Conflict in Northern Uganda

The conflict in northern Uganda has persisted since 1986, when President Yoweri Museveni and the National Resistance Movement (NRM) took power. The Lord's Resistance Army emerged from Alice Auma Lakwena's Holy Spirit Movement (HSM), which aimed to overthrow the newly established NRM government and enjoyed popular support from 1986 to 1987.[9] In 1987, when Lakwena fled to Kenya after her forces suffered heavy casualties in a battle with the NRM, her supposed cousin, Joseph Kony, assumed leadership of the remnants of the HSM.[10] Under Kony's command, the LRA purportedly aimed to overthrow Uganda's government, based in the southern capital of Kampala, and to rule Uganda according to the Ten Commandments.[11] The LRA does not, however, have a "coherent ideology, rational political agenda, or popular support."[12] The LRA never crosses the Nile River, which divides the northern and southern regions of Uganda, and though the LRA attacks government forces at times, it primarily targets northern Uganda's civilian population, whom Kony claims to be punishing for their sins—particularly that of not supporting him.[13] The fighting has largely taken place in the Gulu, Kitgum, and Pader districts of northern Uganda where the Acholi ethnic group dominates.[14]

The LRA's atrocities include killings, beatings, mutilations, abductions, forced recruitment of children and adults, and sexual violence against girls who serve as "wives," or sex slaves, for LRA commanders.[15]

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[9] Payam Akhavan, *The Lord's Resistance Army Case: Uganda's Submission of the First State Referral to the International Criminal Court*, 99 Am. J. Int'l L. 403, 407 (2005).

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] Melanie Thernstrom, *Charlotte, Grace, Janet and Caroline Come Home,* N.Y. Times, May 8, 2005, § 6 (Magazine), at 34; *see also* Int'l Crisis Group, Northern Uganda: Seizing the Opportunity for Peace 1 (2007), *available at* http://www.crisisgroup.org/library/documents/africa/central_africa/124_northern_uganda_seizing_the_opportunity_for_peace.pdf.

[14] Int'l Crisis Group, *supra* note 13, at 1.

[15] Human Rights Watch, Uprooted and Forgotten, Impunity and Human Rights Abuses in Northern Uganda 15 (2005), *available at* http://hrw.org/reports/2005/uganda0905/uganda0905.pdf [hereinafter Uprooted and Forgotten].

Because the LRA lacks a popular base of support, it populates its forces almost exclusively through abduction and forced conscription of children, usually ages eleven to fifteen.[16] It has used these abducted children to carry loot, sustain combat, and serve as sex slaves, while mutilations have served to create perpetual insecurity among the civilian population.[17] According to estimates, the LRA's membership ranges from 1000 to 3000, with a core of 150 to 200 commanders and the rest consisting of abducted children (the LRA has abducted approximately 20,000 children during the twenty year conflict).[18] During the course of the conflict the LRA has looted and burned houses, storage granaries, shops, and entire villages in northern Uganda.[19] The Ugandan People's Defense Force (UPDF), the national military, has also committed human rights violations against civilians in northern Uganda, including extrajudicial execution, arbitrary detention, torture, rape and sexual assault, recruitment of children, and forcible relocation.[20] Altogether, this prolonged conflict has had a severe socio-economic and psychosocial impact . . . on the entire Acholi population."[21]

The government of Sudan heavily supported the LRA until 2002, when the governments of Uganda and Sudan signed a treaty by which both countries agreed to stop supporting each other's insurgents.[22] With the permission of the Sudanese government, the UPDF launched a military offensive in March 2002 against the LRA, known as "Operation Iron Fist."[23] Although the UPDF aimed to eradicate the LRA by attacking its camps in southern Sudan, the LRA instead fled back into

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[16] Akhavan, *supra* note 9, at 407.

[17] Int'l Crisis Group, *supra* note 13, at 1.

[18] Pham et al., *supra* note 1, at 14.

[19] Press Release, Int'l Criminal Court, Background Information on the Situation in Uganda (Jan. 1, 2004), http://www.icc-cpi.int/cases/UGD/s0204/s0204_b.html (follow "Background information on the situation in Uganda" hyperlink).

[20] Human Rights First, International Justice: Uganda, http://www.humanrightsfirst.org/international_justice/regions/uganda/uganda.htm (last visited Apr. 26, 2008).

[21] The High Commissioner for Human Rights, *Report of the U.N. High Commission for Human Rights on the Mission Undertaken by Her Office Pursuant to Commission Resolution 2000/60, to Assess the Situation on the Ground with Regard to the Abduction of Children from Northern Uganda*, ¶ 14, *delivered to the Economic and Social Council*, U.N. Doc. E/CN.4/2002/86 (Nov. 9, 2001).

[22] The Ugandan government had allegedly supported the Sudan Peoples' Liberation Movement/Army (SPLM/A). Human Rights Watch, *supra* note 15, at 9. The unlikely alliance between the Islamist government of Sudan and the nominally Christian LRA grew out of the Sudanese government's fear that the NRM would threaten its control over the non-Islamic, non-Arab southern part of Sudan. Akhavan, *supra* note 9, at 406. Sudan perceived a link between the NRM and the SPLM/A and consequently supported the remnants of the forces of Idi Amin, General Tito Okello, and Milton Obote. *Id.*

[23] Human Rights First, *supra* note 20.

northern Uganda where fighting and abductions intensified.[24] The LRA also expanded the violence into eastern Uganda which had previously been less affected by the conflict.[25] Since the start of Operation Iron Fist, the number of internally displaced persons (IDPs) has grown from 450,000 to over 1.7 million.[26] Since the mid-1990s, approximately three-fourths of the populations in the Gulu, Kitgum, and Pader districts of northern Uganda have been displaced.[27]

In December 2003 President Museveni referred the problem of the LRA to the International Criminal Court.[28] The government of Uganda reportedly conceived of the referral as a strategy for generally engaging the international community and specifically increasing international pressure on Sudan to stop it from supporting the LRA.[29] In October 2005, the ICC prosecutor Luis Moreno-Ocampo unsealed arrest warrants for Kony and four other leaders: Vincent Otti, Okot Odhiambo, Dominic Ongwen, and Rasaka Lukwiya.[30] Their alleged crimes include rape, murder, slavery, sexual slavery, and forced enlistment of children.[31] As of this writing none of the indictees are in the custody of the Ugandan government or the ICC.[32] Meanwhile, the ICC has confirmed the death of Rasaka Lukwiya, and Vincent Otti has reportedly been killed by Kony.[33] Nevertheless, these arrest warrants reportedly rattled the LRA commanders who thereafter began to talk of a peace agreement which would bring them immunity from prosecution.[34]

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[24] Human Rights Watch, *supra* note 15, at 9; Human Rights First, *supra* note 20.

[25] Human Rights Watch, *supra* note 15, at 9.

[26] Internal Displacement Monitoring Ctr., Uganda: Uncertain Peace Process Impedes Return in North While Protection Crisis Looms in Karamoja Region 16, 133 (2007), *available at* http://www.internal-displacement.org (follow "Africa" link under "Countries" tab; then follow "Uganda" hyperlink; then choose "Download full Internal Displacement Profile"); Human Rights First, *supra* note 20.

[27] Human Rights First, *supra* note 20.

[28] Press Release, Int'l Criminal Court, *supra* note 5.

[29] Akhavan, *supra* note 9, at 410.

[30] Moreno-Ocampo, *supra* note 7, at 4–7.

[31] *Id.* at 6.

[32] Helena Cobban, Op-ed., *Uganda: When International Justice and Internal Peace are at Odds,* Christian Sci. Monitor, Aug. 24, 2006, at 9; Emma Thomasson, *Uganda Highlights Tension Between Peace and Justice*, Reuters, Mar. 4, 2008, http://www.reuters.com/article/featuredCrisis/idUSL03416900.

[33] Press Release, Int'l Criminal Court, Statement by the Chief Prosecutor Luis Moreno-Ocampo on the Confirmation of the Death of Raska Lukwiya 1 (Nov. 7, 2006), *available at* http://www.icc-cpi.int/library/organs/otp/speeches/LMO_20061107_en.pdf; Julius Ocen, *LRA's Foes Chafe at Peace Delay*, ICC Update (Institute for War & Peace Reporting) Apr. 3, 2008, http://www.iwpr.net/?p=acr&s=f&o=343790&apc_state=heniacr200804.

[34] Int'l Crisis Group, *supra* note 13, at 1–2.

In the spring of 2006, a significant shift in the dynamics of this conflict occurred as the LRA began portraying itself as a politically motivated movement with legitimate grievances about the marginalization of northern and eastern Uganda.[35] In this vein, Kony appeared for the first time in May 2006 on a video in which he discussed peace, and denied the LRA's involvement in the commission of war crimes.[36] Most importantly, in May and June 2006, a series of meetings took place between Kony and Riek Machar, the vice-president of southern Sudan and the second in command of the Sudan People's Liberation Movement.[37] The government of southern Sudan took on the role of peace mediator because its leaders recognized that the LRA threatened the potential for stability and development in southern Sudan.[38]

After years of military campaigns and indifferent or disingenuous participation in peace initiatives, the government of Uganda finally committed to high-level, sustained peace negotiations, called the Juba peace process, with the LRA in mid-July 2006.[39] The agenda of the Juba peace process includes cessation of hostilities, a comprehensive solution to the conflict, reconciliation and accountability, a formal ceasefire, and a plan for disarmament, demobilization, and reintegration.[40] The LRA and the government of Uganda successfully reached an agreement on the first of these issues.[41] A cessation of hostilities agreement came into effect on August 4, 2006, and was renewed in November and December 2006, though both sides had violated it.[42] The agreement expired at the end of February 2007 after the LRA withdrew from the talks in January, demanding a change in venue and the re-

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[35] *Id.* at 10–11. According to the International Crisis Group:

> The motivation behind the image remaking is probably mixed. Defining itself as a politically-motivated insurgency may be part of an attempt to get a better practical deal. But constructing a vague and expanding agenda that the military leaders have not shown much concern for in the past may as well be a tactic in a campaign to regroup. The LRA wants to escape the ICC warrants and the U.S. terrorism list, and the peace talks offer a forum for its leaders to cultivate an image as misunderstood freedom fighters.

Id. at 11.

[36] Tristan McConnell, *Side Talks Could Be Key to Northern Uganda Peace Process,* Christian Sci. Monitor, July 26, 2006, at 8.

[37] Tristan McConnell, *Fresh Hope for Peace in Northern Uganda*, Christian Sci. Monitor, June 26, 2006, at 7.

[38] Int'l Crisis Group, *supra* note 13, at 11; McConnell, *supra* note 36.

[39] Int'l Crisis Group, *supra* note 13, at 7; Cobban, *supra* note 32.

[40] Int'l Crisis Group, *supra* note 13, at 3.

[41] *Id.*

[42] *Id.*

placement of Machar as chief mediator.[43] However, on April 26, 2007 formal talks resumed in Juba, with representatives from South Africa, Kenya, Congo, Tanzania, and Mozambique acting as observers.[44] Meanwhile, President Museveni has promised that once the LRA and the government sign a peace deal, the government of Uganda will work to have the ICC drop its charges against the LRA leaders.[45] The government has also announced that it will establish a $340 million fund to help northern Uganda.[46]

II. Transitional Mechanisms in Uganda

Even before the conflict in northern Uganda had no clear end in sight, literature on the subject had already begun to address issues of reintegration and reconciliation.[47] This discussion merits attention because thousands of former members of the LRA have sought amnesty and returned to their communities.[48] Well before the Juba peace process began in 2006, communities in northern Uganda had begun reintegrating former LRA rebels and working towards reconciliation through traditional conflict resolution mechanisms.[49] The following section first examines Uganda's Amnesty Act and the traditional Acholi practices and then analyzes how these two mechanisms alone may fall short of achieving reintegration and reconciliation.

A. *Amnesty*

1. The Contours of the Amnesty Act

Religious and cultural leaders in northern Uganda led the movement towards ending the conflict through amnesty rather than through

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[43] *Id.* at 3, 5.

[44] *Id.* at 6.

[45] *See Peace in Northern Uganda?*, Policy Briefing-Africa 41 (Int'l Crisis Group, Nairobi/Brussels), Sept. 13, 2006, at 15 n. 112, http://www.crisisgroup.org/library/documents/africa/central_africa/b041_peace_in_northern_uganda.pdf.

[46] Tristan McConnell, *Uganda Sees Local Justice as Key to Peace,* Christian Sci. Monitor, Sept. 8, 2006, at 6.

[47] *See* sources cited *supra* note 1.

[48] *See* Hovil & Lomo, *supra* note 1, at 7–8. According to the Ministry of Internal Affairs, at the end of January 2005, the number of applicants seeking amnesty was numbered at approximately 15,000. *Id.* at 7.

[49] *See Peace in Northern Uganda?*, *supra* note 45, at 2; Afako, *supra* note 1, at 67 (noting that, as early as 2001, ex-combatants from the LRA participated in a *mato oput* ceremony and were welcomed back to the community).

military force.[50] Because of their efforts, the Ugandan Parliament enacted the Amnesty Act of 2000, which aimed to break the cycle of violence in northern Uganda by encouraging combatants of various rebel groups to leave their armed groups without fear of prosecution.[51] Since its passage into law, Ugandans have largely supported the Amnesty Act and perceived it as a crucial tool for ending the violence and promoting reconciliation.[52] The Ugandan Parliament has repeatedly extended the expiration date of the Amnesty Act.[53]

The Act provides amnesty for any Ugandan who has engaged in, or is engaging in, war or armed rebellion against the government of Uganda since January 26, 1986.[54] Those granted amnesty under the Act receive "a pardon, forgiveness, exemption or discharge from criminal prosecution or any other form of punishment by the State."[55] Amnesty is available for any Ugandan who has actually participated in combat, collaborated with perpetrators of, committed a crime in furtherance of, or assisted or aided the conduct or prosecution of the war or armed rebellion.[56] Thus, there are two broad categories of Ugandans eligible for amnesty: combatants who took up arms and non-combatants who were dependents, camp workers, porters, and other abducted persons.[57] According to the Amnesty Act, the government will not prosecute or punish such persons if they report to the nearest local or central government authority, renounce and abandon involvement in the war or armed rebellion, and surrender any weapons in their possession.[58] In renouncing involvement, the rebels' declarations need not be onerous or specify the crimes for which they seek amnesty.[59] After a rebel has completed the above steps, he or she becomes a "reporter"

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[50] Hovil & Lomo, *supra* note 1, at 3, 5. For a thorough analysis of the intervention of the Acholi Religious Leaders Peace Initiative, see KHADIAGALA, *supra* note 1.

[51] Amnesty Act, 2000, pmbl. (Uganda); PHAM ET AL., *supra* note 1, at 46.

[52] U.N. Disarmament, Demobilization, and Reintegration Resource Centre, Uganda, http://www.unddr.org/countryprogrammes.php?c=37 (follow "Background" hyperlink) (last visited Apr. 26, 2008).

[53] *Id.*

[54] Amnesty Act, ¶ 2.

[55] ¶ 3.

[56] *Id.* The Amnesty Act is silent as to the age of the person to be granted amnesty, but the Amnesty Commission has decided that only persons over twelve years old may qualify for amnesty because twelve is the age of criminal responsibility in Uganda. U.N. Disarmament, Demobilization, and Reintegration Resource Centre, *supra* note 52 (follow "DDR Strategy and Approach" hyperlink).

[57] U.N. Disarmament, Demobilization, and Reintegration Resource Centre, *supra* note 52 (follow "DDR Strategy and Approach" hyperlink).

[58] Amnesty Act, 2000, ¶ 4 (Uganda); PHAM ET AL., *supra* note 1, at 47.

[59] PHAM ET AL., *supra* note 1, at 47.

whose file the Amnesty Commission reviews before a Certificate of Amnesty is issued and the process is completed.[60] According to the United Nations Disarmament, Demobilization and Reintegration Center, the total number of potential reporters is in the tens of thousands, and as of December 2006, 21,000 reporters had received amnesty.[61]

In addition, the Amnesty Act establishes the Amnesty Commission, whose objectives are "to persuade reporters to take advantage of the amnesty and to encourage communities to reconcile with those who have committed the offenses."[62] The Commission consists of a chairperson, a judge of the Ugandan High Court (or a person qualified to be a judge of the High Court), and six other "persons of high moral integrity."[63] The Commission's functions specifically require it to monitor programs of demobilization, reintegration, and resettlement of reporters and to coordinate a program to sensitize the general public about the Amnesty Act.[64] In 2005 the Commission began to run a Disarmament, Demobilization, and Reintegration Program (DDR), which involves sensitization and dialogue, the processing of reporters, social and economic reintegration, support for children and women, and monitoring and evaluation.[65] The Commission fulfills its mandate

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[60] Amnesty Act, ¶ 4.

[61] U.N. Disarmament, Demobilization, and Reintegration Resource Centre, *supra* note 52 (follow "DDR Strategy and Approach" hyperlink). Of the 21,000 reporters who received amnesty, 19,000 have received an initial reinsertion or resettlement kit. *Id.* Additionally, of the 21,000 reporters, 17,106 (79%) were male and 4547 (21%) were female, and 6718 were children between twelve and eighteen years of age. *Id.*

[62] Hovil & Lomo, *supra* note 1, at 7 (quoting Amnesty Commission Handbook, § 3.11).

[63] Amnesty Act, ¶¶ 7–8. The current chairman of the Amnesty Commission is High Court Justice Peter Onega. *See* Charles Ariko, *Ex-LRA Men Get Amnesty*, New Vision, Jan. 21, 2008, http://www.newvision.co.ug/D/8/13/607788.

[64] Amnesty Act, 2000, ¶ 9(a)–(b) (Uganda).

[65] Int'l Crisis Group, Building a Comprehensive Peace Strategy for Northern Uganda 8 (2005); U.N. Disarmament, Demobilization, and Reintegration Resource Centre, *supra* note 52 (follow "Area of Activity" hyperlink). Sensitization and dialogue encourages reporters to return to their communities and also builds confidence between the reporters and the government by providing promotional materials in local languages, organization for community gatherings, support for reconciliation, and education to potential reporters about the advantages of reporting for amnesty. U.N. Disarmament, Demobilization, and Reintegration Resource Centre, *supra* note 52 (follow "Area of Activity" hyperlink). Under the direction of DDR, the processing of reporters involves identifying and screening potential reporters, issuing Certificates of Amnesty, providing gender sensitive psychosocial support, administering medical assessments, distributing in-kind and cash assistance, and providing counseling and referral services regarding reintegration. *Id.* The in-kind assistance packages consist of a mattress, blanket, jerry can, plastic basin, a *panga* (a knife used for cutting vegetation), two saucepans, two sets of clothing, two hand hoes, and five kilograms each of bean seeds and maize seeds. *Id.* The cash assistance consists of US$122.00 as a general support fund, US$10.50 for medical costs, and US$10.00 for trans-

through implementing partners, which include national and international NGOs and international organizations, such as various U.N. agencies.[66] According to the International Center for Transitional Justice, the Commission is efficient and well-functioning despite challenging circumstances.[67] It also maintains good relationships with northern Uganda's civil society.[68] Finally, the Act creates a seven-member Demobilization and Resettlement Team (DRT) which functions at a regional level by establishing programs for decommissioning arms, demobilization, resettlement, and reintegration of reporters.[69]

The Multi-Country Demobilization and Reintegration Program (MDRP) played a highly significant role in implementing the Amnesty Commission's mandate, and therefore merits brief mention. The MDRP "is a multi-agency effort that supports the demobilization and reintegration of ex-combatants in Central Africa's greater lakes region, including Uganda."[70] MDRP complements national and regional peace initiatives by providing financial and technical support for demobilization as well as social and economic reintegration.[71] MDRP's Uganda project aimed to reintegrate approximately 15,300 reporters into civilian life within the context of the Amnesty Act.[72] The project supported

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port costs incurred in returning home. *Id.* Social reintegration involves promoting reconciliation between reporters and their families and communities "via traditional reconciliation mechanisms, religious meetings, and community-welcoming gatherings." *Id.* Economic reintegration involves both counseling and referring reporters to vocational training and income-generating opportunities. *Id.* The United Nations Development Programme (UNDP), United Nations Children's Fund (UNICEF) and Multi-Country Demobilization and Reintegration Program (MDRP) have all supported the Amnesty Commission in social and economic reintegration. *Id.*

[66] U.N. Disarmament, Demobilization, and Reintegration Resource Centre, *supra* note 52 (follow "Area of Activity" hyperlink).

[67] PHAM ET AL., *supra* note 1, at 47 (noting that the Commission is inadequately funded).

[68] *Id.*

[69] Amnesty Act, ¶¶ 11–13.

[70] Multi-Country Demobilization and Reintegration Program, About Us, http://www.mdrp.org/about_us.htm (last visited Apr. 26, 2008). MDRP currently targets approximately 450,000 ex-combatants from Angola, Burundi, Central Africa Republic, Democratic Republic of Congo, Republic of Congo, Rwanda, and Uganda. *Id.* MDRP is a collaborative effort of over forty entities, including regional governments and organizations, the United Nations, and international financial institutions. *Id.* Financing for the MDRP comes from the World Bank as well as Belgium, Canada, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Sweden, the United Kingdom, and the European Commission. *Id.*

[71] *See id.*

[72] MULTI-COUNTRY DEMOBILIZATION AND REINTEGRATION PROGRAM, MDPR FACT SHEET 1 (2007), *available at* http://www.mdrp.org/PDFs/MDRP_UGA_FS_1007.pdf. MDRP demobilized and provided reinsertion support to 16,256 and 14,816 ex-combatants, respectively. *Id.* Most of the target group consisted of ex-LRA rebels and abductees, but the target group also included ex-members of the Allied Democratic Forces (ADF), West Nile Bank Front

the implementation of nearly every aspect of the Amnesty Commission's activities.[73] In addition, the project was involved in strengthening the Amnesty Commission as an institution by recruiting and training staff, installing a financial management system, and procuring equipment.[74] A US $4.2 million MDRP trust fund grant contributed to relieving the funding shortages suffered by the Amnesty Commission.[75] When the Commission officially launched this project in mid-2005, the backlog of reporters who had not received reinsertion assistance at the time when they were granted amnesty had climbed to nearly 11,200.[76] Because of this fund, however, by August 2006 the Commission had delivered resettlement support to 11,851 reporters and had made preparations to support ninety-five percent of registered reporters by the end of October 2006.[77] The MDRP formally closed its Uganda effort on June 30, 2007 after successfully meeting its target goals to strengthen the Amnesty Commission and provide support for the reintegration of approximately 15,000 ex-combatants.[78]

2. The Shortcomings of the Amnesty Process

Despite the accomplishments of the Amnesty Commission, the Amnesty Act may fail to achieve reconciliation because the resettlement packages have been so contentious, basic operational problems have plagued the Commission, and because the Commission has not ex-

(WNBF), Force Obote Back/Ninth October Movement (FOBA/NOM), Uganda National Democratic Alliance Front (UDA/F) and the Uganda National Freedom Movement/Army (UNFM/A). Multi-Country Demobilization and Reintegration Program, Uganda, http://www.mdrp.org/uganda.htm (follow "Special Projects" hyperlink) (last visited Apr. 26, 2008).

[73] *See id.*

[74] *Id.*

[75] U.N. Disarmament, Demobilization, and Reintegration Resource Centre, *supra* note 52 (follow "Funding" hyperlink). By comparison, from 2002 to 2004, the Internal Organization for Migration (IOM), United States Agency for International Development, UNICEF, and the European Union (EU) provided support totaling US $694,004. *Id.* The UNDP provided US $300,000 in 2003 and US $553,774 from 2005 to 2006. *Id.*

[76] Multi-Country Demobilization and Reintegration Program, Progress Report and Work Plan: July–Sept. 2005, at 6 (2005), http://www.mdrp.org/PDFs/progreport_2005_q3.pdf.

[77] Multi-Country Demobilization and Reintegration Program, Quarterly Progress Report July–Sept. 2006, at 7 (2006), http://www.mdrp.org/PDFs/2006-Q3-QPR-MDRP.pdf.

[78] *See* Multi-Country Demobilization and Reintegration Program, *supra* note 72, at 1. It is unknown whether the MDRP will launch another Ugandan effort in the future.

panded its functions to include a truth-telling process.[79] The resettlement packages have been particularly contentious in northern Uganda and may foster resentment and hinder reconciliation unless the government handles them with greater sensitivity.[80] According to the Refugee Law Project, the issue of resettlement packages has "become the primary focus . . . of the Amnesty Law for the majority of ex-combatants interviewed, and is the major issue when considering the current potential for reintegration into the region."[81] Many former rebels view the government's untimely distribution of resettlement packages as a failure to honor its commitments to the reporters.[82] In addition, resentment exists among some displaced, impoverished non-combatants who perceive the packages as perversely rewarding the former rebels for having committed atrocities.[83] Communities sometimes fail to understand why the government offers assistance to the former rebels but not to the other community members they victimized.[84]

The issue of resettlement packages has created divisions not only between former rebels and their communities, but also between the former rebels themselves.[85] The treatment of former high-level rebels and average returnees is widely disparate.[86] Many former LRA rebels have returned to their homes or IDP camps with delayed or nonexistent resettlement packages and with little further monitoring or follow-up by the government.[87] Because reporters sometimes reintegrate into IDP camps, where the living conditions are quite harsh, a risk persists that such reporters will return to the bush.[88] In contrast, some former high-level rebels receive twenty-four hour armed protection by the UPDF and live as guests in UPDF barracks or in a renovated hotel associated with the UPDF.[89]

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[79] *See* Jeremy Ginifer, Dep't for Int'l Dev., Internal Review of DFID's Engagement with the Conflict in Northern Uganda 17 (2006), *available at* http://www.dfid.gov.uk/aboutdfid/performance/files/ev663.pdf; Human Rights Watch, *supra* note 15, at 38–39.

[80] Human Rights Watch, *supra* note 15, at 38–39.

[81] Hovil & Lomo, *supra* note 1, at 16.

[82] *See id.*

[83] Human Rights Watch, *supra* note 15, at 38–39.

[84] Hovil & Lomo, *supra* note 1, at 14.

[85] *Id.* at 18.

[86] *See* Human Rights Watch, *supra* note 15, at 39 (noting that rebel commanders live in relative luxury compared to average reporters).

[87] *Id.*

[88] *See* U.N. Disarmament, Demobilization, and Reintegration Resource Centre, *supra* note 52 (follow "Area of Activity" hyperlink).

[89] Human Rights Watch, *supra* note 15, at 39.

A second problem with the amnesty process is that resource issues have severely constrained the effectiveness of the Amnesty Commission.[90] The release of World Bank funds, via the MDRP, was inexplicably delayed by approximately two years, during which time virtually no reintegration took place.[91] Consequently, the credibility of both the Commission and the amnesty process has often been threatened by large backlogs of reporters who have not received reinsertion assistance.[92] Long delays have plagued the ability of reporters to receive assistance packages and Certificates of Amnesty.[93] This lack of final certificates is very troubling for LRA returnees because the certificates indicate compliance with the Amnesty Act and, thus, are seen as protection against future harassment and prosecution.[94] Furthermore, "[s]uch failings are significant, as the peace process envisaged by the Acholi community depends heavily on the successful reintegration of the first wave of 'reporters' serving as an incitement to additional LRA fighters to desert and come forward."[95] The Commission's credibility is particularly important given that LRA members may already mistrust the government's amnesty offer because former Ugandan governments had previously offered amnesties, which had resulted in the mass murder of soldiers who had accepted the offers.[96]

Finally, the Amnesty Act could fail to reach its potential as a tool for reconciliation because the Commission has not fulfilled its broader functions, including a truth-telling process.[97] Under the Amnesty Act, the Commission must consider and promote appropriate reconciliation mechanisms in northern Uganda, encourage dialogue and reconciliation within the spirit of the Amnesty Act, and "perform any other func-

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[90] *See* Ginifer, *supra* note 79, at 17.

[91] *See id.*

[92] *See* U.N. Disarmament, Demobilization, and Reintegration Resource Centre, *supra* note 52 (follow "Area of Activity" hyperlink).

[93] Willet Weeks, Pushing the Envelope: Moving Beyond "Protected Villages" in Northern Uganda 16 (2002).

[94] *Id.*

[95] *Id.* at 17.

[96] *See* Citizens for Global Solutions, *supra* note 1, at 26. According to one scholar:

> Part of the lukewarm response to the Amnesty by the rebels results from the history of mistrust. While the ARLP has tried to allay the fear of returning about retribution, there are past publicized cases of the disappearance of returnees. More recently, widespread reports of the army inducting former abducted children into its structures do not often help the [sic] sell the Amnesty.

Khadiagala, *supra* note 1, at 15.

[97] *See* Human Rights Watch, *supra* note 15, at 38.

tion that is associated or connected with the execution of the functions stipulated in [the] Act."[98] In keeping with this provision, the Commission has supported the use of traditional cleansing ceremonies, thereby working to fulfill its mandate to promote appropriate reconciliation mechanisms.[99] Yet this provision of the Amnesty Act also suggests that the Commission can, and should, adopt a truth-telling function or establish formal links with traditional conflict resolution mechanisms.[100] A truth-telling process, perhaps in the form of a truth commission, would help to foster dialogue, which could promote reconciliation in northern Uganda and between northern Uganda and the rest of the country. Instituting such a process would also be in keeping with the language of the Act's provisions, as well as the goal of fostering reintegration.[101]

B. *Traditional Justice and Reconciliation Mechanisms*

Traditional Acholi leaders have strongly advocated the use of traditional justice and reconciliation ceremonies as mechanisms for reintegration in the post-conflict context.[102] According to Acholi customs, when an offender declares that he or she has committed a wrong, the traditional conflict management system is triggered.[103] The dispute resolution process identifies certain behaviors as *kir,* or taboo.[104] Such

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[98] Amnesty Act, 2000, ¶ 9(c)–(e) (Uganda).

[99] Erin Baines et al., War-Affected Children and Youth in Northern Uganda: Toward a Brighter Future 4 (2006). The Amnesty Commission enjoys trust and respect on the local level, but "lacks the expertise and resources to capitalize on this good will by initiating discussions aimed at implementing new programs," such as those that could incorporate traditional justice and reconciliation mechanisms. *Id.* at 26–27.

[100] *See* Amnesty Act, ¶ 9(c)–(e).

[101] *See* ¶ 9(a), (e).

[102] *See* Pham et al., *supra* note 1, annex 4, at 50. Although traditional chiefs did not have any legal status for most of the last century, their legitimacy was never destroyed and many continued to operate informally. *See id.*; Afako, *supra* note 1, at 65. In 1911, colonially appointed chiefs, known as *rwodi kalam,* replaced the traditional chiefs, known as *rwodi.* Afako, *supra* note 1, at 65. The 1965 Constitution abolished the system of traditional chiefs altogether. Pham et al., *supra* note 1, annex 4, at 50 n. 81. The 1995 Constitution, however, led to the revival of traditional institutions and allowed traditional leaders to exist throughout Uganda. Afako, *supra* note 1, at 65. Furthermore, in 2000, a civil society initiative reinstated many traditional leaders, including the Acholi Traditional Leaders Council and the head chief, known as *lawi rwodi. See* Pham et al., *supra* note 1, annex 4, at 50 (noting that *rwodi* elect the *law rwodi*); Afako, *supra* note 1, at 65. In general, the chiefs' political independence gives them enhanced credibility in mediation and reconciliation. Afako, *supra* note 1, at 65.

[103] Pham et al., *supra* note 1, annex 4, at 50.

[104] *See id.*

offenses "may range from the criminal to the antisocial—violent acts, disputes over resources, and sexual misconduct—including behavior that would prevent the settlement of the dispute."[105] Clans must then cleanse the *kir* through rituals, which help to reaffirm communal values.[106] Many argue that such traditional mechanisms for cleansing, justice, and reconciliation represent important channels for reintegration and reconciliation which can and should be widely adopted.[107] The following details a cleansing ceremony, known as *nyono tong gweno* (the stepping on the egg ceremony), and two justice and reconciliation processes and ceremonies, known as *mato oput* (drinking of the bitter root), and *gomo tong* (the bending of the spears).[108]

1. Three Ceremonies

a. Nyono Tong Gweno (*Stepping on Eggs*)

The cleansing ceremony, known as *nyono tong gweno,* or stepping on eggs, takes place upon the return of an individual who has spent a significant amount of time away from the community, particularly after having done something immoral or amoral.[109] According to anthropologist Tim Allen, "*[n]yono tong gweno* is a ritual that just about anyone can perform, although it should be performed at someone's own home."[110] The ritual cleanses foreign elements to prevent them from entering the community and bringing it misfortune.[111] During the ceremony the returnee steps on a raw egg which symbolizes innocence, or something pure or untouched.[112] Its crushed shell represents how foreign elements crush the community's life.[113] In addition, a twig from the *opobo* tree and the *layibi,* which is the stick for opening the granary, also accompany the ceremony.[114] The twig symbolizes cleansing because soap is traditionally made from the *opobo* tree and the *layibi* marks

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[105] *Id.*

[106] *Id.* at 50–51.

[107] For literature advocating the use of traditional mechanisms, see generally PAIN, *supra* note 3, at 2; Hovil & Lomo, *supra* note 1, at 26; Hovil & Quinn, *supra* note 3, at 18–19.

[108] *See* TRIAL JUSTICE, *supra* note 1, at 166.

[109] *Id.*

[110] *Id.*

[111] PHAM ET AL., *supra* note 1, annex 4, at 51.

[112] *Id.*; Mark Lacey, *Victims of Uganda Atrocities Choose a Path of Forgiveness*, N.Y. TIMES, Apr. 18, 2005, at A1.

[113] TRIAL JUSTICE, *supra* note 1, at 166.

[114] *Id.*

the individual's return to eat where he or she has eaten before.[115] These individual cleansing ceremonies have been adapted to the current context in northern Uganda and now routinely take place whenever former LRA members return to their communities.[116] Most agencies that receive and reintegrate former combatants ensure that the somewhat bureaucratic amnesty process also incorporates traditional ceremonies, which are usually performed at the agencies.[117]

b. Mato Oput (*Drinking of the Bitter Root*)

In his 1997 report, *The Bending of Spears,* sociologist Dennis Pain identified *mato oput* as an important mechanism for fostering peace and justice in northern Uganda.[118] Pain's report has since generated much speculation about *mato oput*'s exact contours and current applicability.[119] Because Pain appears to have conflated *mato oput* and *gomo tong,* this article draws instead upon the field research of other scholars and NGOs, including a relatively recent and highly detailed report by the Liu Institute for Global Issues and the Gulu District NGO Forum (Liu Institute).[120] As detailed below, *mato oput* is both a process and a ceremony which takes place in the context of an intentional or accidental killing.[121] This long and sophisticated process of reconciliation, which may last for weeks, months, or even years, involves a separation of the affected clans, mediation, and payment of compensa-

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[115] *Id.* For another example of this cleansing ceremony, see Lacey, *supra* note 112 (noting that after stepping in a freshly cracked egg, brushing against a *pobo* tree, and stepping over a pole, the returnees were welcomed back to the community). In the case of returning children, the *nyono tong gweno* ceremony is sometimes followed by a "washing away the tears" ceremony. PHAM ET AL., *supra* note 1, annex 4, at 51. In this ceremony, which symbolizes the "washing away the tears shed over the child," the child's parents slaughter a goat and pour water on the roof of the home where the child will live. *Id.* (noting that because many cannot afford to slaughter a goat, the ceremony is not very common).

[116] *See* TRIAL JUSTICE, *supra* note 1, at 165–66.

[117] *See* Afako, *supra* note 1, at 65.

[118] *See* PAIN, *supra* note 3, at 2.

[119] *See* ROCO WAT I ACOLI, *supra* note 1, at 54. Pain describes *mato oput* as involving an acceptance of responsibility, indication of repentance, and compensation. PAIN, *supra* note 3, at 82. Reconciliation occurs with the simultaneous shared drinking of bitter root from a common calabash and with the bending of two spears. *Id.* Pain argues that the donor community should fund the payment compensation required by *mato oput. Id.* at 2–3. He generally champions traditional Acholi mechanisms for the resolution of conflict and violence as "among the highest practices anywhere in the world" and "far beyond the limited approaches of conservative western legal systems and formal amnesty for offences against the state." *Id.* at 2.

[120] *See* PAIN, *supra* note 3, at 82. *See generally* ROCO WAT I ACOLI, *supra* note 1.

[121] *Id.* at 54.

tion.[122] The process might not begin until as many as ten or twenty years following the killing, after misfortunes have befallen the offending clan and social pressure has motivated the perpetrator, or the perpetrator's family, to seek reconciliation.[123]

The first step in the process of *mato oput* involves a separation of the affected clans which serves as a cooling off period to prevent immediate revenge killings.[124] This separation requires the complete suspension of relations between the families of the perpetrator and the victim, during which time the clans are forbidden to intermarry, trade, socialize, or share food and drink.[125] Such separation is significant because of the communal nature of Acholi culture, wherein families from various clans share food, water, land, and social relations.[126] The second step in *mato oput* involves a mediation process, which allows the affected families to create an account of the facts which emphasizes the perpetrator's voluntary confession, including the motives, the circumstances of the crime, and an expression of remorse.[127] In Acholi culture, until the perpetrator confesses and seeks rectification, the spirit of the dead may plague the perpetrator's family through nightmares, sickness, and death.[128] Finally, in the last step, the family of the perpetrator pays compensation raised through the contributions of clan members.[129] Such compensation must be "affordable, so as not to prevent the restoration of relations, and will usually consist of cattle or money."[130]

After this process, a day-long *mato oput* ceremony takes place.[131] The local chief, *rwot moo*, presides over this ceremony, which brings together the clans of the perpetrator and the victim in order to re-

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[122] *See* Sverker Finnström, Living with Bad Surroundings: War and Existential Uncertainty in Acholiland, Northern Uganda 297 (2003) (reporting that one ceremony lasted for ten years); Roco Wat I Acoli, *supra* note 1, at 54–56.

[123] *See* Finnström, *supra* note 122, at 297; Roco Wat I Acoli, *supra* note 1, at 55.

[124] Roco Wat I Acoli, *supra* note 1, at 55.

[125] Finnström, *supra* note 122, at 297; Roco Wat I Acoli, *supra* note 1, at 55.

[126] Roco Wat I Acoli, *supra* note 1, at 55.

[127] *See id.* at 55–56.

[128] *Id.* at 55.

[129] *Id.* at 56.

> To compensate for a life (*culo kwor*), can mean several forms of compensation, people pointed out. For example, it can also describe the nation's responsibility to pay pensions or to compensate economically the family of a person who dies on duty. Ultimately this is the responsibility of the president, people said.

Finnström, *supra* note 122, at 296.

[130] Pham et al., *supra* note 1, at 51.

[131] *See* Finnström, *supra* note 122, at 291.

establish harmony.[132] Communal involvement in the ceremony as well as the process of *mato oput* reflects the Acholi belief that the perpetrator's offense affects the whole clan.[133] The *mato oput* ceremony consists of an elaborate set of final, symbolic acts which conclude the reconciliation process and restore unity between the parties.[134] Although different clans follow a similar process leading up to the ceremony, the ceremony itself varies widely across clans.[135] Despite these variations, the following symbolic acts generally take place during a *mato oput* ceremony.

First, the offending party beats a stick to broadly symbolize *mato oput's* restorative purpose and then runs away to signify acceptance of guilt for the murder.[136] Second, the parties cut in half a sheep and a goat and exchange opposite sides. The offending clan supplies the sheep, which represents the *cen*, or misfortune, haunting the clan of the offender, while the injured clan supplies the goat, which symbolizes unity and a willingness to forgive and reconcile.[137] Third, the clans eat *boo mukwok*, spoiled boo, or local greens, which signifies that tension between the clans persisted long enough for food to spoil, and also symbolizes the clans' readiness to reconcile after this long period of time.[138] Fourth, a representative from each party drinks *oput*, bitter

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[132] *See* PHAM ET AL., *supra* note 1, at 51; ROCO WAT I ACOLI, *supra* note 1, at 54. Even in the midst of war, this reconciliation ritual has taken place in Acholiland to settle clan feuds. FINNSTRÖM, *supra* note 122, at 296.

[133] ROCO WAT I ACOLI, *supra* note 1, at 54. Also, according to Finnström, "compensation and reconciliation rather than revenge or blood vengeance is the institutionalized Acholi way of handling disputes, homicides and unnatural deaths." FINNSTRÖM, *supra* note 122, at 291.

[134] *Id.* at 57–58. Scholar Tim Allen describes *mato oput* as follows: "[A] ritual performed to reconcile social divisions after a case of killing. It deals with the consequences of homicide. Those who play the main part in performing it are the wrongdoer and a representative of the family he or she has harmed (and clan elders)." TRIAL JUSTICE, *supra* note 1, at 133.

[135] ROCO WAT I ACOLI, *supra* note 1, at 56. According to the Liu Institute, "[t]here is need for further documentation of these differences if *Mato Oput* is to be applied communally by *Ker Kwaro* in the context of the new conflict." *Id. Ker Kwaro* is an executive institution of the head Acholi Chief comprised of nineteen *Rwodi* and Elders, a youth representative, and two women representatives. *Id* at 125.

[136] *Id.* at 57. The Liu Institute provides several differing accounts of the precise ways in which the beating of the stick symbolizes restoration. *Id.* According to one elder, "[t]he beating of the stick illustrates to the spirit of the murdered person that he or she is cared for." *Id.* Another elder noted that the stick symbolizes "truth." *Id.*

[137] *Id.* at 10, 57. An elder stated that, "the sheep and goat represent the two parties prior to *Mato Oput* (separate entities), and the cutting and mixing symbolize the uniting of the two parties." *Id.* at 57. "In another account, however, the sheep was said to symbolize humility, because a sheep is a humble animal." *Id.*

[138] *Id.* at 57.

root, from a calabash.[139] The root represents the bitterness between the clans, and drinking it symbolizes washing away the bitterness between them.[140] Fifth, both parties cook and eat the *acwiny*, liver, of the sheep and the goat to show that their blood has been mixed and united and to symbolically wash away the bitterness within the blood of the human liver.[141] One of the last rituals involves consuming *odeyo*, the remains of a saucepan, which is thought to free the parties to eat together again.[142] The ceremony is not complete until the parties have eaten all of the food prepared for the day; finishing the food means that no bitterness remains between the two clans.[143]

c. Gomo Tong (*the Bending of the Spears*)

G*omo tong*, or the bending of the spears, is a peace-making ceremony, which marks the resolution of violent conflict.[144] Sverker Finnström describes *gomo tong* as "an inter-ethnic reconciliation ritual" which does not involve economic compensation.[145] The parties make vows that the killings will not be renewed and each party then bends a spear into the shape of a "U" and gives it to the other, thereby signaling that renewed violence will "turn back on them."[146] The performance of this ritual is reportedly very rare and may have been last performed when the Acholi people and the people of the West Nile reconciled in the 1980s after the fall of Idi Amin.[147]

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[139] *Id.*

[140] Roco Wat I Acoli, *supra* note 1, at 57. According to a report from the International Center for Transitional Justice, "[r]epresentatives from the perpetrator's and victim's clans kneel together, with their hands behind them and their foreheads touching, to drink the concoction . . . . Sometimes all members of a clan will drink (in pairs) until the juice is finished." Pham et al., *supra* note 1, at 51. The report also noted that the root's bitterness "symbolizes the nature of the crime and the loss of life." *Id.*

[141] Roco Wat I Acoli, *supra* note 1, at 58.

[142] *Id.*

[143] *Id.* According to some elders, "*Mato Oput* was not formally completed until the life lost was replaced with a new one. Historically, a young girl from the offending clan was given as compensation to the victim's clan for marriage." *Id.* at 56.

[144] *See* Trial Justice, *supra* note 1, at 133.

[145] Finnström, *supra* note 122, at 291, 298.

[146] War and Justice, *supra* note 1, at 67; Finnström, *supra* note 122, at 298–99.

[147] *See* Trial Justice, *supra* note 1, at 133; War and Justice, *supra* note 1, at 86; Finnström, *supra* note 122, at 298–99. A particularly famous use of a *gomo tong* reconciliation ceremony occurred between the Payira and Koch clans in order to protect the clans against invading colonialists. *See* Trial Justice, *supra* note 1, at 133; Finnström, *supra* note 122, at 298. Another use occurred during the Amin years, from 1971 to 1979, when Acholi people were targeted by state violence. *See* Finnström, *supra* note 122, at 298. Sverter Finnström explains that, after Amin's fall, revenge killing of people living in the

2. Problems with the Application of Traditional Mechanisms

Although Acholi chiefs have advocated the use of traditional mechanisms, and the Amnesty Commission has supported their use, such mechanisms may fall short of significantly promoting justice.[148] The application and relevance of such ceremonies to the atrocities committed by the LRA is questionable for a variety of reasons, including the lack of knowledge among the Acholi of *mato oput,* the degree to which the Acholi capacity to forgive has been overestimated, and the unusually severe nature of this conflict.[149]

a. *Lack of Knowledge of* Mato Oput

Widespread firsthand knowledge of *mato oput* is lacking among the Acholi.[150] According to Tim Allen, most local knowledge of *mato oput* and *gomo tong* is secondhand and relatively few elders have actually performed *mato oput.*[151] Not only is there a general absence of systematic documentation of *mato oput,* but there is also wide variation in *mato oput* practices and ceremonies throughout Acholiland, which thereby exacerbates the need for such documentation.[152] Also, because the Acholi no longer widely practice *mato oput,* younger generations are unable to fully understand *mato oput.*[153] Furthermore, those who are unfamiliar with the rituals generally do not gain exposure to them because they are typically held at reception centers in district centers where only small audiences bear witness.[154] In addition, non-Acholis in northern Uganda and southern Sudan have also been greatly affected by the LRA conflict since 2002, but have relatively little knowledge of Acholi traditional practices and may question their relevance to them.[155] In the context of

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West Nile region began; however, "[r]evenge was turned into reconciliation when the bending of the spears (*gomo tong*) ritual was performed." *Id.* at 298–99. Today, most Acholi people argue that Joseph Kony could only participate in a reconciliation ceremony "if he wants it in his heart." *Id.* at 299.

[148] *See* Baines et al., *supra* note 99, at 27; Pham et al., *supra* note 1, annex 4, at 50.

[149] *See* Roco Wat i Acoli, *supra* note 1, at 66; Trial Justice, *supra* note 1, at 166; War and Justice, *supra* note 1, at 86.

[150] War and Justice, *supra* note 1, at 86.

[151] *Id.* (noting that *gomo tong* has likely only occurred once or twice within living memory).

[152] *See* Roco Wat i Acoli, *supra* note 1, at 65–66.

[153] *Id.* at 65.

[154] *See* Int'l Crisis Group, *supra* note 65, at 10.

[155] *See* Human Rights Watch, *supra* note 15, at 56 ("The Langi of Lira district and Teso in Soroti district to the south and southeast of Gulu respectively have been greatly affected by the LRA conflict since 2002, as have southern Sudanese, most of whom are non-Acholi.").

this lack of knowledge of *mato oput*, the newly re-established *rwodi*, traditional chiefs, have allocated a different or more generalized meaning to *mato oput*, which now sometimes refers to *nyono tong gweno* or to the ceremonies performed by the *rwodi moo* to promote forgiveness and the reintegration of former LRA combatants.[156]

b. *Overestimation of the Acholi Capacity to Forgive*

The efficacy of these ceremonies and the Acholi capacity to forgive may have been inflated or overestimated by researchers, journalists, humanitarian aid organizations, Acholi elders, and Catholic leaders in the region.[157] According to the received wisdom, these traditional mechanisms reflect the special capacity of the Acholi people to forgive and to reintegrate offenders into society.[158] International aid agencies have tended not to question such portrayals of local beliefs and practices by Acholi leaders.[159] Also, Catholic leaders in northern Uganda have very successfully promoted the idea of forgiveness through NGOs and the local council system and have thereby played a significant role in pressuring the Ugandan government to pass and implement the Amnesty Act.[160] Additionally, the perception that children, who are less responsible for their actions, have largely perpetrated this war has generally reinforced the promotion of forgiveness.[161]

Assertions about Acholi views on forgiveness should be closely questioned, however, as attitudes towards forgiveness, amnesty, and criminal justice are more inconsistent than many have often claimed.[162] First, the very existence of *mato oput* does not necessarily signify that Acholi conceptions of forgiveness are unique.[163] Mechanisms for cleansing, social healing, and dispute settlement are not unusual within this region of Africa and are as likely to concern setting aside or forgetting offenses as recalling and forgiving them.[164] Second, in recent years,

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[156] Trial Justice, *supra* note 1, at 133–34.

[157] *See id.* at 129, 132, 137, 140, 164. Specifically, Allen notes that, "[s]ome researchers, however, seem to have been carried away by their enthusiasm for them, treating them as 'a kind of magic bullet to solve any kind of conflict.'" *Id.* at 164 (quoting Caritas, Traditional Ways of Preventing and Solving Conflicts in Acholi 12 (2005)).

[158] *See id.* at 129 (noting that the perspective had become "institutionalized" and was expressed at almost every public meeting discussing the event).

[159] *See id.* at 138.

[160] *Id.* at 137.

[161] *See* Trial Justice, *supra* note 1, at 138.

[162] *Id.* at 131.

[163] *See id.* at 166.

[164] *See* War and Justice, *supra* note 1, at 84.

academics, NGOs, human rights activists, and journalists have begun to challenge the widely accepted notion that the Acholi people have a "special capacity to forgive."[165] A survey by the International Center for Transitional Justice shows that community leaders and victims are divided on the topics of justice, accountability, and reconciliation.[166] Victims interviewed by Human Rights Watch apparently "did not agree with the prospect of having the LRA leaders forgiven . . . but instead wanted justice, even retribution."[167] Many former child soldiers have reportedly returned from the bush to find themselves homeless because "[t]hey cannot go back to villages where people recall the night they returned with the rebels and massacred their relatives and neighbors—and sometimes, even, their own parents."[168] While Acholis "know that all but a few of the oldest commanders were themselves once abducted children, their pity for the rebels as victims is overlaid with hatred and fear of them as victimizers."[169] Human Rights Watch asserts that even if the community has accepted perpetrators back into the community, individual victims may not want to forgive the perpetrators of serious crimes.[170]

Just as assumptions about Acholi notions of forgiveness merit scrutiny, so do claims about Acholi opposition to criminal justice. Many have seized on the contrasting approaches of traditional Acholi mechanisms and the ICC and have emphasized Acholi support for the former and opposition to the latter.[171] Tim Allen found in his field research that most of his informants in IDP camps did not generally reject international criminal justice, but instead expressed a willingness to see Kony and his senior commanders prosecuted, coupled with con-

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[165] *Id.* at 65–66. Allen found that interviewees often contradicted their initial statements concerning the need for forgiveness by expressing "much greater enthusiasm for prosecution and punishment than other researchers have suggested." *Id.* at 66. He concluded that:

> [A]rguments about Acholi forgiveness need to be closely interrogated, and certainly not taken at face value. In the course of our fieldwork we become concerned that there was too ready an acceptance of the idea that the Acholi people have a special or even unique capacity to forgive those who abuse them.

Id. at 65–66.

[166] Pham et al., *supra* note 1, at 23–27.

[167] Human Rights Watch, *supra* note 15, at 40.

[168] Thernstrom, *supra* note 13.

[169] *Id.* at 36.

[170] Human Rights Watch, *supra* note 15, at 55–56.

[171] Trial Justice, *supra* note 1, at 129–30.

cerns about the security implications of their arrest warrants.[172] Allen found that many people seemed to be embarrassed about wanting accountability, revenge, or compensation and his informants were generally only willing to talk of such desires in private.[173] Allocation of responsibility by an external actor seemed more appealing than was assumed and *mato oput* did not garner particularly widespread enthusiasm.[174] Also, Allen very significantly notes that he has "not yet come across any confirmed instances of *mato oput* being performed to reintegrate a former LRA combatant, although this is often claimed to be taking place."[175] Ultimately, perhaps the people of northern Uganda require some of the same conventional legal mechanisms as those enjoyed by people living in more developed States.[176]

c. Mato Oput *May Not Apply to These Circumstances*

Finally, *mato oput,* in its traditional form, does not readily apply to the mass atrocities committed by the LRA.[177] First, *mato oput* ceremonies may not be sufficient given the scale and nature of the LRA atrocities.[178] *Mato oput* traditionally applied only to less serious cases of manslaughter, not to wanton killing, rape, or mutilation or a killing between enemies during a war.[179] According to Tim Allen, even those promoting the use of *mato oput* acknowledge that it was a mechanism used for individual cases, not for collective dispute settlement.[180] Also, the nature of the atrocities committed by the LRA often precludes reconciliation between the perpetrator's and victim's clans because of the perpetrator's inability to identify his or her victim and thereafter to confess, ask for the forgiveness of, and pay compensation to the victim's clan.[181] Perpetrators are typically unaware of the victim's identity or clan or the location of the crime because the LRA's movement around the three districts of northern Uganda often leaves its abductees unfamiliar with the

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[172] *Id.* at 160. Allen further notes that in his experience, the majority of Acholi, Madi, Langi, and Teso people affected by the conflict want the perpetrators in the LRA and the UPDF to be held legally accountable in some manner. *Id.* at 167.

[173] *Id.* at 138–39.

[174] *Id.* at 147, 167.

[175] *Id.* at 165.

[176] Trial Justice, *supra* note 1, at 168.

[177] *See* Roco Wat I Acoli, *supra* note 1, at 66.

[178] *See id.*

[179] *See id.* at 67.

[180] War and Justice, *supra* note 1, at 86.

[181] *See* Roco Wat I Acoli, *supra* note 1, at 66.

people and the places they attack.[182] Additionally, because the atrocities committed during this conflict are new to the Acholi culture, parties may be unsure as to what type of compensation is necessary for reconciliation, or whether compensation for these types of crimes is possible at all.[183]

The second problem is that the ongoing nature of this conflict also obstructs the application of *mato oput* and *gomo tong*.[184] *Mato oput* may not apply to the current situation in northern Uganda because a conflict must end before reconciliation may be fostered through *mato oput*.[185] Because *mato oput* and *gomo tong* must consist of a mutual act of reconciliation, which involves all parties in a profound way, the LRA would have to come out of the bush and participate in the ceremony as a group.[186] Therefore, so long as a core component of the LRA remains in the bush and the peace has not been finalized, *mato oput* may not be able to foster sustainable peace.[187] Also, the ongoing conflict has largely caused a persistent lack of resources, which has posed a major obstacle to the completion of *mato oput* in northern Uganda.[188] The offending parties have not been able to pay compensation because people living in displacement camps do not have access to income and cannot raise the funds as their family or clan members usually suffer from the same levels of poverty.[189]

A final challenge is that the ethnic identity of the perpetrators in this conflict, as well as their willingness to reconcile, will significantly affect *mato oput's* applicability.[190] UPDF perpetrators come from different ethnic groups throughout Uganda and their crimes fall under separate Ugandan legislation to which traditional justice does not apply, unless they are Acholi.[191] The UPDF's role in this conflict also significantly complicates the reconciliation process because the peaceful settlement of this conflict through *mato oput* would require the Ugandan government to acknowledge the offenses committed by the Ugandan army.[192] Reconciliation through *mato oput* would therefore depend

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[182] *See id.*
[183] *See id.* at 67.
[184] *See id.* at 66.
[185] *See id.*
[186] Finnström, *supra* note 122, at 299–300; Trial Justice, *supra* note 1, at 166.
[187] Roco Wat I Acoli, *supra* note 1, at 67.
[188] *See id.* at 65.
[189] *Id.*
[190] *See id.* at 67.
[191] *Id.*
[192] *See* Finnström, *supra* note 122, at 299–300.

on the willingness of high-ranking UPDF, as well as LRA, leaders to admit responsibility for offenses which they ordered or committed themselves.[193] Meanwhile, the ethnic identity of LRA perpetrators poses its own problems.[194] Because the LRA has abducted children from neighboring districts with different ethnic groups, some of the LRA perpetrators in this conflict are non-Acholi who may hold different cultural beliefs which do not include *mato oput*.[195]

Altogether, these problems suggest that traditional chiefs would have to educate the Acholi population about these ceremonies and also adapt them to the present circumstances. These challenges are not necessarily insurmountable, but they do indicate that other non-traditional mechanisms may be necessary in guiding the reconciliation process among the Acholi. The following section examines alternative mechanisms which Uganda could implement to assist in its transition from conflict to peace.

III. Alternative Transitional Mechanisms Which Uganda Could Implement

This section looks to the experiences of other post-conflict African states and explores alternative transitional mechanisms which the government of Uganda could pursue to promote peace and reconciliation in the region. This article proceeds under the assumption that other mechanisms are necessary in Uganda because the amnesty and traditional justice and reconciliation mechanisms are insufficient by themselves.[196] With only the amnesty and the traditional mechanisms in place, unrealistic demands of forgiveness may be placed on victims who may never receive compensation or an acknowledgment of guilt from perpetrators. While the Amnesty Act currently does not offer reparations for victims, or foster a dialogue, or truth-telling process, the traditional mechanisms also have not, as of yet, begun to foster those processes in a robust way.[197] The following discusses the approaches previously taken in Uganda, Sierra Leone, South Africa, and Rwanda, and then explains how truth-telling and compensation could play important roles in promoting peace and reconciliation in northern Uganda.

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[193] Roco Wat I Acoli, *supra* note 1, at 67.

[194] *See id.* at 67.

[195] *Id.*

[196] *See supra* text accompanying notes 79–101, 150–197.

[197] *See* Amnesty Act, 2000 (Uganda); Pham et al., *supra* note 1, annex 4, at 51.

A. *Truth-Telling Process*

In a post-conflict northern Uganda, a truth commission could play a critical role in the region's transition from civil war to peace. Despite the often inherently difficult and controversial nature of truth commissions, as well as the checkered history of past truth commissions in Uganda, many of the basic goals of truth commissions would be particularly applicable in Uganda today.[198] In addition, the specific features of this conflict would heighten the potential utility of a Ugandan truth commission. Commentators, as well as local leaders, appear to have widely overestimated the Acholi capacity to forgive the perpetrators of this conflict, who range from abducted children to UPDF soldiers to LRA rebels.[199] Neither the amnesty process nor the traditional justice and reconciliation mechanisms adequately respond to these realities in northern Uganda.

A discussion of the merits of a Ugandan truth commission first warrants a brief sketch of what the basic features of such a commission might be. After the conflict is officially over, a Ugandan truth commission would investigate abuses by both the LRA and UPDF in northern Uganda from the time President Museveni came to power in 1986 up until the present day.[200] The government of Uganda would officially sanction this commission, which would operate for a relatively short amount of time, such as two years, after which the commission would produce a report.[201] If the Ugandan Parliament were to leave the Amnesty Act untouched, then amnesty would not be formally linked to the truth-telling process as it was in South Africa.[202] A Ugandan commission could potentially be given the power to grant amnesty based on the testimony of individuals before the commission, however, which might encourage more perpetrators to participate in the truth commission.[203] Presumably this commission could successfully operate parallel to the ICC, as was the case in Sierra Leone, where the Special Court for Sierra Leone (Special Court) and the Truth and Reconciliation Com-

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[198] *See* Priscilla Hayner, Unspeakable Truths: Facing the Challenge of Truth Commissions 23 (2002); *infra* text accompanying notes 234–256.

[199] *See supra* text accompanying notes 159–178.

[200] *See* Human Rights Watch, *supra* note 15, at 8.

[201] *See* Hayner, *supra* note 198, at 74.

[202] *See id.* at 41.

[203] *See id.*

mission (TRC) existed side by side.[204] Ideally, a Ugandan commission would function as a central component of northern Uganda's transition from civil war to peace, alongside, though not necessarily in conjunction with, the amnesty process and trials at the ICC.[205]

1. Reasons Why Uganda Should Have a Truth Commission

Both the process and the product of a truth commission in Uganda could play an important role in Uganda's transition for a wide range of reasons. First, a truth commission would promote sanctioned fact finding by discovering, clarifying, and formally acknowledging the atrocities and abuses which have taken place in northern Uganda for over two decades.[206] Interviews with victims would allow for a detailed accounting of the conflict in the region over the course of this period.[207] According to Priscilla Hayner, "[t]he detail and breadth of information in a truth commission report is usually of a kind and quality far better than any previous historical account, leaving the country with a written and well-documented record of otherwise oft-disputed events."[208]

Second, a truth commission would respond to the needs of victims in northern Uganda.[209] Without a truth-telling mechanism in Uganda, the amnesty process could place unrealistic demands on victims and unnecessarily sacrifice the truth for peace.[210] Unlike criminal prosecutions, such as those at the ICC, the primary focus of a Ugandan truth commission would be on the victims rather than on the specific acts of the perpetrators.[211] By taking the testimony of victims

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[204] *See* Abdul Tejan-Cole, *The Complementary and Conflicting Relationship Between the Special Court for Sierra Leone and the Truth and Reconciliation Commission*, 5 Y.B. Int'l Humanitarian L. 314, 316 (2002).

[205] Alternatively, apart from a truth commission, the Amnesty Commission could encourage a more informal truth-telling process involving greater dialogue between victims and perpetrators. *See* Amnesty Act, 2000, ¶ 9(c)–(e) (Uganda). The Commission could work to ensure that more dialogue and participation takes place during the traditional ceremonies. ¶ 9(c). For example, instead of holding the cleansing ceremonies at the reception centers, as is typical, the Commission could facilitate meetings between the communities and the former combatants. *See* Int'l Crisis Group *supra* note 65, at 10. This could provide an opportunity for combatants to express remorse and for victims to hear the truth. *See id.*

[206] Hayner, *supra* note 198, at 24–25.

[207] *Id.* at 25.

[208] *Id.*

[209] *See id.* at 28.

[210] *See* Hovil & Lomo, *supra* note 1, at 27.

[211] Hayner, *supra* note 198, at 28.

and witnesses, holding public hearings, and publishing a report, the commission would provide victims with a public voice.[212] It would also be possible for a truth commission to serve victims' needs through a reparations program.[213] Additionally, the Acholi population appears to desire a truth commission even though many Acholi victims may already know the truth about what happened and who was responsible.[214] A survey by the International Center for Transitional Justice reveals that the population of northern Uganda would, in fact, be overwhelmingly in favor of a truth-telling process.[215] While only twenty-eight percent were aware of the existence of truth commissions in other countries, such as in Sierra Leone and South Africa, ninety-two percent said that Uganda needed a truth-telling process.[216] Furthermore, eighty-four percent said that the population of northern Uganda should remember the legacy of past abuses.[217] Although the population already desires a truth-telling process, a formal process is necessary because people fear openly discussing the war and experience shame in association with the atrocities that have taken place.[218] Thus, while a truth commission would not necessarily provide victims in northern Uganda with a "new truth," it could still play a valuable role by creating a forum for such truth-telling, and by "formally recogniz[ing] a truth they may already . . . know."[219]

Finally, a truth commission could play an important role in Uganda by outlining the responsibility of the government of Uganda for the long-lasting nature of the conflict and for the abuses of the

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[212] *Id.*

[213] *See infra* text accompanying notes 309–375.

[214] *See* PHAM ET AL., *supra* note 1, at 35. Priscilla Hayner further writes:

> This sense of victims already knowing the truth, and thus gaining little new truth from a commission, is compounded by the unfortunate fact that few victims who provide testimony to truth commissions are able to learn new information about their own case. . . . Most of the thousands of testimonies are recorded exactly as reported by the deponents and used for a statistical analysis of trends, but unfortunately never investigated in depth.

HAYNER, *supra* note 198, at 26.

[215] *See* PHAM ET AL., *supra* note 1, at 35.

[216] *Id.* (noting that forty-three percent would speak to anyone, twenty-six percent to the government, nine percent to religious leaders, and six percent to traditional leaders).

[217] *Id.* ("The three top rationales for remembrance were to honor the victims (44 percent), prevent the violence from happening again (36 percent), and establish a historical record (22 percent).").

[218] Hovil & Lomo, *supra* note 1, at 14.

[219] HAYNER, *supra* note 198, at 26.

UPDF.[220] The commission could then recommend reforms, most likely for the military and the police.[221] A truth commission would be well-positioned to undertake such an assessment because of its status as an institution independent of those under review and because of its ability to base its assessment on a detailed, well-developed record.[222] While the commission's recommendations for reform would likely not be mandatory, they could still provide useful guidance for change, depending on the political will of the Museveni government and the pressure applied by the international community.[223] Such an assessment and prescription could play a critical role in Uganda's transition given the allegedly widespread abuses by UPDF forces and the relative impunity they have enjoyed.[224] As mentioned above, UPDF soldiers have reportedly raped women and girls, committed extrajudicial execution and torture, recruited former LRA child soldiers into the UPDF, and forcibly displaced civilians for reasons linked to the conflict.[225] Yet UPDF forces have not been held accountable for these atrocities to any significant extent by the government of Uganda.[226] In addition, the ICC chose to issue arrest warrants only for the top leaders of the LRA, despite the well-known abuses of the UPDF.[227] While these UPDF perpetrators will most likely never face criminal prosecutions, national or international, the government of Uganda could at a minimum engage in security sector reform to promote a sustainable peace in northern Uganda.[228] A truth commission would be uniquely well-positioned to point Uganda in the direction of such reform.

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[220] *Id.* at 29.

[221] *See id.*

[222] *See id.*

[223] *See id.* at 29–30.

[224] *See* HUMAN RIGHTS WATCH, *supra* note 15, at 2.

[225] *See The Endangered Children of Northern Uganda: Hearing Before the Subcomm. of Africa, Global Human Rights and Int'l Operations of the Comm. on Int'l Relations H. of Rep.*, 109th Cong. 15 (2006) (statement of Jeffrey Krilla, Deputy Assistant Secretary, Bureau of Democracy, Human Rights and Labor); HUMAN RIGHTS WATCH, ABDUCTED AND ABUSED: RENEWED CONFLICT IN NORTHERN UGANDA 41 (2003), *available at* http://www.hrw.org/reports/2003/uganda0703/uganda0703.pdf.

[226] *See* HUMAN RIGHTS WATCH, *supra* note 225, at 41 (noting that the investigations, when initiated at all, have sometimes not been disclosed to the public); HUMAN RIGHTS WATCH, *supra* note 15, at 41–48.

[227] *See* HUMAN RIGHTS WATCH, *supra* note 15, at 4.

[228] *See* News Release, State House, The Republic of Uganda, Museveni Assures Kony of Safety (June 5, 2006), *available at* http://www.statehouse.go.ug/news.detail.php?newsId=900&category=News%20Release.

2. Potential Problems Facing a Ugandan Truth Commission

Any thorough exploration of a possible truth commission in Uganda should mention the potential pitfalls, especially given that a truth commission in Uganda would most likely co-exist beside an amnesty process as well as ICC trials in The Hague.[229] Additionally, as Hayner writes:

> The task of these truth bodies will never be easy. Truth commissions are difficult and controversial entities; they are given a mammoth, almost impossible task and usually insufficient time and resources to complete it; they must struggle with rampant lies, denials, and deceit and the painful, almost unspeakable memories of victims to uncover still-dangerous truths that many in power may well continue to resist.[230]

Not only have two prior truth commissions in Uganda encountered serious problems, but the TRC in Sierra Leone has met with its own share of difficulties, as well as successes.[231] The following therefore touches upon the challenges faced by these commissions in Uganda and Sierra Leone, with a view to how a Ugandan truth commission might structure itself to avoid or to deal with such challenges.

a. *The Experiences of Prior Truth Commissions in Uganda*

In June 1974, President Idi Amin Dada established the Commission of Inquiry into the Disappearance of People in Uganda in response to pressure to investigate disappearances effected by Ugandan military forces since he came into power in January 1971.[232] The Commission consisted of a Pakistani judge as the chair, two Ugandan police superintendents, and a Ugandan army officer.[233] Although the Commission's powers allowed it to compel witness testimony and to call for the production of evidence, many government sectors, including the military police and intelligence, blocked access to information on the disappearances.[234] The Commission held hearings, which were generally public, during which it heard the testimony of 545 witnesses

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[229] *See* Amnesty Act, 2000 (Uganda); Press Release, Int'l Criminal Court, *supra* note 5.

[230] HAYNER, *supra* note 198, at 23.

[231] *See infra* text accompanying notes 257–308.

[232] HAYNER, *supra* note 198, at 51; Richard Carver, *Called to Account: How African Governments Investigate Human Rights Violations*, 89 AFR. AFF. 391, 397 (1990).

[233] HAYNER, *supra* note 198, at 51; Carver, *supra* note 232, at 397.

[234] HAYNER, *supra* note 198, at 51–52; Carver, *supra* note 232, at 397–98.

and documented 308 disappearances.[235] Though the Commission criticized the government of Amin, assigned responsibility for the abuses, and issued recommendations for reform of the police and security forces, the Commission had little impact on the abusiveness of Amin's forces, because little commitment to change accompanied the establishment of the Commission.[236] Unsurprisingly, President Amin neither published the report nor implemented its recommendations.[237] Although this exercise in truth-telling was quite insincere, it is nonetheless widely considered to have been a truth commission, however unsuccessful.[238]

By contrast to the 1974 Commission, the 1986 Commission took place as part of a political transition in Uganda.[239] Soon after President Museveni came into power in January 1986, he appointed a Commission of Inquiry into Violations of Human Rights to investigate human rights violations by state forces from the time of Uganda's independence in 1962 to Museveni's overthrow of the government in 1986.[240] Through public hearings and live television and radio broadcasts, the Commission initially "attrac[ted] wide popular support and an emo-

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[235] Carver, *supra* note 232, at 399. According to Richard Carver, although this number reflects only a small fraction of the total number of disappearances, the achievement was remarkable, "[i]n view of the considerable practical difficulties [the Commission] faced and the highly unfavourable political climate in which it operated." *Id.*

[236] *Id.* at 399–400 (noting that the government expressed little commitment to support the Commission).

[237] Hayner, *supra* note 198, at 52; Carver, *supra* note 232, at 397–400. In contrast to Hayner, Carver offers a positive gloss on the accomplishments of the 1974 Commission. Hayner, *supra* note 198, at 52. *But see* Carver, *supra* note 232, at 397–400. Whereas Hayner points out that abuses by Amin's forces drastically increased in the years following, and that by 1986 the Commission had been "all but forgotten," Carver counters that:

> It could be argued that the whole exercise was futile. However, there are already revisionist views of the 1970s in Uganda, attempting a partial rehabilitation of Amin. What better evidence to refute such interpretations than the findings of this Commission, conducted impartially while the abuses were still continuing? The Commission also had some short-term effect in alleviating human rights abuse. At least for as long as it was sitting, 'disappearances' were reduced significantly. In the longer term, of course, there was no improvement, but this need not have been the case. It is scarcely surprising that Amin's regime paid no heed to the Commission's recommendations, but blame also attaches to those foreign allies of Amin who continued to supply him with arms and other essentials until the very end. Their failure to act was scarcely the Commission's fault.

Hayner, *supra* note 198, at 52; Carver, *supra* note 232, at 400 (footnotes omitted).

[238] Hayner, *supra* note 198, at 52.

[239] *See id.* at 56.

[240] *Id.*

tional reaction from the public."[241] The Commission, however, suffered from an absence of political will as well as institutional failures, including a limited capacity to manage its very broad and unwieldy mandate, a lack of funding and resources, and a lack of time.[242] In addition, northern Ugandan participation in the Commission was extremely limited as rebel activity in the area made travel to the region difficult if not impossible; five years into its public hearings, the Commission spent only four days in the north.[243] Also, the Commission operated without a deadline for completion, and finally submitted its report in 1994, after eight years of investigation.[244] By this time the public had lost interest in the Commission, as new abuses, not covered by the Commission had taken place under the Museveni government, and the report and summary were reportedly never distributed, though thousands of copies were published.[245] Both within and outside of Uganda, the work of this Commission has been virtually forgotten.[246] Finally, the Amnesty Commission, the possibility of which was publicly discussed during the period in which the Commission of Inquiry was in existence, may have undermined the Commission by eliminating culpability and negating the need to investigate the truth about the past.[247]

These two commissions point both to the need for a successful Ugandan truth commission, and to the problems which could befall yet another attempt at a truth-telling process in Uganda.[248] Beyond the issue of limited public awareness among Ugandans of the 1986 Truth Commission, the highly limited participation of northern Ugandans in that Commission suggests that a truth-telling process virtually never even took place in the north.[249] Additionally, to the very limited degree that northern Ugandans did participate, the Commission, according to its mandate, focused on abuses prior to 1986, before the LRA had even come into existence.[250] Moreover, to the extent that today's Amnesty

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[241] *Id.* Over 600 witnesses appeared before the Commission. Joanna R. Quinn, *Constraints: The Un-Doing of the Ugandan Truth Commission,* 26 HUM. RTS. Q. 401, 407 (2004).

[242] Quinn, *supra* note 241, at 408, 411–17.

[243] *Id.* at 421.

[244] *Id.* at 414–15.

[245] HAYNER, *supra* note 198, at 56–57; Quinn, *supra* note 241, at 425. *But see,* Carver, *supra* note 232, at 396. According to Carver, the Commission "played a psychologically important role in helping Ugandans to come to terms with their own past, as well as proposing a number of future safeguards against human rights abuse." *Id.*

[246] Quinn, *supra* note 241, at 409.

[247] *Id.* at 419.

[248] *See* HAYNER, *supra* note 198, at 51–52, 56.

[249] Quinn, *supra* note 241, at 420–21.

[250] *Id.* at 419.

Commission now effectively buries the past instead of illuminating it, another truth commission in Uganda would bring much needed public awareness to the conflict endured by northern Ugandans.[251] Given the checkered history of truth commissions in Uganda, however, another commission would require careful planning so as to ensure that President Museveni's second truth commission would not suffer from the same problems which undermined the 1986 Commission.[252] This commission would require a deadline for completion as well as a carefully circumscribed mandate.[253] The international community would most likely have to play a critical role, not only by providing financial support, but also by pressuring President Museveni to throw his political will behind the commission, without which history suggests the commission would be doomed to fail.[254]

b. *The Co-existence of Sierra Leone's Special Court and Truth and Reconciliation Commission*

The co-existence in Sierra Leone of the TRC and Special Court is especially relevant for northern Uganda because a truth commission in Uganda could conceivably operate contemporaneously with trials at the ICC in The Hague.[255] Given that post-conflict States have traditionally instituted truth commissions as an alternative to criminal justice, thereby replacing or at least suspending criminal prosecutions, Sierra Leone's mixture of these two options represents a unique and unprecedented experiment.[256] Ultimately, Sierra Leone's experiment in transitional justice demonstrates some of the tensions between the two mechanisms as well as the feasibility of their coexistence.[257] The following briefly outlines the key features of the TRC and Special Court, and discusses the particularly notable aspects of their largely successful relationship.

The 1999 Lomé Peace Agreement marked the beginning of the end of the conflict in Sierra Leone.[258] The Agreement provided for the creation of a truth and reconciliation commission "to address im-

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[251] *See id.* at 419–21.

[252] *See id.* at 425.

[253] *See id.* at 412–13, 415–16.

[254] *See* Quinn, *supra* note 241, at 417.

[255] *See* Tejan-Cole, *supra* note 204, at 316.

[256] William A. Schabas, *Truth Commissions and Courts Working in Parallel: The Sierra Leone Experience*, 98 Am. Soc'y Int'l L. Proc. 189, 189 (2004); Tejan-Cole, *supra* note 204, at 316.

[257] Schabas, *supra* note 256, at 189.

[258] *Id.*

punity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, [and to] get a clear picture of the past in order to facilitate genuine healing and reconciliation."[259] The TRC exercised temporal jurisdiction over human rights violations from the beginning of the conflict on March 23, 1991 to the signing of the Lomé Peace Agreement on July 7, 1999.[260] It had the authority to recommend measures for the rehabilitation of victims and to make recommendations regarding the Special Fund for War Victims.[261] The TRC was mandated to give special attention to the experiences of children in the conflict.[262]

While the success of the South African Truth and Reconciliation Commission originally inspired the establishment of Sierra Leone's Commission, it did not have the same power held by the South African Commission to grant amnesty as an incentive for admissions by perpetrators.[263] Instead, the Lomé Peace Agreement provided for a blanket amnesty for the acts of all combatants and collaborators up to the signing of the Agreement.[264] Upon the signing of the Lomé Agreement however, the U.N. Special Representative entered a reservation stipulating that the United Nations did not recognize the application of amnesty to genocide, crimes against humanity, war crimes, and other serious violations of international humanitarian law.[265]

The government of Sierra Leone later requested that the United Nations establish a special tribunal after renewed fighting in May 2000 resulted in a reassessment of the amnesty provided by the Lomé Agreement.[266] The United Nations and the government of Sierra Leone then reached an agreement establishing the Special Court, which would be composed of both national and international judges who would apply

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[259] Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, art. XXVI, ¶ 1, Jul. 7, 1999 [hereinafter Lomé Peace Agreement].

[260] ¶ 2.

[261] Truth and Reconciliation Commission Act, 2000, ¶ 7(6) (Sierra Leone); Lomé Peace Agreement, *supra* note 259, art. XXIX. The Act does not, however, authorize the Commission to exercise control over the operations or disbursement of the Fund. ¶ 7(6).

[262] ¶ 6(2)(b).

[263] Omer Yousif Elagab, *The Special Court for Sierra Leone: Some Constraints,* 8 Int'l J. Hum. Rts. 249, 257 (2004); Schabas, *supra* note 256, at 191.

[264] Lomé Peace Agreement, *supra* note 259, art. IX, ¶ 2.

[265] Elagab, *supra* note 263, at 260; Tejan-Cole, *supra* note 204, at 315.

[266] William A. Schabas, *Internationalized Courts and their Relationship with Alternative Accountability Mechanisms: The Case of Sierra Leone, in* Internationalized Criminal Courts and Tribunals: Sierra Leone, East Timor, Kosovo, and Cambodia 157 (Cesare P. R. Romano et al. eds., 2004).

international as well as Sierra Leonean law. [267] The Special Court is authorized "to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996."[268] Despite intense speculation about how the Special Court and the TRC would interact, the two institutions never came to any formal agreement on cooperation between them, but instead seemed to value polite and neighborly relations and nothing more. [269]

In mid-2002 both the Special Court and the TRC began their operations in Freetown in buildings, coincidentally, neighboring each other.[270] In March 2003, the Court began to issue what would amount to a total of thirteen indictments for high profile individuals associated with all three warring factions.[271] Trials at the Special Court did not begin until June 2004, at which point the TRC's work was nearly complete.[272] During the statement-taking phase, which began in December 2002, the TRC interviewed approximately seven-thousand victims and perpetrators throughout the country.[273] It then held public hearings

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[267] *See* Statute of the Special Court for Sierra Leone, arts. 3–5, 11–13; S.C. Res. 1315, ¶¶ 1–4, U.N. Doc. S/RES/1315 (Aug. 14, 2000). According to Abdul Tejan-Cole:

> The decision to require a mixed tribunal of national and international judges was due primarily to practical considerations and fears about the neutrality of national trials. The Sierra Leonean judicial system was largely decimated as a result of the war. It is only functional in Freetown and lacks the enormous human and financial resources required to undertake such trials.

Tejan-Cole, *supra* note 204, at 318.

[268] Statute of the Special Court for Sierra Leone, art. 1(1).

[269] *See* William A. Schabas, *A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone, in* Truth Commissions and Courts: The Tension Between Criminal Justice and the Search for Truth 3, 25–29 (William A. Schabas & Shane Darcy eds., 2004); Schabas, *supra* note 256, at 191. Several nongovernmental organizations produced detailed reports about how the TRC and Special Court could structure a formal relationship. *See generally* Marieke Wierda et al., Int'l Ctr. for Transitional Justice, Exploring the Relationship Between the Special Court and the Truth and Reconciliation Commission of Sierra Leone 11–19 (2002); Human Rights Watch, Policy Paper on the Interrelationship Between the Special Court for Sierra Leone and Truth and Reconciliation Commission (2002), http://www.hrw.org/press/2002/04/sierraleoneTRC0418.htm.

[270] Schabas, *supra* note 256, at 190.

[271] *See id.*; About the Special Court for Sierra Leone, http://www.sc-sl.org/about.html (last visited Apr. 26, 2008). However, only ten of the original thirteen had been indicted as of May 2007. About the Special Court for Sierra Leone, *supra* (noting that the Special Court withdrew two indictments and terminated another following the death of three accused).

[272] Schabas, *supra* note 256, at 190.

[273] *Id.*

throughout Sierra Leone between March and August 2003 and presented its final report in October 2004, by which time the TRC and the Special Court had been operating simultaneously for over 18 months.[274]

When the two bodies began their work, a major concern emerged that because of their overlapping mandates and jurisdictions, the two institutions would conflict with each other, confuse the Sierra Leonean public, and waste resources by duplicating each other's work.[275] The subject matter jurisdiction of the TRC encompassed, and went beyond, that of the Special Court, while the temporal jurisdiction of the two institutions overlapped from November 30, 1996 to July 7, 1999.[276] William Schabas, one of the TRC commissioners, argues that concerns about overlapping mandates and jurisdictions did not actually play out in any significant way.[277] Their day-to-day work shared little common ground and the two institutions demonstrated that they could work side-by-side without conflict or tension.[278] Schabas further posits that, "[g]iven an appropriately benign and non-confrontational attitude of the personalities involved, there is no reason why this experience cannot be repeated in other contexts," as potential sources of conflict can be managed.[279] Schabas also suggests that although many Sierra Leoneans did not appreciate the distinction between the TRC and Special Court, as long as they simply understood that both institutions were working towards accountability for the atrocities suffered during the war, then perhaps a failure to grasp the distinctions between the two really did not represent a significant problem.[280]

The initial debate about the relationship between the two bodies was also dominated by the concern that information sharing by the TRC with the Special Court would deter perpetrators from telling the

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[274] Tim Kelsall, *Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone*, 27 HUM. RTS. Q. 361, 381; Schabas, *supra* note 266, at 158; Schabas, *supra* note 256, at 190.

[275] Tejan-Cole, *supra* note 204, at 322–23.

[276] *Id.* at 319, 322.

[277] Schabas, *supra* note 266, at 179–80.

[278] *Id.* at 180. Schabas writes that perhaps the appropriate metaphor for describing the synergistic relationship of the two bodies is that of building a house:

> The Truth and Reconciliation Commission is the plumber, and the Special Court is the electrician. The two trades work in different parts of the house, on different days, at different stages of the construction, and using different tools and materials. Nobody would want to live in a finished house that lacked either electricity or plumbing.

Id.

[279] *Id.*

[280] Schabas, *supra* note 269, at 54.

truth or from even attending the TRC out of fear that such evidence would be used against them by the Special Court.[281] The TRC, however, insisted that it would not share confidential information with the Special Court, and the Special Court Prosecutor David Crane publicly stated that the Court would not use evidence presented to the TRC.[282] According to one commentator, some Sierra Leoneans were nevertheless suspicious of information exchanges between the two institutions and refrained from giving statements to the TRC to avoid incriminating themselves.[283] Another commentator even argues that perhaps the TRC should not have begun to function until after the Special Court had finished its work so that witnesses would not fear that revealing admissions would lead to prosecution by the Court.[284]

Schabas, on the other hand, argues that it is difficult to assess how such concerns about information sharing actually affected the work of the TRC, as the willingness of perpetrators to participate in accountability processes, such as truth-telling has little to do with the threat of criminal trials or the promise of amnesty.[285] Instead, "[w]illingness or unwillingness to testify seems to have more to do with the mysteries of the human soul than it does with issues of amnesty, use immunity and compulsion to testify."[286] While only small numbers of perpetrators testified before the TRC, other truth commissions that functioned with no threat of prosecution were no more successful in persuading perpetrators to testify.[287] In fact, several detainees of the Special Court—Sam Hinga Norman, Augustine Gbao, and Issa Sesay—actually approached the TRC about giving public testimony before it, thereby suggesting that the threat of prosecution played a relatively insignificant role in discouraging testimony before the TRC.[288] Ironically, these requests to testify provoked the only public tension between the two bodies during their co-existence.[289] The Prosecutor of the Special Court opposed pub-

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[281] Schabas, *supra* note 266, at 166–67; Tejan-Cole, *supra* note 204, at 326.

[282] Tejan-Cole, *supra* note 204, at 326. For a detailed examination of information-sharing issues, see Schabas, *supra* note 269, at 30–41.

[283] *See* Kelsall, *supra* note 274, at 381. In contrast to William Schabas, Tim Kelsall argues that, "an important factor deterring witnesses from speaking openly in the hearings was the troubled relationship between the TRC and the Special Court," which "was a source of considerable frustration to some TRC staff, who felt that the court was impeding their work to an unacceptable degree." *Id.*

[284] Elagab, *supra* note 263, at 259.

[285] *See* Schabas, *supra* note 256, at 192.

[286] *See* Schabas, *supra* note 269, at 54.

[287] Schabas, *supra* note 266, at 167.

[288] Schabas, *supra* note 269, at 44; Schabas, *supra* note 266, at 167.

[289] Schabas, *supra* note 266, at 167; *see* Schabas, *supra* note 269, at 43–50.

lic hearings for these three detainees, and a ruling on appeal by the Court's President, Geoffrey Robertson, allowed the defendants to testify before the TRC, but not in public.[290] Defendant Norman then refused to cooperate with the TRC after having been deprived of his public platform.[291] Schabas describes this as a most unfortunate quarrel between the two institutions at the close of what had been an essentially "cordial and uneventful relationship."[292]

Sierra Leone's experiment demonstrates that the co-existence of a Ugandan truth commission and ICC trials would be a feasible and even desirable combination of transitional justice mechanisms.[293] Like the TRC in Sierra Leone, a Ugandan truth commission could focus on the needs of children and of victims, more generally. The conflicts in Sierra Leone and northern Uganda are similar in that both involved the large-scale use of child soldiers as well as massive population displacement.[294] Neither the Special Court nor the ICC, however, can effectively play a significant role in addressing these realities, as both courts necessarily focus on a relatively very small number of perpetrators, not on the very large number of victims.[295] Such a highly selective focus on the actions of a few perpetrators is, of course, in the very nature of international criminal justice.[296] The massive scale of these conflicts essentially demands a complementary mechanism, however, which addresses the needs of victims, including the need to hear and tell the truth. The ICC's outreach program and its plans for victim participation do not provide a substitute for a truth commission.[297] The outreach program logically consists primarily of the Court informing Ugandans about the Court, not of Ugandan victims informing the Court about the atrocities they have suffered.[298] Also, although the Rome Statute does include unprecedented provisions for the participation of victims in the Court's

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[290] Schabas, *supra* note 269, at 45–46, 48.

[291] *Id.* at 48.

[292] *Id.* at 50.

[293] *See* Schabas, *supra* note 266, at 180.

[294] *See* Lisa Alfredson, *Child Soldiers, Displacement and Human Security*, 3 Disarmament F. 17, 19 (2002), *available at* http://www.unidir.org/pdf/articles/pdf-art1728.pdf.

[295] Human Rights Watch, Universal Jurisdiction in Europe: The State of the Art 1 (2006) (noting that due to finite resources, international courts can only try a limited number of perpetrators involved in specifically identified conflicts and territories).

[296] *See id.*

[297] International Criminal Court, Outreach, Uganda, http://www.icc-cpi.int/outreach/o_uganda.html (last visited Apr. 26, 2008); International Criminal Court, Participation of Victims in Proceedings, http://www.icc-cpi.int/victimsissues/victimsparticipation.html (last visited Apr. 26, 2008).

[298] International Criminal Court, Outreach, Uganda, *supra* note 297.

proceedings, the narrowly confined nature of this participation does not resemble that of a truth commission at all.[299]

In addition, a mixture of truth-telling and criminal justice for northern Uganda could meet with fewer challenges than did Sierra Leone's simultaneous pursuit of these two approaches.[300] First, a temporal, as well as a physical, separation between the ICC and a commission would help to separate the two institutions in the minds of Ugandans to a greater extent than was the case in Sierra Leone.[301] Ugandans would probably not be as likely to confuse or conflate the two institutions because the ICC's investigation and issuance of arrest warrants would have occurred years before the creation of a truth commission.[302] In Sierra Leone, by contrast, the Commission and the Court began to operate at approximately the same time. Given that the ICC resides in The Hague, while the truth commission would operate in Uganda, the ICC and the commission would not literally be neighbors, as the Special Court and TRC were in Freetown. Second, Uganda's combination of truth telling and criminal justice may be less problematic than in Sierra Leone, because perpetrators might be less concerned about information sharing between a commission and the ICC because the ICC has already issued its indictments in the Uganda situation.[303] Leaving aside the unlikely possibility that the ICC will issue further arrest warrants years after unsealing the first warrants, perpetrators would not be faced with fears about future prosecutions based on their testimony before the commission.[304]

Finally, in contrast to the TRC in Sierra Leone, a commission in Uganda would be less likely to face severe under-funding because the ICC and the commission would not be in direct competition with each other for funding as were the Special Court and the Commission.[305] Because the ICC obtains its funding through the contributions of States parties as well as the United Nations, the commission would be drawing

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[299] *See* Rome Statute of the International Criminal Court, art. 68, ¶ 3, July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute].

[300] *See* Tejan-Cole, *supra* note 204, at 316.

[301] *See id.* at 322.

[302] *See* Moreno-Ocampo, *supra* note 7, at 3.

[303] *See* Schabas, *supra* note 266, at 166–67; Moreno-Ocampo, *supra* note 7, at 3.

[304] *See* Elagab, *supra* note 263, at 259 (suggesting that potential witnesses would be encouraged to provide statements if the criminal justice component was completed prior to the commencement of the commission).

[305] *See* Schabas, *supra* note 269, at 7–8 (noting that donor enthusiasm for the ICC may have inhibited the TRC from raising sufficient funds).

upon a separate pool of money from the international donor community.[306]

B. *A Reparations System*

The range of physical, psychological, and socio-economic harm suffered by northern Ugandans as a result of this twenty-two year conflict with the LRA necessitates the provision of reparations by the government.[307] The LRA has killed and mutilated civilians and abducted tens of thousands of children and adults, while the UPDF has committed its own share of atrocities.[308] The conflict has produced approximately 1.7 million IDPs who have little prospect of employment, health care, education, or returning home.[309] Meanwhile, an untenable situation has developed wherein perpetrators who have been granted amnesty have received resettlement packages while victims have received nothing.[310] According to the International Center for Transitional Justice, a majority of those surveyed said that victims of the conflict should receive some form of reparations.[311] Fifty-two percent wanted victims to receive financial compensation and fifty-eight percent thought that such compensation should be for the community as opposed to individual victims.[312] While a majority (sixty-three percent) of respondents believed that the return of IDPs to their villages should be prioritized once peace is achieved, respondents also gave priority to rebuilding village infrastructure (twenty-nine percent), providing compensation to victims (twenty-two percent), and providing education to children (twenty-one percent).[313] In this context, reparations could encompass

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[306] *See* Rome Statute, *supra* note 299, art. 115.

[307] *See* text accompanying notes 15–21. The question of whether Uganda is under an international legal obligation to provide reparations is beyond the scope of this article, which argues instead, that under these circumstances, Uganda is morally obligated to provide reparations.

[308] Human Rights First, *supra* note 20.

[309] *See* INTERNAL DISPLACEMENT MONITORING CTR., *supra* note 26, at 17–18.

[310] *See* INT'L CRISIS GROUP, *supra* note 65, at 8. In an interview conducted by the International Crisis Group, President Museveni apparently stated that benefits for former LRA members must be balanced by benefits for the LRA's victims, both as a matter of equity and to generate support for DDR. *Id.*

[311] PHAM ET AL., *supra* note 1, at 36.

[312] *Id.* Respondents also mentioned other forms of reparations including food support (forty percent), educational support (twenty-six percent), counseling support (twenty-six percent), and livestock (seventeen percent). *Id.* In addition, respondents mentioned alternatives to reparations including justice (eight percent), apologies (nine percent), and reconciliation (six percent). *Id.*

[313] *Id.* at 25.

an expansive definition, including restitution (the restoration of the victim to the original situation before the violations occurred), compensation (for economically assessable damage), rehabilitation (medical and psychological care and legal and social services), and satisfaction and guarantees of non-repetition (to acknowledge the violations and prevent their recurrence).[314]

The government of Uganda, however, has failed to respond to victims' need for reparations. Neither the Amnesty Act nor the traditional justice and reconciliation mechanisms currently provide victims with significant compensation.[315] The Amnesty Act, in fact, provides no reparations for victims but instead provides the perpetrators with resettlement packages.[316] Although *mato oput* is traditionally supposed to include compensation in the form of cattle or money, such payments may no longer be possible because the vast majority of the Acholi population now lives in poverty in IDP camps.[317] In addition, former LRA rebels typically escape from the bush with no ability to offer any compensation themselves.[318] Consequently, this article proposes that the government of Uganda could compensate the victims through the Amnesty Commission or by funding the compensation mechanism embodied in *mato oput*. Alternatively, if the government of Uganda were to establish a truth commission, then reparations could be provided through this institution as well.

The reparations systems of South Africa and Rwanda may provide models for Uganda's post conflict situation. South Africa provides an example of how compensation may be tied to a larger truth commission, while Rwanda's *gacaca* tribunals alternatively show how a traditional justice mechanism may be codified and expanded to include compensation.[319] In post-conflict northern Uganda, a compensation system similar to that of South Africa or Rwanda could work toward adequately addressing victims' interests.

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[314] *See* G.A. Res. 60/147, ¶¶ 19–23, U.N. Doc. A/RES/60/147 (Mar. 21, 2006).

[315] *See* Hovil & Lomo, *supra* note 1, at 14 (noting that some victims are not benefiting from the Amnesty Act in any way); PHAM ET AL., *supra* note 1, annex 4, at 51 (noting that traditional ceremonies that include compensation mechanisms are not common).

[316] *See* Amnesty Act, 2000, ¶ 9(a)–(b) (Uganda).

[317] *See* ROCO WAT I ACOLI, *supra* note 1, at 65 (noting that those who live in displacement camps lack sufficient resources to compensate victims).

[318] *Id.* at 67.

[319] *See* LYN S. GRAYBILL, TRUTH & RECONCILIATION IN SOUTH AFRICA: MIRACLE OR MODEL? 6–8 (2002) (discussing the South African Truth and Reconciliation Commission); Stef Vandeginste, *Victims of Genocide, Crimes Against Humanity, and War Crimes in Rwanda: The Legal and Institutional Framework of Their Right to Reparation, in* POLITICS AND THE PAST 258, 260 (John Torpey ed., 2003) (discussing the Rwandan *gacaca* tribunals).

1. South Africa's Committee on Reparation and Rehabilitation

South Africa's TRC included a Committee on Reparations and Rehabilitation that recommended symbolic reparations as well as substantial payments to victims of gross human rights violations.[320] When the Committee began its work in 1996, many South Africans expected that compensation would be only symbolic because of the vast number of claims and the difficulties involved in adequately compensating victims.[321] The Committee, however, shifted its emphasis from symbolic to substantial compensation after conducting workshops throughout South Africa over two years.[322] While the Committee did propose symbolic reparations, including memorials, reburials, renaming of streets, and days of remembrance, it also proposed individual reparation grants.[323] In addition, the Committee determined that certain victims required urgent interim relief, including victims who had lost a wage-earner, who required psychological support after testifying, who required urgent medical attention, or who were terminally ill and not expected to outlive the South African TRC.[324]

Despite these substantial recommendations by the Committee, the reparations process in South Africa has generated significant dissatisfaction among victims.[325] First, the government was very slow to respond to the South African TRC's recommendations about payments to the 22,000 victims.[326] Second, the Promotion of National Unity and Reconciliation Act, which authorized the South African TRC, included no requirements for reparations from perpetrators or beneficiaries of apartheid.[327] The Act did not call for reparations directly from perpetrators to victims even though under traditional systems, *ubuntu*, an African philosophy of humanity, requires *ulihlawule*, paying the debt, by

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[320] GRAYBILL, *supra* note 319, at 6.

[321] *Id.* at 149.

[322] *Id.* at 150.

[323] *See id.* at 151. The Committee proposed reparation grants of a minimum of 17,000 rand per year for each victim for six years. *Id.* The recommended grant was 23,000 rand per year for victims with many dependents or living in rural areas. *Id.* The average grant was 21,700 rand, which was based on the median income of black South African households. *Id.*

[324] *Id.* at 149–50.

[325] GRAYBILL, *supra* note 319, at 152–53; HAYNER, *supra* note 198, at 178–79.

[326] *See* HAYNER, *supra* note 198, at 178.

[327] GRAYBILL, *supra* note 319, at 151.

the one who violates community law.[328] The Act thus broke this link between the violation and the obligation.[329]

2. Reparations Through Rwanda's *Gacaca* Tribunals

Rwanda, by contrast, developed a compensation system linked not to a truth and reconciliation commission, but to its *gacaca* system.[330] Rwanda's *gacaca* tribunals grew out of the government's struggle to detain and prosecute over 100,000 people charged with the commission of genocide, war crimes, and crimes against humanity during the 1994 Rwandan genocide.[331] However, because of the modest prosecution rates of both the International Criminal Tribunal for Rwanda (ICTR) and the national judiciary, by 2000 the Rwandan government had begun to seek an alternative form of justice.[332] According to Chiseche Mibenge:

> There was an emphasis on establishing a model of justice that would embrace traditional Rwandan values by advocating restoration over retribution; a model that would expedite the process of justice, ease overcrowding in detention centres and uphold the rights of the accused while remaining palatable to the survivors of the genocide. *Gacaca* tribunals emerged as the only viable solution to the impasse in Rwanda's domestic transitional justice process.[333]

Rwanda's Gacaca Law of 2001 therefore codified a modified version of Rwanda's traditional community-based dispute resolution mechanism whereby village elders would assemble all parties to a dispute in order to mediate a solution.[334] The Gacaca Law of 2001 designed a participatory judicial system that would involve a large part of the Rwandan

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[328] *Id.* at 151–52. Discussions about a possible wealth tax on those who benefited financially from apartheid fell by the wayside when Thabo Mbeki succeeded Nelson Mandela to the presidency in the spring of 1999. *Id.*

[329] *See id.*

[330] Chiseche Mibenge, *Enforcing International Humanitarian Law at the National Level: The Gacaca Jurisdictions of Rwanda, in* Y.B. Int'l Humanitarian L. 410, 412 (2004).

[331] *Id.* at 410–12.

[332] *Id.* at 411–12 (noting that by the year 2000 approximately 2500 accused had been tried at the national judiciary and of 70 indicted at the ICTR, only 9 had stood trial).

[333] *Id.* at 412.

[334] Organic Law No. 40/2000 of 26/01/2001 Setting up "Gacaca jurisdictions" and Organizing Prosecutions for Offenses Constituting the Crime of Genocide or Crimes Against Humanity Committed Between October 1, 1990 and December 31, 1994 (amended 2004), *available at* http://www.inkiko-gacaca.gov.rw/pdf/Law.pdf [hereinafter Gacaca Law 2001]; *see* Mibenge, *supra* note 330, at 412.

population as judges or witnesses.[335] While the *gacaca* typically dealt with disputes over property rights, livestock, marriage, succession, and attacks on personal integrity, the Gacaca Law of 2001 established *gacaca* tribunals for the prosecutions of genocide and crimes against humanity committed between October 1, 1990 and December 31, 1994.[336] Additionally, the Gacaca Law of 2004, which amended the earlier Law of 2001, created three categories for prosecuted persons based on the gravity of their crime.[337] G*acaca* tribunals exercise jurisdiction over the lesser category two and three offenses, which include crimes against the person and crimes against property.[338]

The unusual nature of the *gacaca* tribunals compelled the Rwandan legislature to clarify the extent to which the tribunals could render decisions concerning compensation.[339] While the Gacaca Law of 2001 provided for a compensation fund, the Gacaca Law of 2004, which now prevails over the 2001 Law in this respect, contains significantly different provisions for compensation.[340] Under the Gacaca Law of 2001, the rulings and judgments of the *gacaca* tribunals included lists of victims, the damages they suffered, and the compensation to which they were entitled.[341] The *gacaca* tribunals would then forward rulings and judgments, with these lists, to the Compensation Fund for Victims of the Genocide and Crimes against Humanity, which would make payments.[342] Based on total damages suffered, the Fund would then fix the modalities for granting compensation.[343]

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[335] *See* Mibenge, *supra* note 330, at 412; Vandeginste, *supra* note 319, at 258, 260.

[336] Mibenge, *supra* note 330, at 413.

[337] Organic Law No. 16/2004 of 19/6/2004 Establishing the Organization, Competence and Functioning of Gacaca Courts Charged with Prosecuting and Trying the Perpetrators of the Crime of Genocide and Other Crimes Against Humanity, Committed Between October 1, 1990 and December 31, 1994, art. 51, *available at* www.inkiko-gacaca.gov.rw/pdf/newlaw1.pdf [hereinafter Gacaca Law 2004].

[338] Art. 2. *Gacaca* tribunals do not however exercise jurisdiction over the most serious offenses or perpetrators, which compose category one offenses. Arts. 2, 51.

[339] *See* Vandeginste, *supra* note 319, at 258.

[340] *See* Gacaca Law 2004, *supra* note 337, arts. 95–96; Gacaca Law 2001, *supra* note 334, arts. 90–91.

[341] Gacaca Law 2001, *supra* note 334, art. 90. These rulings must indicate "the identity of persons who have suffered material losses and the inventory of damages to their property; the list of victims and the inventory of suffered body damages; as well as related damages fixed in conformity with the scale provided for by law." *Id.*

[342] *See id.* The Compensation Fund is distinct from the National Fund for Assistance to Survivors of Genocide and Massacres (NFASGM), which came into existence in 1998. Vandeginste, *supra* note 319, at 264. The NFASGM provides assistance to the most economically disadvantaged victims. *See id.* Its activities focus on housing, education, health, and social reintegration. *Id.*

[343] Gacaca Law 2001, *supra* note 334, art. 90.

By contrast, the Gacaca Law of 2004 contains narrower provisions for compensation which largely avoid the issue of damages or other forms of compensation.[344] Under this law, reparations only involve the "restitution of the property looted whenever possible" and "repayment of the ransacked property or carrying out the work worth the property to be repaired."[345] In addition, "[o]ther forms of compensation the victims receive shall be determined [only] by a particular law," a reference to the Fond d'Indemnisation (FIND)—draft legislation concerning a victims compensation fund.[346] Consequently, until FIND becomes law, the Gacaca Law of 2004 has effectively reduced the scope of damages which victims may receive because the law covers only property damages, not bodily harm.[347]

Although the compensation provisions of the Gacaca Law of 2004 now prevail over the more robust provisions of Gacaca Law of 2001, the advantages and risks of the earlier Law are more relevant for our purposes because the 2001 Law more adequately addresses victims' interests and therefore provides a more suitable model for a reparations system in Uganda.[348] According to Stef Vandeginste, some of the advantages of the Gacaca Law of 2001 included:

> the active participation of the victims, the acknowledgment of their status as victims, the recognition of the damages they have incurred, the acknowledgment of their right to reparation independent of any sentencing of the perpetrator of a crime, the consistency and realism in the sums awarded, and the more than merely symbolic value of the amounts concerned.[349]

Additionally, the law entitled victims to receive compensation without a criminal conviction of the perpetrator, thus eliminating the role of criminal evidence in the determination of compensation.[350]

Potentially problematic aspects of this system, however, included its dependence on the transparent, proper operation and financial

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[344] *See* Gacaca Law 2004, *supra* note 337, art. 95.

[345] *Id.*

[346] Art. 96; Mibenge, *supra* note 330, at 420. FIND originated out of a 1996 Rwanda law that created a fund for genocide victims in need of financial assistance. *Id.* For an in-depth analysis of FIND draft legislation, see Heidy Rombouts, Victim Organisations and the Politics of Reparation: A Case Study on Rwanda 411–13 (2004).

[347] *See* Gacaca Law 2004, *supra* note 337, art. 95; Rombouts, *supra* note 346, at 413.

[348] *See* Gacaca Law 2004, *supra* note 337, arts. 95–96; Gacaca Law 2001, *supra* note 334, arts. 90–91.

[349] Vandeginste, *supra* note 319, at 265.

[350] *Id.* at 259–60.

wherewithal of the Compensation Fund.[351] Also, claimants still encountered difficulties in proving damages, such as through the provision of medical certificates, so many years after the genocide.[352] Finally, raising awareness of the *gacaca* tribunals and of the Fund among the most ill-informed and destitute victims also posed a great challenge to the Gacaca Law of 2001.[353] The advantages and risks of the reparations system created by the Gacaca Law of 2001 are most likely not specific to Rwanda's *gacaca* system and could easily characterize a reparations system linked to traditional Acholi mechanisms as well.

3. Reparations in Uganda

Uganda faces many potential alternatives for a reparations system. The government could implement reparations through a stand-alone government agency or through another mechanism such as a truth commission, the Amnesty Commission, or *mato oput*. While the experiences of both South Africa and Rwanda are relevant for northern Uganda, the following discussion focuses on the pertinence of Rwanda's *gacaca* system, which is perhaps most immediately relevant, as traditional mechanisms currently exist in northern Uganda but, as of yet, no truth commission has come into being.[354] Although Uganda will very likely not implement the equivalent of Rwanda's *gacaca* tribunals, the compensation system set forth in the Gacaca Law of 2001 could still be relevant to the victims of the conflict in northern Uganda.[355] Rwanda's Gacaca Law of 2001 demonstrates how government-funded compensation can take place through traditional justice mechanisms, as opposed to a truth commission.[356]

It is possible that the Amnesty Commission could implement a reparations system tied to *mato oput*.[357] The government of Uganda could strengthen this traditional mechanism by pledging to provide the funds for the compensation upon which the parties have agreed. The Amnesty Commission could establish a compensation fund under its power to "perform any other function that is associated or con-

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[351] *See id.* at 259, 266.

[352] *See id.* at 266.

[353] *See id.*

[354] *See supra* text accompanying notes 332–340.

[355] *See* Gacaca Law 2001, *supra* note 334, arts. 90–91.

[356] *See id.*

[357] *See* Amnesty Act, 2000, ¶ 9(e) (Uganda) (granting the Amnesty Commission the right to "perform any other function that is associated or connected with the execution of the functions stipulated in this Act").

nected with the execution of the functions stipulated in [the] Act."[358] Because the Commission's functions include the promotion of reconciliation, a compensation fund would be a permissible expansion of the Commission's current operations.[359] The two parties performing *mato oput* could agree upon an appropriate level of compensation and then submit a claim to the compensation fund.[360] The Commission could issue guidelines for parties to use when determining appropriate levels of compensation. Such a system could restore efficacy to *mato oput,* which is currently somewhat dysfunctional partly due to the inability of perpetrators to provide compensation.[361]

Some caveats, however, are in order. This compensation system would, of course, be premised on a general revival of *mato oput* and its use by LRA perpetrators and their victims, neither of which may actually happen.[362] Also, third-party interference by the government in the *mato oput* process could conceivably harm the integrity of a process that has traditionally taken place between clans with no government involvement. Given these potential problems, the Amnesty Commission could, alternatively, provide benefits to victims who apply to receive compensation packages, which could be similar to the resettlement packages given to reporters.[363] Thus, the provision of reparations by the Amnesty Commission could exist totally apart from *mato oput.*

Finally, Rwanda also serves as a useful example of how broad poverty reduction, in addition to compensation for individual victims or clans, may contribute to reconciliation.[364] Poverty reduction is one of the priorities of the Rwandan Patriotic Front (RPF)-led government, as President Paul Kagame has reiterated in public statements.[365] For Rwandans whose livelihood was destroyed during the genocide, economic assistance may lay the groundwork necessary for the process of forgiveness and reconciliation.[366] Similarly, in northern Uganda, compensation for whole communities could also play an important role in

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[358] *Id.*

[359] *See* ¶ 9(c).

[360] *See* Roco Wat I Acoli, *supra* note 1, at 56 (noting that compensation is typically determined by reference to clan by-laws).

[361] *See id. Mato oput* is not officially completed until compensation has been paid to the victim. *Id.*

[362] *See id.* at 67 (stating that *mato oput* cannot occur until all LRA fighters return home from the bush).

[363] *See supra* note 65 and accompanying text.

[364] *See* Eugenia Zorbas, *Reconciliation in Post-Genocide Rwanda,* 1 Afr. J. of Legal Stud. 29, 37 (2004).

[365] *Id.*

[366] *See id.* at 37–38.

helping the region achieve reconciliation.[367] The government could focus on providing the infrastructure necessary for the Acholi people to achieve reintegration because northern Ugandans cannot truly reintegrate the former rebels until they have left the IDP camps and returned to their homes.[368] Communal compensation could therefore concentrate on rebuilding infrastructure, resettlement packages for farming, and resources for education.[369]

Measures aimed at broader poverty reduction, beyond support for reintegration, could also be an important tool for achieving national as well as regional reconciliation.[370] The International Crisis Group writes of how the north-south divide in Uganda must be bridged so that the Acholi feel that they are a part of Ugandan society.[371] Unifying the country "will require specific political, economic and social initiatives aimed at building the North's connections with the central government while enhancing autonomy and localized decision-making."[372] Such initiatives could include post-conflict reconstruction assistance through "support for agricultural production," affirmative action through scholarships and employment opportunities, "social reform," "settlement and reintegration of IDPs," and "psychological and social support" for former LRA rebels and victimized communities.[373]

IV. International Criminal Justice

The final section of this article examines the degree to which the ICC may be able to play a role in fostering reconciliation in northern Uganda, particularly in light of the Special Court for Sierra Leone.[374]

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[367] *See id.*

[368] *See* Internal Displacement Monitoring Ctr., *supra* note 26, at 16.

[369] *See* Pham et al., *supra* note 1, at 25.

[370] *See id.*

[371] *See* Int'l Crisis Group, Northern Uganda: Understanding and Solving the Conflict 23 (2004), *available at* http://www.up.ligi.ubc.ca/ICGreport.pdf.

[372] *Id.*

[373] *Id.*

[374] *See* Human Rights Watch, Benchmarks for Assessing Possible National Alternatives to International Criminal Court Cases Against LRA Leaders 3 (2007). For a thorough examination of the legal nature of the conflict between the ICC's arrest warrants and the ongoing peace negotiations see generally Kasaija Phillip Apuuli, *The ICC Arrest Warrants for the Lord's Resistance Army Leaders and Peace Prospects for Northern Uganda,* 4 Int'l Crim. Just. 179, 183–87 (2006) (suggesting the possibility for a peaceful negotiation to end the conflict has diminished since the ICC arrest warrants were made public); Eric Blumenson, *The Challenge of a Global Standard of Justice: Peace, Pluralism, and Punishment at the International Criminal Court,* 44 Colum. J. Transnat'l L. 801, 832–53 (2006) (discussing the conflict between peace and prosecution); H. Abigail Moy, Recent Development, *The International Criminal Court's Arrest Warrants and Uganda's Lord's Resistance Army: Renewing*

The experience of the Special Court is highly relevant to the situation in northern Uganda because the Special Court has narrowly focused on prosecuting only those bearing the greatest responsibility for the civil war in Sierra Leone.[375] In June 2000, Sierra Leone's President Ahmad Tejan Kabbah requested the assistance of the international community in establishing a court to try high level Revolutionary United Front (RUF) officers.[376] Having taken RUF leader Foday Sankoh into custody in May 2000, the government was apprehensive that a national trial of Sankoh and other RUF leaders would aggravate the conflict and produce further instability.[377] By January 2002, the government of Sierra Leone and the United Nations had concluded the Agreement on the Special Court, which established a hybrid tribunal based in Freetown.[378]

The Special Court's statute limits the Court's prosecutorial scope to only those "who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law" committed during the conflict.[379] The Court's limited prosecutorial discretion enabled the Court to keep its time frame relatively short and its costs relatively low, as compared with the ad hoc tribunals for Rwanda and the former Yugoslavia.[380] The Court only indicted thirteen persons, and ten arrests resulted, including that of former Liberian President Charles Taylor in March 2006.[381] While questions linger about whether such limited prosecutions will produce incomplete or unsatisfactory justice in Sierra Leone, the prosecution of Charles Taylor will likely have a highly significant impact on the Court's ultimate credibility as well as Sierra Leonean perceptions of the Court.[382]

The Special Court for Sierra Leone is relevant to northern Uganda because limited prosecutions of the LRA by the ICC are currently the only practicable and available options for Uganda, though they may be

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the Debate over Amnesty and Complementarity, 19 Harv. Hum. Rts. J. 267, 271–73 (2006) (discussing the legal implications of the ICC and Ugandan Amnesty Act).

[375] Tom Perriello & Marieke Wierda, Int'l Ctr. for Transnational Justice, The Special Court for Sierra Leone Under Scrutiny 15 (2006).

[376] *Id.* at 10.

[377] *Id.*

[378] *Id.* at 15, 40.

[379] Statute of the Special Court for Sierra Leone, art. 1(1).

[380] Perriello & Wierda, *supra* note 375, at 31, 43.

[381] *Id.* at 27.

[382] *Id.* at 43, epilogue.

undesirable.[383] In post-conflict northern Uganda, the widespread use of retributive justice would not be an effective tool for achieving reconciliation.[384] Many argue that justice can theoretically deter similar acts in the future by ensuring respect for human rights and the rule of law.[385] In fact, "[t]he basic argument in support of prosecutions is that trials are necessary in order to bring violators of human rights to justice and to deter future repression."[386] Yet prolonged trials of all or most of the Ugandan perpetrators on the scale of those in Rwanda—through ordinary domestic courts, the *gacaca* tribunals, and the ICTR—would be inappropriate in northern Uganda for a number of reasons.

First, on a pragmatic level, northern Uganda could not accommodate mass prosecutions of former LRA rebels.[387] Northern Uganda currently lacks the infrastructure necessary to conduct trials for UPDF soldiers, let alone thousands of former LRA rebels.[388] The courts are grossly understaffed and little or no judicial presence exists in the Kitgum and Pader districts.[389] As of March 2005, a large backlog of cases, two to three years old, existed in Gulu because no High Court judge had sat in Gulu in more than five months.[390] Thus the judiciary's capacity to guarantee fair trials is very limited and the resources necessary to rebuild the judiciary and to support mass justice in the Acholi region could perhaps be better spent on other initiatives geared more directly towards reconciliation.[391]

Second, even a less expensive, mass justice system such as the *gacaca* tribunals in Rwanda would be inappropriate for northern Uganda because of the circumstances of this conflict.[392] Trials would be unsuitable for most of the perpetrators of the atrocities in northern Uganda because the vast majority of the reporters were abducted into

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[383] Jeremy Sarkin, *The Tension Between Justice and Reconciliation in Rwanda: Politics, Human Rights, Due Process and the Role of the* Gacaca *Courts in Dealing with the Genocide,* 45 J. AFR. L. 143, 147 (2001).

[384] *Id.* at 148 (noting that the aim of criminal justice process is not to assist victims in the recovery process). This article certainly acknowledges, however, that mass criminal justice can play an important role in other post-conflict societies, such as the *gacaca* tribunals in Rwanda. *See* Mibenge, *supra* note 330, at 410–12.

[385] Sarkin, *supra* note 383, at 147.

[386] *Id.*

[387] *See* HUMAN RIGHTS WATCH, *supra* note 15, at 50–51 (noting the weakness of the judicial system).

[388] *See id.* at 50 (noting a general lack of police presence).

[389] *Id.*

[390] *Id.*

[391] *See id.*

[392] Hovil & Lomo, *supra* note 1, at 12.

the LRA as children and carried out atrocities under duress.[393] Deterrence has a very limited role to play because most of the perpetrators would not have voluntarily joined the LRA or committed atrocities.[394] Thus, criminal justice is inappropriate given the identity of the perpetrators and the circumstances surrounding their crimes.[395] Additionally, because victims and perpetrators often belong to the same families or neighborhoods, finding credible evidence against perpetrators may be difficult.[396]

Finally, the cultural norms of the victims contribute to the inappropriateness of mass prosecutions. Widespread use of retributive justice would conflict with Acholi traditions and with the current perspective of the population in northern Uganda.[397] The Acholis' traditional mechanisms are geared towards reconciliation and reintegration rather than punishment.[398] Interviews conducted by various NGOs note that many interviewees wished to forgive the perpetrators for the sake of peace after so many years of conflict.[399] Also, according to a survey conducted by the International Center for Transitional Justice, fifty-eight percent of respondents did not want low ranking members of the LRA to be held accountable for their crimes.[400] Sixty-six percent of respondents who thought LRA leaders should be held accountable supported processes such as trial and imprisonment.[401] Given how ill-suited mass criminal justice would be in this context, the ICC could play an important, but limited, role in achieving justice by prosecuting the LRA leaders.[402]

The ICC has the potential to play an important role in national, as well as regional, justice, though President Museveni's recent shift in attitude towards the ICC does seriously threaten the Court's efficacy.[403]

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[393] *See id.*

[394] *See* Sarkin, *supra* note 383, at 147.

[395] *See* Hovil & Lomo, *supra* note 1, at 12.

[396] *See id.*

[397] *See* PHAM ET AL., *supra* note 1, annex 4, at 50–52.

[398] *See* Hovil & Lomo, *supra* note 1, at 4.

[399] *See, e.g.*, PHAM ET AL., *supra* note 1, at 23; Hovil & Lomo, *supra* note 1, at 23, 31.

[400] *See* PHAM ET AL., *supra* note 1, at 26. The percentages of respondents who opposed accountability for lower ranking members of the LRA varied considerably by district. *See id.* In Gulu, this number was as high as seventy-two percent, and in Lira, sixty-two percent. *Id.* Conversely, in Soroti and Kitgum, many were in favor of holding lower-ranking LRA members accountable (sixty-one and forty-one percent, respectively). *Id.*

[401] *Id.*

[402] *See id.*; Press Release, Int'l Criminal Court, *supra* note 5.

[403] *See* INT'L CRISIS GROUP, *supra* note 45, at 15 (noting that President Museveni has promised the LRA that no indicted leaders will be turned over to the ICC). The compati-

In light of the historic mistrust between Uganda's north and south, credible international trials could function as a depoliticized venue for justice, if and when the indicted commanders are arrested.[404] As in Sierra Leone, prosecution by an international body could help to prevent the political instability that could result from national prosecutions.[405] The ICC's prosecutions could also help to promote regional peace by ensuring that the Amnesty Act does not amount to total impunity.[406] Through its referral to the ICC, Uganda essentially withdrew its offer of amnesty to the top leadership of the LRA.[407] While prosecution of the lower ranking former LRA rebels would not be appropriate or possible, trials for the leaders might signify some degree of accountability and justice, however limited. Despite the very small number of prosecutions, the trials could nonetheless be significant if those most responsible for the atrocities are held accountable.[408]

Also, after a somewhat rocky start to its investigations, the ICC has subsequently made significant efforts to explain its mission to northern Ugandan communities, which have been concerned about the implications of the ICC process and their right to continue using traditional reconciliation procedures.[409] Initially some Acholis reportedly perceived the ICC referral as an anti-Acholi policy aimed at foiling peace negotiations and prolonging the war in order to keep northern Uganda weak.[410] Others viewed the ICC's Office of the Prosecutor as biased and acting on behalf of President Museveni, who referred the situation to the ICC in December 2003.[411] Because of increased contact

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bility of the ICC's prosecution with efforts to end the conflict is highly controversial and beyond the scope of this article.

[404] *See* Int'l Crisis Group, *supra* note 371, at 2; Akhavan, *supra* note 9, at 410. The north-south divide originated during colonial times and was exacerbated by post-independence Ugandan governments. Int'l Crisis Group, *supra* note 371, at 2. The political victory of the NRM in 1986 produced new animosity between the North and the South, partially as a result of southern dominance in the new government, and has fueled the current conflict. *See id.*

[405] *See* Sarkin, *supra* note 383, at 147 (arguing that the effects of politically charged criminal prosecutions have the potential to fracture fragile governments).

[406] Akhavan, *supra* note 9, at 410.

[407] *Id.*

[408] *See* Press Release, Int'l Criminal Court, *supra* note 5 (noting that the most senior LRA leaders, including Kony, have already been indicted).

[409] Int'l Crisis Group, *supra* note 65, at 9.

[410] Akhavan, *supra* note 9, at 416.

[411] *See* Pham et al., *supra* note 1, at 18. After President Museveni referred the situation to the ICC in December 2003, he and the ICC Chief Prosecutor, Luis Moreno-Ocampo, held a joint press conference in London on January 29, 2004 to announce the referral. *Id.* By announcing the referral with President Museveni by his side, the Prosecutor created

between Acholi leaders and ICC officials, a spirit of cooperation in northern Uganda has reportedly replaced suspicions about the Court's intentions.[412] Within this context of cooperation, Uganda's decision to relinquish jurisdiction to the ICC could allow the ICC to function as an instrument for achieving justice and full closure of the conflict.[413]

An important caveat to the above analysis stems from President Museveni's change of position regarding the ICC indictments.[414] He has publicly stated that if the LRA reaches a peace agreement with the Ugandan government, then the government will grant Kony and the other indicted commanders total amnesty and seek to persuade the ICC to drop the indictments against them.[415] In accordance with Article 53 of the Rome Statute, the Prosecutor has the discretion to end prosecutions that are not in the "interests of justice."[416] Under these circumstances, however, it is highly unlikely that the Prosecutor will drop the charges because justice requires some form of accountability, and President Museveni has promised to grant the LRA leaders amnesty, which would ensure that they would not face any sort of criminal prosecution.[417] Unfortunately, because of President Museveni's use of

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doubt as to whether he would investigate the UPDF with the same rigor as the LRA. *Id.*; Trial Justice, *supra* note 1, at 96–97. In response to public perception, the Chief Prosecutor addressed this issue in a letter to the ICC President, in which he wrote: "My Office has informed the Ugandan authorities that we must interpret the scope of the referral consistently with the principles of the Rome Statute, and hence we are analyzing crimes within the situation of northern Uganda by *whomever* committed." *See* International Criminal Court, Decision Assigning the Situation in Uganda to Pre-Trial Chamber II, ICC-02/04, annex 1 (July 5, 2004) *available at* http://www.icc-cpi.int/library/about/officialjournal/basicdocuments/Decision_on_Assignment_Uganda-OTP_Annex.pdf (emphasis added).

[412] Int'l Crisis Group, Policy Briefing, Shock Therapy for Northern Uganda's Peace Process 5 (2005).

[413] *See* Akhavan, *supra* note 9, at 410–11.

[414] *See* Int'l Crisis Group, *supra* note 45, at 15.

[415] *See* News Release, State House, *supra* note 228.

[416] Rome Statute, *supra* note 299, art. 53(2)(c). Specifically, article 53(2) provides:

> If, upon investigation, the Prosecutor concludes that there is not a sufficient basis for a prosecution because: . . . (c) A prosecution is not in the interests of justice, taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime; the Prosecutor shall inform the Pre-Trial Chamber and the State making a referral under article 14 or the Security Council in a case under article 13, paragraph (b), of his or her conclusion and the reasons for the conclusion.

Art. 53(2).

[417] *See* Int'l Crisis Group, *supra* note 45, at 16–17 (suggesting that the Prosecutor would only drop the charges if an accountability mechanism were in place). In accordance with the principle of complementarity, the ICC might drop the charges if the Ugandan

the ICC indictments as a bargaining chip in the government's peace negotiations with the LRA, the indictments have become a complicating factor in the peace talks.[418] Consequently, the threat of ICC prosecutions may be exacerbating, rather than diminishing, northern Uganda's instability.

Conclusion

This article examines the weaknesses of Uganda's current Amnesty Act and traditional justice and reconciliation mechanisms. With only the Amnesty Act and the traditional Acholi ceremonies in place, northern Uganda's transition to peace may be hindered by Uganda's failure to adequately address the interests of victims. While the path to reconciliation in Uganda will be difficult and uncertain, the experiences of other African countries like Sierra Leone, South Africa, and Rwanda offer useful examples upon which Uganda may draw. Rwanda's *gacaca* tribunals offer guidance as to how Uganda could combine the use of its traditional practices with the pursuit of reconciliation and community participation. Uganda could promote compensation as well as dialogue through traditional Acholi mechanisms, while at the same time maintaining the integrity of those traditional customs. Alternatively, should Uganda formally establish a truth-telling process, it could look to the TRC of Sierra Leone as an example of how another African country promoted dialogue and forgiveness in the context of ongoing criminal prosecutions. Although the circumstances of Sierra Leone's civil war, Rwanda's genocide, and South Africa's apartheid regime differ greatly from northern Uganda's conflict with the LRA, the innovative legal approaches of Sierra Leone, South Africa, and Rwanda serve as useful examples and inspiration for Uganda.

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government itself prosecuted the commanders. *Id.* at 17. In such a situation, it might be appropriate for the government to create a mixed tribunal, similar to that adopted in Sierra Leone, to avoid creating the perception that the trials represent retribution by the southern-dominated Ugandan government against northern Uganda. *See* Int'l Crisis Group, *supra* note 371, at 2; Schabas, *supra* note 256, at 189; Tejan-Cole, *supra* note 204, at 316.

[418] *See* Int'l Crisis Group, *supra* note 45, at 15 n.112 (concluding that Museveni's options are limited and that he "apparently want[s] to maintain the threat of [ICC] prosecutions").

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