

**APPROACHING NATIONAL
RECONCILIATION IN UGANDA.
Perspectives on Applicable Justice
systems.**

EXECUTIVE SUMMARY

Since the UCICC first embarked on its regional sensitization workshops in northern Uganda in 2005, to create awareness of the International Criminal Court (ICC) in Uganda. The coalition has received mixed reactions from different sections of the Uganda public who have either been direct victims of the conflict or have not been affected at all by the conflict. For a while now debates in some sections affected by the conflict have been advocating for Mato oput as a direct alternative to the international Justice mechanism, that would like the Lords Resistance Army (LRA) to hold account for the various human rights violations that they visited upon the innocent people of northern Uganda, advocates for traditional justice in the recent past argued that International justice is a foreign justice mechanism that is not suitable for Uganda which is an African Country, and there have also been protests from other sections who have been affected by the conflict as to the choice of Mato oput in administering justice and that there is grassroots-level opposition to the ICC- however one doubts whether if this is the region where the grass roots is opposes to the ICC, our experience in the region shows that there is a diverse range of views within the victim community regarding justice, this diverse range of views has been reflected in a recent study where “more than two-thirds of respondents (70%) said it was important to hold accountable those responsible for committing violations of human rights and international humanitarian law in northern Uganda. Half the respondents said the LRA leaders should be held accountable, and 48 percent said all of the LRA. Forty percent said the government should be held accountable¹”. In some places communities have been very welcoming to information on the ICC, where as in others, there has been open hostility against any one speaking for international justice, thus many people do not know about the ICC and in most cases know only about their traditional forms of justice that has been taught/passed on to them. Others have asked whether traditional justice deliver effective justice in a diverse community like Uganda where the conflict has affected several tribes and also cut across borders, the proponents of traditional justice continue to argue that complementary is an untested principle and they forget that a national strategy for accountability or accountability for mass crimes has never been tested too and this will be the first time that it may be tested. The Uganda Coalition for the International Criminal Court examines local justice mechanisms in the regions that have been affected by the conflict namely: Acholi, Lango, Teso and Madi-land to discover meet the minimum standards of justice, in addition to these four traditional justice mechanisms, the UCICC also captured highlights of traditional justice mechanisms of the baganda, banyakigezi, banyankole, Jopadhola, the Basamia, Banyole, Bamasaba, and the Lugbara people of Uganda.

The working paper looks at the similarities in terms of principles that International Justice and traditional justice aim to achieve in practicing their forms of justice.

The first part of this working paper attempts to put together the traditional justice mechanisms of the communities that have been affected by the conflict and those that have not been affected by the conflict.

The second part of the compilation, examines whether these forms of justice meet the minimum standards of justice

The final part of this paper provides an analysis of the challenges of codifying amnesty or making amendments to the penal code and the constitution of the Republic of Uganda.

¹ Northern Uganda New Population-Based Data on Attitudes about Peace and Justice Human Rights Centre of the University of California Berkeley, ICTJ and Payson centre for International Development and Technology Transfer

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Objectives of the analysis

The overriding objective of the analysis is to ensure that the views and interests of victims regarding applicable justice systems in northern Uganda and the west Nile region are researched and disseminated.

1. To explore and examine the traditional justice systems of the other tribes;
2. To explore the views of victims regarding such traditional justice systems
3. Examine the similarities between traditional and international justice
4. Examine the challenges of codifying traditional justice systems into national laws

Methodology:

Focus group discussions, face to face interviews self administered questions and document/literature reviews were used. Desk research on existing legislation: The constitution, principal and subsidiary legislation. To ensure that the information was not misrepresented, the information collated from respondents was send back to them for them comments, and corrections. UCICC Staff collated information from over 659 respondents in the districts of lira. Apac, Amolatar, Dokolo and Oyam, Adjumani, Soroti, Kumi, Tororo, Butaleja Palliisa, Bukedea and Mbale districts of Uganda from August 2006 to July 2007.

Recommendations

- There is need to use of an integrated approach to conflict resolution and accountability in order to fulfil the goals of peace and stabilisation i.e. allowing for the ICC and other justice mechanisms.
- If justice is not affirmed through legitimate judgements, and if remedies are not made available to the victims? It may be true that there can be no peace without some degree of forgiveness,

but no forgiveness is possible without acceptable justice. And those who have to accept it are the victims.

- There is need for a special attention for victims of gender based crimes and their unique interests like protection from stigma.
- Our position is that forgiveness should not be ruled out from the toolbox of justice and reconciliation: however, how is it possible to forgive if the truth is not fully disclosed?
- Proposed solutions should reflect Uganda's international obligations.
- Recognise the diverse nature of the conflict including, victims, tradition and values.
- Encourage victim's participation.
- Provide for adequate measures for victims and witness protection.

THE ACHOLI PEOPLES' RITES OF RECONCILIATION².

Introduction:

The Acholi people of northern Uganda had many forms of disputes and infightings. In resolving the disputes and infightings the rite of reconciliation was applied. The consequences of the disputes and infightings were not only detrimental to the Acholi social and political systems but constituted an insult to the Acholi deity, jok, who always wished the Acholi to live harmoniously with one another in unending happiness. When applied the rite always did justice to and addressed the Acholi person both as an individual and community and it aimed at the well being of both the offender and the offended. This holistic anthropological approach to conflict transformation made the acholi rite of reconciliation unique and better method than the reductionist one of the international court of justice which appears to look only at the legal aspect of the act of the offender.

The main forms of reconciliation rites have: a) individual (psychic) nature to purify i.e. to cleanse and thus reconcile an acholi individual with his own conscience. This is the rite of purification which consists in the symbolic act of breaking the egg (nyonno tong-gweno) and b) communal nature i.e. i) reconciling the Acholi individual to another individual say - husband and wife (tummu kir and tummu buru) or ii) group of persons involving even clans and chiefdoms (matto opwut and gomme tong). Underlying the whole concept of reconciliation, is the Acholi theological and moral understanding of collective responsibility according to which a sin committed by an individual has bearing on the whole society³. All the forms of reconciliation are still in practice today. But the reconciliation rite cannot be understood without knowledge of the Acholi social and political system.

Since 1986 the Acholi people live in untold suffering caused by conflict between government of Yoweri Museveni and the rebel movement of Joseph Kony. Many people have given their views as to why the war and conflict persists. One view lays blame on the Acholi people who do not want to accept and support the rule of Yoweri Museveni. Some other views part from the premise that the Acholi people are by nature belligerent that all they enjoy in life is nothing but war contrary to the traditional datum of a highly valued rite of reconciliation. What philosopher Thomas Hobbes attributed to humanity, homo homini lupus, has thus been attributed to the Acholi people alone.

There is however one view which has not been seriously taken. It is the anthropological view that the Acholi are worried about preserving their identity, their social and political rights, dignity and cultural values. These have been objects of attacks since the advent of Arab slavers to the post colonial governments. We certainly do not expect the Acholi to sit back and wait. Indeed if truth is to be acknowledged then we must say that all known rebellion in Acholiland since the time of the Arab slavers to date have no mark of aggression. The government of Yoweri Museveni have more than once acknowledged this when it asked why some Acholi rebel.

The Acholi people, name and geographic location:

The origin of the name Acholi has no clear cut explanations: The name “has come into use only within the last thirty years (in the thirties) or so, and its derivation is uncertain. Previously they (Acholi) were known as the ‘Gang’ or ‘Gangi’⁴ or as the ‘Shuli’. The name ‘Gang’ was first used by the Acholi

² As simply described by Rev.Fr. Dr. Joseph Okumu.

³ In the above cited case, Otim’s clan tribunal assumes the responsibility of killing Okeny although Okeny was killed by an individual, Otim. While in his confession after the rite of purification (nyonno tong-gweno) breaking the egg Otim confesses in singular form “I killed Okeny”, Otim’s clan tribunal now takes responsibility and uses the plural form while reporting the killing of Okeny to his clan tribunal. Thus the clan tribunal says we killed your son Okeny”.

⁴ ‘Gangi’ is a mispronunciation of ‘Gang’. The Bantu speaking people (Baganda and Banyoro etc) who had contact with Acholi people could not pronounce a word ending in a consonant without adding a vowel. Thus ‘Gang’ which was a foreign

neighbours, the Langi and the Banyoro. The name probably derives from the Acholi word for village, *gang*. Earlier in 1907 also the name appeared in the first grammar of the language to distinguish the wonderer 'Kidi' Acholi from the settler, agriculturalist and village Acholi. The Arabic-speaking slavers and ivory traders saw some language affinity between the Acholi and the Shilluk of the Sudan and they preferred the name 'Shuli' to Acholi. Emin Pasha (and Sir Samuel Baker (1863-1865) who came after the slavers and the ivory traders recorded 'Shuli' in one of their first reliable information about the area. The Acholi territory extends over about fifteen thousand square miles or approximately 28,000 square kilometres to the east of the Nile from about 2° and 30 mins to 4° North latitude, and from 31° to 33° West longitude. The greater part of the territory lies in Uganda while a smaller portion lies in the Sudan.

The Acholi social and political systems:

There are five levels of Acholi social and political systems which are inter-related. These are: household, hamlet, village, domain and the heptarch, Acholi-land. Each of these levels has different principles of organisations but there is one principle of organisation which cuts across all. It is the theological and consequently the moral principle. The five levels of Acholi system have also proportionate ritual ceremonies of reconciliation. At the household, nuclear family levels up to the hamlet system at the second level the appropriate rite of reconciliation is a simple cleansing from minor offences among husband and wife and their children, *tummu-kir* or *tummu-buru*. When we come to the village system at the third level, the domain system at the fourth level and the heptarch Acholiland system at the fifth level the proportionate rite is drinking the bitter root, *matto-opwut* and bending the spear, *gommo tong*. The moral command to reconcile comes from the Acholi God, *Joké* who lives among the Acholi people in the sacred shrines found in Acholi systems and levels of household to Acholiland.

The household or nuclear family system is formed when after some times cohabitation between a man (husband) and woman (wife) is established. A household may become in its turn a nucleus from which another develops.

The household head is known as father of the hut, *won-ot* and the wife is known as mother of the hut, *min-ot*. Both father and mother of the hut are recognised as such and are expected to behave as father and mother of the hut. There are of course variations in size of different 'households'. These differences are significant in defining the structure and development of a village and domain.

A woman or many women and minors unite under the authority of the head of the household, *won-ot* to form a territorial and political organisation of the Acholi system at the first level. The system at the same level consists structurally of one or more nuclear domestic families of the separate wives with a few other dependants.

At this level when relation goes wrong (offences committed) between husband and wife a rite of reconciliation proportionate to the level is done to restore good human relations and to appease the Acholi God, *Joké* who lives here in the household sacred shrine, *abila*. The household ritual of reconciliation (*tum/kwer*) serves two categories of offences namely: that which has instrumentalized fire or related things to fire to cause harm (*buru*) and that which has caused harm to someone without use of fire and things related to it (*kir*).

Hamlet system.

When sons of one man or several brothers grow up they marry to set up their nuclear families or households occupying a common yard with parents. The yard so occupied is known in Acholi as *dye-keal*. The people of the same *dye-keal* have also a common fire place, *wang-o* which serves a learning venue of the children by evening fall. Another important location in the Acholi hamlet is the traditional sacred

word to them was pronounced 'Gangi'. Cf. Girling, F.K. (1960) *The Acholi of Uganda; Colonial research studies No. 30*, Her Majesty's Stationery Office p. 1. Similarly today the name 'Kony' is pronounced with a vowel in the end 'Konyi'.

shrine, abode of the ancestors and place of sacrifices to God, *Jok* through the ancestors immediately present and met on a daily basis in the sacred shrine, *abila*. Both *wang-o* and *abila* are placed at the centre of *dye-kaal*.

The hamlet is characterised by high degree of economic co-operation. It is formed not only by members of agnatic descent. They may include cousins, nephews, in-laws etc who occupy the same territory and share the same *wang-o*. Although there is really no formal recognition of hamlet among the Acholi the main part of the hamlet is made up of agnates. Being a patriarchal society the Acholi system of hamlet is headed by the head of the hamlet known, *won-paco* who is the eldest of the male heads of the households forming the hamlet. The difference between hamlet and household is that the hamlet already includes people of different agnatic descent while the household has only people of the same agnatic descent.

At the third level is the village system.

The village is formed by agnatic lineages which clearly indicates that village is larger than hamlet, *dye-kaal*. Although in the hamlet there may be more non-agnates in a village there are more agnates who are recognised by flirtation name, *nying-mwoc* or simply, *mwooc*. Flirtation name is used at first only between members of the same age grade in the village, but may later on be used by all. Village is characterised also by co-operation in agricultural work together with members of neighbouring group so that sometimes the head of the village is called chief of the hoe, *mwot-kweri*. A village also shares the same hunting ground, *tim*. Homicide is not compensated by transfer of cattle or girl, *dyang ma gineko i dwol pe giculu*. But compensation was demanded for seduction of a girl or of wife of a village by a stranger.

A village was made up of a core of agnates and a number of non-agnates attached to it differed in accordance with social status. There were more non-agnates in aristocratic than in a commoner village. The agnates shared common totemic abstentions from certain food or from using certain plants and had the same myths to account for them. The village lineage formed a group within which marriage was not permitted and sometimes this prohibition also extended to dispersed branches of the same lineage in other domain.

The principles of ultimo- or primo-genitor determine the inheritance of politico-ritual authority and material wealth respectively. The members respect words of the lineage elders in settlement of internal disputes and in relations with other villages within the domain. His authority is supposedly described through a succession of the 'youngest sons'. He officiates in the observances of the ancestor cult and also in some cases in those of the spirit cult, the *jok* of the village. He is known as the great village or *ladit-kaka*. Usually, the 'eldest son' breaks away to form another village. He may go to other domain but will retain the same flirtation name, *nying-mwoc*.

Aristocratic lineage/domain system

The difference between domain and household in Acholi society is only in scale and not in structure. The newly installed chief founds a new household which embraces all the inhabitants of the domain.

"As the 'youngest son' of his father and of the group's eponym, he was the head of the aristocratic lineage. Through his wife he was bound by ties of fictional affinity to all the commoner lineages. The population of the domain combined for defence and attack and the need to do so gave the unit its internal strength. War was first approved by *lapii* before it was waged. The Acholi elders consult with the Acholi God, *Jok* to wage or not war. The God, *Jok* of the domain lives in some abode bigger than the household sacred shrine – hills, huge trees or river.

Acholiland system

The numerous domains which made up the society of Acholiland formed a heptarchy of chieftainships. There are today 52 chieftainships in the Acholiland. All of these recognised the suzerainty of the head of chiefs, *lami-rwodi*. In the map below we see the Acholiland in its entirety today. It is a territory of roughly 28,000 square kilometres.

The Acholi theological system

The Acholi people like any other person on the earth has a system of belief. But the Acholi belief is concrete, local and powerfully existential. The Supreme being in whom they believe is *Jok-kene* or *Rubanga*. *Jok-kene* is not some deity who lives up there and has nothing to do with the lives of people. *Jok* lives concretely in the heads of families, grand-parents, chiefs and ancestors⁵ all of whom are somehow gods, *jogi* (plural). They are not however *jogi* in the pantheistic sense. The abode of *Jok* is the Acholi sacred shrine, *abila* which is always placed at the centre of the hamlet, village, domain. Each of the 52 known Acholi chiefdoms has its *jogi* highest of whom is *Jok-kene*. For example the people of P'Oranga have Olal-teng, the people of Pa-Ayira have Kalawinya, Pa-Jule have Lagoro, Koch have Lokka etc. today. These are chiefdom gods and are in no way equal to *Jok-kene*.

Conclusion

They are the above described social, political, theological/religious and land systems which knit the Acholi people together into an ethnic entity and they are the ones for which some Acholi rebel today.

The rightful masters of the rite reconciliation at the chiefdom and domain levels are the *rwodi moo*. At the lower village, hamlet and household levels she is always an elderly woman who has past the age of fertility and in most cases is not sexually active in life.

These people are therefore never appointed by any political power outside the clan. The appointment is done within the clan because the clan gods are involved in it inasmuch as they are clan gods. And no clan god appoints a master of ceremony other than in his own. In most cases the functions of the masters and mistresses are inherited.

In its proposal to resolve the northern Uganda by rite of reconciliation the Acholi traditional religion leaders are saying:

- 1) That the Acholi go back home to their sacred shrine where such ritual ceremonies are carried out.
- 2) That the Acholi social, political, religious or theological heritage be respected as they hold the Acholi people together into being.
- 3) Many political leaders by appointment in Acholi today do not have the moral authority and the traditional blessing of the people they lead.

All these must be listened to if a honest solution to the conflict in northern Uganda is to be sought.

The next article will be dedicated fully to the detailed description of rituals of reconciliation with concrete examples where they worked.

Introduction:

Having described the Acholi traditional social and political systems we now turn to the rite of reconciliation. The rite is a religious act of profound acknowledgement of the spiritual existence of a human person created by a Supreme Being. It is the expression of a fabric that keeps the Acholi people in harmony with the forces of life around. The Supreme Being has created not only human persons but also things seen and unseen, animate and inanimate. The Acholi social and political systems are also a creation of the Supreme Being. This is why their leadership is not by appointment but by anointing.

⁵ When European Christian missionaries first came among the Acholi, they taught catechism which consisted in asking questions about the being of God. When the Acholi was asked who God is and they did not answer the question, the European missionary thought he did not have any idea of God not realising that the question put was instead a wrong one. The correct question which the Acholi would have readily answered was where is God? To answer it, the Acholi would have pointed to their sacred shrines. The Acholi cannot talk about God except by human attributes but they do not give human attributes to God equally. God is obviously a higher being, *Jok-kene*.

The beginning of all troubles for the Acholi people were 1) the attempt to interfere with the social and political systems and the blatant denial of any real organisation or continuity in the Acholi indigenous society .

“ The first few years of British rule in Acholiland were devoted to the consolidation of the power of the Government and what Delmé- Radcliffe called ‘the identification of the chiefs with the Administration and making them a part of the Government organisation’⁶. And in Postlethwaite’s (First Acholi District Commissioner in 1913) words:

“I was, however, dealing with a tribe who had no system of ancient holdings, nothing that answered to the Bataka of Buganda, whose life was at that time communal, and who from force of circumstances, had perforce been in the habit of moving every few years of their own volition”⁷. And 2) the misconception that development or (passim) “progress of all kinds could only be achieved through the adoption of the institutions with which the rulers (the kind of Postlethwaite) were familiar in their own country, and by taking over also what were believed to be the values associated with those institutions. In this case the particular institution in question was private property in land, and the value was that of hard work, with which the highest productivity per head of European agriculture was associated”

There is evidently strong ontological link between the Acholi social and political systems to the Acholi religious and moral values and so the denial of one leads logically to the other. Let the Acholi back home in peace and you have let the Acholi religious and moral orders back in place. This is the real meaning of the Acholi reconciliation. The ICC legal solution by retributive justice can only serve to inflict pain for pain similar to the biblical *lex talionis*.

The Acholi ritual of reconciliation at all levels of Acholi social and political systems

I. Breaking the egg⁸

This is how the rite is performed:

The news has just come over the local FM radio station that Otim (not real name) who had been abducted and detained by rebels of the Lord’s Resistance Army (LRA) of Joseph Kony some ten years ago in 1994 escaped and would soon be home. He gave himself up to the Uganda regular army, Uganda Peoples Defence Forces, UPDF through a Local councillor I (LCI) of Paibona location in Aswa county of Gulu district. The army kept Otim in Lugore army detach for some weeks until there was a vehicle to transport him to Gulu. Otim’s parents heard that their only son has finally returned after million earnest prayers they offered to God for his safety.

Otim’s father Oto (not real name) and his mother Aber (not real name) thought first of the rite of *purification*, and so immediately reported the safe return of their son to an elder⁹ of their homestead to make arrangements to receive and eventually reunite Otim with the community. Everyone of Oto and Aber’s neighbours who heard of Otim’s safe return were coming to share the great news. A courtyard is fully packed with well wishers from all over the neighbourhood who want to see and hug Otim after ten years. Otims parents belong to the Pa-Atiko clan in the Ajulu hills.

One thing is sure, Otim has stayed a whole decade away and he has grown up with all sorts of experiences which have made him unclean. He needs purification.

⁶ GIRLING F.K, (1960) *The Acholi of Uganda*, London, Her Majesty’s Stationery Office p.175

⁷ Loc. Cit.

⁸ Significance of this rite.

The rite of breaking the egg has the meaning of restoring psychological and moral confidence in a person as an individual and community. The acholi group of people believes strongly in communal life. “I am because we are, we are because I am” as African philosophers are often correctly quoted to put it.

Whenever someone leaves the common life and lives outside wilfully or un-wilfully the person becomes unclean and in need of cleansing before re-unification. Common life must be guarded very scrupulously.

⁹ The elder is an authorised master of ceremony of the Acholi ritual of purification known as “nyonno tongweno”.

Preparations:

An elder has prepared an egg and a stick of tender plant, *pobo* generally known for its strong but slippery fibres to tie objects together. The fresh egg is placed down visibly on the pathway leading into the homestead. The about two meter stick of *pobo* is ripped opened into two and placed on the same pathway leading into the homestead keeping the fresh egg in the middle. There is a new calabash, a local water container. It contains water and some pieces of a creeping plant, *anyero*¹⁰.

The water container is held by both hands of the elder with a small bunch of wet grass prepared to sprinkle-bless Otim. Otim meets the elder just a few meters from the standing egg. The congregation of well wishers are standing behind the elder in the courtyard. The congregation is the clean welcoming end Otim the unclean receiving. The elder daringly approaches Otim, holds him back as he approaches the entrance into the homestead. The elder blesses Otim by sprinkling water on the chest and on both legs and his feet symbolizing a washing act of the heart and feet. He then shows Otim the standing egg and Otim steps over, breaking it¹¹ open. He then enters and joins his people in the courtyard where he, like them, enjoys a life free of sins committed and of omissions. The congregation welcomes Otim with shouts of joy and ululations. Otim is now joined initially to members of his family in the homestead.

Spontaneous individual confession¹²

While here in the homestead Otim begins to freely interact with the community members, talk freely and confesses all he had committed and omitted while in rebels' captivity. The elders and parents listen carefully and attentively and encourage Otim to confess all he has to confess. Finished the confession, Otim is assured of a warm welcome and pardon. He is accepted as one part of the family he left against his will. The listeners assure Otim they too need his pardon for not having done enough in their power to protect Otim at the time of abduction by the rebels.

In his confession Otim said he had been ordered by the rebels' high command to abduct some children of his village. He and other six rebels came to his own village, got and killed one, Okeny son of Odongtoo of Pa-Cwa in Pader who had come to visit his aunt in Paibona. He confessed to personally killing the boy. The elders of his Pa-Atiko clan must know of this capital offence immediately. The following week there would be an assembly of all the clan leaders of Pa-Atiko to address the issue. The understanding is that Otim of Pa-Atiko clan has killed someone of Pa-Cwa, therefore the whole of Pa-Atiko has killed someone of Pa-Cwa. The Pa-Cwa people must be informed immediately by the reconciliation committee (*kal-kwaro*¹³) of Pa-Atiko¹⁴.

The committee meets the Pa-Cwa *kal kwaro* and breaks the sad news of the capital offence committed by the son of Pa-Atiko clan.

“We unfortunately abducted and killed your son Okeny, the confession goes, and now we have come to humbly beg for pardon and declare that we are ready to pay compensation for such capital offence, *cullu kwo*¹⁵”.

¹⁰ Anyero is a noun from Acholi word infinitive *ka nyero* which means to laugh. So anyero is a creeping plant that causes laughter, brings joy and happiness.

¹¹ The fresh egg symbolizes innocence and newness of life. Otim's life has been purified and now returned to the innocence like that of an egg in his homestead.

¹² Although the Acholi fights and may even kill a person he or she believes that such act is the greatest offence that heavily weighs on the killer. The only way to get its anger out of ones life it is to confess it and have it compensated. Any killing pre-meditated or not haunts an Acholi who wastes no time to have it appeased.

¹³ “Kal-kwaro” is Acholi word for clan tribunal”.

¹⁴ Once Otim has confessed to the killing he as an individual goes into the background of responsibility. His clan assumes the killing in preparation for expiation.

¹⁵ The Acholi expression *cullu kwor* literally means making compensation. But it may also mean taking revenge. In petty quarrels Acholi people do not make allowance for forgiveness. “Kwor pe top i koma” they would say. In the context of reconciliation the expression means admitting guilt, seeking purification and making up for the damage.

Making compensation or *Cullu kwor*.

On hearing the confession of the Pa-Atiko clan from their representative committee, Pa-Cwa in a reflex mood is enraged. Anger and shouts of cry are heard all over. The elders of Pa_Cwa move in immediately to restrain mourners and calm the by silencing the mourners. The elders of Pa-Atiko are assured of their safety to stay with the Pa-Cwa and return to their clan to prepare for the rite of compensation and reconciliation (*matto opwut*). So both committee of the Pa-Atiko killer and of Pa-cwa clan of victim Okeny reach an accord to have his killing compensated. On the committee's return to Pa-Atiko compensation tax is levied on every Pa-Atiko house hold¹⁶. A sum of Uganda shillings 5,000.00 five thousand would be collected by the representative of all households of Pa-Atiko clan to pay compensation to Pa-Cwa clan in the next dry season. The payment would be made contemporarily with the celebration of the rite of reconciliation *matto opwu*¹⁷.

II. Reconciliation: *Matto Opwut*.

Mato oput literally means “drinking oput Mato oput is widely known as a key element of Acholi culture beyond Acholi borders. Not Infrequently, However, mato oput has been misunderstood and romanticized as a kind of magic bullet to solve virtually any type of conflict. Furthermore, the notion of mato oput has often been used metaphorically to refer to nearly every reconciliation process taking place in Acholi today, thus bringing confusion to the scope and nature of mato oput as properly understood. Mato oput is the final act which concludes the process of reconciliation that follows a... killing¹⁸”

The leaves of the wild figs have started to fall and the elders are quick to notice is summer season. Patiko clan has all the compensation money ready. The Acholi rite of reconciliation is a long process of purification for psychological, moral and social re-integration. The process has the initial purification rite, preparation of the reconciliation mix of fruit juice, *acuga* and roots *opwut*.

Applicability¹⁹

According to, Thomas Harlacher Francis Xavier okot Caroline Aloyo Obonyo Mychelle Bathazard and Ronald Atkinson, authors of the recent book titled: Traditional ways of Coping in Acholi, Cultural provisions for reconciliation and healing from War, despite the extent to which the ceremony of mato oput has become known both inside and outside Uganda, its performance is relatively rare in contemporary Acholi, especially in the reintegration of former LRA combatants.

¹⁶ Before the coming of the British Administrators in Acholiland a person killed is compensated by a girl. But since 1934 a compensation of ten cows have replaced that of a girl by order of the colonial administrators. One wonders why the compensation was so severe as to give a girl in place of a person killed. To the Acholi life is sacred and when lost it cannot be found again except in another life for the posterity of the bereaved clan.

¹⁷ Matto Opwut are Acholi words for drinking the bitter roots.

¹⁸ Traditional ways of Coping in Acholi, Cultural provisions for reconciliation and healing from War:Thomas Harlacher Francis Xavier Okot Caroline Aloyo Obonyo Mychelle Bathazard and Ronald Atkinson.

¹⁹ Ibid P.90

A. Preparation:

Preparing the reconciliation mix to drink is done by an elderly person (senior of all in age). The elder prepares from the roots, *opwut*. The roots are dug up and pounded on a stone to form some sort of powder. The powder is mixed up with the fruit juice in a new calabash carefully placed on the ground.

B. Short rite of purification:

Before the family of Otim sets to go to the designated village site of reconciliation, a brief rite of purification is performed by simply spitting into the mouth of the reconciliation sheep. Otim holds open the mouth of the sheep he is leading and spits some saliva²⁰ into it. That done, he then leads the black sheep to the farmyard of the mother of Okeny. On reaching the farmyard, the sheep is laid on its back on the ground and its head in the north direction. The sheep is then stabbed by one of the elderly persons, master of the ceremony with a sharp knife. Successively another of the elderly persons lay another reddish-white sheep on its back on the ground, its head in the opposite south direction. This sheep is presented to the elderly persons by the family of Okeny killed. The elder then stabs it also with a sharp knife. The close relatives of Otim gather in the north direction of their slain sheep and like wise the close relatives of Okeny gather on the side of their sheep. The two opposite direction, north and south of the heads of the ritual sheep signify the diversification of enmity which must be brought close together and the families of the two will no longer entertain hostilities but become reconciled and live in peace.

C. Drinking the reconciliation mix (matto *opwut*).

The elderly person, master of ceremony, will take the blood of the two slaughtered sheep and pour it into the *opwut* and *acuga* mix to form a single mix of reconciliation drink. The close relatives of the person killed and those of the killer come close to each other and converge on the mixed juice from their opposite directions in a gesture signifying end to hostilities and beginning of reconciliation. Having converged on the calabash containing the mix of the reconciliation drink, the killer and a close relative of the one killed begin to drink.

They both kneel down and close on to the calabash, their hands are folded behind, as seen from the photo) and they bend on to drink from the calabash without holding it by hands. In this way they drink from the calabash three times and then leave way to their close relatives who have come to witness the ritual ceremony. Otim will start to drink followed by the relative, father of slain Okeny. The mother of the one killed always stands by bitterly weeping her slain son or daughter. The elders will always keep her company in an effort to show kindness and affection and restrain her from excessive mourning which could otherwise provoke the close relatives of the slain into revenge. They also invite her to partake of the *opwut* reconciliation mix. Meanwhile the carcass of the sacrificial sheep is cooking on fire.

D. Consuming the liver of the sacrificial sheep

The liver of the two sheep is roasted, cut into pieces and put on the fresh hides of the slaughtered sheep and then eaten. Otim takes a piece of liver and feeds it into the mouth of the close relative of the slain Okeny who consumes it. Likewise the close relative of the slain takes a piece of liver and feeds it into the mouth of the killer who consumes it. The rest of the meat of the sheep is cooked for consumption.

E. Examination of and blessing the indemnity

²⁰ It is to be noted that the Acholi people considers saliva a holy thing of human person. Saliva is always friendly and is not poisonous. It is used for blessing. An elderly person or any person wanting to bless his or her child would often spit into the hands and chest of a person to be blessed.

Meanwhile the meat is cooking in the fire some elders come up to examine the indemnity which the family of the killer must pay to the family of the slain person. They are two fat and healthy cows which have become substitute of paying indemnity with a person namely a girl. When accepted, the elders bless the indemnity by smearing the chest of each person present with the content of the entrails of the sheep. The content is put on the chest of all persons present saying:

“Let these cows produce many and only female off-springs.
We all do mistakes,
May peace and calm now return among us”.

E. Celebrating the reconciliation:

In this way reconciliation rite is accomplished. An older person begins to drum from the royal *bwola* drum. The women shout ululations and clan mottos while an old man drums. On hearing the drums sounded the people from all over the neighbourhood come and join in the happy dance and merry making. The feasting continues even for a second day when more bulls are slaughtered to feed the people who have witnessed the reconciliation.

Conclusion:

This brings us to the end of the description of the rite of reconciliation as practiced by the Acholi people. There may be variations in details of the reconciliation rite but essentially the rite includes purification, making confession, making compensation and finally coming together in a joyful celebration which must eating together from the same dish and drinking from the same calabash. This rite presupposes the existence of the Acholi social and political systems under an anointed chief. The anointed chief represents the clan god through the ancestors.

The concept of Acholi reconciliation rites is broad. It covers both culpable and in culpable acts of killing of a person. All it says is that life is sacred and so it must be respected and highest care be taken to protect and preserve it.

A question may be asked in the present circumstance when so many people have killed others how would this rite work? Remember that the Acholi, like other African people on the earth planet are “notoriously religious”. This acholi religiosity is not something in the abstract.

In the first place the levelled ground for the rite must be secured. Meaning, get the Acholi people back to their clans round their sacred shrines, *abila or kac* where they will meet their clan gods to talk to their consciences. Then guilt feelings and remorse will begin to come to the surface as every Acholi will begin to look for settlement. The Acholi needs to meet his clan god in the concrete sacred place *abila*. The camps into which the Acholi population has been herded are not a home and are not taken to be any place of sacred value. It is a refuge full of indignity and malediction. The spirits of the ancestors who mediates with the gods do not even desire to live there. And this is why no Acholi feels like building even a temporary sacred shrine in the camps.

True purification, compensation and reconciliation will take place when the Acholi has got back to his village in front of his sacred shrine.

So, what about the rites of purification, *nyonno tong-gveno* which are taking places in these days in the presence of the Acholi paramount chief?

To the Acholi all these are just political shows which are empty of all religious and moral contents. The reason is that the paramount chief is the anointed chief of Payira who derives his powers from the Payira god *Kalaminya*. He cannot exercise powers over the other Acholi clans who have their gods. The true ritual of braking the egg is done before one’s own sacred shrine.

This is precisely what is going to happen if the Acholi goes back to his home where he has his sacred shrine. All those who stepped on the eggs before the chief of Payira will go and do it validly in their homesteads.

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AILUC - ITESO LOCAL JUSTICE SYSTEM

Background

The word Iteso is reportedly derived from the word 'ates', meaning grave. While still in Karamoja the youth reportedly abandoned their elders (the Karimojong) and moved South West to the present day Teso in search of water and pasture. The angry elders reportedly cursed the young men and called them 'ates (in)' the plural for graves. But other sources dispute this meaning.

The Iteso political system was based on the clan as an independent and sovereign state in its own right. The elders wielded the power in the clan. The youth and women were subordinate to the elders. Based on the age-set system the clan built an army that defended its sovereignty and conducted inter-clan relations with other sovereign clans. But this segmentary system has now been unified under one undisputed cultural leader, the Emorimor Papa Iteso, for the entire Iteso nation that extends from Uganda to Kenya.

The Iteso bordering Lango are said to have fought several border skirmishes in pre-colonial times. It is possible that harmony was maintained through the clans opting to settle their disputes through compensation.

The Name of the traditional justice mechanism used by the Iteso people for the reparation of a crime or sin in the Iteso traditional justice system is called AILUC.

General Disputes

Among the Iteso the most common disputes and fights are over land boundary encroachments. Disputes were usually resolved by reporting them to the clan leader and clan members, but a few leaders from neighbouring clans could also be invited to resolve the dispute in a meeting where the complaint was heard, the accused was asked to defend himself and witnesses were called. The statements made by the complainant, accused and witnesses were evaluated and used in taking a decision on the dispute. In the case of a boundary, the evidence of elders used to always be taken as gospel truth. Landmarks on the disputed land would be planted based on the guidance of the elders.

In most cases the boundary fixed by elders would be respected, albeit grudgingly. But in some cases one of the parties to the dispute would be killed on the spur of the moment as he crossed the boundary. The party harbouring the grudge after the elders fixed the boundary often sought to get rid of his protagonist through witchcraft and otherwise. Usually, however, the elders' boundary was respected.

These days, however, the Local Council (LC) have taken the upper hand in settling the land and any other disputes. The dispute is usually reported to them and not to the clan leaders. However, at times they will ask the support of the clan members. The highest bidder is usually the winner in the LC Courts. Though the elders were usually mindful of their reputation when giving evidence claiming "I am an old man, I cannot tell lies," a few of them actually went ahead to tell lies about the boundary in favour of the stronger party.

Marital Disputes

People involved in a land dispute usually remained suspicious of one another for a long time. A dispute between a wife and husband, however, was usually resolved by asking the wife to prepare a chicken or goat meal for the husband who would be asked to eat her food in the presence of elders. This was done after hearing the complaints from both sides, and the elders giving them a piece of advice. In most cases care would be taken not to blame but to harmonise. However, in extreme cases the elders would be more direct. The objective of the eating of the chicken by the husband is to symbolize a willingness of the husband to open a new chapter of sharing with his wife. Admission of facts would be welcome, but it was not always a pre-condition for reconciling husband and wife. It was enough that they were once again eating together, sharing. Harmony was the key word when describing the value that provides the foundation of the rite. It was accepted that to err is human; therefore mistakes should not be allowed to break up families.

Presentation of Crimes and Decision-making

As part of the procedure, the disputing parties were offered the opportunity to defend themselves. This included the right to deny the disputed act, but the weight of evidence of other members of the community was taken very seriously. Being adamant in the face of strong evidence would attract a heavier punishment that may include dozens of lashes and

heavy compensation. But being remorseful led to forgiveness or lighter punishment, if any. In the case of a domestic dispute the clan emphasized harmony over deciding who is wrong and right. But if a fight broke out between two men the jury could decide on who was wrong or right and appropriate compensation paid to the person who was harmed, which could be in the form of goats or cattle.

If the perpetrator was remorseful the victim was expected to forgive him or her after receiving due compensation that was determined by the community. The more remorseless perpetrator would be treated harshly. But this did not stop the perpetrator from explaining himself in his own words. In pre-colonial times a dispute between a clansman and a non-clansman would actively involve the two clans as well. If a clansman killed a member of another clan, the perpetrator's clan was supposed to pay compensation to the victim's clan in the form a girl and cattle. The girl would be given to a brother of the victim as a wife in order to produce a replacement for the dead man. A war could result between the two clans if the matter was not resolved peacefully. The killer had to undergo cleansing ceremonies conducted by clansmen.

Compensation

As stated above, matrimonial violence was settled through reconciliation without compensation. A male member of the clan subjected to violence by another member would be compensated with goats or cattle. A murdered non-clansman would be compensated with a girl and cattle. War would result in case a peaceful settlement failed. Women, girls and boys would be taken as booty while men would be killed in case of war with non-Iteso.

To safeguards 'fairness' for the parties involved, the compensation mechanism must be clearly spelt out and applied equally, so the weak will be treated fairly.

Children and Rape Victims

Disputes concerning children get resolved in the same manner as other disputes, but the elders would play the dominant role. Child mothers have a hard time as their children do not usually enjoy full rights. At best they are tolerated.

Regarding the crime of rape families sometimes keep such crimes secret because they are considered an abomination. The perpetrator might be approached to give compensation in secrecy, while leaving open the possibility of taking it up with the Police and Courts.

Witchcraft

Witchcraft is a crime that would be impossible for the rite to address. Practicing witchcraft was punishable by banishment or death. A witch would be betrayed to non-clansmen to be killed since it was an abomination for a clansman to kill a fellow clansman. Witchcraft might have been taken as a premeditated evil act against a clansman.

Guiding Principles for the Lords Resistance Army (LRA)

A confession and sincere apology attracts leniency from the community. Accidental killing of a clansman could be resolved through compensation with cattle while malicious killing of clansman through witchcraft was unpardonable. But it is not clear where the killings by LRA fall. Some might argue that they planned the killings of some clansmen, so their crime might be equated to the premeditated acts of a witch, for which they deserve death. Others might argue that the people they killed were not clansmen in the strict sense of the word, since they could be Acholis but of a different clan. The LRA could also argue that they were provoked by their clansmen and tribesmen who were collaborating with UPDF. In that sense the clansmen were acting like witches themselves. Of course it is easier to see the plight of the abducted children who were forced to kill against their will. The middle ranking LRA could also use the same defence as the abducted children that they were obeying orders from their superiors against their will.

The LRA and the International Criminal Court (ICC)

The only reason some people want LRA leaders pardoned is because they want peace at all cost. It is understood that the dead are not going to come back to life whether Kony is sentenced to death or not. Nobody would care if the top LRA leaders were tried by ICC together with any other killers outside the LRA ranks, but some have difficulty understanding why the Court only identified the five top commanders for prosecution.

Traditional Justice Mechanisms Then and Now

It is possible for traditional justice systems to continue to have meaning for young people if they are sensitised to the positive elements of compensation and respect for human life at all times.

When looking for the extent of the crimes committed by the LRA today, such extreme crimes were committed in conquest in pre-colonial and colonial times. It just meant that the vanquished lost everything. In today's context, Kony has talked of compensating his victims. The question is does he have adequate resources to do so?

Justice and Conflict

The culprit should first and foremost apologize sincerely for the wrong committed against the victim, and offer to compensate the victim as far as possible. Once that has happened, it is the victim's responsibility to forgive the culprit in the interests of peace.

In my opinion peace is sleeping with one's door open, on a full stomach, and walking on the road during day or night without fear of attack.

The term 'Ailuc' is an Iteso word for the traditional justice process that aims at holding persons responsible and punishing them for their wrongs and or criminal actions in the society there by deterring future similar actions.

Ailuc also includes the process of paying compensation for the crimes one has committed. It effectively provided for the law against the values, norms, traditions, cultures and customs of the Teso people.

The Iteso hail from the modern day districts of Soroti, Kumi, Serere, Bukedea, Sironko, and Katakwi.

In the whole process of Ailuc, is normally followed by the process of 'Aipuc'. Aipuc therefore is a peace process in which a perpetrator tells the victim/s of his crimes that sorry and prays for forgiveness.

The perpetrator must take responsibility for all the crimes where upon the elders will prevail and ensure that a dispute is resolved peacefully. The perpetrator must initiate the process where the intention is to have a peaceful resolution to the issues leading to the dispute or conflict.

It is important to note that when the perpetrator takes responsibility, he should be ready to accept any punishment that may be prescribed with the ultimate goal to reconciliation.

Jurisdiction of Ailuc:

The jurisdiction of Ailuc was limited to crimes committed by;

- 1) a member of one clan against a member of another clan
- 2) a tribe against the iteso
- 3) an individual
- 4) families

The crimes falling under the jurisdiction included among others the following:

- Murder
- Adultery
- Incest
- Burying a dead dog
- Parents curses of their children
- Disrespecting parents by children
- Etc

Procedure of dispensing justice:

Taking incest as a crime that has been committed in the society, it is the obligation of the person concerned to see to it that;

- a) A report of the commission of the crime is filed with the elders.
- b) The elders carry out investigations
- c) The Elders summon and hold meetings which are chaired by the clan leader/elder
- d) The elders summon the suspects to the meeting.
- e) Both parties are heard and given opportunity to speak.
- f) The elders make a decision and pass a sentence depending on the charge.
- g) In this case a person found guilty of incest would be sent to a hut near a swamp which the relatives have constructed. The convicts are forced to strip naked and enter the hut which is set on fire once inside. The fire drives the two individuals out and they are whipped as they run.

Lessons from the practice:

The mechanism had very positive lessons for society. It is vital to note that the elders played a significant role and this role was appreciated by the society because cultural values and norms were held in esteem.

Today the cultural and moral values are dying out steadily and this is partly attributable to inter-marriages which have affected cultural institutions, their values and morals on the one hand and the advent of modernization on the other hand.

The lessons drawn from the practice of Ailuc which were significant include;

- reformation of the individual
- deterring future similar acts and other would be offenders
- encouraging responsibility and respect in the clan
- upholding culture, cultural values and norms
- maintain human dignity after crime has been deterred
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The mechanism however has its negative aspects which include;

- some of the traditional practices were inhuman and degrading
- there trials were not entirely fair because individuals were not adequately allowed to defend themselves
- Cases of incest it was argued that some children did not know their relatives and therefore getting punished for something which was not known was unfair. (There were strong arguments put forward to the effect that in the Iteso community it was not an excuse because every family was expected to assist children know their relatives.

TOLU/TONU AK.A VUNA A LEJJO JO KA – MADI LOCAL JUSTICE SYSTEM

The Madi Disputes

From time immemorial, the Madi fought bitter tribal wars with Kuku, Acholi and the kakwa. Fighting or disputes so arose because these three tribes wanted to grab land of the madi because there were deposits of iron ores found in the tribe. They also had vested interest in rustling cattle. Human beings were taken as captives to go and serve as housewives, domestic servants and provide labor force in the fields of aggressors. This angered the madi and they then took to fighting. As a result of these disputes, the madi lost some land and human beings to the external forces.

This is evidenced by finding some madis in Acholi land called the madi opei; madi lukai in eastern Equatoria in the Sudan, palukere in Atiak (Acholi land), in Sudan one will get moipi, parego and Pamoju in Kajokyi district. These people were taken as slaves. As for the Kakwas, the madis overpowered them and captured some people as prisoners of war. The captives were then settled at a place called Leli cave in Itula sub-county.

The consequences of the disputes included huge loss of properties, loss of human lives, crimes against humanity such as rape, sodomy defilement, child abuse, forced labour, and loss of madi land to kuku, Acholi and kakwa.

Vuna a lejjo jo ka, is a system where by an aggrieved party approaches a group of elders or a chief or Mukungu to whom the dispute is reported.

There are three levels of dispute resolution in Madi;

The first level is where there is a dispute between parties are related to each other e.g. brothers or sisters, a husband or a wife (domestic dispute), here the elders headed by the head of the elders summons the parties to a particular place, where the complainant, gives his/her version of the story in public (this process is called **Laki**), where necessary the elders may ask the complainant some questions, once the complainant has finished speaking the accused party is also allowed to speak and respond to the allegations before the elders,

and should it be found out that the accused person is not telling the truth then the head of the elders, makes a decision on what punishment should be meted out on the accused party.

The punishment is usually in the form of fines (money) and buying local brew e.g. “Moyo Moyo” “Kwetto”, or “Wirri”, in case a person stole some thing he or she would be made to return the property or buy a new one if the property has been destroyed.

Inter clan/village disputes over land, e.t.c

In case of an inter clan fight in the village, the elders would usually meet, at the border between the two clans or village and all the relevant ceremonies would be performed at the border of these villages and witnessed by both sides.

The procedure followed here was that elders from both clans/villages would meet to resolve the dispute and each side would then produce a cow or a sheep which would be slaughtered and the meal is shared by both clans/villages, this act is meant to bring harmony between the parties in madi culture.

Disputes where there are killings

Where a person was killed as a result of the inter clan/ village disputes, there would be a cleansing ceremony performed by elders from both sides, a sheep would be slaughtered and the meat is shared by both sides.

And usually the relative of the deceased would be compensated for the loss of life with cows.

In the course of time, where a killing takes place, the procedures have changed with more people preferring to take the case to the local authorities or the police to have the matter resolved.

Disputes between the Madi and another tribe

When this happened, it was a must for the Opi (Chief) to approach the leaders of that tribe, so that they can resolve the dispute amicably, this has been done in border disputes between the Acholi and Madi at Adjumani.

Peace Talks and Reconciliation

These disputes were resolved by initiation of peace talks and reconciliation by the two parties at designated locations. The same system or procedure is used from that time up to now.

Peace talks were initiated by hereditary chiefs where council of elders from both parties come together to iron out their differences. The two fighting parties exchange what is called “peace building spears.” A stray dog is caught and then axed dead to symbolize cessation of further occurrence of bad omen in both places, each side brings one man and the two animals are speared dead and then left there to be pecked by vultures and other wild animals. Two bulls are similarly offered by the parties. They are slaughtered at a chosen location and the community members shall feast upon them together. But before that, the liver is roasted and then each person present eats the pieces of offal.

There is an always a specific place made known to the two parties where the rite is supposed to take place. The parties must voluntarily accept to be involved, unless the actor admits his crime, no rites shall be performed, and one veteran elder with undisputed integrity shall under take charge of the ritual performances. Everybody will accede to performances. Everybody will accede to the final decision of the appointed head man.

The objective of this procedure is to bring peace amongst the communities of the tribes, to promote peaceful co-existence among the different ethnic tribes, to encourage inter-marriages and free trade amongst the tribes, encourage and sensitize communities to have the spirit of forgiveness and avoid the system of an “ eye for an eye”.

This procedure is still in force and unaltered. It takes both traditional and solemn forms, including culture and norms of the tribes.

The value that provides the foundation of the procedure is morality, which is held high and is appreciated in the community. It brings about sustainable peace in the society, and there is respect for all persons regardless of social, political and geographical status. “Opi Ni Ukwewa opigo Nyoli a tzo ni ofuku.” Peace is enjoyed by all stakeholders since peace and tranquility is the pre-requisite to development. In true conflict resolution and management as well as reconciliation redressing the situation of the survivors is not allowed because this may create a “win-lose” continuum.

These procedures shall involve coming up in open to declare at once whether one is wrong or right on the spot. There is no punishment or compensation paid to the affected or to whom harm was inflicted, otherwise what is aid (vunaico) fine by the person found to be in the wrong to the community is just enough.

Whether a person is wrong or not is decided and declared after critically examining evidence from both sides. The communities will also carefully weigh arguments from both sides. The views of the majority decide who is wrong or right the matter is ruled like wise without any appeal.

Roles during the Procedure

The role of the victim or survivor are to pardon the perpetrator by sincerely testifying before the community that he/she has forgiven all the wrongs the actor had committed on him or her.

The perpetrator is to openly admit his unbecoming action on the survivor, to apologize profoundly to the victim in the presence of the communities where need be such statements could be documented or taped for future reference.

The communities’ role is to restrain from being biased or partial in testifying the cause of events between the disputers, to appeal and earnestly ask both parties to forget all what had transpired, forgive each other and start a new life.

Community members requested not to revive the old wounds (**Andra Odiru nyagbwolo oku si**). Each party is given ample opportunity to detail without duress the circumstances that surrounded their dispute.

Background

The madi name originated from a man who had been on the run from Ethiopia and the Sudan during those dark ages of evolution, when different clusters of communities were moving from place to place in search of food, wealth and domination of other weak communities in order to increase their political might in case of external aggression. When this man ran and wandered until he could no longer bear, he later decided to station himself in a place now known as madi district. The meaning of the name is “Here I am come what may”.

The Social and Political system of the Madi

Include thus: established clans and kinship under traditional rulers which all the subjects in one geographical area pay their allegiance. There are clan and village leaders and family units who ensure that law and order within communities are kept and maintained socially, people do not worry within close relations, communal field work, feasts, hunting and funerals take place which brings about consolidation of unity, cooperation and peace. Marriages normally take place in churches, in homes of bridegrooms and in the government Administrators office. Traditional shrines are respected. Hereditary rulers and their spouses are buried in those sacred places (rudu)

Society, Social Events, Attitudes, Custom

The social and political set-up of the Madi is closely interwoven with spirituality and this informs their attitudes and traditions. The society is organized in chiefdoms headed by a hereditary chief known as the Opi. The Opi exercised both political and religious powers. The rain-makers, land chiefs – vudipi (who exercises an important influence over the land) and the chiefs are believed to retain similar powers even after their deaths. There was a hierarchy of spirits corresponding exactly to the hierarchy of authority as it existed in the society²¹. The Opi (Chief) is the highest Authority in Madi, he is followed in rank by the community of elders who are responsible for resolving disputes, in the clans/villages.

²¹ http://www.gurtong.org/resourcecenter/people/profile_tribe.asp?TribeID=30

Birth²²

The birth of twins is considered an ill-omen among the Madi attributable to Rubanga. Twins were regarded as mysterious creatures and in fact the elder of the twins was named Ejaiya meaning 'take him to the bush' and the younger Rubanga.

Assistance to extended families plays a major influence and role in maintaining ethnic or kinship ties.

Harmony among the Madi people is kept because there exists big respect and peace amongst the people of madi and aliens. There is no social or political exclusion of all those who chose to settle in the district, trade is liberalized, when it comes to justice, no Kangaroo law is applied but only fair deal and trial is accorded to each side cases are not solved in the same way.

Judicial System²³

The chiefs and clan elders exercise judicial powers of settling cases. However, in cases where the suspect pleaded innocence to accusations of stealing or adultery, the witch doctor was consulted. The witch doctor would take a handful of spear grass and order the accuser and the accused to hold each end of the grass. The witch doctor would then cut the spear grass with an arrow. Whoever was guilty would fall sick and the truth would establish itself through the consequences.

Spirituality and Beliefs²⁴

The whole life of the Madi is centred on the belief that their ancestors survived after death as spirits known as ori. It is believed that the ori could intervene directly in human affairs. The Madi attribute every misfortune to the anger of a spirit and in the event of a misfortune or sickness, they would immediately consult an odzo or odzogo (witchdoctor) to find out which ancestor was behind the ordeal. Sacrifices were then offered to the particular spirit in order to avert its malign influence on the living. The powerful families among the Madi bas were believed to have powerful ancestral spirits to help them. 'Babu-garee' constitutes the whole paraphernalia of the spirits of the dead.

²² Ibid

²³ Ibid

²⁴ Ibid

Sexual Violence/ Martial Disputes

Sexual violence in matrimony is solved by first of all bringing the couple before the go-between (best man and matron) if this attempt does not yield any positive results the matter is tried by the representatives of the wife and husband, should this fail again that matter shall be forwarded to the parish priest and his ecclesiastical council. All these trials are carried out behind closed doors and discussions are kept top secret.

In case of a member of a clan, the adulterer pays a heifer to perform a ritual known as removal of semen from the girls' womb (udrwe egu). The husband of the woman receives the heifer. A ram is slaughtered to cleanse the home and house where the fornication took place. The two parties involved are anointed with faces of the ram, and later the council of elders eats the beacon. A hoe is thrown in the center of the compound and the most senior elderly man will collect it when the ritual is completed. The hoe is to curse off all the wicked behaviors that the two persons brought to the home.

An outsider shall pay a mature heifer as KBT to the owner of the wife. On top of that he will pay two goats plus a he goat with which the community partners shall celebrate the occasion.

Children and Violence

Children are disciplined by canning them in public and giving them serious warnings, the number of beatings depends on the magnitude of the offence and age of the children. In the final analysis, their parents are cautioned to teach their children in a good moral way.

The perpetrator of child abuse shall pay a fine of a ram with which the girl and the home are cleansed. A bull is also charged on the perpetrator. It is killed and eaten by the conflict mediators. He also produces a heifer for the uncles of the girl, which they will take along at the end of the day.

Meanwhile, the uncles of the girl will bring a ram which shall be used to cleanse the girl alone so that such a misfortune may not befall the girl again. No peer groups get involved in solving this dramatic scenario.

A Child mother in a family is brought before the family members and is asked to confess as for whom the womb is. If a relative is found to be responsible for that pregnancy, all ritual procedures and fines are exactly followed as per no.14 clan sexual violence. The begotten child will be sent to the mother's uncle after attaining reasonable age. Where a non relative claims the pregnancy, the child mother will be sent to her husband on condition that, he cleanses the home by killing a ram. As a reconciliation aspect, the girl is not stigmatized or rebuked. She will rather be warned to guard against such unwanted occurrence in future. A child born is named either Bajala or Minzira or Faidha depending on the sex of the child

Witchcraft

The suspect would be banished or isolated from the community and if the suspect has children his or her children would not be married by the community members, he or she must leave the village, if the person refuses to leave the village, his or her home would be destroyed

Banishment from the community would take as long as three years, after the situation has cooled down or people decide that the person has now reformed his or her ways

Adultery

The elders would summon the man and woman when a complaint has been made, and children would not be allowed to be nearby when the elders are making a decision on this matter, the man usually pay a fine of a sheep, goat, and some times a cow and he would be seriously warned not to repeat this act, in extreme cases the aggrieved man may sent away his wife and demand that the father of his wife returns his bride price (**Mali**).

Other crimes

Crimes such as arson, rape, defilement robbery with violence, treason cannot be tried at this level, since they are capital offences, triable by judges that could carry the sentence of death or life imprisonment.

There is no tit for tat, since this can create more social violence among the community settings.

“Fairness” during the Process

Both parties are given an opportunity to fully explain their positions, witnesses or assessors must control their emotions and desist from biases, they too should refrain from being nepotistic or favoring a side. The interim chairman shall exercise neutrality as much as possible, in the mean time, the process of hearing the conflict shall be held public. The view of the majority will be embraced, taken, respected and implemented.

Principles and Proverbs

The principle that guides the decision is the following: “there should be no repeat or taking pride in what was reconciled upon what so ever.” Decisions reached must be respected at all costs.

Proverbs that is applicable for combatants, e.g. Government of Uganda and the LRA et al:

- a) Do not play with a wounded buffalo, lest it may emit all annoyance on you in a swift second.
- b) Let sleeping dogs lie
- c) Fire cannot be extinguished with fire
- d) History repeats it self
- e) When two elephants fight, it is the grass that suffers
- f) Man made problems cannot be solved by the barrel of the gun.

Allegations on LRA and UPDF Crimes

The LRA functionaries should be pardoned; they should surrender without any pre-conditions. Let them come in open and kneel down on their knees and confess and repent for their crimes against humanity they have committed so far.

The middle and low cadres similarly must once and for all lay down their arms, accept to be integrated in their respective communities, those who are still physically fit could be absorbed into the UPDF, while child soldiers should go back to school or other vocational training institutions.

The ICC should be flexible to the current peace talks being brokered by our Sudanese brother Dr. Riak Machar the vice president of Southern Sudan, after all laws change with time and space from situation to situation

Traditional Justice Mechanisms Then and Now

Traditional justice systems will continue to have meaning for young people. The rites play an important role because it models the behaviors of our children and make them accountable for their behaviors in their daily life.

The dispute resolution mechanisms have been used for such extreme crimes before.

Granting clemency or pardoning prisoners of murder, arson, treason, corruption, defilement, rape by presidents of Uganda are examples that are available.

In the context of conflict, justice is a system where a playing field is leveled for two people in a contest, in other words, giving Caesar what belongs to Caesar. Fair-mindedness and fair deal is pursued in the event of a problem solving.

LUGBARA TRADITIONAL JUSTICE SYSTEM

BRIEF BACKGROUND:

Lugbara is a tribe in Uganda that is located in the north – upper west part of Uganda known as West Nile. A great length of its boundary that separates it from other Ugandan tribes is marked by the great River Nile. The main language used in this tribe is called Lugbara. There are also the Alur who form part of the West Nile and the language they speak is called Alur, more related to Lwo. There is also the Kakwa who are the minority in West Nile neighboring Democratic Republic of Congo (DRC). They speak Kakwa which is completely unrelated to Lugbara and Alur dialects.

Lugbara as a tribe is multi-ethnic in origin and multi-lingual but related dialects. The tribe has five counties who all speak Lugbara but with great deal of dialectical variation. They, however, understand each other. The counties constitute Vurra, Ayivu, Terego, Maracha and Aringa. Because of the variation in origin, the Lugbara do not have a common name for the traditional justice system.

ORIGIN:

According to the history pertaining to the origin of the Lugbara, they are believed to have come from different backgrounds, even those from the same county. Their customary practices vary but are similar in context. For example the Aringa are believed to have come from the Sudan, part of Terego from the West Africa and trekked through Ethiopia, Sudan and the other part from Acholi land. There are numerous reasons allotted for their migrations which can not be enumerated herein. The composer of this article comes from Terego and therefore, will base the traditional justice system of the Lugbara on the traditional practices of Terego. Remember, this will be representative of the general traditional justice system in the Lugbara community.

TRADITIONAL JUSTICE SYSTEM OF TEREGO.

Common offences / disputes in Lugbara tradition include the following: murder, poison cases, witchcraft, land disputes, theft, adultery, incest, bestiality, divorce, succession / inheritance disputes (estates, widows and leadership), physical fights (individual or interclan), insults / abusive words, curses, crop destruction, defecation in gardens. Rape and defilement were not looked at as offences because it was normal to use force to obtain marriage of a girl. Defilement was only possible if the girl was considered to be too young and this was judged by the physical look of the girl.

It should be noted that these offences can be committed against individuals as well as a community (clan). This is because of the feeling of belonging that an offence committed against a clan member may rise up the whole clan against the perpetrator as an individual or the clan where the perpetrator belongs.

Conflict Resolution in Lugbara Traditional Community.

They were (are at a minor extent now) a number of methods of conflict resolution traditionally practiced by the Lugbara. The forum for conflict resolution comprised of clan elders and on few occasions, the elders would invite some respected old ladies of wisdom to have a say in certain cases. There were no appeals entertained in the system because the elder's decisions were final and the community that time believed in the results of all the rituals performed within the community. Secondly, members were expected to be honest and so when you deny what you know you did and waste the elders' time to go through all the processes, then you are assumed to have accepted to be subjected to their decisions. This was meant to promote honesty and once you admit doing a wrong, then the elders would resort to remedies to solve the issue, which include punishments, cautions, compensation and reconciliation as shall be seen later.

Methods of conflict resolution:

Identification of suspects:

- In cases where the suspect refuses to admit, for instance in poisoning, murder and witchcraft cases, the elders ask the plaintiff / complainant (if he / she can afford or if not, a relative) offers a goat which is cursed in the name of the suspect by certain specific elders to die within a certain period of time, normally five (5) days. And if it dies within the period, then it confirms the guilt of the suspect.
- In the case of death either by poison or murder and the suspect denies responsibility, porridge is made during the burial of the deceased out of millet or sorghum flour in which the soil dug out of the grave is mixed. It is given to be drunk by a number of people, including the suspect. And if the suspect did commit the crime in issue, then within a period of about 3 months, his / her stomach will begin to swell and eventually he /she perishes within a year from the date of performing the ritual. Nothing happens if he / she is innocent.
- There is another method known as “Ondaa su”. In this ritual there is a tree known as “Oguu” whose sap is extracted and poured into small pots according to the number of the suspects. This sap whenever subjected to extreme heat makes the container to burst. So each pot is named according to the names of the suspects and one by one, they are placed on fire. So if ones pot bursts in the process, then the person is acclaimed innocent and if it does not burst, then that person is considered the perpetrator of the crime.
- In some cases, a perpetrator would be identified slaughtering a chicken. First of all, small pits are dug in a round form and allocated to persons who include suspects. Then a chicken is slaughtered (head completely cut off) and left in the center of the pits. The chicken will begin to throw itself up and down, side by side until it finally dies in one of the pits. Where it dies, then the person to whom the pit was allocated is confirmed the culprit.
- Another method of identifying a suspect was by the use of ash placed in somehow broken pot and placed in the late evening in uninhabited place on the side of a pathway for overnight and checked the following dawn. If found intact, then the suspect is assumed innocent but if spread out by wild animals (which they assumed must be a fox), then the suspect is taken to be guilty.
- Another method is to tie the suspect to a tree in the wilderness overnight and if he was not eaten up by wild animals, then he would be considered innocent.
- **Reconciliation / Cleansing:** the process is commonly known as “Ejuka”. This is a method of reconciliation where a sheep brought by the perpetrator is slaughtered, the blood is smeared on the chests of the parties concerned and the meat shared between parties or eaten at the site where the ritual. This is accompanied by a number of events that include deliberations, cautions, dancing, sharing a number of items and cursing a repeat of the incident. Reconciliation perse may be conducted for an incident on apology or after the matter has been resolved using other methods indicated herein.

Punishments:

Punishments are awarded depending on the kind of wrong doing and the gravity of the matter.

Death by cursing, banishment from the community (the essence is that you should be killed by others considering that the clans had no mercy for trespassers), compensation e.g. funeral expenses; exemption and restriction from certain places and social, public activities; felling a big tree and splitting it for fire wood, subjecting one to termite bites, hanging the suspect about 1 meter over a burning fire (the last two were used as a means of interrogation especially if you tend to deny the obvious), canning.

A few examples:

Bestiality:

There are three punishments that can be imposed individually or all at ago. The include compensation (giving away the animal to the perpetrator who in turn replaces it with his another), canning, forcing him to pay bride price determined by the elders to the owner of the animal and composing a traditional song in his names (meant to traumatize and shame him).

Incest:

The perpetrator is forced to pay bride price to the maternal uncles of the victim.

Reconciliation method above mentioned is applied.

If a biological relative such as a daughter, sister and depending on the circumstances surrounding the commission of the incest, the elders may decide to curse you to become barren (infertile). The rationale is that by so doing, you show the community that you do not like to have biological relatives and so making you barren will bar you from getting more of them.

The maternal uncles may take away the victim and ask you to pay bride price to them selves.

Leadership / succession / inheritance wrangles.

Traditionally, women had no entitlements in matters of leadership, succession and inheritance. They could not own property and were not considered members of the clan as they would ever leave and get married else where.

Traditional leadership is determined by age. The elder person takes the chance incase the incumbent dies. But if the elders discover any weakness with the elder, they can pass over the leadership to a follower.

Estate: The deceased's father or elder brother or any other responsible blood relative takes management of the estate. The management of the estate is not necessarily tied to the family of the deceased. The testator can manage it the way he or the elders deem fit.

Divorce.

The tradition did not encourage divorce but believed in resolving family matters through other methods that include having a charge on the wrong doer. But incase they try and fail to resolve the matter, the elders blame the wrong doer with hell of curses. For example, if the man causes the divorce and whenever he intends to remarry, the community rises up to influence the woman he intends to marry against the marriage. And so he can not easily marry.

If it is caused by the woman, the elders order return of bride price to the man.

Where children are the perpetrators of an offence, recourse was had to the parents or uncles for redress of the matter.

Inter-clan Fights:

In the case of clan fights, they would be resolved by way of reconciliation, same method as already explained.

Personal / Individual justice systems.

There are also personal / individual means of justice which of course are so detrimental to the perpetrator. They consisted of some traditional invisible gods kept by some people, especially under certain big trees or where anti hills existed. They were not common but they existed in certain homesteads and could be inherited by will. At the same time the owner could reject them and chase them away. The owner had a binding duty not to start eating anything prepared at home before throwing bit of it to the gods where they live. If he contravened that duty, the gods would punish him for that. For instance a family member falls seriously sick and it is only when the owner goes to contact some rituals to appease the gods, which includes slaughtering for them a chicken that the sick person recovers. They are as follows:

“Adraa”: In the event that one harms the owner, for instance by way of stealing his property, what the owner does is to go sit and cry where the gods live in accusation of the culprit over night or the whole day. After that a family member falls abruptly sick or develops a wound that erupts so fast. They say this signifies that the gods want to punish the perpetrator but have come to the owner to seek his permission to do so. The owner then goes back to the site and grants them the permission after which the sickness or the wound immediately goes off. The next thing is to hear that the perpetrator had been hit by the gods. Their attack is normally in form of chronic wounds or disruption of the tooth gums causing wound in the mouth and the teeth begin falling off. Their effects were known by the community and once they saw somebody suffering from the same, they ask the person to reveal where he wronged or they would approach a witch doctor (fore tellers) to detect what really happened. After establishing the cause and the source of the problem, then the elders

would approach the person who sent the gods for talks. The person would then recall back the gods at a fee chargeable by him. For instance inform of animals (cattle). The person thereafter recovers.

“Yakani”. It also consists of gods having the same characteristics as above enumerated except it attacks by way of making the person loose balance, ever shaking and feeling feverish. The same methods are used to correct the situation.

NB: These methods have greatly been shunned since Christianity took route in the area.

Allegations of Crimes committed by the LRA or UPDF:

In the event of Kony matter, the community would banish him in the event that he came home and did not apologize. In the alternative, since he would not be in position to compensate all the affected persons, they (the affected persons) would be asked if they would forgive him and if they did not, then he would be subjected to death by any brutal method the elders deemed fit. But if they did forgive him, then the reconciliation (cleansing) system above mentioned would be applied between his fighters and the community.

KAYO CUK - Langi Traditional Justice Mechanism

Background

Langi, as one gets from the history of migration, came from Sudan through Ethiopia. They settled first in Karamoja and continued down west to this most fertile land. As migration took them around, they were not in a hurry to jump into things. They would take their time – lalango. In that way, they earned the name “Lango.”

Langi are the at worst known as warriors, people who are out to fight and kill at whatever cost. It is not so today. They are peace-loving, hospitable and frank. Below are some means by which they would and still settle conflicts and cause reconciliation amongst the parties concerned.

Disputes and Kayo Cuk

An example of the kinds of disputes and fighting that occurs amongst the Langi, or Acholi, Ateso people is the following: People go hunting and one person unintentionally throws a spear aiming at some animal but incidentally he spears another hunter. This would be taken as manslaughter but even at that there was need for atonement reconciliation (KAYO CUK).

“CUK” is charcoal, which under normal circumstances can’t be eaten. In this, to avoid recitation, compensation in form of cows (seven of them) would be given to the family of the deceased and the eighth one slaughtered and half is left with the clan that caused death. As a symbol of unity, a small piece would be roasted and heads of the warring parties would bite from each end and a knife runs through so that each head chews his piece to show that what was tearing them apart is no more.

Other conflicts would come from death though child bearings, murder, land dispute or far back uncalled for fighting’s where spears would be buried and the involved parties jump over to show that all that would cause death was now buried.

In some cases fights or disputes would escalate into a fully blown domestic fight among the clans or tribes.

To resolve these disputes and bring peace between people who are disputing or fighting each other, apart from ceremonies, compensations and rituals like sprinkling water, counseling by the elders and merry making ceremonies would follow.

Because culture is preserved and since those ceremonies were aimed at creating harmony, they still hold over against the western philosophy of taking anything African as satanic or barbaric.

People want unity in diversity and anything that goes against co-existence is discarded. The objective for which all this is done is to create unity of purpose where people go about their business and inter-marry. Central among the langi in settling disputes among the langi is the admission of facts. One has to admit guilt where need be and reach out for the purpose of unity.

The situations calling for reconciliation is always tense. The role of the perpetrators is that of humility and acceptance of guilt. But langi do not hold grievances permanently. Once the ritual is performed, that marks the end of conflict.

Sometimes people are emotionally moved to execute justice, but should it be proved beyond reasonable doubt that the suspected culprit didn't do it, and then another ritual is performed. It is that of justification.

Local Council

The Langi are happy with the recently enacted local council courts act. This takes care of such disputes, which are clearly stipulated in the 1st and 2nd schedules. The *Local Council Courts Act 2006* seeks to strengthen the power of Local Council Courts to dispense justice and resolve conflicts in and between communities. It brings and allows justice to be administered by the people puts at grass-roots level.(which is cost-effective)

The main objective of the Act is to strengthen the operations of Local Council Courts, which operate at the Village, Parish and Sub county/Town and to relive the formal justice system of the heavy back log .(the judiciary is very under staffed) The Law provides the 50,580 local council courts of the country with real powers in a number of civil cases. As much as possible, the courts are not supposed to try criminal offences.

Salient features of the new Law include, among others, the following:

- Emphasis on female representation in the Local Council Courts;
- Regulations concerning the collection and use of fees and fines collected by the LC Courts;
- Introduction of community service as a sentencing option;
- Endorsement of separation of powers (by creating a LC Court at Sub-County/Town separate from the Executive Committee of the Local Government).

The First Schedule

It provides that a currency point is equivalent to 20,000 shillings

The second Schedule

This provides for matters which are triable by the LC courts and these are:

1. Debts
2. Contracts
3. Assaults
4. Conversion
5. Damage to Property
6. Trespass

The constitutional court recently held that the system was unconstitutional as it was designed to operate in a movement political (one part) yet we are now in a multiparty system.

With the coming in force of the local council courts, there is need for the arbitrators. They can sometimes be clan elders or nearby elders.

On April 3, 2007, the constitutional courts annulled the entire Local Council system and the LC Courts were partially affected sections of the LC act that were annulled include: the Local Government Act, the women's Act and the National Youth Act.

Rape

Rape is an abomination which was unknown among the Langi. It would be associated with wizardry and in those days of old the jungle law would be instituted. It's now accommodated within the existing laws.

When a crime is committed against an individual, it is an injury. When it is committed against the state, you can't just play about with it. It is the state that handles that particular case or the victims. Such a crime would be inappropriate for the traditional rite to address.

BANYAKIGEZI LOCAL JUSTICE MECHANISM

Traditionally, Kigezi region was and still is comprised of the people from the modern day districts of Kabale, Kisoro, Rukungiri, and Kanungu.

The Banyakigezi traditional justice mechanism²⁵ was put in place within the kigezi community to prevent and punish crime and in so doing maintain order, unity reconciliation, harmony, and cooperation.

The crimes for which punishment was administered in this region were crimes not of a grievous nature²⁶ but this notwithstanding attracted severe punishments in some respects and at times gender insensitive towards the female gender.

Here below we consider the crimes and the punishments metered out to the perpetrators, the rituals and the parties involved;

Murder:

²⁵ The Banyakigezi traditional justice mechanism was discussed by participants attending the UCICC workshop organized by NGO's and Civil Society organizations with a human rights component in their activities. The participants all hail from the region.

²⁶ Grievous crimes such as war crimes, crimes against humanity, and genocide as may be deduced from international law instruments and conventions like the Rome Statute, the Genocide Convention etc.

Life in the Banyakigezi community was precious and important and therefore the taking of another's life unlawfully amounted to murder and when this happened, the perpetrator and or the family of the perpetrator suffered severe punishment.

The punishment for the crimes like murder was not reduced in writing in the form of statutes but was known thru customary practice that revenge killings (mob justice), destruction of property particularly households being set ablaze would be carried out.

The above punishments were irrespective of the circumstances that led to the loss of life. In other words it was immaterial that it was an inter community conflict or an inter clan conflict or within the family.

However in the spirit of reestablishing unity, and reconciliation especially where the murder arose from an inter clan dispute or within the family, the clan leaders and members of the concerned families intervened and called for a cessation of hostilities by encouraging intermarriages (Okuhonga).

Unwanted/ pre marital pregnancies:

Pre marital pregnancies were serious crimes within the Banyakigezi community because a girl's virginity was treasured and reserved for the man that would eventually marry the girl.

The victim who was of course the girl with the pregnancy was regarded as impure and an embarrassment to the family and the community. In contrast, the boy or man responsible for the pregnancy was never looked at as having contributed to the victim's pregnancy.

The family members of the girl administered the punishment and this punishment which was very inhuman called for the girl to be thrown off a stiff cliff sending her to death almost immediately upon contact with the hard surface.

Some times the punishment for pre marital pregnancies involved hanging of the pregnancy victim to death.

As a way to purify the family members, cleansing ceremonies were performed.

Failure to give parents the first fruits (Okuganura):

Traditionally, the Banyakigezi were farmers and cultivators and as such a newly wed couple was required to give the first fruits of their harvest to their parents.

In the event of default or failure to adhere to this customary practice requirement, it was considered a crime and therefore punishment such as the refusal of the parents at any time to eat food prepared by guilty couple whether it is in their home or not.

This also attracted paying fines in the form of food and local beer or brew.

The parents of the couple in issue were mainly involved in engagements.

Refusal to participate in traditional worship:

This was another crime within the kigezi community because it was believed that each family had its god and in the event of refusal to worship these gods then the intermediaries between the people and the gods would summon the god to administer punishment.

Punishments took the form of havoc being caused in one's family and in extreme circumstances death was occasioned on the guilty party by the gods.

Family leaders and the traditional spiritual leaders or intermediaries often intervened to bring calm and also restore the worship of the gods.

Rituals such as making blood sacrifices to the gods and also paying local beer/brew was involved to appease the gods so that they could relent or cease their anger and wrath.

Eating prohibited foods:

Certain foods were prohibited but most of these prohibited foods were against women. The foods included chicken, eggs etc.

The rationale for denying the women these foods or criminalizing eating of certain foods by women is that men in Kigezi were potentially polygamous and therefore families were big or bound to be big and the family rarely had chicken or eggs enough to feed whole families hence the barring of women from eating some of the foods.

Marrying from the same clan:

This was another crime within the Banyakigezi community. This crime was serious enough that when it occurred it attracted the harsh punishment of disowning the victims from the clan.

The clan leaders and in-laws played a central role of establishing the facts and presiding over the congregation and delivering of a verdict. It was unforgivable within the community.

Victims' role in the traditional justice mechanism:

Victims role in the whole justice process was diminished and in the case of women, the right to be heard was unknown as a victim and therefore verdicts were rendered without due considerations of the victims interests and rights.

ANKOLE LOCAL JUSTICE MECHANISM

Traditionally the Ankole people make up the modern day Ugandan districts of Ntungamo, Mbarara, Ibanda, Kiruhura and Bushenyi.

The Banyankole like many other ethnic groups in modern day Uganda had a kingship under the Omugabe (King) and had a traditional justice mechanism akin to the Banyakigezi or vice versa.

Below is a description of some of the crimes and their punishments²⁷ as they were regarded in the region.

Domestic violence:

Domestic violence was one of the principle crimes committed in this region for which there was a punishment prescribed. It consisted of conflicts/disputes between a wife and a husband; conflicts/disputes between children and parents; and also conflicts/disputes between a wife and her in-laws.

The Ankole traditional justice promoted reconciliation in family matters and in doing so, meetings of clan heads were called and at such a meeting parties were heard and judgment pronounced on the guilty party.

In some cases punishment was prescribed for example paying of a fine (which was paid in kind like local beer/brew, cows etc. When fines were paid or extracted from the guilt party, the community feasted on these.

However in the event that a guilty party failed to reform, he or she was cursed by the clan leaders and to be cursed by the clan leaders, the community considered it a very serious thing and or bad omen.

Murder:

Unlawful killings which were known in the communities often occurred between members of two separate clans; within members of the same clan; within members of the same clan; and also members of other communities.

In the administration of the traditional justice where murder was committed, it often started with a community gathering upon the sounding of a drum beat, a trumpet and in some cases an alarm and or other means.

Elders then in the above circumstances would come to the gathering place armed with spears to symbolize death.

The elders would establish the circumstances that caused death and proceed to pronounce their judgment by finding the suspect guilty or otherwise.

Where death occurred in respect of members from the same family, the elders often recommended either the isolation of the guilty party or administration of curses and or administering of fines (which were normally in kind like goats, cows, and local beer/brew).

Cleansing rituals were also performed and when performed certain herbs were applied.

²⁷ The crimes and punishments cited here may not be exhaustive of the crimes that existed in this region however what is cited in this report is what was collected from the two day sensitization workshop (organized by the UCICC) carried out in Mbarara for NGO's and CBO' from the region that have elements of human rights in their activities.

Where the death occurred arising from an inter community conflicts then a mob killing was performed.

Theft:

Theft was a serious crime in the Ankole region. When a thief was arrested, several punishments were applied or meted out to the convict.

The clan leaders would recommend that;

- 1) Fines be administered
- 2) The person be caned a number of strokes and a caution against repetition spelt out;
- 3) Restitution or replacement of the stolen property;
- 4) Excommunication from the community where the culprit failed to reform.

Pre marital pregnancies:

Pre marital pregnancies by young girls were serious crimes as a girl or woman was expected to safe guard her virginity till the time she is given away in marriage.

Victims of these pre marital pregnancies received a death sentence almost immediately as she would be taken to a cliff or a high point next to a deep water body where upon she would be pushed to her death or in the case of drown.

This practice was performed by the family of the girl particularly the brother. Over time, the girls learnt to hold onto their brothers when they were pushed over the cliff leading to the death of the two of them.

The clan leaders therefore resolved that to avoid the girls from puling their brothers to death, their hands would be tied or hand cuffed before she would be pushed over and sent to her death.

Later, where the pregnant victim was not pushed over a cliff, conditional or forced marriages were concluded especially after the girls started dragging along their brothers to death.

In disciplined children:

Children were required to be much disciplined and when indiscipline was identified, it was considered a crime.

Punishments for in disciplined children included;

- 1) Caning of the in disciplined child
- 2) Cautions
- 3) Banishment in extreme cases.

Role of victims in traditional justice:

Victims essentially played no vital role in the traditional justice however when asked, it was argued²⁸ that victims of crime would appreciate it, if a justice mechanism;

- a) Granted a suspect a fair hearing
- b) In respect of very grave crimes a life sentence as opposed to a death penalty was suggested;
- c) Promotes reconciliation;
- d) Provides assistance to the victims in terms of acquiring legal counsel and facilitation;
- e) Provides reparations;
- f) Respects judicial independence.

LOCAL JUSTICE AMONG THE BAGANDA

EMBUGA

Traditional justice in Buganda refers to the native regulations, norms and customs initiated by the fore fathers as means followed to correct the wrongs committed in the community. These norms were commonly known in the respective communities and every body was expected to religiously observe them. There were norms to respect the gods, traditional leaders, fellow man, and communal property. Therefore each time these norms were violated – crime was committed against the gods, traditional leaders, fellow man and communal property; and justice was called for, to help repair, punish, reconcile, compensate or rehabilitate the victimized persons.

The family head, clan leaders or community / society elders made sure that the persons who violated the norms was punished, and that the punishment helps to retribute, appease and rehabilitate the victimized persons and community.

Embuga is the name for the Baganda traditional justice mechanism. The Baganda are another ethnic group in Uganda and are part of the “Bantu” speaking migrants from the south of the African continent. The Baganda who speak the “Luganda” dialect may be found in all districts in the country but they are dominantly found in the modern day districts of Kampala, Mukono, Mpigi, Luwero, Nakasongola, Nakaseke, Masaka, Kiboga, Masindi²⁹ etc.

Embuga means the Court yard. This is where the conflicts and disputes were resolved. The mechanism operated at two distinct levels which may be classified as follows;

1) LEVEL 1

In this level, the Embuga was employed at;

²⁸ Participants at the UCICC workshop at Mbarara having noted non existent role of victims in traditional justice preferred to make recommendations for an ideal justice mechanism.

²⁹ See the map of Uganda.

- a) The Family level: At the family level the head of the family sat and presided over a conflict or dispute in his family. The head of the family traditionally in Buganda is the husband or the man.
- b) The village level. At this level the village chief presided over the issues in controversy. However under the village level there were, the lineage, the Mutuba structures.

2) LEVEL 2

At level 2, this was a higher level than level one above; there were established structures which operated as appellate structures depending on the dissatisfaction of a complainant. The heads of these structures were normally appointed by the Kabaka³⁰ and they presided over their offices or establishments as servants of the Kabaka.

The structures in this level are the following;

- a) The Mutaka:
This was headed by a Mutaka Chief.
- b) The Mutongole:
This was also headed by a Mutongole Chief.
- c) The Muluka:
The Muluka could be equated to a parish. This parish was headed by a Muluka or Parish Chief.
- d) The Gombolola:
The Gombolola may also be equated to a sub county setting where the Gombolola or sub county Chief presided.
- e) The Saza:
The Saza too may be equated to the County setting where the Saza or County Chief was the presiding officer.
- f) The Katikiro:
The Katikiro is the Prime Minister in Buganda. He is second in authority to the Kabaka. When a matter came before him he presided as the Katikiro.
- g) The Kabaka:
The Kabaka was the last structure of appeal in the Buganda justice mechanism and the Kabaka's decision was a final one and a matter would be put to rest.

³⁰ The Kabaka is the luganda name for the King. The Kabaka is the highest office in the Buganda Kingdom and the person of the Kabaka is revered greatly by the people of Buganda.

Jurisdiction of the Embuga:

The jurisdiction of the embuga was limited to the following crimes behaviors that in Buganda constituted crimes and the punishments administered;

- 1) Killing of a human being.
Life in traditional Buganda was not easily dispensable except by the order of the King. In the circumstances therefore where death was occasioned on another person, the punishment for murder would be a death sentence³¹ for the perpetrator of the crime.
- 2) Failing to attend Funerals.
Buganda norms and practices required unity and encouraged community participation and therefore in case of failure by a person to attend a funeral the punishment would include being caned in public; paying fines; or suffering a boycott when the culprit lost their own.
- 3) Breaking of cultural taboos
Traditionally the Baganda had taboos which were respected or expected to be respected by every muganda. An example of cultural taboos is failing to kneel for women or girls when greeting or serving a husband or male elders and other respectable persons in the community; Getting married at a tender age.
The victims of this crime were caned or made to pay fines which were normally in the form of paying foods, goats or local brew.
- 4) Incest
The Baganda have many clan groups. Incest in Buganda therefore was not restricted to only blood relations but also to marriages or sexual relationships members of the same clan. The punishment for this crime was excommunication from the clan.
- 5) Rape
Rape was a serious crime but not a so prominent crime because the Baganda believed in the institution of marriage and the norms and practices required not to touch a woman before marriage. When the crime was committed and the perpetrator identified, the punishment executed was canning in public and counseling and guidance.
- 6) Failure to respect elders.
Like every community with elders the Baganda require great respect for elders within the community and the failure to respect an elder called for immediate

³¹ The Buganda kingdom is one of the traditional kingdoms still recognized today with most of its structures like the Katikiro and a substantive Kabaka. Although the Kabaka is the head of the Buganda Kingdom, the Kabaka can no longer preside over murder crimes nor does he have authority to order the death of any of his subjects. This responsibility of investigating and prosecuting perpetrators of crime is the mandate of the State through the established institutions.

disciplinary action to be taken against the culprit and this disciplinary action was administered by caning and giving guidance to the culprit.

- 7) Witchcraft.
Witchcraft in Buganda was a serious crime. The Baganda had nothing to do with witchcraft practices and therefore any person who was found to practice witchcraft was isolated and in extreme cases killed or banished from the community.
- 8) Suicide.
Taking your own life like in many other traditional African communities was a serious abomination in Buganda and the community showed no sympathy for such a one.
- 9) Sexual denial for spouses.
A spouse denying the other conjugal rights was a crime in Buganda and when it happened in the case of a woman being the culprit then the maternal aunt (ssenga) would be invited to give guidance and counseling and thereafter cook a very delicious meal.

For the case of a man, one of his uncles would be similarly invited to advise the man about his responsibilities to his wife and thereafter the man would be expected to perform to his best abilities.

The Embuga like any other traditional justice mechanism was not a means to punish perpetrators and leave it at that rather it went further by drawing lessons for other would be perpetrators of crime so that they are deterred from commission of similar crimes; and it also promoted reconciliation.

Here below it is considered how the Embuga dealt with victims of crime and issues of reparations such as compensation, restitution and rehabilitation.

Children and Parents:

It is a known norm that a parent was to be respected by the children. In case a child did not respect the father by making rude replies, verbally abusing, or acting in a way amounting to disrespect, it was considered as an abuse towards the particular parent.

The child culprit was therefore subjected to serious caning, and counseling by the clan leaders.

And was advised to apologize and ask for forgiveness from the parents, In addition to bringing cooked food, local brew and a goat to his father as an atonement for the crime committed. The parent was also counseled to accept the child's apologies and receive the child's atonement offering as a sign of forgiveness.

All this was done before the entire community. This was a way of rebuking the particular child (be it young or an adult) who had misbehaved towards the parent. It also showed him that he had done an abominable thing. The parent felt relieved of the humiliation when the child repented.

The punishment administered or action helped to rehabilitate the child's behavior, restore the parents' esteem – that he is respected in his own home, and also restored the relationship between the parent and child especially when the parent accepted the atonement offering.

Morality and Virginity:

The entire community was expected to stay virgins until they were married off. However, some girls involved themselves in premarital sex and suffered the consequences. In cases where early pregnancies occurred and the parents especially the mother suffered humiliation and shame because the community looked at her as the one who was immoral and so her daughter had taken from her behave likewise.

These victims of premarital pregnancies in some lenient communities like the Baganda, such a girl suffered serious isolation and discrimination. She would be advised to construct her own hut at the end of the plot or share shelter with the goats until after she has delivered. Even after delivery, many cleansing rituals were performed on her. She was denied access to some rooms in the main house and she was not allowed to use basins used by other members of the family.

Parents especially the father would not help hold or even play with her baby. The baby was considered to be born “out of sin”.

Allowing the girl to come back to the parents' home showed that her position as a child is restored though not fully accepted as the “innocent girl” she was before she committed crime.

Therefore discrimination against her had to continue. Through such treatment of the girl, the parents got satisfied that the girl is punished and had learnt her lesson. The punishment also helped to rehabilitate the girl's behavior as well as a deterrence measure for the young siblings from committing the same crime. On witnessing the treatment imposed on the girl, the community stopped blaming the concerned family heads of immorality.

Life and the Crime of Murder:

Life was sacred and it was every body's concern to preserve it, but in case this norm was violated accidentally or intentionally, justice was always called for.

Occasionally, an accident occurred during games like wrestling or during work and life was lost. Here no compensation was demanded from the responsible person. Instead it was considered a prestige for someone who died during execution of his duty. Therefore out of courtesy and recognition of service the King would reward the deceased's family with property like land.

However when a person intentionally took the life of another in cold blood another member of the community, himself or his family was subjected to harsh treatment as a way of punishing him and or counseling him not to get involved in unlawful taking of another's life again. The perpetrator would therefore be asked to compensate the deceased's family with large amounts of property or human beings. For example the deceased's family would take a girl or boy of their choice as a wife or slave from the murderer's family.

Additionally, a lot of cleansing ceremonies would be performed on the murderer.

In some extreme cases, the murderer would be killed in the name of revenge or even banished.

All this was meant to appease the victimized families and communities. For example, it reminded parents to advise their children against dangerous games.

The compensated family felt satisfied, and the relationship between the two families was restored. Other potential murderers in the community were expected to be threatened against being held for the same crime and thus the prevalence of peace in the community.

Significantly also, the elders got satisfaction that their family and community courts of laws were respected.

Community work and activities:

In Buganda, it was everybody's responsibility to participate in communal work and ensure harmony in the society by joining other members in attending to, and maintaining the roads, wells, burials, last funeral rites and sharing meals at such functions.

When a person did not behave as expected or participate with the community, he suffered revenge and rebuke from the community members.

In the unfortunate event that he lost someone of his own, the community members would do exactly what he had done over time. For example if he did not stay for the night vigil, elders would not appear at his home.

In addition, the elders would counsel him about his bad practices, cane him publicly, ask him to give them (community members) a certain amount of local brew, goats, cooked food as well as require him to ask for forgiveness as a way of appeasing the community members and assuring them that victim is sorry and will never repeat the bad behaviour.

The actions of the elders helped transmit lessons to the victim and other members of the community, about the importance of communal unity and the community received satisfaction that her norms are respected. The community therefore shared and lived in harmony.

Family and Spousal issues:

Amongst the Baganda, it was common knowledge that a wife was not to be shared. Therefore, in the event that the husband proved beyond doubt that his wife was unfaithful/ adulterous, he demanded that justice prevails.

As the victim who witnessed and suffered humiliation, the husband would invite the aunt to his wife to help repair him, the wife, and the entire situation. The aunt's role was primarily to counsel both wife and husband and normally apologized on behalf of the wife but also insisted that the wife repents and asks for forgiveness, which she did.

In addition, the wife was ordered to prepare a delicious meal for her husband which would include mushrooms, matooke and chicken. As she went to the kitchen to cook the aunt remained inside the main house purposely to counsel and console the husband.

Before she served the food the wife was required to provide both the aunt and the husband with water to bathe one at a time. After the meal, the aunt continued to rebuke the wife before her husband, and assure him that if the wife repeated the foolish behavior, the auntie and the family would be forced to additionally provide him with a younger wife –a sibling to his wife, which action could be taken immediately if the circumstances merited the action.

All this was done to belittle and shame the wife, and eventually stop further sin. When the husband accepted the apologies and the meal prepared by his wife, then the wife would know she is forgiven.

The aunt helped soothe / rehabilitate the husband and her intervention helped restore the relationship between husband and wife.

The coming of the auntie, the counsel and consolation she offered made the husband feel man enough, and recover from the humiliation he had suffered earlier on, just as the addition of the younger wife did.

This young wife acted as an under study, a measure of caution to the official wife that any time she behaves foolishly, the young one would take her rightful position. So it helped the official wife perform her roles, always take caution and avoiding misbehaving.

Conclusion:

In such ways as described above, traditional justice dealt with the interests of the victims to ensure that they are repaired, compensated, and or rehabilitated. The victims were appeased through punishment of the offender/ criminal, and the punishments helped to rehabilitate the victims and their communities.

KAYO CHOKO-LOCAL JUSTICE MECHANISM OF THE JOPADHOLA

The term “Kayo choko” in a Jophadhola means “biting a borne”. The term is the word for the whole process of the administration of traditional justice amongst the Jophadhola people and implies taking responsibility for ones wrongs which constitute crimes.

The Jophadhola, make up what is the modern or present day Tororo District in eastern Uganda.

The Jophadhola like many other African societies in Uganda, had values, norms, customs and practices which they held dear to themselves for purpose of peace, unity and justice in their society.

The Jophadhola defined some actions or omissions to constitute crimes and any person who committed such actions or omissions committed crime and was liable and subjected to a justice process which culminated in reconciliation.

The following were defined as crimes within this African society;

- 1) murder
- 2) rape
- 3) adultery
- 4) witch craft
- 5) theft
- 6) incest
- 7) pre-marital pregnancy
- 8) tribal conflicts
- 9) domestic disputes

The Jophadhola social community structure was organized along the family, clan, community and traditional religious structures.

For these named structures, there were leaders who exercised or wielded power to ensure the observance of the norms, values customs and cultural practices of the society as well as over see the punishments for the wrongs committed insociety.

Structures:

- 1) The Family; the Family elders exercised authority
- 2) The clan ; the Clan elders exercised authority
- 3) The Community; the community elders exercised authority
- 4) The Religious setting; the Mutusa traditional priests exercised authority.

Punishments and administration of justice:

The Jophadhola operated an “eye for an eye” justice system. They appreciated their society and found it necessary to criminalize wrongs committed in the society because of the need

to preserve a society which was peaceful and respectful hence the punishments for the wrongs.

The crimes identified above will be considered in relation to the punishments that such crimes attracted.

Murder:

The taking of a person's life by causing that person's death was an abominable act. Where the victim was not a family member, the clan elders would seat and consider the matter and the clan of the perpetrator would be required through its elders to pay compensation to the family of the victim.

The compensation was always in-kind and it took the form animals for example it would be required that one of the animals must be a black sheep.

In the event that the murder was within the family, then dependent on the aggravating or mitigating factors the punishments administered attracted;

- a) excommunication from the family
- b) canning
- c) cleansing requirements to be contributed (normally animals)

Rape:

A woman who was raped suffered humiliation in the society and her chances of getting married were highly diminished. Therefore the family of such a rape victim in an endeavor to protect her from humiliation often required the rapist to pay dowry or bride price instantly and take the woman as his wife.

Incest:

Having sexual relations with a family member or even clan member's attracted serious reprisals from the elders.

The punishment for such actions was termed as "burning". The culprits would be taken to a wilderness where a temporal structure would be erected with no door and the culprits would be required to enter the structure together while naked.

Inside the structure a puppy would be tied. A fire would be lit on the shelter and as it burnt down the culprits would be forced out of the shelter because of the heat and possibility of being burnt and run for dear life.

As the culprits ran out they would be caned and told they were burning the evil behavior out of them.

Adultery:

The marriage institution amongst the Jophadhola was highly revered.

A man who was found guilty of committing adultery was required by the elders to atone for the wrong he had committed and therefore as way of punishment, he was required to pay a number of cattle to the victim or husband of the woman with whom he had been found to violate.

In contrast, a woman who was found guilty for committing adultery would be required to expose her private parts where the millet grains would be sprinkled and a cork would be brought and left to peck at the woman as it retrieved the millet grains thereby drawing a lesson for the woman.

Witch craft

Witch craft was equally a serious crime and was not tolerated in the Jophadhola society. A person found guilty of bewitching others would be excommunicated from the clan by the authority of the elders.

Theft

Theft attracted serious punishments which included;

- a) canning or flogging the culprit
- b) restoring the stolen property
- c) Compensating the victim of the theft through additional requirements from the culprit.

Pre-marital pregnancy:

The society required every young girl to remain virgin until given away in marriage however this never happened always as young girls would get pregnant before they are ready for marriage.

When it was established that a girl had become pregnant, it was always known in the society that the pregnancy would be forced out notwithstanding the after effects.

In this case a granary stick is put on the tummy of the pregnancy victim and strong men step on either side.

Tribal conflicts:

Tribal conflicts often attracted revenge attacks or even killings in some cases, capture of youths and sometimes looting.

The elders once again prevailed in these circumstances.

Domestic disputes:

Domestic disputes were not foreign to the Jophadhola society and often times there were family disputes and elders intervened.

When one was found to be at fault in the family dispute, either of the following punishments was administered;

- a) canning or flogging of the individual
- b) making local brew for the elders

The purpose and or lessons drawn from the above said actions are;

- I) To check revenge in the society
- II) To check commission of crimes in the society
- III) To deter other would be offenders
- IV) To promote reconciliation in the society

Role of victims in the traditional justice mechanism:

Victims in this society played a very minimal role but in certain instances, their role involved,

- testifying before the elders committee
- providing exhibits as the circumstances would demand
- Provide mitigating assistance where necessary.

OHUFANGANA/OKHUSASANIA-LOCAL JUSTICE MECHANISM OF THE BASAMIA AND BANYOLE

The term “Ohufangana” is a Banyole word translated into English means “reconciliation”.

The term “Okhusasania” is a Samia word translated into English means “reconciliation”.

The two terms mentioned above are words for the whole process of the administration of traditional justice amongst the Banyole and Samia people³² and involves eating together after a person takes responsibility for the wrongs which constitute crimes.

The Banyole and Samia, make up what is the modern or present day Busia, Bunyole and parts of Tororo District in eastern Uganda.

The Banyole and the Samia like many other African societies in Uganda, had values, norms, customs and practices which they held dear to themselves for purpose of peace, unity, justice and tranquility in their society.

The Banyole and Samia traditional justice system was based on clans and clan leaders and the hierarchy of their justice system was organized thus;

- a) the family level
- b) immediate extended family level

³² The Banyole and the Samia, are related peoples and thus as the UCICC collected information of their traditional justice practices, they were grouped together hence the joint reference.

- c) the elders
- d) clan committees

The Banyole and Samia defined some actions or omissions as wrongs in the society and therefore constituted crimes and any person who committed such wrongs, committed crime and was liable and subjected to a justice process which culminated in reconciliation.

The following were defined as crimes within these African societies;

Murder, incest, theft, adultery, bad omen, separation, pre-marital pregnancy, rape, nonparticipation in community work, witch craft, and suicide

Punishments and administration of justice:

The Banyole and Samia appreciated their society and found it necessary to criminalize wrongs committed in the society because of the need to preserve a society which was peaceful and respectful hence the punishments for the wrongs.

The crimes identified above had corresponding punishments which were administered in accordance with crimes committed.

Murder:

The taking of a person's life by causing that person's death was an abominable act.

Many a time, killing another attracted revenge killings within these societies however where the elders intervened just in time, fines and or compensation was required from the perpetrator or his family/clan. The fines were in kind and included among others chicken, sheep etc.

A lamb would be sacrificed because it was believed that it had the effect of chasing away the ghost of the deceased person.

Other cleansing rituals were performed such as smearing of the blood of the lamb on the body before burial.

Incest:

Having sexual relations with a family member or even clan member attracted serious reprisals from the elders.

The punishment for such actions included;

- I) Killing of the perpetrators of the crime in some instances.
- II) Casting of the perpetrators out of the clan
- III) Cleansing.

Like their brothers the Jophadhola, the Banyole/Samia would have the culprits taken to a field while naked and they would be caned and in the process they would be asked “...*what is being caned?...*” and the response would be “...*the madness that caused the us to commit the wrong..*”.

Theft

Theft attracted serious punishments which included;

- d) canning or flogging the culprit
- e) restoring the stolen property
- f) nick naming the culprit

Nick names of the thieves were derived from the item a person had stolen or from being bluntly called a thief wherever the person went. The rationale for this nick naming practices was to cause embarrassment to the person who would eventually quit his wrongful behaviour and get transformed into a ‘normal’ person.

Adultery:

The marriage institution amongst the Banyole/Samia was highly regarded. Unfortunately however, the Samia did not recognise adultery as a crime in their society.

Amongst the Banyole though, a person found guilty of committing adultery was required by the elders to atone for the wrong he had committed and therefore as way of punishment such a person was;

- a) canned or flogged in public
- b) required to pay a fine/s as defined by the elders

Bad Omen (Being barren or impotent)

This is a unique wrong in this society however when it happened and the person was identified, the following actions were taken;

- I) If the person died before giving birth to an offspring, that person’s name would cease since no person would be named after him/her.
- II) The person would receive an abnormal burial for example cow dung would be used to block any opening on the persons body.
- III) Amongst the Samia, a barren woman’s dead body while being taken for burial would never pass through the main door or entrance of the house but rather an opening in the wall of the house would be made wherein the body would be passed.

Separation

It was considered a wrong in the society whenever a married couple separated and parted their ways. Whenever it happened the individuals involved were subjected to;

- I) Isolation from the community
- II) Nick names. These were used to depict a person as a failure and their by cause embarrassment with a possible return to the family/marriage union.

Pre-marital pregnancy:

The society required every young girl to remain virgin until given away in marriage however this never happened always as young girls would get pregnant before they are ready for marriage.

When it was established that a girl had become pregnant before getting married she was often subjected to either;

- a) death
- b) Isolation from the family and community generally to demonstrate that what she had done was not approved of.
- c) Fines to the aunties.

Rape:

A woman who was raped suffered humiliation in the society and her chances of getting married were highly diminished. Therefore the family of such a rape victim in an endeavor to protect her from humiliation often required the rapist to pay fine.

The perpetrator also was subjected to a number of strokes for the wrong he had committed.

9. Non-participation in community work:

Community work included among others household work, burials, clearing roads/wells etc. a person who for no justifiable reason excluded himself or herself from these communal chores was punished having been identified and the punishments included the following;

- I) fines as prescribed by the elders,
- II) canning/ flogging of the individual
- III) isolation

Witch craft

Witch craft was equally a serious crime and was not tolerated in the Banyole/Samia society. A person found guilty of bewitching others would be excommunicated from the clan by the authority of the elders.

However it was argued that there was the positive witch craft which the elders sanctioned in a few instances like if the intention is to establish a perpetrator of a murder in the society.

Suicide:

To commit suicide or take ones life was never condoned amongst the Banyole/Samia societies.

Where a person took his life, the dead body would be caned/ flogged significantly and in instances where the person had killed himself/herself on a tree, the rope would be cut down and the body would be buried just where it fell.

Where the person had killed himself/herself in the house, the house would be completely demolished.

The punishments or measures taken by the elders had important lessons and messages but significantly, purpose and or lessons drawn from the above said actions include;

- V) To check revenge in the society
- VI) To check commission of crimes in the society
- VII) To deter other would be offenders
- VIII) To promote reconciliation in the society

Role of victims in the traditional justice mechanism:

Victims in these societies played a very minimal role but in certain instances, their role involved,

- Reporting to clan leaders to assist in the resolution of the issues in controversy
- Providing exhibits and source of evidence as the circumstances would demand
- To get the accused punished or reconciled
- Cleansing in case of incest and in a bid to avoid the wrath of the gods (such as Rachali Were, Hanya Namugabo)
- To prevent continuation of disputes/conflicts
- To identify culprits and have them exposed.

LUKHOBOLWESIKUKA/LWESHIKUKA-LOCAL JUSTICE MECHANISM OF THE BAGISU/BAMASABA

“Lukhobo Lwesikuka/Lweshikuka” is a “Bamasaba³³” word for the traditional justice mechanism for the Bamasaba society. The term, translated in the English language entails the whole process of holding persons accountable for their wrongful actions in the society. It consists of wrongs that were defined as crimes, the punishments administered, and the rituals practiced etc. The spelling and pronunciation of the term differs in some of the clans amongst the Bamasaba but essentially it is the same.

The Bamasaba people hail from the eastern parts of Uganda and particularly the modern day districts of Mbale, Sironko, Manafwa, Bududa, and Budaka. They speak the Lugisu dialect/language.

³³ “Bamasaba” translated in the English language means “*the children of Masaba*”.

They have a rich history and practice of dispensing traditional justice because they had values, norms, cultures, and customs that they needed members of society to respect and uphold.

Mob justice was a common feature amongst the Bamasaba and it would be averted at the intervention of the elders.

Like other African traditional societies, the Bamasaba were organized in family, clan and community structures which were overseen by the elders.

The elderly women in the society played the role of counseling women.

Jurisdiction of Lukhobo Lwesikuka/Lweshikuka

A number of actions and omissions amounting to wrongs and their fore constituting crimes were punishable in this African society when one was found guilty of the same. The jurisdiction of the mechanism covered the following crimes;

- I) Running from/avoiding circumcision
- II) Adultery
- III) Land encroachment
- IV) Murder
- VI) Incest
- VII) Witchcraft
- VIII) Elopement
- IX) Failure to pay dowry

The Bamasaba, employed their traditional justice mechanisms because it had great lessons and other significant measures in maintaining peace, unity and harmony and justice in the society. These included deterrence, punishments, and cleansing rituals/ceremonies.

The above wrongs, when committed in the society usually demanded justice to be done and here below is how the Lukhobo Lwesikuka/ Lweshikuka dealt with these crimes individually.

Crime and punishment:

Running away from circumcision:

Circumcision amongst the Bamasaba, was a cultural norm that every male born in this community grew up knowing that when he becomes of age he must experience the (*literally put*) the knife of the traditional surgeon of the fore skin. Circumcision was an initiation into adulthood and for others it said enduring the pain before the public was symbolic of ones masculinity.

Therefore, if it was established that a man had avoided being circumcised, the community arranged during the circumcision period, rounded up all such individuals and forcefully had them circumcised.

If a person passed away before undergoing circumcision, the person did not escape the “knife”. Consequently therefore before the burial, the dead body would be circumcised and this was done by non clan members – adding to the embarrassment.

It was also possible that if the elders found it necessary, they advised that the culprit be canned or flogged before being forcefully circumcised.

Theft:

The society believed in working in order to earn a livelihood and therefore it was expected that a person would work to acquire what they wanted however like in many communities, there are those who opt to take from others unlawfully and without consent.

If a person was found to have stolen, occasionally the community would apply mob justice (although this was not sanctioned by the traditional justice mechanism).

The punishment for theft in this society however included;

- demanding the culprit to restore the stolen property
- corporal punishment which includes canning
- confiscating the culprits own property
- cutting off the limbs of the culprit
- In some cases involving children, burning of the hands.

All these punishments were meant to instill good morals in the individual as well as deterring other would be thieves.

Adultery:

The Bamasaba society values and norms in respect of the institution of marriage were profound - like in most African communities. Marriage was a protected institution and generation after generation discovered that it had to be respected or one paid a price.

To this end therefore if one was found to have committed adultery, the elders would sit and require the guilty person to be subjected to any of the following punishments;

- 1) Pay a fine of ten (10) cows
- 2) Cane/flog the offender in a public setting while nude.
- 3) Cause the adultery to forcefully take the adulteress as his wife
- 4) Require the family of the woman to refund the dowry or bride price.

A ritual that involved the two culprits forced to run naked while being caned and washing oneself at the river was practiced. This had the effect of having one cleansed from the evil that had been done and being accepted back into the community.

It should be also noted that the culprits received this treatment because the purpose was among others to cause embarrassment with the aim of deterring the person from engaging in a similar incident as well as other would be culprits;

Land disputes/encroachment:

Traditionally in this society land was the main resource for food crop cultivation and wealth. Therefore the society guarded its land jealously to the effect that where there was encroachment, the elders would intervene to resolve the disputes over the land by considering the information available.

The elders' decisions included;

- Re-demarcation of the land
- Land restoration, as the case would be.

Murder:

Life is precious in the society. It was every person's duty to ensure that life is preserved.

In cases where one person unlawfully caused the death or killed another, often times as earlier stated, the community would react with revenge killing and it is only when elders stamped their authority in the communities that sanity prevailed.

In some clans within the Bamasaba, the elders sanctioned revenge killings where the accused was known. However where the accused person was unknown, it was argued that there were those whose duty it was in the society to find such an accused person by employing mediums such as witch craft (for a good cause) coupled with curses.

In all other cases where the perpetrator was known, elders defined punishment and which included;

- compensation (in the event that it was a clan's man responsible) was required of an accused person or members of his family/clan.
- destruction of the accused property would be done
- revenge killing.

Witch craft:

Witch craft in this African society was engaged in two dimensions. The first was for a good purpose and the second was for an evil purpose.

The first was employed in circumstances like mentioned above where it is necessary to establish a perpetrator who has not been identified or who has failed/refused to voluntarily give him/her up.

The second one (which is the evil dimension) was not condoned by the society because it was employed by the perpetrators or its users to cause havoc and pain against others. This was punishable whenever the individual was identified.

The punishment for witch craft included;

- 1) Death through stoning normally it would be by a mob.

- 2) Excommunication from the clan or community
- 3) Destruction of the individual's property.

Elopement:

This was punishable in the same way adultery was punished.

Failure to pay dowry:

The society was entrenched in the belief that before one takes a wife, dowry or bride price had to be paid by the intending groom and failure to pay such dowry the consequences was dire.

The elders would demand that;

- a) The wife (and if there are any children) be take away and returned to her home
- b) In some clans the man would be take the wife's home as slave. The rationale for this action it was argued was to have him work and pay the dowry that the family of the wife demanded.
- c) In some cases the property of the man would be seized and taken by the wife's family
- d) In the event that the woman passed away before dowry was paid, the body would be buried at the parent's home or bride price would be demanded before burial is done.

Rape:

Rape was not uniformly agreed to as a crime within the society. Two arguments were advanced for and against and these were;

- 1) Where the victim's family (the parents) were not aware of any relationship or any thing between the man and their daughter, it was possible to consider this act rape and therefore punishable. The punishment in this case would be sentence to death by stoning or compensation by way of paying cows or the elders would announce an alternative punishment.
- 2) Marriages in the past were 'forced' unions. If a man successfully forced woman into sexual intercourse, the woman automatically became his wife. This was regarded as 'manhood' or 'khawunwa'.

Where the parents of the victim consented to the relationship/union, then the man could do as he desired.

Incest:

Any practice of incest in the society received condemnation and punishment. Punishments for any person found guilty by the elders included excommunication from the clan, fines and other punishments defined by the elders.

Animal sacrifices were made to cleanse the individuals.

Failure to participate in communal work:

The society was a dynamic one which reorganised the importance of communal engagements. These included such things as cleaning the wells of water, clearing roads and other public places, attending funerals etc.

When a person failed to participate in such communal chores, he was likely to be excommunicated from the society, have his property confiscated. The rationale for these actions was to encourage work and working together as well as to promote social responsibility.

Victims' role in Likhobo Lwesikuka/Lweshikuka

The victims' role in the traditional justice mechanism was minimal and in many respects (especially violence on the female gender) was inconsequential however where the victims were active they;

- reported the wrongs/crimes to the respective elders.
- in some cases of domestic violence, a woman would pack her belongings and return to her father's home.

Minimum standards of justice

The minimal standards here aren't necessarily those under the Rome Statute of the ICC.

The national and international justice systems constitute the framework for the peace process in Uganda today. The national Ugandan justice system and the international justice system, represented by the International Criminal Court (ICC), have given shape to the peace negotiations in Juba- Southern Sudan. However, the Acholi traditional justice system differs significantly from the other justice systems and even the national justice system for example, In contemporary Uganda, when a killing takes place, it is reported to the police, followed investigations and the case goes to the courts of law; in the Acholi traditional justice system, the perpetrator goes through a number of rituals that culminate in Mato oput and the perpetrator is forgiven, in the international justice system when killings take place, investigations are carried out, analysis of the cases takes place and an arrest warrant may or may not be issued, the issuing of arrest warrants for rebels is said to a “stumbling block” in the peace process.

There is no agreement between the two systems at the universal level (ICC and the Acholi traditional system), and I doubt whether there will be an agreement between the two systems going by what parties from the different systems say about the different justice systems.

A further analysis of the justice systems in Uganda reveals that, firstly, the international justice system represented by the International Criminal Court is perceived to be a foreign intervention being imposed on Africans from the affected communities of northern Uganda, this problem has been compounded by the fact that issuing of arrest warrants has only been one sided for the Lords Resistance Army, yet there are two parties who are involved the conflict, secondly, at the national level the main challenge is that there is currently no ICC enabling law in place, the ICC draft bill has been re-tabled again before the 8th parliament after it was not enacted into law by the 7th parliament, thirdly, there has been a lot of debate on how Mato oput could be applied in the current situation in Uganda, given that the atrocities committed by the rebels have cut across to other tribes, who do not subscribe to Acholi traditional justice system, besides that there is also the factor of religion where some Christians and people of other faiths mentioned above believe that religion is more important than any African traditional ritual or justice mechanism, further more Acholi traditional justice system is said to have been weakened by internal displacement of people as a result of the twenty year old conflict, the abolition of kingdoms by the first government of Dr. Apollo Milton Obote government in 1966 and the British colonization, which deteriorated Acholi traditions.

While traditional forms of justice draw their application from standard practices of an individual community handed down from generation to generation, International Justice Standards draw their application from universally agreed minimum standards recognized by States and reduced into international instruments. These include; availing a fair opportunity for both parties to present their case, respect for the rights of the accused, free and fair trial, independence of the judicial officials and participation of victims in the proceedings. It must be noted that many of the traditional systems of justice fall short of accepted standards of justice dispensation. The traditional systems are male dominated and may not consider the gravity of gender based crimes.

In the above respect therefore to establish a relationship of traditional forms to international justice mechanisms is quite a challenge as traditional forms are limited' in application in respect of individual human rights.

However we will examine any relationship in the following procedure drawing from the characteristics above:

Human Rights:-

Human Rights are entitlements or moral claims possessed by all persons by virtue of belonging to the human race or by virtue of freedom and dignity, they are perceived as universal, inalienable, indivisible and independent.

From the Universal Declaration of Human Rights in 1948, enormous efforts has been applied to the realization of human rights world over through establishment of International Conventions that establish standards for promotion, observance and monitoring mechanisms where violations of human rights can be handled and victims of the abuse receive redress.

Traditional practices and cultures are equally recognised in terms of rights as long as they are not repugnant or inconsistent with the constitution of Uganda (1995) and minimum international human rights standards.

The ritual practices in a traditional form of justice only satisfy the community in which a crime was committed which in effect may be a continuous and an unresolved issue for other communities affected by the crime because it does not apply to them.

Traditional forms in Uganda though not expressly spelt out, seem like International Justice Instruments and mechanisms to recognize that every individual has rights (political, social, economic and cultural) hence the steps taken by elders to ensure that a perpetrator admits his guilt, takes responsibility and further requests for forgiveness from the victim's family or community and where necessary pays compensation.

However, the undoing of the traditional forms of justice unlike international mechanisms is that they fail to make distinction of individual rights, ignore the rights of vulnerable groups like women (especially women who have been victims at the hands of perpetrators and suffered violent sexual abuse) children, disabled and the elderly people.

In application traditional forms fail to look into violations such as rape or forced marriages or pregnancies and the resultant effects such as contraction of HIV Aids and unwanted pregnancies by child mothers which in a human rights respecting environment such victims ought to have redress through competent authorities who are established by law and are able to apply the minimum standards recognised universally to deal with such violations as meted out on the victim. Other minimum standards include the right to be heard, the right to receive reparations, the right to protection and assistance to recover from the victim's traumatic experiences as well as assist them to reintegrate into society by either returning to school or doing other developmental issues.

Traditional forms also, unlike International justice mechanisms do not have precedents or experience of human rights abuses of a gross nature or crimes of international concern nor do they have means of dealing with such crimes e.g. crimes of enlisting and conscripting children to engage in violent and war situations either against government forces or against their own communities and other crimes which are defined in the Rome Statute and for which the LRA top leadership have been indicted to answer.

In fact it is possible that some forms traditional justice may undermine the respect and observation of human rights.

In addition Traditional forms of justice like Mato oput assumes that after the cleansing ceremony, the perpetrator of the crime will spontaneously start confessing of the crimes he or she committed then the offenders clan will assume responsibility for the act committed, and will be ready and able to pay compensation, however it must be noted that if the initial stages do not succeed then Mato oput can not take place or would be meaning less ,its worthy noting that these standards minimum standards of traditional Justice, would not would not satisfy the requirements of Article 17 the Rome statute of the ICC, as this is within the competence of the judges and has no precedence yet.

In Acholi land justice mechanisms are active within their communities, but the question about their applicability to other communities or tribes and how it can be used by those in government has yet to be answered and should not be over looked because they embody a lot of African cultures that expresses a fabric that keeps communities in harmony. The rituals bring reconciliation and societal healing but ignore the interests of individual victims. International justice too should not be shoved off, but instead what needs to be done is to clear identify parameters at which international justice, traditional justice and the national justice systems can all play a role in ending impunity in Uganda.

The 1995 constitution of the republic of Uganda objective XXIV provides for the state has the responsibility to uphold customary values which are consistent with fundamental freedoms, human dignity and incorporates those aspects in people's lives. However, a custom(s) which promotes a culture of impunity, disrespect for human rights and rights of victims should not be condoned.

Do these forms of justice meet the minimum standards of justice?

The minimal standards here aren't necessarily those under the Rome Statute of the ICC.

The national and international justice systems constitute the framework for the peace process in Uganda today. The national Ugandan justice system and the international justice system, represented by the International Criminal Court (ICC), have given shape to the peace negotiations in juba- Southern Sudan. However, the Acholi traditional justice system differs significantly from the other justice systems and even the national justice system for example, In contemporary Uganda, when a killing takes place, it is reported to the police, followed investigations and the case goes to the courts of law; in the Acholi traditional justice system, the perpetrator goes through a number of rituals that culminate in Mato oput and the perpetrator is forgiven, in the international justice system when killings take place, investigations are carried out, analysis of the cases takes place and an arrest warrant may or

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Similarities between International and Traditional Justice

*There is nothing either good or bad but thinking makes it so*³⁴,

Cooling off period:

Whenever tensions arise, elders intervene to cool tensions. This is normally a period of shuttle diplomacy, supposedly comparable to the role of the police who ensures that an offender is immediately separated from those who offended. In Mato oput, whenever a killing occurs the elders separate the two parties³⁵. This is to ensure that there is no revenge by the affected persons (clans), and that a process of dialogue takes course... also comparable to police intervention to ensure that there is no mob justice/violence ...

Jurisdiction:

The International Criminal Court has, jurisdiction to prosecute individuals responsible for the most serious crimes of international concern : genocide, crimes against humanity and war crimes, the Jurisdiction of the international Criminal court is limited by the Crimes of genocide, crimes against humanity, and war crimes [Art. 5] which include: Crimes of genocide, crimes against humanity, and war crimes, Time [Art. 11] the court has jurisdiction for crimes committed after 1 July 2002, Territory [Art. 12 (2) (a)]the court may exercise its jurisdiction if one or more of the following states are parties to the Rome Statue (a) the state on the territory of which the conduct in question occurred, or if the crime was committed on board a vessel or aircraft, the state of registration of that vessel or aircraft and ,

³⁴ The Hamlet by William Shakespe

³⁵ The Acholi communal society ensures that whenever one commits a crime, the clan remains responsible. In the case of mato oput, elders separate the two clans.

Nationality [Art. 12 (2) (b)] the state of which the person accused is a national, in the Acholi jurisprudence, the jurisdiction of elders local courts differ depending on the intensity of the offence committed. Minor crimes (like Kiir) are handled by the family or household heads, crimes that affect the clan are handled by a rwot moo, while crimes that affects one clan and another are handled by the chiefs and his council of elders. Crimes affecting the entire Acholi are handled by a council of chiefs headed by the paramount chief.

Right to be heard

Uganda's history both recorded and unrecorded is full of countless instances of gross human rights atrocities and human brutality most of which are committed during war.

Contrary to common beliefs, human brutality was and is still a problem to both the developed and third world countries. It is therefore interesting to note that there are many similarities between International and Traditional African Justice mechanisms.

Notwithstanding the differences in levels of development and cultural diversities, certain highlights can be made in respect to traditional African Justice Mechanisms.

As in the modern day Court system, there is a public hearing in Acholi Jurisprudence, in all cases that affect the community. Social pressure is put on the perpetrator to admit his wrong doing (although not in the case of mato oput evidence is never extracted under duress). The person is given a right to be heard, proceedings under this arrangement are very informal and often more relaxed

The International Criminal Court aims to establish the truth, when investigating a situation, and under international law the judges issue warrants of arrest or indictments against a person alleged to have committed an offence, requiring him or her to appear before court to answer charges against him or her. Proceedings are more formal with a prosecutor calling witnesses and in certain cases (as it is before the ICC) victims may though there legal representatives participate in the proceedings. An accused person also has rights including, a right to a fair trial, legal representation and a right to adequate time and facilities to prepare for his defence among others.

Making compensation or *Cullu kwor to the victims*

Another similarity between the two mechanisms is that both make provisions for a perpetrator to pay reparations to the victim of his/her wrongful acts. Although it is patentee to add that the methods and intention for paying reparations may slightly differ.

Under the International legal system, the right to reparations for wrongful acts has long been recognised as a fundamental principle of law essential to the functioning of legal systems. In 1961, Justice Guha Roy of India wrote:

That a wrong done to an individual must be redressed by the offender himself or by someone else against whom the sanction of the community may be directed is one of those timeless axioms of justice without which social life is unthinkable.³⁶

³⁶ International law obligations to provide reparations for human rights abuses, Antonio Buti BPE, Murdoch University Electronic Journal of Law, [Refereed Articles, Volume 6, Number 4 \(December 1999\)](#)

The obligation to provide reparations for human right abuses, especially gross violations of human rights, has more recently been recognised under international treaty and customary law, decisions of international bodies such as the United Nations Human Rights Committee and Inter-American Court of Human Rights, national law and practices and municipal courts and tribunals.³⁷

The most recent recognition of victim's rights in international law is to be found in the Rome Statute of the International Criminal Court which recognizes victims rights to participation in proceedings before the ICC³⁸, protection³⁹, information,⁴⁰ legal representation and reparations⁴¹. The Rome Statute also provides for a Victims Trust Fund⁴² from where the reparations will be made to the victims of crimes that fall under the court's jurisdiction.

In traditional Justice, the perpetrator if found guilty may be required has to pay for the crime committed. The nature of reparations too different dimensions depending on the type of offence committed and ethic group example in Acholi traditional justice system, elders come up to examine the indemnity which the family of the killer must pay to the family of the slain person. Sometimes a young girl would be offered to the family of the victims by the family/clan of the perpetrator as a way of reinstating the good relationship between the two families/clans as the young girl would bear children in her "new" family and therefore "replace" the lost soul. Other African societies prescribed payment of cows and goats for crippling an arm and payment of double the number of livestock stolen in cases of theft.⁴³ Where compensation was to be made, the whole clan usually contributed⁴⁴ showing collective responsibility which prevailed in many African societies...

Presumption of innocence:

Both systems (International and Acholi) assume that one is innocent until after the contrary is proved for example under International law a person is assumed to be innocent till proven guilty before a court in accordance with applicable law⁴⁵. The onus is on the prosecutor to prove the guilt of the accused⁴⁶. This fundamental principal of law is embedded in several international human rights instruments like the universal declaration of human rights and the international covenant on civil and political rights.

In the traditional setting, a person alleged to have committed an offence until the contrary was proved by the elders or until the accused made an unequivocal confession and pleaded to be forgiven by the victims of his wrongful actions. A number of rituals are then performed to cleanse the accused of all ill omen for example "stepping on the egg" (among the Acholi).

³⁷ *ibid*

³⁸ Rule 89 Rules of Procedure and Evidence of the ICC

³⁹ Art 68(1) Rome Statute.

⁴⁰ Rule 50(1) Rules of Procedure and Evidence of the ICC

⁴¹ Art 75 Rome Statute

⁴² Art 79 *ibid*

⁴³ *Criminology in Africa*, Tibamanya Mwene Mushanga, fountain publishers, 2004 pg3

⁴⁴ *Ibid*

⁴⁵ Art 66 (1) Rome Statute

⁴⁶ Art 66(2) *ibid*, also see Art 14(2) of the International Covenant on civil and political rights and Art 11 (1) of the Universal Declaration of Human Rights.

Right of Appeal.

The right to appeal is also recognized under both systems. International law provides that everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.⁴⁷ The Rome Statute also provides that on appeal, a decision may be reversed or amended, a new trial ordered or a decision on compensation for unlawful arrest may also be made⁴⁸

Similarly under the Traditional Acholi jurisprudence, an individual who feels dissatisfied by the decisions passed at a lower level, had the right to appeal to a higher level court, it was also so rare for an appeal process to take place, since the entire community was involved in providing evidence. However if such an incident arose, the councils of elders were always ready to give attention. Such evidence (whenever strong) wasn't rejected at all.

What if new evidence emerges after an appeal?

In circumstances that new evidence emerged after an appeal both systems provide for a remedy for the affected person or his/her relatives.

The Rome Statute of the International Criminal Court provides that "Where new evidence emerges after an appeal decision, the convicted person or after death, spouses, children, parents, or one person alive at the time of the accuser's death that having received instructions or the Prosecutor on the persons behalf may apply under Art. 84 of the RS to Appeals Chambers to revise the final judgment showing that NEW evidence has been discovered to the effect that;

- A) (I) At the time of the trial the evidence was not available and that the person applying had no means of entirely having such info or evidence and;
(II) If the new info were proved at the trial, the result would have led to a different verdict.
- B) That it has been newly discovered that the decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified⁴⁹
- C) One or more of the judges participating in the conviction acted grossly in breach of duty⁵⁰.

It should be noted that the above provisions are subject to the decision of the judges upon consideration of the matter whether it merits any attention or it should be rejected⁵¹.

Traditional African Justice Mechanisms also provided for the exoneration of an accused person if facts tending to prove his innocence emerged after appeal. In such circumstance any punishment that the accused was serving would be lifted and if an

⁴⁷ Art 14 International Covenant on civil and political rights.

⁴⁸ Arts 81 and 82 of the Rome Statute.

⁴⁹ See paragraph (b) of Art. 84 RS

⁵⁰ See paragraph (c) of Art. 84 RS

⁵¹ See clause 2 of Art 84 RS

individual had been banished from his community, a message would be sent to him/her to come back home.

Punishments

Both Justice systems (International and Acholi) impose some kind of punishment on the perpetrator for the crime/ offence committed, under the Acholi traditional Justice system; if the perpetrator confessed of having committed the crime the community would own up to the crime and it's the community that would make a contribution towards the fine or compensation to be paid.

In other African communities, offences such as treason and spying for an enemy were punishable by death.⁵² Fines payable in form of cattle, cattle and beer were imposed for "lesser offences" like adultery and theft. Imprisonment as a form of punishment was non-existent in traditional African societies it was introduced by the colonialists and thus the right to bail did not exist because no one was a prisoner. In fact the offender remains a member of the clan he acknowledged the wrong, confessed and paid compensation. The bail is set from the word go! That is, after a crime is committed.

Further more, the traditional justice systems described above, ensured that if a perpetrator commits the worst crime he or she or is punished for the crime or the community in cases where there is communal responsibility like in Acholi) usually the punishment or fine would be paying a hefty fines, as a form of compensation (Cullu kwor) to the clan, this can take the form of (animals, etc/, in other cases, the perpetrator may be ex-communicated from the Acholi community sentenced to community service and in the past notorious criminals in Lango and Acholi were buried alive as a punishment for their crimes.

However, the Rome Statute of the International Criminal Court provides that an accused person may serve his or her sentence in a State cooperating with ICC, receive a sentence of a Maximum of thirty years, or life imprisonment (extreme cases) and there is No death penalty, the sentence will also consider the Scope of reparation for victims.

Decision making:

In cases of major offences, decisions to every crime committed are passed by an executive or a council. The judge (Chief, rwot moo, etc depending on the jurisdiction) passes a ruling based on a popular decision reached at by the council/executive of elders.

Record keeping:

For every local court, in Acholi Jurisprudence, there is a record of court proceedings done by the secretary of the council of elders. These records are filed and are to ensure that a precedent is set against which other critical cases can be considered. For instance, when elders and chiefs were asked about the applicability of mato oput, they mentioned that this was unprecedented.

Finally, all cases handled under the Acholi jurisprudence, involved truth telling, acknowledgement, compensation and reconciliation:

⁵² Criminology in Africa, Tibamanya Mwene Mushanga, fountain publishers, 2004 pg4

Conclusion.

Most differences between International (ICC) and Traditional African Justice mechanisms are in procedure not substance. The core principles fair trial, presumption of innocence, reparation and compensation to victims are found in both systems.

Challenges of codifying local/traditional Justice into national laws of Uganda.

Codification of local traditions is very important in many respects, in particular, the victims of the crimes committed by all parties in the Northern Uganda conflict(s).

The Ugandan rebel group the Lord's Resistance Army (LRA) and the government of Uganda signed a pact on accountability and reconciliation on June 29 ,2007, The issue of accountability for crime committed during the 21 year old conflict had been sticky point on the peace negotiation agenda.

The agreement recommends alternative traditional justice and many people in Uganda have seen it as attempt to shield the four top LRA commanders from prosecution by the International Criminal Court (ICC) for war crimes and the crime against humanity.

"Accountability mechanisms shall be implemented through the adapted legal framework in Uganda. Legislation shall introduce a regime of alternative penalties and sanctions which shall apply, and replace existing penalties, with respect to serious crimes and human rights violations committed by non-state actors in the course of the conflict" The agreement reads in part⁵³.

However the introduction of and use of traditional justice mechanisms will need codification of the various traditions and norms of the people affected by the war.

One of the major challenges to codifying traditional justice mechanisms is the fact that traditional justice practices may conflict with provisions of the Constitution of Uganda, other existing legislation especially criminal law and procedure and with international accepted standards of justice as contained in the various international human rights instruments Uganda has ratified.

The constitutional test

The constitution provides that the "Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda"⁵⁴. *Article 2(2)* further provides that if any other law or any custom is inconsistent with any of the

⁵³ See clause 4.4 of the Agreement.

⁵⁴ *Article 2(1)* of the 1995 Constitution of the Republic of Uganda.

provisions of the Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void⁵⁵.

The constitution therefore recognises other laws and customs but such traditions or norms must not be contrary to its provision.

Further the Judicature Act⁵⁶ provides that customary law shall be applicable in courts of law only if it is not repugnant to justice, morality and good conscience. This means therefore that for any traditional norm or custom to be codified and enforced by the courts, it must not be repugnant to justice, morality and good conscience.

The other relevant laws that should be looked at before venturing into the prospect of codifying traditional justice systems include the Penal Code⁵⁷, Trial on Indictment Act, Anti Terrorism Act, the UPDF Act⁵⁸ Criminal Procedure Code Act as well as the International Treaties to which Uganda is signatory.

The question now rises on whether traditional justice practices are in conformity with our constitution and other relevant laws.

Most traditional justice practices are male dominated. There is little or no participation at all of women in the process. This is despite the fact the women and children constitute the greatest number of victims in armed situations.

It must be remembered that the 1995 Uganda Constitution prohibits all forms of discrimination against women and this expressly applies to cultural and tradition practices⁵⁹. It is submitted that in as far as traditional justice mechanisms do not permit the participation of women they may be declared null and void.

Other provisions of the constitution that may be contravened include Art.33 (6) which provides that laws, cultures ,customs and traditions which are against the dignity, welfare or interests of women or which undermine their status are prohibited by the constitution.

Diversity of traditions

It will be a great challenge to codify the various traditional justice mechanisms of all the ethnic groups affected by the war into one set of law.

Research carried out by UCICC shows that there are a number of similarities between the various traditional justice practices in the north and eastern parts of Uganda but there also exist a great number of differences.

Related to that will be the important question on whether such a law will be applicable to only the war affected areas or the entire country.

⁵⁵ Ibid.

⁵⁶ Cap 13 vol 2 Laws of Uganda.

⁵⁷ Cap 116 vol 6 Laws of Uganda.

⁵⁸ Cap 307 vol 12 law of Uganda.

⁵⁹ See Article 33 of the 1995 Uganda Constitution.

Forgotten Traditions

During the research UCICC carried out on Traditional Justice mechanisms in five parts of the country, it was observed that many of the elders (who are the custodians of traditions) disagreed and did not remember many of the practices. The situation is worsened by the fact that not much has been documented about traditional justice mechanisms.

Traditional justice mechanisms have also largely not been in use since post colonial Uganda and greatly suffered a set back when President Obote abolished kingdoms.

Financial implications

The codification of law involves a great deal of research and consultation. However Uganda has been relying on donor aid since her independence and may need to appeal for more aid in order to pass a good law that is enforceable.

It is also imperative to note that the implementation of such a law will cost a lot of money as trials may go on for many years especially if victims are allowed to actively participate as envisaged by the agreement.

Trained Human Resource

The enforcement of such a law will require persons schooled in international law, domestic criminal law and procedure and who are alive to the various traditional justice mechanisms in the war affected area of the country. This is a challenge in as far as the Ugandan judiciary is currently over strained with a backlog of thousands of cases and with great understaffing as some sitting judges like Justice Julia Ssebutinde are currently on International duty.

Other minor Challenges

Part III of the Juba documents, on accountability and justice, and it seems to have an absence of clarity on what the Government intends to do.

On one side, the Government position supports the ICC, as long as it deals with the most serious crimes committed after 1 July 2002, which - according to the Prosecutor of the ICC - appear to have been committed by the LRA forces, and not by the Government forces.

On the other, there is an obligation under international law to investigate and prosecute (or alternatively extradite to a third country capable of doing so) the individuals accused of having committed genocide, crimes against humanity and/or war crimes. This obligation stems from the Nuremberg principles of 1945 and was consolidated with the practise of States and International Organisations in the post Cold-War era.

National Laws may or may not codify traditional justice procedures, but it would be preferable that National Laws would recognize certain "effects" of Local/traditional justice procedures (e.g. confession of atrocities would equate to an admission of guilt etc.)

National criminal laws can be designed to meet certain criminal justice policy goals: the most traditional one is retribution or punishment of the culprit, who is presumed innocent until proven guilty by an independent Court of law. Retribution is coupled, in modern systems, with the criminal policy goals of special prevention and general prevention (special prevention = to avoid that a perpetrator commits crimes again; general prevention to dissuade the other persons in the same society from committing the crimes committed by the perpetrator).

A wave of reforms of the criminal justice systems that started with the human rights movement of the 1940ies/1950ies brought about another policy goal, namely, the rehabilitation of the convicted person. This criminal justice policy goal may be closer to the community-oriented approach of some African cultures. As far as I know (my cultural background is limited by the studies that I pursued), the doctrine of the rehabilitation of the convicted persons found its inspiration in philosophers of the era of the enlightenment (e.g. Cesare Beccaria) and in the humanistic culture of the Catholic Church (the social doctrine of the church) or of other Christian churches. This approach focussed more on the penalty-sanction aspect of Criminal Law rather than on the substantive (incriminations) or procedural aspects of the Law, and its main added value has been the reform of the penitentiary system, i.e. making prisons more humane and more geared towards the re-education of criminals, who "should spend the time in detention to prepare themselves to the re-insertion into society".

Restorative justice, which focuses mainly on the rehabilitation of the victims, is a newer concept and stems from the victims rights movement of the 1970ies.

In conclusion, it is not easy to answer all these questions like , but it is clear that Uganda may want to make use of all these approaches to criminal justice in order to fulfil the goals of peace and stabilisation (which passes also through to the prevention of crimes), the goal of rehabilitation of the perpetrators (whenever possible: a good approach for all the middle and low level ranks of the LRA and the UPDF involved in atrocities), as well as the goal of reparations to victims, who are the only persons entitled to forgive or not forgive. [And, as you know, child-soldiers and even former child-soldiers are, in my view, victims, as they acted as a consequence of their manipulation by their enslavers like Kony who should be held responsible for all criminal conduct that the child-soldiers committed under his control. And the ICC charges against Kony are very well written on this crucial issue of the crime against humanity of enslavement, which is in my view the characterising feature of basically all atrocities carried out by the LRA].

As a matter of fact, the fact that only victims shall be entitled to forgive is the single major problem of the traditional justice an equation. As far as I understand, in the traditional justice ritual, the community forgives the perpetrator on the basis of his confession (and it is not really clear how detailed the confession would actually be). But, if individual victims do not agree with the power exercised by the community leader, or if the will/consent of victims is coerced by the existing power-structure and the conditions of extreme poverty in which they live, I do not believe that these leaders should have authority/possess legitimacy to forgive.

We would like to be associated with the views of: Thomas Harlacher, Francis Xavier Okot, Caroline Aloyo Mychelle Bathazard and Ronald Atkinson, authors of the book: traditional ways of coping in Acholi. Cultural provisions for reconciliation and healing in war, who believe that “ people looking for ways to overcome their suffering typically request and practice traditional approaches alongside other approaches..., the use of multiple coping strategies reflects and reinforces the fundamental reality that Acholi society (like all societies is both complex and in a continuous process of change. Therefore, a variety of options needs to be available to cater for the variety of needs of people who seek help and healing. Traditional approaches should be seen as one avenue of help and healing among others, rather than used as an argument to disqualify other potentially helpful approaches”⁶⁰

Our position is that forgiveness should not be ruled out from the toolbox of justice and reconciliation: however, how is it possible to forgive if the truth is not fully disclosed? If justice is not affirmed through legitimate judgements, and if remedies are not made available to the victims? It may be true that there can be no peace without some degree of forgiveness, but no forgiveness is possible without acceptable justice. And those who have to accept it are the victims.

⁶⁰ Traditional ways of Coping in Acholi, Cultural provisions for reconciliation and healing from War: Thomas Harlacher Francis Xavier Okot Caroline Aloyo Obonyo Mychelle Bathazard and Ronald Atkinson.