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RETHINKING TRANSITIONAL JUSTICE IN NORTHERN UGANDA

JESSICA ANDERSON

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Preface

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I am in Uganda, a country on the cusp of resolving a brutal and unrelenting civil war, and for the past month I have been interviewing politicians, academics, NGO's, and war-affected men and women. My goal is to understand how they envision post-conflict justice, with a focus on Northern civilians who have been displaced by the conflict.

My translator guides me into a camp on the outskirts of Gulu Town on the back of his boda-boda, bringing me to an internally displaced persons (IDP) settlement in Northern Uganda. On this rain-soaked summer morning, I find a dozen men and women spread out on mats and rickety eucalyptus stools looking at me expectantly. In spite of the butterflies in my stomach, my first interview begins. It is with Melie, a young mother of seven who has lived in Palenga camp since 1996, after being forcibly displaced by the Ugandan People's Defence Force (UPDF), the Ugandan army. Melie is soft-spoken and shy, cradling a sleeping girl in her arms while another baby is strapped to her back and wailing unapologetically. As she bounces her newborn son into a soft whimper, I ask Melie what a normal day is like for her in the camp. She replies:

In the evenings, when I go to bathe, I start to worry. They can burn you while you're sleeping. 'When are we going to get out?' you ask. 'Will it ever change? Am I going to be here forever?' These are the questions that haunt you and don't let you sleep. When it reaches morning, you need to ask for the nearest land to cultivate. There isn't enough to eat and the food rations aren't enough. We need to cultivate. After the field, we get water, firewood, cook the meals, and look after the children. Once the evening comes, I just start to worry again.¹

Melie has not been abducted or mutilated. She hasn't lost any close family members, and she does not fall into any of the "extremely vulnerable" categories that have become so fashionable among humanitarian organizations today. Melie is one Acholi woman, among the 1.7 million displaced in Northern Uganda, and she lives in a state of perpetual fear and deprivation in Palenga. With the simple description of her day, I learned that suffering is pervasive here, even in the absence of physical wounds.

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Through Melie I discovered the importance of thinking about more subtle violence lying below the conflict radar. These structural forms of violence and insecurity are not being addressed in the conflict zone, despite the fact that nearly everyone in Northern Uganda is affected. Since the level of impact is broad, silent, and pervasive, it is more difficult to tackle and is often ignored. It does not seem as if these difficulties should necessarily pave the way to paralysis; instead, more attention should be paid to the intricacies of violence. For a woman like Melie, deprivation and the chronic threat of physical violence create a steady state of insecurity. Daily life is focused on surviving instead of thriving, and so Melie focuses her attention on the incremental – on waking up in the morning and staying alive – instead of planning for her future. She is forced to compartmentalize her life, and focus on making it day by day in the terrible conditions of IDP camps.

The questions that constantly turned over and over again in my mind while in the camps were: What exactly could justice be in this context? How can one begin to compensate for the insecurity and want experienced by the Melies of Northern Uganda? As I discovered the many ways that violence impacts the lives of Acholis in Northern Uganda, I began to explore the other subtle, structural factors that influenced the way people lived, and how they discussed concepts of justice. Every interaction with men and women like Melie revealed that local voices are often omitted from the discourse; as a result, their desires for justice remain unnoticed as well. Any effort to restore a sense of normalcy to IDPs requires a close look at how local actors imagine justice, and how this conflicts with national and international conceptions of transitional justice.

Historical Background

Under British rule, Southern Uganda was considered an economic powerhouse while Northerners were pigeonholed as either warriors or farmers. The Southern perception of a militarized North eventually became reality. By the outbreak of World War II, more Acholi men were serving in the army than any other ethnic group in Uganda. Colonial rule ended and Northerner Milton Obote assumed power in 1960, relying heavily on the Northerner-dominant army to maintain his rule of Uganda. Southerner Idi Amin launched a military coup against Obote in 1971, and his rule was marked by gross human rights abuses, especially against supporters of Obote. Amin was then overthrown in 1979. Milton Obote returned to power in 1979. In 1985, Yoweri Museveni began a guerrilla war and his National Resistance Army assumed power and he assumed the presidency of Uganda in January 1986.

Upon Museveni's accession, Alice Lakwena launched the Holy Spirit Movement (HSM) as a religious response to the political tensions and widespread discontent with Museveni between the Acholi and other Northern ethnic groups. Lakwena's alleged cousin, Joseph Kony, assumed control of the military movement in 1988. Kony currently leads what is now known as The Lord's Resistance Army (LRA), a rebel guerrilla army operating mainly in

Northern Uganda, the Democratic Republic of the Congo, and Southern Sudan.³ Support for the LRA from Lakwena's supporters dwindled as violence increased, and the LRA began resorting to the abduction of men and women from their homes in order to fill the rebe ranks. The government continued with its military response to the civil war, and in 1996 it began creating 'protected villages' into which some Northern Ugandans fled voluntarily, and others were forcibly displaced by the UPDF. This forcible displacement further deepened the antagonistic attitude that many Acholi have toward the government, especially as the population faced continued attacks by the LRA, despite living in "protected" camps. In March 2002, the UPDF launched Operation Iron Fist against the LRA, which led to more destruction and devastation than ever was seen before in the conflict. As a result, President Museveni referred the LRA to the International Criminal Court (ICC) as a terrorist group guilty of international war crimes in December 2003.

The Rule of Law Within The Current Crisis

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The Government of Uganda (GoU) has maintained a military strategy for tackling the Lord's Resistance Army, creating a scenario in which civilians face threats from both LRA and UPDF forces. The intent of the IDP camps was to shield Northern Ugandans from LRA attacks, but massive levels of displacement have created new and potentially more serious protection problems for IDPs—with the perpetrators often being the very UPDF forces sent to protect the displaced from the LRA insurgency. In a recent study, IDPs reported that UPDF mobile units are the most notorious for committing violent abuses against civilians. These abuses include, but are not limited to: "attacking civilians pursuing livelihood activities in the cleared zones, raping civilian women pursuing livelihood activities, assaulting and raping civilians found in breach of curfews, killing civilians in camps arising from disputes, and torture during detention."4 As militarization continues, the rule of law is conspicuously absent from the North, and the disconnect between the government and the North is even wider in light of the UPDF's behavior. Even though the aim of transitional justice is to seek accountability for conflict atrocities, the GoU refuses to admit its role in the civil war.

In lieu of a legitimate rule of law process, the UPDF has responded by creating local militias and local defense units (LDU) to fill the vacuum of order and control in the IDP camps. This civilian protection strategy has flooded the region with small arms, creating local armies with no formal accountability in which, "They themselves prey on the vulnerable and are exploited by the powerful." 5 Salary payments often never arrive, and the militias exert their power by stealing food and goods from the community, especially from more vulnerable groups such as child-headed households and war orphans. Meanwhile, camps containing tens of thousands of people do not have a single police officer to monitor, investigate, or prosecute crimes. According to estimates, the total population deprived of police easily exceeds one million. The "protection strategy," an irresponsible substitute for proper policing forces, instead puts the burden of security on civilians who are potentially raising arms against their own children, brothers, sisters, and friends in the LRA

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ranks. The current militias were also hurriedly recruited, poorly screened, and incompletely trained. Many young men feel frustrated with the idleness and deprivation they face in the camps and join the militia as a response. The North is confronted with a situation in which everyone faces a steady state of insecurity and fear as thousands of weapons are distributed to groups of displaced, uneducated, unemployed men who have little to lose.

The justice system in Northern Uganda is similarly dysfunctional. According to a Ugandan researcher in Gulu:

The criminal justice system right now is terrible. There aren't enough judges, there isn't enough infrastructure. If you want to create security post-conflict, you need these elements! Right now there are 4,000 cases of sexual violence in Gulu waiting to go forward, and I just don't think they ever will.

As he describes, there is no relief from the insecurity in Northern Uganda. Internally displaced persons are confronted with the security threat of the militias, the UPDF soldiers, and the LRA rebels, and live with a virtually collapsed court structure. "In Northern Uganda, where the protective system provided by the state has failed, it is the civilians themselves who are forced to find ways of 'coping' with their situation." The state continues to deny or underplay the negative impact of its own forces, undermining the pain caused by UPDF soldiers and further blocking trust in the state.

One of the most embedded and lingering effects of the humanitarian crisis that will inevitably carry over into the peace process is the Acholis' extreme mistrust of their government. A professor of Peace and Conflict at Makerere University described his conception of transitional justice: "The long-term goals are good governance, respect of human rights, respect of the constitution. But right now there's a lack of respect for the state. We need participatory democracy and national unity."8 For Professor Nkabahona, transitional justice is the rule of law, and yet the North-South disconnect is such that by having a perceived 'other' for the Acholis to resent, their own identity and sense of alienation has become more clearly defined over the course of the conflict. For many Acholis, the real aims of the GoU's inaction are perceived to be revenge against Northerners for past crimes and ensuring that the North does not pose any political challenge to the current national power structure."9 Acholi indignity at such an agenda creates a social situation in which the government is seen as an obstacle to peace and far removed from the protective role it should play for its citizens.

As for national trials as a rule-of-law-promoting transitional justice measure, a common opinion echoed in Gulu and Kampala was: "It will look like the Government of Uganda is essentially trying the Acholi people – tribalizing the conflict. As if all that we have are Acholis killing Acholis."10 Acholis are thus often unwilling to trust the government to hold national trials, which is a common reaction when, "citizens view legal institutions

skeptically because of corruption, systematic bias, HOWEVER, BY association with abusive past regimes."11 As a Kampalabased NGO director candidly informed me, "Kampala is three hours away from Gulu. Here we spend our nights in EXCLUSIVELY ON discos. But supposedly there is an official structure called Uganda."12 Such a disconnect, riddled with THE LRA. THE ICC IS biases and abuse, demonstrates the importance of nationally reforming police, court, and justice structures through a protracted and politically-willed process, which can also CANNOT ENFORCE constitute a form of transitional justice. However, this does not tackle the rule of law in the short-term, in a context where accountability structures are virtually nonexistent. ATROCITIES COMMITTED In light of a history of exclusion, minimal trust in state institutions, and diverse every day realities, short term rule BY THE UGANDAN STATE. of law measures such as trials will be difficult to implement successfully.

The International Criminal Court

As mentioned above, President Museveni asked the International Criminal Court to release indictments against the ICC in promoting the rule of law is thereby undermined Lord's Resistance Army in 2003, following the UPDF's fail- in the region. ure to stop the rebellion through military means. In light of national-level failure, the ICC presents an opportunity for the international community to hold the LRA respon- In addition to denying the UPDF's role in the conflict, the sible for mass violations of human rights and crimes against humanity. However, the methods of the ICC alienate many Northern Ugandans, who are put off by its "straightjacket few leaders accountable is often considered irrelevant in notion of justice, one sided and alien to Africa as it is."13

UPDF Impunity

Despite the ICC's status as an accountability mechanism, it does not necessarily resonate in a meaningful way with Acholis on the ground in Northern Uganda. "Real equality before the law requires courts that are strong and independent enough to enforce it."14 However, by focusing indictments exclusively on the LRA, the ICC is seen as biased and cannot enforce the law for crimes and atrocities committed by the Ugandan state. According to James Otto, director of are less individualistic and more focused on communities Human Rights Focus based in Gulu, "The ICC has dented its own image in not investigating the Ugandan government which has also committed atrocities."15 Beyond the

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strued as an attack against the Acholi people in the North. The ICC is thus considered illegitimate by many Acholis because it does not address the reality of their experience and many perceive it as a roadblock to the peace process. By failing to address the role of the UPDF, the ICC allows for no real equality before the law, and the success of the

Root Causes and the Retributive

ICC practices retributive justice, or "Western justice." In the North, the ICC's narrow mandate of holding only a addressing the root causes of the civil war. According to a Kampala-based NGO director, "The ICC is a seed for more conflict. At what point are we going to address the historical contexts of these leaders? The ICC is a quick fix to a very complicated problem."16 Just as Uganda is limited by a complex social, political and economic web, so are the decisions of its leaders. Most IDPs are more interested in addressing the deeper, underlying causes of the conflict than simply bringing top LRA leaders to trial. International justice "displaces alternative visions of social justice that and responsibilities."17 The ICC fails to look holistically at the economic marginalization, ethnic prejudices, and political violence that have pervaded Northern Uganda's ICC's image, denial of the crimes of the UPDF is often con- history. A legal specialist in Gulu lamented the "magic

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bullet" approach of the ICC, and its potential to falsely convince people that an answer has been found. "Uganda as a concept has always interfered with people's lives. Wars after wars after wars. If we think that a couple rebels on trial will heal this problem we are deceiving ourselves." 18

Peace as Justice

It is apparent that a deeper look at the conflict – and more than "a couple rebels on trial" – is needed to pursue transitional justice and reestablish the rule of law in Northern Uganda. In particular, emphasizing physical violence is problematic when 1.7 million people have been displaced from their homes and forced to live in devastating conditions of material deprivation without health care or sanitation. According to a researcher based in Kampala, "To the extent that people think it's Kony and Museveni fighting this war, they're mistaken. It's millions of IDPs, abductees, and local militias."19 A system of justice that focuses on individual accountability not only misses the root causes of the conflict, but also fails to account for the importance locals place on ending to the conflict at any cost, "The desire for long-term stability outweighs the demands of modern justice as articulated in international law."20 The Kampala-based women's organization NAWOU commented on the need for security, "Schools, hospitals, better water, that's what the other districts were asking for. In the North, they said they wanted peace. At first we thought that they didn't want to cooperate, or didn't understand. But they said to us, 'How can you ask us what we need when we can't move twenty meters?" Stakeholders in the quest for accountability at the international level have underestimated the entire notion of peace as justice and the importance that IDPs place on a lasting end to the conflict.

By assuming that the rule of law can be established through such a narrow interpretation of accountability, the ICC ignores the complexity of the conflict. The ICC is considered problematic for both pragmatic and historical reasons. As a displaced woman in Koro camp, Gulu said, "I don't see how the ICC is going to benefit me. Is it going to build my house? Or give me seeds?"21 Clearly, there are many issues in Uganda that run deeper than anything the ICC proposes to solve. In light of these shortcomings, the role of the ICC should be framed specifically and humbly as upholding international justice and accountability, but not necessarily as promoting justice or the rule of law on the ground in Northern Uganda. Furthermore, the ICC should be more conscious of local conceptions of justice and the real purpose of the institution's work. After all, "are these international judgments really for the survivors of war and genocide, or are they for some more lofty, albeit important cause of 'international justice'?"22 The realities on the ground seem to indicate the latter - this is not necessarily wrong, but it must be widely understood in the region, and international justice must not be billed as something that it is not. Now, the task is to think about how justice and the rule of law should look in the short term, if national and international measures have been found inadequate.

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"Are these international judgments really for the survivors of war and genocide, or are they for some more lofty, albeit important cause of 'international justice'?"

Mato Oput

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Jeroen de Zeeuw highlights the key pitfalls of both the ICC and GoU in approaching the rule of law and justice, "Post-war communities need to define and take ownership of the process of justice... Individuals and groups crave respect, acknowledgement, and affirmation. They want to be involved in decisions that affect their lives, and they resent being treated as the object of some other body's plans," 23 In resistance to being treated as "the object of some other body's plans," 3 In resistance to being treated as "the object of some other body's plans," support for the widespread use of the Acholi justice mechanism of Mato Oput has increased steadily in the region. The main objective of the Mato Oput ritual is to reintegrate a perpetrator (historically, someone who murdered a person from another clan) into the community with their victim, through a process of "establishing truth, confession, reparation, repentance, and forgiveness." 24 It is a way for locals to exercise their agency and control over the process, which is critical for the legitimacy of any justice practice. "Although law and order might appear to be a universal good, it also depends heavily on citizens" acceptance of laws and on the government's legitimacy to make laws that bind them." 25 This disconnect between law and local legitimacy was evident in my interview with a New Vision journalist:

Does the ICC really bring peace? My nose has been cut off but I'm the one calling for Mato Oput. It is me who has been tortured. But we just want these children to grow well. We

know culturally what to do with these people when they're brought back home. Let them all come back and we will handle them. 26

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Kleinfeld supports this sort of flexibility and claims that whether the restraining powers are legal, moral or constitutional, is unimportant. Rather, the effectiveness of the process is what matters. If Mato Oput is effective in achieving a sense of justice, and resonates with war-affected people on the ground, then it should be supported as such.

There is a willingness in the region for the process of Mato Oput to adapt to the specific context of the war. "Dialoguing is the key to the restoration of broken communities. Yes, Mato Oput. But it often doesn't matter what you do. Dialoguing is key, though. Northern ethnicities are communal in nature. We need to interact, to talk with each other." \$27 Sally Engle Merry makes a parallel observation, writing that "local cultural practices are far more fluid and open to change than the essentialized model suggests." \$28 Religious and cultural leaders have discussed this fluidity, and many support Mato Oput's restorative conceptions of justice in a broader sense, where "restoring perpetrators back into harmony with the values of the community is one component of justice." \$29 From these observations it is apparent that moral values and the quest for justice is still the primary aim, but that the process can take many, varied forms.

It appears that the underlying values of Mato Oput – not every detail of the historical ritual – are most valuable in Northern Uganda. As Archbishop Odama claims, "It's restorative healing for both sides, and saving. We feel it's better than just going into court. The purpose of Mato Oput is conciliatory. It will stop the crime from being repeated and this will never happen again." The rule of law is thus promoted in keeping with a history of the practice, while restoring the community's relationships in a way that may be more valuable in the aftermath of violent conflict. Furthermore, the communal nature of the practice is seen as a form of accountability in itself, since there is consensus in decision-making and outcomes that are distinct from the seemingly arbitrary nature of trials. "Unlike the current legal system, the perpetrator is charged for what he has done and confesses. If you refuse that you have done anything, you would lose your place in society. It's not just lawyers playing their cards." Mato Oput is positioned to be an inclusive justice process that provides local-level accountability and avoids the skepticism that Northerners have towards lawyers and the national court structures.

While current international and national mechanisms are lacking on the ground, there is evidence that locals in Northern Uganda are enthusiastic about supporting Mato Oput as a justice mechanism. Mato Oput addresses issues of restoration and unification of the community and is rooted in a historical process that resonates in a more meaningful way with locals than national court processes or the ICC. It also allows for flexibility in the justice process that is absent from these two mechanisms. Furthermore, as a locally owned process, Mato Oput is less likely to fall prey to the feelings of alienation and distrust that are currently ubiquitous in Northern Uganda. By promoting local agency, local desires

and values become central to short-term post-conflict stabilization. With Mato Oput, those who have lived and endured through Uganda's civil war have the opportunity to provide a more nuanced and honest look at the conflict, as well as post-conflict justice.

Mato Oput is not a magic bullet for reestablishing the rule of law in Northern Uganda. Rather, it is the sole justice and accountability measure that is widely understood at the local level, and of which there is no legacy of mistrust or abuse. There is still a need for international accountability, as well as a stable system of policing, courts, and justice structures at the national level. However, these structures may need to be built gradually. Moreover, the parameters of each mechanism should be properly understood and not expected to do more work than they are capable of delivering. Mato Oput has the potential to provide accountability and security in a setting where this has been lacking for a long time. By emphasizing local agency, those disenfranchised from the war can begin to recover from the conflict on their own terms, while other aspects of justice are addressed over time. In order to promote justice and stability – the aims of the rule of law – we need to consider both how to address past actions as well as how to move forward. Mato Oput fills a crucial role within this progression, but it will be meaningless if not surrounded by parallel measures of transitional justice and accountability for both past crimes and future offenses in Uganda.

Conclusions

The limitations of formal justice are most vivid when there are many 'dirty hands,' as there are in civil conflicts like Northern Uganda. Justice, like beauty, is in the eye of the beholder and can be interpreted in a variety of ways. It can legitimately take many forms.

Justice, in terms of both past acts and future stability, has multiple roles, meanings, and functions in society. It is a diverse term: for many IDPs in Northern Uganda, post-conflict justice is the ability to live free of extreme material deprivation and outside a state of perpetual fear. Justice can also mean the knowledge that the conflict will end, giving hope for a better future. While the ICC has a role to play, it should be understood narrowly as a means of accountability for the perpetrators of crimes against humanity. The burden of creating institutions and mechanisms for justice lies with the Ugandan state, but when the state is incapable of establishing the rule of law - as is the case currently in Northern Uganda – local mechanisms can provide some form of accountability and justice in the region. With a forward-looking approach, rule of law and transitional justice can complement each other by reflecting on the past and promoting security in the future. In tandem with a realistic acceptance of the ICC's role, the national police forces and court system should be bolstered and improved as a form of long-term transitional justice. But in the shorter term, local practices can provide a response that both holds meaning and fulfills the aims of rule of law and transitional justice. With this conclusion, I suggest that local practices should be adopted slowly, critically, with reservation, and with the engagement of grassroots organizations and formerly displaced persons.

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Northern Ugandans have a strong sense of what justice looks like. For many, it includes trials, but it can also mean peace, freedom from the terror of the IDP camps, and an end to the humiliation of eating World Food Programme handouts for over a decade. Their goal is to regain some sense of normalcy in their daily lives and to have faith in the system from which they seek justice.

Finally, in order to successfully transition from violent conflict, it is crucial to give war survivors a stake in defining justice and owning the justice process. Northern Ugandans have a strong sense of what justice looks like. For many, it includes trials, but it can also mean peace, freedom from the terror of the IDP camps, and an end to the humiliation of eating World Food Programme handouts for over a decade. Their goal is to regain some sense of normalcy in their daily lives and to have faith in the system from which they seek justice. While international and national actors have failed in this regard, local justice practices resonate with many people. If justice is not owned by the people who suffered injustice, who is it for and what is its purpose? As the resolution of Uganda's civil war remains in limbo, it is essential to solicit the post-conflict aspirations and imaginations of the war-affected. What do they dream of? What is their conception of justice, and how does this fit into national and international frameworks? Instead of discounting local ideas, which are focused on peace, security, and ending deprivation, these ideas should be embraced. Justice is in the eye of the beholder, but more attention must be paid to whose justice is taking priority in Uganda. Local voices can ultimately contribute to a more nuanced idea of justice, as well as to a more inclusive and holistic post-conflict transition. Promoting local agency paves the way for an enduring end to conflict by addressing root causes and local needs, immediate concerns and the long-term future of the Ugandan state.

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