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Achieving Justice Through the International Criminal Court in Northern Uganda: Is Indigenous/Restorative Justice a Better Approach?

Terry Beitzel[1] and Tammy Castle[1]

Abstract

The self-referral by the Ugandan government for the situation concerning the Lord's Resistance Army/Movement in Northern Uganda triggered the first referral for the International Criminal Court (ICC). The purpose of this article was to examine the dimensions of justice, and analyze whether the ICC's role best serves the needs of the community in Northern Uganda. More specifically, this study investigates several guiding orientations of the ICC, such as the rule of complementarity and the increased focus on victims, and asserts that international third-party actors must consider whether retributive/punitive approaches can deliver justice. Restorative justice is explored as an alternative vision of justice, and one that is already present and practiced by the Acholi people. Given the complexity of issues facing postconflict societies, as well as the strengths of restorative justice to heal the community, the authors argue that traditional or indigenous forms of justice represent the best approach for obtaining justice for victims.

Keywords

comparative crime, justice, North Africa, court, law

In June 2002, when the Rome Statute of the International Criminal Court (ICC) went into effect, the then United Nations Secretary—General Kofi Annan proclaimed:

> The long-held dream of a permanent International Criminal Court (ICC) is nearing reality. Our hope is that, by punishing the guilty, the ICC will bring some comfort to the surviving victims and to the communities that have been targeted. More important, we hope it will deter future war criminals, and bring

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> nearer the day when no ruler, no State, no junta and no army anywhere will be able to abuse human rights with impunity. (http://www.un.org/ffd/pressrel/19b.htm)

Ten years later, the world's first permanent court is at the crossroads of trying to establish whether the ICC can bring justice to perpetrators of war crimes, crimes against humanity, genocide, and possibly crimes of aggression when national courts are unable or unwilling to do so. The court was set up for two primary reasons: first, to hold accountable, on internationally agreed standards, those individuals (not groups) in leadership positions who commit horrendous crimes against large groups of people and, second, to have a court immune from political interference (see Schabas, 2004). The purpose of this article is to assess whether the ICC can be deemed adequate and accurate to deal with the transition from violence to peaceful politics in the context of Northern Uganda. This contribution offers a critique of the ICC's involvement and the outline of an alternative framework—restorative justice—for achieving justice in which Ugandans are a crucial and active resource, and not simply passive recipients of international norms and external third-party interventions.

This article addresses several issues that are at the core of central guiding orientations of the ICC such as the principle of complementarity and an increased focus on victims—and the role of the ICC in larger issues of justice in violence-torn societies. It is not the purpose of this article to address neither the intricacies of international law nor specific details of events "on the ground" in Northern Uganda. Rather, the focus here is on what is meant by "justice" and, more specifically, should the discussion remain in the polemical debate between justice and peace or can a better position be articulated, with reference to who is involved in "bringing" or "making" justice? In engaging this question, the study first examines the role of the ICC to date in the situation in Northern Uganda because this was the first case of a self-referral by a state to the ICC. Further, this article highlights ongoing concerns with the ICC's ability to pursue international justice, while also reexamining, briefly, the different types of justice assumptions and findings. The authors propose that a "problem-solving" approach—questioning the general assumptions of justice by judiciary and looking for alternative forms of seeking justice—is the better approach to take in moving from violence to peaceful politics in Northern Uganda.

This exploration then provides an overview of restorative justice as understood by Western advocates and practitioners, with empirical evidence that restorative justice is more effective than retributive justice (Sherman & Strang, 2007). The concluding assertions argue that restorative justice—by involving the local community to address the needs of victims and the responsibilities of the offender and the community (1) is better able to respond comprehensively to the justice requirements, (2) is compatible with peacebuilding in war-torn societies, and (3) and dissolves the dichotomy often presumed between justice and peace. The resulting proposition is that a restorative justice approach represents a more adequate theory of justice and has considerably more support from the local populations than do the retributive–punitive–judicial approaches currently informing international attempts at dealing with the tensions between justice and peace for violence-torn societies. The ICC is centrally located in this debate as they seek to compliment domestic courts by helping to deliver justice.

The ICC and Northern Uganda

The ICC was established in July 1998 when the U.N. Security Council adopted the Rome Statute of the ICC. With the court seat in The Hague, Netherlands, the court officially began operations in 2002 and the judges and prosecutors took office in 2003. To date, nearly 100 states are parties to the statute, of which 24 are African states, including Uganda. One goal of the court is to end impunity for the most serious human rights crimes (Schabas, 2004).

The ICC began issuing arrest warrants in 2005 for crimes of genocide, war crimes, and crimes against humanity. The court was to serve as a court of last resort when national courts had failed to bring cases to trial. The ICC cannot prosecute crimes retroactively; thus, only crimes committed after 2002 can be brought before the court. Referrals to the court can be made in one of the three ways: referral by a state party; referral by the Court of the Security Council; and by authorization from the Pretrial Chamber of the ICC (Nouwen & Werner, 2010).

The Republic of Uganda became the first state party to refer a case to the ICC's Office of the Prosecutor (OTP) in 2003, when they submitted a self-referral for the situation involving the Lord's Resistance Army/Movement (LRA/M; Nouwen & Werner, 2010). The LRA/M was created by Joseph Kony in 1988, with aims to overthrow the Museveni regime and take control of the country (Apuuli, 2011). However, instead of spreading democracy the LRA/M participated in gross human rights violations as children were abducted for the purpose of staffing the army (boys) and sexual slavery (girls; Ssenyonjo, 2007). Furthermore, the LRA/M has been accused of using abducted children for labor, as well as human shields during conflict (Apuuli, 2011), and has been designated as a terrorist organization by the United States and government of Uganda (Ssenyonjo, 2007).

The self-referral by President Museveni came after over a decade of failed military interventions and peace negotiations, in addition to an escalating humanitarian crisis (Nouwen & Werner, 2010). In 2005, partly because of Uganda's early support of the court and subsequent self-referral, the ICC issued arrest warrants for Kony and four other senior leaders in the LRA/M. The effect of the five arrest warrants issued by the ICC has been much disputed both domestically and internationally. On one hand, the warrants helped to bring the LRA/M leaders to the negotiating table in 2006. Uganda was encouraged by the government of Southern Sudan (GOSS)—who had provided training and weaponry to the LRA/M—to negotiate in Southern Sudan's capital city of Juba for a peaceful settlement to the conflict (Ssenyonjo, 2007).

On the other hand, the issuance of warrants by the ICC has hindered the pursuit of peace. First, at the time of the referral, the International Court of Justice (ICJ) was considering whether the government of Uganda had "violated international law in its involvement in the eastern DRC" (Nouwen & Werner, 2010, p. 947). The Democratic Republic of Congo had made claims against the Ugandan government, and the ICJ was adjudicating. However, due to the cooperation of Uganda on the issue of the LRA/M no charges have been filed, or investigations opened, into whether or not government officials had committed crimes in the DRC. The lack of charges filed against possibly corrupt state actors harms the legitimacy of the Ugandan government and ongoing peace negotiations (Apuuli, 2011).

Second, the LRA/M leadership wanted the ICC proceedings to be dropped as a condition of peace. The Ugandan government obliged and offered "total amnesty" to all LRA/M combatants and leadership (Ssenyonjo, 2007, p. 363), partly based on the previous passing of the Amnesty Act (2000). The act was a collaborative effort between the Ugandan government and the Acholi Religious Leaders Peace Initiative (ARLPI), a civil society group that advocated peace and reconciliation in Northern Uganda (Apuuli, 2011). Because of the peace negotiations and promise of amnesty, the Ugandan government became unwilling to assist in the capture and arrest of Kony and other LRA/M leaders, especially considering they were being told by LRA/M leadership that the indictments were the only impediments to peace (Ssenyonjo, 2007).

The conflict with the ICC and the Amnesty Act was detailed in the "ICC Statement" (July 28, 2004) position paper by the Refugee Law Project (RLP) at Makerere University. The authors stated that the ICC investigation is positive in principle but "ill conceived" in reality, given the sociohistorical context of Uganda. Of particular concern is the "disjuncture between international conceptions of justice and local community traditions, values, and notions of justice" (p. 1). The paper concludes that the foreseen implications are continued violence, weakening of the existing Amnesty Act, and undermining of local conflict resolution mechanisms, and loss of peaceful opportunities for resolving the violent conflict (p. 6).

One of the concerns was that the indictments provided incentives for the LRA/M to continue fighting. Second, the ICC indictments undermine the Amnesty Act which is supported by those people directly affected because the Amnesty Act is based on principles similar to their own traditional values regarding justice and conflict resolution (RLP Working Paper No. 11, February 2004). Support had increased for utilizing the traditional Acholi method of *Mato Oput*[1] for reconciliation, rather than focus on the arrest warrants of the ICC (Ssenyonjo, 2007).

At issue is the interpretation and application of the principle of complementarity of the Rome Statute (Article 1). The article states that international conceptions of justice must complement national courts. Article 53 states that the investigation of the ICC must "serve the interests of justice." The principle of complementarity is the corner stone for the operation of the ICC because it organizes the functional relationship between domestic courts and the ICC. The concept of complementarity lies at the heart not only of the Rome statute of the ICC, it is in many respects the underlying paradigm of international criminal justice as a whole (Zeidy, 2008). When the principle of complementarity is combined with the focus of the ICC on the victims of mass human rights violations, the ICC may need to exercise further flexibility since the prosecutor has opted for "a collaborative approach vis-à-vis the international community in general, including states, international organizations and civil society, and in particular towards the states in which international crimes have allegedly been committed" (Friman, 2004, p. 20).

The RLP raises two important questions regarding the rule of complementarity: first, do national rules of criminal justice and local community rules of criminal justice complement each other? second, is complementarity as understood by the ICC intended to include the norms and values of local traditional communities (July 2004, p. 8)? The RLP correctly notes the paramount issue, "whose definition of justice" applies?

Defining Justice

Justice is a normative term and therefore can be described and contested in various ways (Brooks, 2008; Walzer, 1983). A key question in defining justice is whether it is measured in terms of starting points, processes, or outcomes. Justice can be described from numerous perspectives categorized in terms of primary focus: procedural, retributive, or distributive (Barry, 1989). Defining justice in *procedural* terms locates justice in the making and implementing of decisions, primarily around how decisions are made, and who is involved in decision making. Defining justice in retributive terms appeals to the notion that people deserve to be treated in the same way that they treat others and is retroactive in justifying punishment as a means to correct imbalances created by injustice. Distributive justice refers to the allocation of the costs and benefits of living in a social unit (Forst, 2002).

Three forms for distribution include allocation of costs and benefits according to needs, merit, or equality. Needs-based distribution uses the criteria of need for allocation of costs and benefits: those who need more receive more, those who need less receive less. Merit-based distribution uses the criteria of equity for the allocation of costs and benefits, relational to the contributions an individual makes. Equality-based distribution uses the criteria that everyone should get the same amount of cost and benefit for participating in a social system (Miller, 2005).

The above are traditional categories of justice and numerous nuances exist within and between these types. In terms of international actors and the orientation to justice, distributive justice plays a central role for advocates of development and poverty relief. Advocates for democracy and conflict resolution with diplomacy, mediation, and negotiation operate primarily from a procedural justice position. Finally, retributive justice plays a central role in legal proceedings with the advocates of international law, human rights, and war crimes adjudication (Forst, 2002; Miller, 2005). How we define justice matters since it provides orientations toward "who is responsible to do what" and suggests very different policy trajectories. Given the retributive–punitive approach echoed by

Table 1. Restorative Justice Framework (Zehr, 2002).

Retributive/criminal justice	Restorative justice
Crime is a violation of the law and the state	Crime is a violation of people and relationships
Violations create guilt	Violations create obligations
Justice requires the state to determine blame (guilt) and impose punishment (pain)	Justice involves victims, offenders, and community members in an effort to put things right
Central focus: Offenders get what they deserve	*Central focus:* Victim and community needs and offender responsibility for doing harm

the UN Secretary General, legal scholars, and human rights organizations, while little evidence seems to support this proclamation, it is imperative to reconsider or at least examine alternative frameworks of justice (Apuuli, 2011; Braithwaite, 2002; Cayley, 1998; Friman, 2004; Latimer, Dowden, & Muise, 2001).

Restorative Justice

A fourth form of justice, restorative, should be added to the general justice frameworks listed above because restorative justice represents an alternative approach to justice that is itself a ''problem-solving'' approach to justice. Zehr (1990) highlighted some of the ways in which restorative justice holds a unique position in the history of justice. First, restorative justice rarely if ever appears in current mainstream justice discussions, even though it is perhaps one of the oldest approaches to justice. While acknowledging that crime does involve violating laws of the state, restorative justice advocates argue, more importantly, that crime harms individual victims and communities. Victims and communities can be harmed either directly or indirectly. Restorative justice—by focusing on the needs of the victim, rather than exclusively on retribution against the offender—is not directed at imposing pain in return for an offense, but rather in a ''search for solutions which promote repair, reconciliation, and reassurance'' (Zehr, 1990, p. 181).

Zehr (2002) outlines the difference in orientation between retributive/criminal justice and restorative justice because ''many feel that the process of [retributive] justice deepens wounds and conflicts rather than contributing to healing or peace'' (p. 3). Restorative justice is based on a core set of principles that suggest an alternate set of guiding questions to provide an unconventional framework for thinking about wrongdoing. The following briefly contrasts the two approaches (p. 21).

In this inclusive, problem-solving approach, restorative justice is better situated than other approaches to justice to deal with reconciliation among victims and perpetrators.

The emerging empirical evidence on restorative justice supports the argument for more consideration of restorative approaches in violence-torn contexts, such as Northern Uganda (Kua, Longmire, & Cuvelier, 2010). Evidence suggests that restorative justice is more effective than retributive-punitive approaches (Sherman & Strang, 2007), works for serious and violent offenses (Braithwaite, 2002), is more likely to be viewed as fair by both the victim and the offender (Braithwaite, 2002; Latimer et al., 2001; Poulson, 2003), offers increased victim and offender satisfaction with a mediated as opposed to adjudicated process (Umbreit, 1993; Van Ness, 1993; Zehr, 1990), has aided in the declining rates of crime in several nations (Haley, 1996), and reduces attitudes of revenge and desire for retribution (Sherman & Strang, 2007). Restorative approaches provide a framework for parties—victims, offenders, and communities—to consider what is required to meet the needs of the parties and make a plan for achieving it. A restorative approach to justice, therefore, seems worthy of consideration for Northern Uganda and other conflict areas both from the perspective of international third-party actors and from local victims and communities.

Restorative Justice in Northern Uganda

While international support for retributive justice in the case of Northern Uganda appears to be mounting based on activist campaigns to find and punish Kony, a reflection on the role of punishment by sociologists and criminologists has led to disenchantment with the rehabilitative effects like reductions in offender recidivism within the dominant framework of existing retributive philosophy. Moreover, there is added skepticism over the deterrent effects of punishment, whether specific as aimed at the offender or general as aimed at the public, as an effective goal to pursue in punishment. This raises serious questions as to how far dominant, which often means Western, retributive models can actually serve to promote reconciliation and reintegration in the complicated context of new wars, since the current models express enthusiasm for incarceration and incapacitation (Zehr, 2002). In fact, The U.N. Office on Drugs and Crime recently produced a handbook on restorative justice programs to guide member states in the establishment and development of restorative justice programs involving criminal matters.

A task as complex as achieving justice in Northern Uganda requires serious critical evaluation in terms of the justice assumptions brought to bear "on the ground." Referencing Kofi Annan's quote used at the beginning of this article, it is imperative to interrogate what degree of certainty can be placed in the belief that "punishing the guilty" will "bring some comfort to the surviving victims" and "deter future war criminals?" This assumption hinges on the perception that "some comfort" contributes to transitioning from a violence-torn to a peaceful society and that punishment serves as both a general and specific deterrent. Paris (2004) argues that none of these reasons seems wholly adequate to legitimate third-party intervention. The international community, as third party, from this perspective, has a limited role to play. While important in terms of possibly ending violence through arrest of key individuals in command, their role in "bringing" justice to situations like that of Northern Uganda is overstated.

Restorative justice would offer two more conceptual distinctions for doing the work of justice than traditionally retributive approaches. It would change the "focus" of addressing crime to include what victims need and a look to the future, to create the kind of society desired. Zehr's (2002) particular focus concerning crime would allow for less focus on punishing offenders and more on addressing the needs of victims and the community. However, restorative justice would not necessarily provide an alternative to prison sentences. Incarceration for violent offenders who have committed crimes in the past and are likely to continue crime in the future may be necessary.

In cases involving mass human rights abuses directed by leaders, such as those for which the ICC issued arrest warrants in Northern Uganda, incarceration is appropriate in ensuring that the leaders should no longer be in a position to direct future atrocities. As Zehr (2002) maintains, we should not "lose those qualities which the legal system at its best represents: the rule of law, dues process, a deep regard for human rights, the orderly development of law" (p. 60). In addition, some scholars assert that the trials themselves help strengthen domestic rule of law in postconflict societies (Stromseth, 2009). For this reason, restorative justice should not necessarily be a replacement for the legal system in Uganda. In fact, in the more common retributive/criminal approach to wrongdoing, offenses are viewed ultimately as a violation of laws of the state. In contrast, a restorative approach would allow those dealing with the process in Northern Uganda to also look at wrongdoing as a violation against individuals, relationships, communities, and societies, who all are stakeholders (Zehr, 1990). Zehr (2002) refers to the core principle of restorative justice as based in one word, *respect*.

Restorative justice offers an alternative framework of performing justice that in Northern Uganda would be rooted in an alternative vision of justice that includes the victim and the community in the process of determining and achieving justice. Fully appreciated then, restorative justice is a theory of justice. It is concerned with what justice means and what it requires. It offers more than alternative

processes—more than a new path to the same destinations sought by existing national and international justice systems and institutions (Cayley, 1998; Johnstone, 2002; Wright, 1996).

Justice in a restorative understanding is concerned with responding to the harms to relationships related to, and resulting from, wrongdoing. This truth is perhaps nowhere as evident as in times of transition from violent conflict, especially given the complexities of the dynamics of victim–perpetrators, as with the case in Northern Uganda. This focus does not neglect what happened in the past, but, at the same time, is future oriented and directed toward what kind of future is desired. This is especially prescient given the fact of child soldiers in Northern Uganda. Are they victims, perpetrators, or both? What does justice demand in these situations? It is here that a restorative framework, by focusing on the context in which offenses occur, increases the role of the community in deciding what justice is in a given circumstance as defined by the people of Northern Uganda.

The context-dependent focus of a restorative approach to wrongdoing means that the local community is an integral ingredient in the analysis, creation, and resolution of social conflict (Galaway & Hudson, 1996). It is crucial, then, that the community be recognized as a legitimate stakeholder and is included in restorative justice processes. This increased participation from the community allows for the appropriate relationship for serving justice to emerge and develop through the process of addressing wrongdoing itself.

Properly implemented, the restorative justice approach builds positive relationships in the process of achieving justice. Justice is not achieved after the criminal trial, but is built during and through the restorative process itself. This is legitimated by Robert Dahl's insight that too often revolutionary movements seek to overthrow the existing regime while too little effort is placed in what comes *After the Revolution* (Dahl, 1970). Restorative justice seeks to connect the past, the present, and the future while responding comprehensively to the justice needs and requirements with respect to all parties impacted by crime—victims, community, and wrongdoers (Zehr, 2002, p. 22).

This raises the important question as to what reach of justice can be delivered by an external actor, such as the ICC. The popular understanding is that the Northern Ugandan people need justice, and it is therefore the responsibility of the international community to deliver justice. Transitioning from war to peace often makes it appear like a trade-off must be made between justice on one side and peace on the other, as a dichotomy. The international human rights community favors the justice side of the dichotomy, particularly where war crimes or crimes against humanity are concerned. The ICC's ability to assert jurisdiction where nation states are unable or unwilling to is a mechanism through which the international cosmopolitan human rights community can weigh in on the justice side of the dichotomy (see Babbitt & Lutz, 2009; Kaldor, 2007). However, restorative justice is an approach in which the goals of peace and justice are complementary and proceed together. While restorative justice is the term used for this "new" movement in justice in the West, this article argues below that this "new" movement can be termed as indigenous or traditional justice in Uganda.

Indigenous Justice as Restorative Justice

An overarching issue in the case of Northern Uganda concerns the tension between, on one hand, the principle of nation-state sovereignty and self-determination, originating in the Treaty of Westphalia in the 17th Century, which barred interference in another state's affairs and, on the other hand, the introduction of universal human rights with the U.N. Universal Declaration of Human Rights. At one end of the spectrum is the protection of state self-determination and at the other end of the spectrum is not only the right but the duty to intervene in a state's affairs when human rights are violated and those with resources are assigned responsibility (Finnemore, 2004).

In the case of the Rwandan genocide, international actors have been criticized for not intervening or for intervening too late—for following the principle of self-determination and noninterference. In the case of the conflict in Northern Uganda, the international community is criticized for intervening

in inappropriate ways—for upholding the principles of international universal human rights. In keeping with the emphasis on the victims by the ICC, it seems appropriate at this point to include the population of Northern Uganda in determining the terms and conditions and the form and extent of intervention by the international community in Uganda, especially since they are the ones most directly impacted by the decisions made. However, the ICC has been criticized for failing in providing justice for victims (Thynne, 2009).

In 2007, a key element of agreements between the government of Uganda and the LRA/M was the Agreement on Accountability and Reconciliation (The Agreement Act), which called for reconciliation through traditional justice mechanisms, a comprehensive analysis of the history of the conflict, and "modifications . . . [within the national legal system] to ensure a more effective and integrated justice and accountability response" (Section 3.1, p. 4). In 2008, the High Court of Uganda recognized that "Traditional justice shall form a central part of the alternative justice and reconciliation framework identified in the Principle Agreement" (Section 19, see also Section 9a). This followed the Amnesty Act in 2000 issued by the Ugandan government stating that from 1986 onward comprehensive amnesty applied to all as long as they agreed to renounce affiliation with rebel groups. Given the amnesty program and the Agreement Act, therefore, the "likely limits to any ICC or national trials, suggest that prosecutions will probably not be sufficient to address the challenge of justice and reconciliation" (Worden, 2008, p. 10). Is this justice for the peoples of Uganda?

The following quotation suggests first that "Western" justice is not the only form of justice recognized in Northern Uganda and second that alternatives to retributive, punitive, and judicial justice have been pursued and the acceptance of restorative justice already exists in the perspectives of local community members:

> As the conflict in northern Uganda gained more attention in the international arena, many advocates and political appointees began thinking of ways to bring Joseph Kony to justice. It is a natural feeling in much of the world, particularly the West. We do not like to see people get away with terrible crimes, for we know it only perpetuates such acts in the future. However, we cannot expect the rest of the world to understand justice in such a way. And the fact that a majority of northern Ugandans were advocating for the withdrawal of the ICC warrant against Kony should have been the first clue that the West had no place in determining another community's sense of justice. (Jacques & Tucky, 2009, p. 3)

Indigenous and traditional forms of justice in Northern Uganda reflect the mutuality of serving justice and peace, similar to the complementarity between restorative justice and peacebuilding. Jacques and Tucky (2009) further explain:

> There is a common theory among international advocates and some northern Ugandans that Kony and top LRA commanders have committed crimes that are beyond the purview of a restorative justice system. Though there were wars in Acholi history, there was never such mass slaughter of the population orchestrated by a few rebel leaders. This theory may very well be true, but it is important to remember that we are not in an either/or situation. It is indeed possible to practice restorative justice to reconcile the community and also try Kony in national court. It is a delicate balance, and achieving justice in this way is only possible through dialogue between local leaders and government officials. Whether Kony would agree to be tried is another issue, but it should be recognized that restorative justice can be complimentary to punitive justice when properly conducted. (p. 3)

From studies based on employing traditional justice systems—*Gacaca*—in Rwanda after the genocide, several findings were made: "traditional justice should not focus on punishment, but truly on reintegration, and it should involve the participation of the community" (Fiechter, 2009, p. 17). In

compliance with the principle of complementarity stressed by the ICC, if the justice system is broadened to include traditional community forms of justice and is not limited to formal state justice systems, complementarity with traditional forms of conferring justice will serve to meet the incredible needs of the Ugandan population. *Mato oput*—drinking the bitter root from a common cup—is one, among several, such traditional mechanisms recognized by the Acholi people of Northern Uganda as a process of reconciliation and reintegration (Ssenyonjo, 2007). Civil society groups, including local village elders and religious leaders, in Northern Uganda have argued that these traditional mechanisms have worked to secure justice after violence has erupted in the past (Apuuli, 2011).

Furthermore, the population of Northern Uganda has suggested that there are more pressing concerns in the community. A survey by Vinck (2007) conducted from April to June in 2007 in eight districts found that only 3% of the population mentioned justice as a top priority at the time of the survey. More important priorities included peace, food, health, land, education, and money. Moreover, while 70% of the population surveyed stated that those responsible for committing human rights atrocities should be held accountable, 52% preferred options such as forgiveness, reconciliation, and reintegration. Less than half reported that nontraditional trials would lead to peace, security, and justice. Over 81% said amnesty would help achieve peace, with less than 0.3% saying those receiving amnesty should not return home. Almost all respondents (96%) viewed themselves as victims with the majority of those stating financial compensations were most important. Finally, over 70% of the respondents said they felt comfortable living in the same community with former low-ranking LRA/M combatants, with 45% reporting that even LRA/M leaders should be allowed to govern.

Fiechter's (2009) conclusion was that "Northern Ugandans have, as did the Rwandans, other far more important priorities than to spend time and scarce resources" on extensive formal litigation (p. 17). Therefore, "traditional justice in Uganda will be able to play a more major role in dealing with the lower-rank perpetrators, even though the crimes to address are of an unprecedented nature" (Fiechter, 2009, p. 21). The formal judicial approach of the ICC is foreign to many in Northern Uganda, many traditional leaders are against it, and traditional systems of reconciliation and accountability are available. To understand this difference between criminal justice and more traditional forms of justice, recall the preceding description of restorative justice.

The RLP paper, mentioned previously, detailed a series of interviews that took place in the West Nile and concluded that the majority of citizens living in the region are "living in something of a justice vacuum" (RLP Working Paper No. 21, May 2007, pp. 24–25). The formal justice systems and mechanisms lack credibility among the communities they are supposed to serve and are viewed as irrelevant and inaccessible to the majority of the population. In addition, many of those interviewed expressed skepticism that the formal justice mechanisms are arbitrary, unsupervised, ambiguous, and susceptible to corruption. In summary, the RLP study concluded that:

> Formal mechanisms of justice are seen to be fundamentally dysfunctional, making their impact minimal to the communities they are trying to serve … [At the same time] informal mechanisms of justice are unable [at this point in time] to adequately fill the gaps in the formal system. (Working Paper No. 21, May 2007, p. 28)

Although reservations were expressed with the informal forms of justice, most respondents supported informal justice mechanisms for Uganda and preferred the informal and traditional mechanisms of justice to the more formal and international forms of justice. Reports from various civil society groups have also cited "war fatigue" as a problem, as many Ugandans would prefer to forgive and reconcile if it means peace (Finnegan, 2010, p. 436).

Despite these difficulties, this need not lead to despair. The question is where to put more energy and resources. The informal justice system in Uganda, garnering more support from the local population than other formal options, includes, for example, cultural systems of elders, clan leaders, and

local councilors. These informal institutions are closer to the people and have greater legitimacy. According to the information gathered from interviews conducted by the RLP, what is required is greater support for the informal mechanisms and an increase in legal aid providers who can monitor the informal procedures utilized, provide procedural training when necessary, and link informal and formal justice mechanisms when appropriate (Working Paper No. 21, May 2007, pp. 26–27).

Mediating between the international initiatives and local issues are numerous regional institutions such as the RLP, African Faith, and Reconciliation, and the Coalition for Reconciliation in Uganda (CORU), to name a few. CORU is an example of an umbrella organization providing a space for collaboration between civil society organizations and was formed as a network comprising many civil society organizations, nongovernmental organizations, academic institutions, religious institutions, and individuals working for peace, justice, development, and reconciliation in Uganda (Oola, 2010). These regional organizations exist and are active in drafting proposals such as the National Reconciliation Bill for Uganda for reconciliation and transitional initiatives. The Juba peace talks attracted international recognition and funding; however, ''many funders chose to prioritize particular aspects of the peace agreement, with many opting to fund prosecutorial initiatives'' (Oola, 2010, p. 10). Given the local desire to adopt local forms of justice and reconciliation mechanisms, it seems that more resources and energy need to be placed in indigenous transitional justice measures.

The peace and reconciliation processes in South Africa, Mozambique, Rwanda, Burundi, Liberia, and Sierra Leone have raised interest in indigenous and traditional methods of justice and raise pertinent challenges to the efficacy of uncritical application of international justice mechanisms (Ginty, 2008). In 2008, the Institute for Democracy and Electoral Assistance (IDEA) published a report titled ''Traditional Justice and Reconciliation after Violent Conflict: Learning from the African Experiences.'' Commenting on the report, Adama Dieng, Assistant Secretary-General/Registrar at the International Criminal Tribunal for Rwanda, has encouraged everyone to:

> Dig deep through the African roots to find right there ways of solving major problems arising in Africa. With this approach, justice will no longer appear as a foreign organ badly transplanted to a rejecting body. Rather, it will appear as the product of Africa's own genius. (quoted in Aapengnuo, 2009, p. 3)

In fact, beyond local solutions to local problems, in some cases, traditional and indigenous approaches to justice can offer correctives to the failings of the punitive Western justice models (Ginty, 2008, p. 169).

It is in this sense that Ugandans cannot be viewed as recipients of justice but rather as a resource for justice. The traditional and indigenous Ugandan justice mechanisms, just like restorative approaches, involve participation from the local community in constructing the meaning of justice. The international community can support these local initiatives, provide resources and even procedural training when necessary, but the international community is limited in how effective it can be in delivering justice. The ICC can function to incarcerate a few individuals—those with command responsibility for mass atrocities—and can serve furthering justice to the degree that incarcerating those with command responsibility stops injustice. The ICC can bolster the national criminal courts and fill gaps that may be missing. However, if the principle of complementarity and the focus on victims, stated goals of the ICC, are interpreted within a restorative or indigenous justice framework, then defining and deciding on justice issues needs to rely more on the local communities and the local communities need to participate more in the process.

Conclusion

The complexities surrounding the issue of justice in Northern Uganda raise important debates not only about defining justice but especially about how to administer justice given the magnitude of

atrocities and disruption in the communities. Should restorative and indigenous forms of justice be more readily available and supported to address all areas of dealing with crime? Some advocates for restorative and indigenous justice see this not as full justice, but as adequate or pragmatic for societies undergoing transitions from war to peace merely to be tolerated until justice can be reinstated (see Jennifer Llewellyn, 2006). Implicit and sometimes explicit is the view that restorative justice is a compromise to be made during extraordinary transitions. However, given the evidence sited in the previous sections, restorative and indigenous forms of justice deserve more support. The choices being made by the international community and by donors have important ramifications for the future of Northern Uganda. Therefore, great care is required to ensure that the best choices for the means of transitioning from violence to peaceful politics are made. This is especially true since, even with international support and intervention, postconflict states are still often left on their own to deal with the consequences of such choices (Minow, 1998).

A restorative approach to justice raises questions as to what extent justice can be *delivered to* a community, providing the alternative that from a restorative perspective the community is a *resource for* the generation and sustaining of justice. This is an important reconceptualization of the situation, since the grassroots levels of society have been and must be empowered as the natural partners of the top leaders of liberal peace for social transformation (Duffield, 2001, pp. 120–122). Said another way, for justice and peace to move into and be sustained in the future, third-party interventions cannot act independent of local context and cannot simply deliver justice on their own terms. Outside interveners should fade into background supporting roles in efforts based on local ethos and resources of justice that are themselves crucial for the future (John, 2005, p. 17). The field of conflict prevention and transformation reiterates this insight, advocating for local solutions to local problems (Babbitt & Lutz, 2009; Carnegie Commission, 1997; Lederach, 2005).

Good intentions from the international community, while important, are not enough and can actually do as much or more harm than good (Anderson, 1999). Roland Paris (2004) offers a word of caution to those doing third-party interventions when he argues:

> International efforts to transform war-shattered states have, in a number of cases, inadvertently exacerbated societal tensions or reproduced conditions that historically fueled violence in these countries. The very strategy that peace builders have employed to consolidate peace . . . seems, paradoxically, to have increased the likelihood of renewed violence in several of these states. (p. 6)

At the very least, this statement should promote reflection on whether or not members of the international community. Restorative and indigenous justice should receive further attention as an alternative approach to achieving justice and positive peace.

By starting with needs of individuals and communities rather than exclusive focus on offenses, restorative/indigenous justice is positioned to address the overarching concerns of making contributions to the process of rebuilding civil society in the process of restoring justice. The demands of justice and peace are often viewed as an either/or proposition, either justice will be served or peace can emerge (Oola, 2010). The inclusive approach of restorative justice combined with its forward-looking orientation to addressing wrongdoing is one of the features that render it most attractive to peacebuilding efforts. Howard Zehr, in his restorative justice blog on April 20, 2009, when connecting restorative justice to resolving social conflicts, prefers the term peacebuilding rather than peace:

> because conflicts arise from specific contexts. To address conflicts and build peaceful communities, we have to understand the contexts that lead to conflict and create contexts that promote peace. As John Paul Lederach says, it takes as long to end a conflict as it does to create it. True peace requires us not to just make peace by ending conflicts but to build an infrastructure for peace (http://emu.edu/blog/restorative-justice/2009/04/20/restorative-justice-and-peacebuilding).

Restorative justice attempts to entrench peace and stability through the process of restoring justice itself.

Since the ICC does not allow amnesty, a compromise could be made in which the court began with a commitment to restorative/indigenous justice as an animating goal in integrated peacebuilding efforts. This should help clarify the potential role of the ICC to deal with those leaders who have both committed human rights violations and are not willing or able to participate in restorative processes. However, first, caution must be taken not to put too much "hope" in the reach of the impact of incarcerating a few individuals nor too much currency to the general and specific deterrent effects of such arrests and incarcerations, since there is simply no evidence as yet to support these positions. The ICC and other third-party international interventions can perform the function of complementing and reinforcing pursuits of restorative/indigenous justice to build and sustain peace and justice. It is here that the judicial principle of complementarity of the ICC reflects and supports a domestic rather than international response wherever and to the greatest extent possible. As argued previously, a more flexible role is possible if the ICC combines this role with providing justice for victims of mass human rights violations.

Second, the international community needs to reflect on what is meant by "justice"—whether procedural, retributive, distributive, and/or restorative—and to search for better ways to integrate justice and peace pursuits, and not simply operate from a position, or positions, that may *do more harm than good* (see Anderson, 1999). Conflict scholar–practitioners are becoming more critical of past attempts and assumptions at transitioning from violence to peaceful politics and are developing promising new models and orientations that emphasize the local and domestic population as crucial to the process itself (Lederach, 2005; Shirch, 2004), as *resources for* and not simply *recipients of* justice and peace. In Northern Uganda, restorative justice would work if it operates with a principle of complementarity, having a high concern for victims, and providing a way to "make" justice using the community through this process as a resource. Furthermore, Western nations' definitions of justice should not be privileged because they are the primary funding source for the ICC.

Revisiting the opening paragraph, questions emerge about Kofi Annan's overstatement of the role of the ICC. Critical examination is needed of the assumptions that the ICC and especially whether retributive justice alone can bring much "hope ... that, by punishing the guilty, the ICC will bring some comfort to the surviving victims and to the communities that have been targeted." While it may bring some "hope," the evidence above suggests that it is a small amount and that there is limited reason to believe it will provide general deterrence to "future war criminals." If only justice and peace were that easy and uncomplicated. Given the ICC refuses to recognize amnesty arising from the peace agreement, a trial may be warranted for those in senior leadership roles in Northern Uganda for gross human rights violations. However, we need to be careful not to place too much hope in the extent to which these prosecutions alone can build the infrastructure of peace. Peace and justice are not easy, nor is a restorative/indigenous justice approach to contribute toward achieving them. What is required in Northern Uganda, to use the title of Lars Waldof (2006), is using "mass justice for mass atrocities" in rethinking the positive role of traditional justice as transitional justice. Rather than playing the leading role, the ICC and international third-party actors should play supporting roles, complementing the difficult and successful work that has already been done by regional and local actors toward promoting the transition from violence to peace in Northern Uganda.

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Note

1. *Mato Oput* is the Acholi reconciliatory process involving several steps an individual must take before rejoining the community. These steps include standing outside the village and speaking the names of family, confessing to the crime, the elders taking collective responsibility, and finally the ritual of the drinking the bitter root.

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