In the Multiple Systems of Justice in Uganda

Whither Justice for WOMEN?

A FIDA-UGANDA PUBLICATION

Vahida Nainar
About FIDA-Uganda

FIDA-Uganda: The Association of women lawyers is a premier women’s rights organisation that is the pioneer of legal aid, public legal education and legal mediation in Uganda.

Her mission is to promote the human rights and inherent dignity of women and children, using law as a tool for social justice. Her thematic focus includes, Access to Justice, Economic Justice, Sexual and Reproductive Health Rights, Transitional justice, and Institutional development.

Established in 1974, the organization has a track-record of 37 years of exemplar experience as a passionate, trusted, fearless and uncompromising spokesperson and defender of women’s rights. FIDA-Uganda is a household name that has provided women with a shield against legal impunity.

By raising awareness of rights and the mechanisms to enforce them, she empowers women to assert and claim their rights. Concurrently, FIDA-Uganda enhances the capacity of the formal and informal justice agencies to protect women’s rights. She undertakes strategic/public interest litigation aimed at law and policy reform. She also monitors the justice systems’ adherence to international human rights standards in delivering justice to women.

FIDA-Uganda is affiliated to the FIDA-International, through which it has observer status with the ECOSOC. She has independent observer status with the Africa Human Rights Commission.

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Acknowledgements

FIDA-UGANDA thanks Vahida Nainer, the lead consultant and author of this report and Monica Emiru who provided research support, we also thank all the informants and partners who participated in the research. We thank the Austria Development Cooperation for their Financial support.
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## List of Abbreviations

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<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>ACCORD</td>
<td>The African Centre for the Constructive Resolution of Disputes</td>
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<td>ARC</td>
<td>American Refugee Committee</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination Against Women</td>
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<td>DGO</td>
<td>District Gender Officer</td>
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<td>FCC</td>
<td>Family and Children Court</td>
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<td>FIDA</td>
<td>Federación Internacional de Abogadas (The International Federation of Women Lawyers)</td>
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<td>HURIFO</td>
<td>Human Rights Focus</td>
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<tr>
<td>ICC</td>
<td>International Criminal Court</td>
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<td>ICC Act, 2010</td>
<td>(Ugandan) International Criminal Court Act, 2010</td>
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<tr>
<td>IDP</td>
<td>Internally Displaced People</td>
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<tr>
<td>KKA</td>
<td>Ker Kwaro Acholi</td>
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<tr>
<td>LC</td>
<td>Local Council</td>
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<td>LRA</td>
<td>Lord’s Resistance Army</td>
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<td>MDG</td>
<td>Millennium Development Goals</td>
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<tr>
<td>MoU</td>
<td>Memorandum of Understanding</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
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<tr>
<td>PRDP</td>
<td>Peace, Recovery and Development Plan</td>
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<tr>
<td>PVP</td>
<td>People’s Voice for Peace</td>
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<tr>
<td>RPE</td>
<td>Rules of Procedure and Evidence</td>
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<tr>
<td>SGBV</td>
<td>Sexual and Gender Based Violence</td>
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<td>UHRC</td>
<td>Uganda Human Rights Commission</td>
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<tr>
<td>UNFPA</td>
<td>United Nations Family Planning Association</td>
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<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<tr>
<td>UPDF</td>
<td>Ugandan Peoples Defense Force</td>
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<td>VAW</td>
<td>Violence Against Women</td>
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<td>WHO</td>
<td>World Health Organization</td>
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The report is based on the rapid assessment survey undertaken by The Federación Internacional de Abogadas (The Association of Women Lawyers, FIDA-Uganda), a women’s rights organization championing human rights, governance, legal and policy issues pertaining to women. FIDA’s operations are guided by the Convention on the Elimination of Discrimination Against Women (CEDAW) and other international treaties that promote the rights of women and children. In addressing issues in the family, FIDA also promotes, protects and provides for the human rights of children. Among its current projects is the sexual and gender based violence project in Northern Uganda that seeks to mainstream human rights and gender justice in responses to SGBV in the region. The project is implemented with support from Austria Development Cooperation.

In addressing SGBV, FIDA addresses the root causes of SGBV by addressing women’s powerlessness within society and the law by adopting rights based approach. The project focuses on the legal empowerment of women to claim and assert their rights. It works with communities to analyze their culture through a human rights lens in order to promote fairer gender relations. The project also seeks to strengthen the judiciary and the legal profession to protect women from SGBV by domesticating international human rights standards in the judicial and law enforcement processes. A major component that informs programming, advocacy as well as provides a knowledge base for the programme and other national, regional and international human rights mechanisms is empirical research to effectively monitor government’s obligation to protect, promote and provide the sexual and health rights of women. One of the researches FIDA-Uganda has embarked on is a gender audit of transitional justice mechanisms.

FIDA’s project to mainstream human rights and gender justice in responses in northern Uganda will contribute to the Millennium Development Goal (MDG) 3.
that seeks to provide for Gender Equality and Empowerment of Women. It looks at human rights of women, that is, civil, political, economic, social and cultural rights of women. The implementation of this project adopts a human rights based approach to development, which emphasizes that rights are an issue of justice not charity. Therefore, by focusing on the rights of the women as marginalized groups, the project seeks to ensure that gender and human rights are mainstreamed in justice mechanisms and that the state holds the rights violators accountable.

This research examines the current level of accountability in order to inform implementation of the project as well as provide knowledge base for advocacy for increased response to provision of the rights of women in a transitional justice context.

The survey revealed enormous challenges faced by survivors in accessing the different systems of justice in Northern Uganda. For women, justice remains an intangible dream. Justice at an international level did not take off and therefore could not address crimes against women. Justice from the courts in Northern Uganda is fraught with challenges that frustrate women at all levels – from reporting the violations to the filing of cases in court and the process in the courts itself. Traditional justice is inherently biased and anti-women. Other institutions and NGOs attempts to assist women access the justice system have had limited and short-lived success.

There was an acknowledgement that while the multiple systems of justice functioning simultaneously and effectively complimenting each other had a critical role in sustaining peace, each of the systems have failed to include and address women’s views, interests and needs for justice. The key recommendations by those interviewed in the survey were to strengthen judicial institutions as an important first step towards justice provision in general and for women in particular. Several measures to strengthen judicial and supporting criminal justice institutions were proposed with the aim of making justice accessible for women and for holding perpetrators accountable for violations committed against women in general but for war-related ones in particular.

Dr. Maria Nassali – Chief Executive Officer – FIDA-Uganda
A state emerging from prolonged conflict face innumerable challenges on the question of addressing past wrongs. A conflict leaves as many victims and survivors as perpetrators; destroys institutions, subverts systems of governance and rule of law; and leaves a state bereft of resources to address the many legitimate claims for redress and reconstruction of the society. The existing legal system is often rendered incapable, in terms of its infrastructure, human and material resources to administer justice. The well-established concept of retributive justice through trials and criminal prosecutions is found grossly inadequate and ineffective in a post-conflict state. In such contexts, it is physically impossible to prosecute all the offenders, there is no perfect victim as some of them are also complicit in the violation of others, the survivors’ view of justice differ from those of the prosecutions and the process of justice is often seen to be unfair and unresponsive to the interests of certain sections of the community, particularly women. There is thus a veritable search for alternative concepts and process of justice.

Various alternative forms and processes of justice have emerged such as truth commissions, ad-hoc tribunals, hybrid national courts, amnesty agreements, people’s tribunals, constitutional amendments, traditional systems of justice modified or adapted to meet contemporary needs for justice. These mechanisms, also referred to as transitional justice, are employed alternatively to achieve the different goals in a post-conflict situation. The goals vary according to the history and the political contexts of the conflict and the priorities of the society in transition. By and large though, the goals of transitional justice is the presumed resumption or a transition to democracy, establishment of rule of law,

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The conflict in Northern Uganda that lasted more than twenty years between the Lord’s Resistance Army, the rebel group and the Uganda People’s Defense Force UPDF, ended with the Cessation of Hostilities Agreement in 2006. Even prior to the discussion on cessation of hostilities, international justice for crimes during the conflict was triggered by Uganda’s referral of the situation to the International Criminal Court. Subsequently, several transitional mechanisms were introduced such as passing amnesty laws to bring about perpetrators’ integration to the mainstream of Northern Ugandan society, introducing the Peace, Recovery, Development Policy for aiding the peace and reconciliation process and exploring justice possibilities in traditional mechanisms of justice. Through a rapid gender audit of the different mechanisms of transitional justice, this report examines the ability and effectiveness of the different justice mechanisms to extend justice to women.

The report is structured to provide the context of the conflict in Northern Uganda at the outset followed by the findings on the various forms, causes and prevalence of violence against women. The findings show that domestic violence, sexual violence and economic abuse is the widely prevalent forms of violence against women and each of the different forms of violence dominated in different phases of the conflict. The research for the rapid gender audit was conducted in Gulu district and sought to establish the extent to which transitional justice systems are engendered. The report goes on to explain the various systems of justice introduced in Northern Uganda to address the past wrongs of the conflict. It examines the ability and effectiveness of each of these systems to secure accountability and justice for violence against women and concludes with identifying the way forward to secure justice within some of these transitional justice mechanisms.

Domestic violence, sexual violence and economic abuse is the widely prevalent forms of violence against women.
The transitional justice gender audit has been carried out in the northern region, which is most affected by the conflict. Being a rapid audit, the selection of the sample district focused on Gulu district, the area with a representation of all the respondents identified in the sample. As a part of the rapid audit of the institutions that deal with transitional justice, officials of various institutions operational in Northern Uganda and specifically Gulu, were interviewed to clarify the structures of institutions and their functions.

Gulu district hosts the High Court and other regional bodies such as the Uganda Human Rights Commission, National and International NGOs and the Traditional Chief of the Acholi (Ker Kal Kwaro). A number of issues relating to gender justice therefore are handled in Gulu by the various institutions. FIDA office covering the same region is also located in Gulu. Through these institutions, clients who come from other districts, or at least information regarding their cases could be accessed from Gulu.

The design of the audit took into consideration the fact that gender justice is about dealing with sexual and gender based violence (SGBV) and gender-based inequalities, information about which can only be obtained in specific institutions and among specific groups of people. Qualitative methods of data collection and analysis were used to provide an overview of key issues. Selection of the sample district and sample population was purposive since the nature of respondents was pre-determined by the issues under examination. The audit is based on information obtained from women and girls who had experienced GBV, traditional leader, government officials who deal with GBV issues, the Judiciary, the police, NGOs addressing GBV and justice, informal actors in gender justice and FIDA staff members.
The gender audit methods were qualitative in nature that included interviews with key informants, focused group discussions, narrations or storytelling and case studies. Primary data collection was guided by the key theme of the long-term conflict in the region that resulted in people being huddled up in camps and the current relatively peaceful situation and resettlement. The concern was whether the prevailing justice systems were functional for women and girls to redress abuses during the war and to handle current GBV violations effectively. These were probed depending on the mandate of the respondent and in line with issues they raised, examining the formal and informal justice mechanisms. The literature review included material generated by national and international NGOs, UN agencies and academic articles on the issue of gender justice to victims and survivors of the conflict. The status of case of Northern Uganda at the International Criminal Court also informed the audit of the formal justice mechanisms.
For over two decades, armed conflict plagued the northern region of Uganda, especially the Acholi sub-region. The prolonged conflict brought with it tremendous human suffering including displacement and huddling of communities into camps. The conditions in the camps were such that there was lack of food, no security and privacy and no land to till for subsistence. Men lost their position in the families as bread-winners. The idleness in camps led most of the men to resort to drinking alcohol that often ended in violence directed at women. In Gulu the women suffered most and in very specific ways as a result of loss of homesteads i.e. women were harassed, raped and lost the comfort of a family set up. Rape and sexual violence were used as tools of war by both, the Ugandan Peoples Defense Force (UPDF) and the rebel group, Lord Resistance Army (LRA). According to a UNICEF report, more than 32,000 children were abducted by the LRA during the course of the twenty years of war and used as child combatants and sex slaves.

Other forms of violations during the conflict include abductions, killing and maiming, particularly by cutting off women’s lips, ears and noses. When women and girls were murdered, their deaths were sexualized i.e. their breasts were cut off, foetuses ripped from their wombs, weapons thrust up their vaginas, or their sexual organs impaled. Violence against women occurred both in the private space: the home, and the public sphere: the community and the sites of war. Private violence was notably caused by congestion in the camps as the founder

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of a human rights NGO noted. “The situation in the camps for the internally displaced people allowed for gender based violence to thrive. In the homestead back in the communities, boys slept in one hut, the girls in another and parents had their own hut. Due to lack of space in the camps, the huts were shared. Men demanded sex before children go to bed in the camps. When women refused, she was subjected to domestic violence” (HURIFO). Documentation conducted when camps were still operational also affirms that in ‘the horror of camp life... it is not unusual for a drunken man to start demanding sex from his wife regardless of who is present’ causing disruption in long cherished social and cultural norms of public and private behaviour⁴.

As part of violence in the public sphere, abducted girls were forced to relate with the rebel leaders and soldiers as wives. Sexual violence became accepted as a normal consequence of conflict, and women’s bodies were used as battlegrounds for injuring or eliminating the opposing parties outright⁵. An observation of the U.N Special Rapporteur of violence against women (VAW) noted that sexual and gender-based violence (SGBV) continues to be treated with indifference and treated as an unfortunate outcome of war, rather than a crime⁶.

The landmark Cessation of Hostilities Agreement in August 2006 marked the beginning of efforts towards resettlement. Initially people moved to satellite camps closer to their communities and later back to their original homes. By January 2010, 942,000 people had returned to their villages of origin and 445,145 were in transit camps⁷. Women welcomed the return and resettlement and took the lead to move out of the camps and resettle in their communities. And yet, for some women who were interviewed for this rapid gender assessment, the conflict is not over; but merely inactive. The only difference is that the location and the actors of the conflict have changed.

⁴Tindifa: 2006 at 57
⁵Kelly D Askin, The Quest for Post-Conflict Gender Justice 41 Colum. J. Transnat’l L. 509
⁷Uganda Law Reform Report, 2007. 20
Among the peculiar problems in the phase of resettlement is that the reintegration of a considerable number of formerly abducted children, both girls and boys in the society remains a challenge. The abducted girls were attached to rebel leaders as “wives.” They were sexually abused and had children of these soldiers. Some of the abductees who either escaped or where rescued by the national army were granted amnesty in the same manner like that of any other adult person who had voluntarily joined the rebel group. The soldiers from the rebel group who surrendered or relinquished the rebel groups have since been absorbed into the national army and some of them have received rewards for denouncing rebel activities. The formerly abducted girls however, received no recognition of their victimization. On the contrary, they continue to be considered and treated as pariahs in the society. Some of them who returned with children have received psychosocial and resettlement support from NGOs but nothing from the Ugandan government. They continue to face the burden of dealing with the trauma resulting from their experiences in abduction and the challenge of having to maintain themselves and their children without any economic support.

Judge Kasule explains the situation as “some girls were abducted and forcefully made wives. They produced children and when the girls came back, they had to apply for amnesty. The fathers of the children reached agreements with the government and were incorporated within the armies. But they washed their hands off these women and their children taking no responsibility for them. Women are legalized only through the amnesty certificates. If they do not get these certificates, they are treated as rebels and are looked upon as raped women, practicing prostitution or having extra martial relationships and not respected or regarded well by the society”. The abducted children including the girls have the challenge of seeking pardon for crimes they never committed but by the unfortunate fact that they were forced to associate with the rebels.

HURIFO acknowledges that children born in captivity are deprived and are not considered to belong to any clan. “They have not been accepted by the mother’s clan and so they are left clanless and landless” (HURIFO). Their mothers, having been abducted as children missed development opportunities including education, have to now find a home and land for their children. HURIFO clarified
the plight of these child mothers. “Children who came back with children of their own earlier wanted to shed this label of being ‘child mother’ to integrate in the society. But when the families and clans rejected them, they have come to accept the situation and decided to stay single and fend for themselves. They formed the Association of Child Mothers. They have no social attachments to any clan or community and majority of them are sex workers”. In addition to facing the challenges of single motherhood, these child mothers also run the risks associated with commercial sex work, which is illegal in Uganda. They are not only exposed to HIV/AIDS but also unwanted pregnancies. Northern Uganda has the lowest rate of contraception use that stands at 12% as opposed to the national average of 23%, high abortion rates and unwanted pregnancies. One in every 5 pregnant women in Northern Uganda goes through an abortion, while 50% of pregnancies are unwanted8.

In 2007 the government of Uganda developed a framework for responding to the situation in Northern Uganda called the Peace, Recovery and Development Plan (PRDP) for Northern Uganda (2007 – 2010). The strategic objective 2 of the PRDP aims at rebuilding and empowering communities by promoting improvement in the conditions and quality of life of displaced persons in camps, completing the return and reintegration of displaced populations, initiating rehabilitation and development activities among other resident communities and ensuring that the vulnerable are protected and served9. The most vulnerable in Northern Uganda are currently women and girls who have borne the brunt of war and have several odds against them as already noted above. Strategic objective 4 focuses on peace building and reconciliation to ensure continuous prevalence of peace in Northern region through increased access to information by the population, enhancing counseling services, establishment of mechanisms for intra/inter communal and national conflict resolution, strengthening local governance and informal leadership structures and reinforcing the socioeconomic reintegration of ex-combatants10. To meet these objectives, women and girls deserve the greatest attention and justice for the violations of their bodies. They equally deserve compensatory interventions that would place them in a position of economic independence and therefore empowerment.

However, the PRDP may not achieve these desired objectives. While its implementation should have started in 2007, it was suspended by one year due to lack of a budget. Some NGOs operating in Gulu believe that the PRDP is not a priority for the government. Since there was no budget “the government went about and asked the NGOs their budget for community work and showed it as money available for PRDP” explained HURIFO.

In an effort to seek lasting peace and reconciliation in the region, the government of Uganda passed the ICC Act in 2010 that seeks to improve cooperation with the ICC and enable Uganda to try war crimes domestically. To date however, no case has been initiated domestically to bring justice to women and girls.

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8World Health Organization, 2007
9PRDP, 2007
10ibid
The Various Forms

Causes and Prevalence of Violence Against Women

i) Sexual and Gender Based Violence

While sexual and gender based violence against women is generally high in Uganda, the rise in violence against women in northern Uganda is associated with the long war that displaced people from their original homes into camps for the internally displaced persons (IDP). Almost all respondents reported that normal family life was affected, men felt inadequate as bread winners and that people experienced poverty in various forms that led to decay of moral fabric of the society. The Acting RDC believes that the increase in SGBV was because of the war and poverty. “During the war, many people were displaced and moved to camps. Men were denied their role as providers because there was no land to till and they felt they were no longer proper heads of families, which in some cases caused violence. Sexual abuse was also high because of people were collected in one place” he noted.

The most common abuse during the war were abductions by the LRA who were targeting young girls and forcing them into early sex. In the camps, rape and defilement were common and so was domestic violence. When survivors were in the camps, NGOs conducted many awareness-raising activities to prevent SGBV with a hope that when people return and resettle to normal life in their communities, violence would decrease. Sadly, SGBV not only continues to be widely prevalent, it is reported to have risen in recent years. According to ARC,

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11Study published by the Uganda Bureau of Services Uganda Demographic and Health Survey 2006, August 2007 confirms the prevalence of high rate of sexual and gender-based violence against women in Uganda.
the different forms of SGBV women continue to suffer even after the war officially ended are rape, physical assault/violence, psychological abuse, denial of access to food/property, husbands withholding resources for care of children and pay for their school fees, medical expenses and overall economic abuse. In ARC’s experience, defilement is the highly prevalent form of abuse for girls younger than 18 years of age; and physical assault is the form of abuse that older women suffer. Young girls are reported to have been defiled by men from the family, unknown men, community members, neighbours, business men etc.

The District Gender Officer (DGO) of Gulu, who has held office for more than 10 years, saw a visible decrease in assault type of violence in the IDP camps. “Men said women were given a lot of power in the camp and swore to wait till they returned to their rural homes to show women their power”. True to that threat, when those in camps began returning and resettling, battery and killing of women was reported to have escalated. When such violence occurs there is little or no recourse to relief. The Police are stationed at considerable distance from the communities and the homes are far apart making it difficult for neighbours to know of the violence. Consequently in 2008-09, the DGO noticed a fall in the reporting of sexual violence but a corresponding rise in domestic violence by close relatives such as fathers, brothers, step-fathers, relatives and neighbours. Since the move back to the homes from the camps, there have been many reported cases of battery and killing of women. For example, Gulu police station reported 24 cases of wife kill in a span of six months. A number of women are also reported to have killed their husbands when they could not bear the domestic violence anymore.

### ii) Domestic Violence

HURIFO observed that Northern Uganda is reported to have the highest incidents of domestic violence, and estimates it at 95%. They further observed that the situation of the IDP camps allowed for domestic violence to thrive. Any
The case of Domestic violence - Atim Gloria

My husband often beat me and chased me out of our house together with our children. Sometimes I had to sleep at neighbours or at police station with the children for safety. He does not care about the children because they are girls. When I go to the Police for assistance, they do not listen because my husband bribed them. They send me back home. Sometimes when we are eating he throws the food at me. One time I got annoyed, abandoned the children and went to our home after taking the children to the Police Station. I expected him to pick up the children but he did not. The police looked for me and asked me to take the children. He did not follow me to my home after I left with the children. (It is normal practice for a man to follow a woman to her parent’s home after a disagreement). Whenever I would call him concerning the children’s issue at school or for their medical expenses, he says he has enough space on his land to bury the children. I asked several women and one man who all referred me to FIDA. I got to FIDA and followed FIDA’s instructions and he was taken to court. Whatever he was asked to provide for the children as a father, he is doing but he does not want to have anything to do with me. He brings everything for us and leaves it in the FIDA office but does not want to see the children.

In addition, I am an orphan. I now live with my brother and his wife, but they do not allow me to use our land so I have nowhere to dig to fend for myself and my children. The little money my husband provides is what I use to sustain myself and the children. I believe that if my parents were alive, they would assist me. Life is hard. The two children are all I have and I want to live for them. I only would like to find a place where I can dig, live and die. (FIDA is now engaged in exploring the land of her parents that is now occupied by her brother to see if she can get a piece to till and create a life for herself)
dispute or disagreement becomes a reason for violence. Refusal to comply with the husband’s demands for sex is a reason for domestic violence. Women not conceiving within 3-6 months are suspected of using family planning services, thereby ‘inviting’ or indeed ‘deserving’ violence from their husbands or partners.

Mr. Michael Kony, Magistrate at the Family and Children Court observed that, ‘most of the assault cases that come to the court are that of domestic violence or threat of domestic violence. Majority of the assault victims are women and there are also cases of abuse of the child by parents.’ Respondents of the audit, be they married women, widows and child mothers confirmed the widespread prevalence of domestic violence. The UHRC inspections of the enforcement institution and police stations for human rights violations found that domestic violence is the number one crime in the station. It is also reported that some cases of persistent violence actually end up with death. While there is little or no action against the men who batter women, when a wife kills her husband, she almost always ends up in prison.

Criminal or police action against men for domestic violence is not a remedy that women prefer or have the luxury to choose. Women are financially dependent on men who abuse them and therefore putting them away intensifies the problems for women rather than address them. An Amnesty International study confirms that ‘most women victims of domestic violence…would not report domestic violence to the police because doing so would be to their detriment as they depended on the perpetrators for financial support. In some cases… it was the abusive spouse who depended on them and the domestic violence often entailed their husbands depriving them of their property and farm produce. In such cases, … women argued that they required legal remedies, which offered them protection and not necessarily limit them to the option of preferring criminal charges.’

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iii) Economic Abuse: Dependency, denial of land rights and access to sources of livelihood

There is a general consensus among all interviewed that a major form of violence women face currently is economic abuse. A study by ACCORD in 2007-08 attributes the high levels of sexual and gender based violence to factors including war and displacement, poverty, HIV/AIDS, culture and tradition, limited availability of resources such as food, changes in gender roles as women became the bread winner, collapse of traditional society and family support, too much consumption of alcohol, design or social structure of the camp among others14.

Judge Kasule informed that Uganda is generally a patriarchal society but more so the northern regions. He said, ‘The status of women is very low with regard property ownership, social positioning, having a voice and being heard. The armed conflict exacerbated the situation as every family in Acholi has lost someone - a spouse, child or a close relative in the war. The number of widows in Acholiland is appalling.’ Many cases that come before Judge Kasule’s court are those of estate management. The cases are of compensation for those who lost properties, cattle or other forms of assets. He believes that the situation has worsened because traditionally women have no independent right to own or access land. Upon marriage, a girl looses her rights to land in her parent’s homestead and does not consequently gain any rights in the family of her husband. Her only hope and expectation is that her children will turn out to be respectful or considerate and will allow her access to their share of the land. If not, the woman is left with nothing because when the husband dies, the clan comes and divides everything including land, pension, harvest, savings etcetera, leaving the woman with only the homestead and nothing else to support herself with.

http://pambazuka.org/en/category/comment/49418
The District Gender officer said that most of the women who are chased out of their homes are not formally nor traditionally married. Many men and women met each other in the camps and had begun co-habiting. Traditionally, when a man died or took another woman, the current spouse, even if she was not his wife was not chased away. They simply built a new hut for the new woman and both lived on the same land. Now when a man marries again or wants to co-habit with another woman, the first one is chased out. When men and women went back to their villages, the men continued to live the idle lives that they had been accustomed to in the camps while the women did all the work. But men would claim the yield as their own dispossessing the woman from access to the fruits of her labour. During harvest therefore, a notable increase in violence is reported. Women and widows are chased out of their land and men bring in new women to enjoy the harvest.

The DGO referred to a case where the woman who lost her husband was asked to bring 18 bags of groundnut, which is the yield of her labour to the house of the father-in-law. In another instance, a grandmother with ten dependents was chased out of her home. She went to the house of the Chairman of the District office and insisted that she has no place to go. As a result of the intervention of the District’s office, the woman was reinstated in the home and her land given back to her. The DGO believes that men have realized the value of land and thus want to own and control land to the exclusion of their spouses and families.

Conflict disproportionately affected women in terms of economic rights and personal security. Prior to the war, the communities used to fend for themselves but at the IDP camps, they were dependent on charity. When they returned to their villages, men continued to depend on women to provide for them. When women failed or refused, they were faced with increased instances of domestic violence.

Women did most of the work, both in the camps and in the communities. In the camps, it was the women who fetched firewood or water and grow quick crops for food. They mobilized among themselves and took the lead to move out of the camps. Back in the communities, they worked the land and produced the harvest for the families. The only job that men did was to put the grass on the roof, a task that women do not do. Paradoxically, living in the camps empowered women. NGOs found women to be a vehicle of change and mobilized them into groups to get help and assistance while they were in the camp. But the groups disintegrated when they went back to their different villages. With the disintegration of their support systems, women were left defenseless when faced with violence in the communities.
Government institutions are linked to ministries and sectors found at the local government level. These are the Community Services Department linked to the Ministry of Gender, Labour and Community Development, Health Service providers under the Ministry of Health and the Judiciary that fall under the Ministry of Justice and Constitutional Affairs.

The Gender Officer of the District is responsible for gender concerns, mainstreaming gender into programme implementation of other sectors including gender budgeting, is part of the Community Services Department. Some of the interventions of the District Gender Office on SGBV are awareness raising in communities, and among local and traditional leaders, follow up with the police to ensure cases are implemented, accessing medical care for survivors of sexual violence and psychosocial support for battery, physical violence and abusive relationships. The Office works in collaboration with other government departments, NGOs and Development partners such as UNFPA. Despite the magnitude of its mandate, the office is under-funded. The Gender Officer informed the research team that the office is usually allocated a government budget of five million Uganda shillings, (equivalent of about 2,000 dollars). The rest of the budget is supported by donors or partners.

Under the judiciary are the Courts. Magistrates Courts are supposed to be in all the districts but Northern Uganda has only two Family and Children’s Court. One sitting in Pader and the other in Gulu. The newly created Districts do not have any Magistrates Court. The District High Court sits in Gulu. In terms of GBV, the functioning of these Courts is supported by the Police and the Office of Public Prosecutions that has a Resident State Attorney in Gulu.

In the Multiple Systems of Justice in Uganda, Whither Justice for Women?
Though the government and private hospitals have an important role to play in matters of GBV, providing medical evidence and treatment; functional linkages between the two institutions is non-existent. Moreover, the doctors who fill in the police form are not available and that they only respond when women are accompanied by an NGO. Women who approach the institutions on their own are ignored and neglected.

The Local Council (LC) Structure was created to make justice more accessible to the grassroots communities. However, the relationship between the LCs and the judiciary is ambivalent. The judiciary contends that the LCs are part of the local government structures and are partisan in orientation.

The Uganda Human Rights Commission (UHRC) established in 1997 is a national mechanism responding to human rights violations. The Gulu office came into existence in 1999. It monitors human rights violations, handle complaints and carry out awareness-raising on civil and political rights. Addressing social, economic and cultural rights are not within the mandate of UHRC.

There are a number of national and international NGOs operating in the region. They have programs that address human rights violations, provide education and awareness on human rights and the law, support documentation and reporting of SGBV and provide redress to survivors of SGBV. NGOs such as People’s Voice of Peace address the recovery concerns of survivors, supporting rape and land mines victims and women who were rejected through counseling, provision of medical care for land mine victims and gynecological and reproductive health services. They also introduced a saving and credit system through revolving loans. Development partners, some of who have established bases in the region, support both government and NGO interventions on SGBV. These include, UNHCR, UNFPA and WHO. All the institutions and agencies have a role to play in the transitional justice process but this audit narrowed two systems for further scrutiny i.e. the formal systems of justice and the traditional system.
i) Formal Justice Systems

Years of conflict disrupted development efforts, destroyed institutions and the socio-cultural fabric of communities. It affected both, community based informal justice support mechanisms and the formal ones. ‘The war greatly impaired the institutions of the government. Since then the restoration of justice systems has not been significant. Courts, police, prisons, LC courts all exists but function with a lot of weakness let alone address rights compliance.’ (UHRC) Access to justice is inhibited by lack of fully functional judicial system, lack of resources and insecurity for both justice seekers and providers. Decades of conflict have thus left the majority of the population in Northern Uganda vulnerable and without the means, capacity or confidence to seek legal redress. In addition, corruption and a poorly resourced judiciary have impaired people’s confidence in the legal system.

Summarizing the problems with the justice system in Northern Uganda, a representative of ACCORD said, ‘the legal fraternity is not responsive to the needs and the constraints of the woman.’ Since men dominate many of the institutions, there are no institutions that are willing and have the capacity to help women. The police are not very cooperative and the women are not empowered to hold the institutions accountable. Until recently, Pader did not even have a Magistrate’s Court. Distances to the court are too long. Women have to go a long distance to access medical person for evidence of violence.

The Police are not seen as custodians of law. Victims are expected to facilitate arrests of the perpetrators and pay for photocopying materials and documents necessary for the case. Evidence is destroyed and perpetrators roam free in the society. During the inspections of the police force, the UHRC found that domestic violence is the number one crime reported in the police stations. Not only does the institutions of government not focus on women, they are not considered a priority and thus do not prioritize reducing violence against women. Out-of-court settlements are the norm rather than an exception and there is a general perception that justice is only for the rich. Significantly, the biggest problem is the erosion of confidence in the administration of justice.
The LC courts that administer justice, including on domestic violence are often biased. The members of LC are elected from communities and often turn out to be relatives of the man against who the woman may be claiming justice. The LCs are reputed to be corrupt and have no knowledge of the laws nor of human rights. Echoing similar views, HURIFO said that the LC structure often handles domestic violence with the clichéd response of ‘which home has no violence.’

In 70% cases that come to ARC, the survivor decline legal action and protection or security services for fear of losing children, family, husband and sense of family. Some of these cases are of incestuous abuse such as a child raped by her father or a niece by her uncle. There is often no legal action specifically in such cases for fear of ‘husband or the clan throwing the victim out.’

Despite women’s fear of reporting crimes of sexual assault, majority of the criminal cases in the courts of the Northern region are of sexual assault or related cases. Judge Kasule says, ’30 out of 50 criminal cases at my court are either of defilement, rape or murder but connected with some form of sexual assault.’ The conflict has so normalized the culture of violence that reactions to relationship troubles are very violent often leading to manslaughter or murder.

The Family court handles defilement cases when the accused are juveniles. Magistrate Micheal Kony of the Family and Childrens Court (FCC) said that in such cases the court often gives a probation order or sends the offender to prison on light terms. Sometimes parents of the juveniles are ordered to pay compensation but these parents are also poor and cannot pay the compensation awards. Magistrate Kony confirms that of the 100-120 cases that the Court hears every month, as high as a third of them are cases of defilement of young girls.

Since 2008, there is an influx of women coming to the FCC for custody and maintenance money for their children. Most of these women cannot claim maintenance for themselves because they have co-habited with the father of their children and are not the legally wedded wives. The maintenance award depends on the income of the respondents and range from 30,000 (for a peasant) Ugandan shillings (approximately 15 US dollars) to 200,000 (for a civil servant) Ugandan
shillings (approximately 100 US dollars). In addition, often the respondents are ordered to pay school fees, medical care, shelter for children and clothing among other costs. In Magistrate Kony’s experience, most of the respondents do not pay and pile up their arrears. In such cases the courts enforces the award by arresting the person. It’s often the relatives of the men that come for their release and pay up the arrears. Magistrate Kony noticed that men do not want to pay if the woman begins co-habiting with another man. He has to explain in such cases that paying for the maintenance of their children is still the father’s responsibility. In some custody cases, the courts consult with the child for his/her preference as to who he/she would like to live with.

The UHRC too receives many cases from women relating to maintenance. But since the Commission primarily addresses human rights violations by state agencies, they are only able to address issues related to problems with administration of justice or when the violence against women is defined as discrimination. They refer cases of maintenance to other agencies and NGOs, particularly FIDA - Uganda.

One of the officers at the Gulu office of FIDA-U noted that currently, most of the cases they assist with are of gender-based violence arising out of land disputes. The cases handled by the Gulu office of FIDA-U revolves around negotiating and mediating between women and their families for their rights and access to land. The communities however do not appreciate the position of the law and FIDA-U is never sure how long any remedy that comes out of such mediation last or whether it will be implemented at all. As such, the effectiveness of the solutions and remedy they offer are short-lived or necessitate following up the cases to ensure compliance. Citing a case they handled, the officer said that an old man had bequeathed some land to his son. On return from the camp, the son died. But the old man retracted the bequeath of land to his son thereby leaving the widow and her children landless.

Mediations, like the ones handled by FIDA-U, though faster than formal justice, still take long if parties are not willing or not truthful in the mediation process. Even after drafting a MoU that has been agreed upon, there is a reluctance to
The supremacy of a man’s right to land is so pervasive that even some educated women leave the administration of estates to their brothers or sons. Judge Kasule recalled a case where a mother who was a businesswoman died leaving two children. The older boy took to drinking from the money he was left but the girl got herself an education in financial management. When the Judge asked the children who should administer the mother’s estate, the girl said ‘he is a boy so he should be doing it’ despite knowing fully well that he was good for nothing.’ Judge Kasule laments, ‘when girls become complicit in their marginalization, the situation is simply tragic.’

To counter the above situation, if a case of estate survived by children comes before him, Judge Kasule passes an order that the administration of the estate must go to the surviving spouse and the surviving children. Through his orders he introduced a practice in the Gulu court that when dealing with estate, they look first into the rights of the widow and also ensure that the girl child is not excluded. However, formalizing such a practice within the court system and among the communities is a long-term process. According to UHRC, there is a need for human rights based approach to administration of justice to address aspects of land discrimination against women. Such approach requires organizing of awareness conferences for judges and other officers.

There are several issues that impede women’s access to and ability to access justice in the formal justice system. A report by Amnesty International gives a
detail account of the impediments women encounter every step of the way in their quest for justice. These impediments range from lack of police/legal protection, incompetence, hostility and indifference, difficulties gathering medical evidence, frustrations of the court process etcetera. The District Gender Office of Gulu cites bureaucracy of the system as one of the problems. Women are forced to run from pillar to post between the offices of police stations, doctors offices, courts etc. Often these are delaying tactics made to induce fatigue until the woman gives up pursuing justice. The distance to, from and between the institutions is another major issue. Women do not have the money to reach the institutions and police too ask them for money to do their job. Indeed, the NGOs that were interviewed confirmed that they often have to provide the transportation and refreshment for the police to visit communities or arrest an offender.

Moreover, the DGO found that engaging the formal justice system may result in greater frustration. In one case, a woman reported and pursued her rape case only to be eventually dismissed. The offender was acquitted despite enough evidence and the testimony of the doctor. This woman was a participant at an awareness program of the Gender Unit and had known of her rights. Her experience with the justice process left her disappointed with the realization of the wide gap between her rights and its realization.

People’s Voice for Peace (PVP) notes that the legal mechanism have several obstacles and are incapable to secure justice for war related violence. To begin with, women need to know the identity of those who violated – the perpetrators without which they cannot file any case. Almost all the women suffered during the war in Northern Uganda but they do not know how to move the justice system and have thus largely failed to get justice. Women have not been compensated for the harm they suffered and those affected by HIV-AIDS are dying slowly with the knowledge that none is forthcoming. Although some NGOs have supported women, PVP laments that women do not have a sense of justice. The government did not protect women during the war nor have they issued any strategy or policy of helping the war-affected category of women.

Judge Kasule adds that the first step towards transitional justice is rehabilitation, compensation and reintegration of all the affected people. However, he finds discrimination against women in the treatment of returnees. The men from the rebel groups have reached agreements with the government and are treated very well living normal respected lives; while women are still treated as rebels with nothing to look forward to. HURIFO observes that the formal justice system puts the rapist in jail, who may also be the only bread earner of his family. So when a woman loses the bread-earner she is also punished and suffers the consequences of the wrong by her man. The approach of the formal justice system of ‘he deserves to go to jail’ does not always end up doing justice. The overall sense is that the formal legal mechanism has not been helpful for justice to war affected women and that women victim and survivors generally find the legal process to be slow and unresponsive to their needs.

Even the officials of the courts are aware of and highlight the challenges women are faced with when they approach the courts for justice. While some of the challenges are the same whether the courts address civil or criminal matters, there are others that are very specific to civil or criminal courts. Magistrate Kony of Family and Children Court, lists the challenges of the courts in dealing with civil matters as follows:

- The courts are not accessible easily as they are situated a long distance, often 60 km away from where women live.

- Accessing courts means that women have to find money for food, accommodation and transportation to come to the court. When there are basic needs to meet, spending money on such expenses are a luxury that most women cannot afford.

- Social and religious factors play a role in deterring women from accessing the Court. The Pentacostals, for example say ‘I am saved and am not taking the matter to the Court.’

- Culturally, the communities believe that the clan can and must resolve certain matters, particularly the matters concerning women and children. Accordingly, they settle issues concerning women and children within/between the clans.
As women in Northern Uganda are not educated or empowered, they find the formal justice system too intimidating to approach.

Finally, the Courts do not have the facilities or adequate resources to deal with the number of cases that come to the courts. There are few court staff or clerks. On an average a case takes about a month to conclude but a case that requires witnesses to be heard may even take six months to conclude.

For Judge Kasule, the main disadvantage of the Courts is the criminal part of justice. The criminal justice is conceptually a system between the state and the accused person with no role for the victim. Indeed, the victim goes “empty-handed.” Even if the Courts order compensation, the accused is often not in a position to pay. It’s the main bottleneck with formal justice system. The victim has the option to bring a civil case for compensation but without an evolved structure and governance of the state and no economic development of the northern region, women find it too trying and too expensive to pursue a civil suit. Judge Kasule lists the following as the impediments to a successful case of sexual assault:

The enforcement institutions do not spend resources to perform some of the basic investigative functions such as visiting the crime scene, interrogation of key witnesses, forensic verifications and medical examinations of victims and survivors. Bad investigation by the police is often the reason for acquittal of offenders for lack of evidence.

Victims are expected to pay the costs of the above listed investigative functions of the police that is rightfully the responsibility of the State. Inability of the victim to pay for medical examination, for the transportation of the police to visit the crime scene. Although it is not the responsibility of the victims to pay for such expenses but since the state lacks or does not allocate resources to cover such expenses, those that want their case to be pursued have to bear such costs.
Police or those related to the offender often intimidate the woman at the stage of investigation to prevent them coming to court and as such, the cases are often compromised.

Culturally speaking, women do not feel free to speak certain things in the presence of certain people. Often, for example, women feel constraint speaking about sexual matters in the presence of their father-in-law.

The trauma of rape and being considered a rape victim, the sense of shame and guilt and the knowledge of rape causing breakup of the family and rejection from the husband discourages women from reporting crimes of sexual violence.

Finally, because women do not have an income/homestead of their own and men refuse to pay for the cost involved if a woman wants to seek justice, the woman ends up with no justice for the violation she suffered.

Trainings and raising awareness among women of their rights and the process of justice are often recommended as means to improve women’s access to justice. Improving legal aid services to bear the costs of seeking justice is also an important factor to provide better access to justice for women in Acholiland. While such a service exists, it is overwhelmed by the sheer magnitude of the problem.

**ii) Traditional Systems of Justice**

The challenges posed by the ICC’s indictment of the LRA leaders to the peace process led to discussions about resurrecting traditional systems of justice among the Acholis as an alternative. The parties to the peace negotiations make reference to the application of the Acholi traditional justice mechanism of Mato Oput, which ‘requires that the offenders admit guilt and unequivocally ask the victims
for forgiveness, coupled with discussions of integrating the LRA into the cabinet, diplomatic services and political arena other than prosecutions.16

The Acholi traditional institution - Ker Kwaro Acholi (KKA) is recognised as one of the actors in transitional justice. The KKA formalized in 2002 has a leadership structure that consists of local chiefs (Rwot) at the community level, Councilors who are attached to Ministries, Ministers, the Prime Minister and finally the Paramount Chief. Ms. Catherine Okot, one of the Ministers of KKA based in Gulu further clarified the structure. KKA structure is headed by a leader or the Paramount Chief who is referred to as ‘His Highness,’ his Counselors are the Chief and they include women leaders. Under the Prime Minister, there are the cabinet ministers with their own ministries. The Counselors are attached to the Ministry and selects one Rwot who reports to the Council. The Minister reports to the Prime Minister and the Prime Minister reports to the Paramount Chief.17

The current Paramount Chief took over from his father sometime in the 1990s and inherited his kingdom. He organized his Chiefs to form a Council. Earlier the Chiefs were attached to the clans and there were few who reported to the Paramount Chief. There are 54 chiefs. At the community level is Rwot Kweri who oversees the functioning of the clan and families in the clan report to him. There is a head of women called Rwot Kwor who deals with the women’s activities and problems. They appoint the most active woman as the head of the woman. Given that they now appoint women, the institution is said to be more gender responsive than in the past though there is still no space to allow women to be the Chief.

Although some believe traditional justice to be a better form of justice because it aims to restore relations between the perpetrators and the survivors, the District Gender Officer said that the traditional leaders system is not strong anymore. ‘Earlier when the immediate family was unable to settle issue, they went to the clan with their problems. Now the traditional chiefs, paramount chief, ker kwaro etc. are

17A detail account of the KKA structure is presented in the paper ‘Engaging Cultural Institutions in Expanding Access to Justice For Women in Uganda: A cast study of the Ker Kwaro Acholi,’ Dr. Maria Nassali, FIDA-U, June 2010.
the same as NGOs, writing proposals and implementing programs. They are more political and politicized and do not know much about the issues on the ground,’ said the DGO.

The establishment, rather the re-establishment of the KKA institution has the backing of the Ugandan government. The constitution of Uganda allows for traditional leader to enjoy ‘privileges and benefits as may be conferred by the Government and local government.’ At the same time, ‘a traditional leader or cultural leader shall not have or exercise any administrative, legislative or executive powers of Government or local government.’ HURIFO informed the team that houses are built for the Chiefs by the State and some of them also receive salary making the KKA, a cultural institution of the Acholis an extension of the State. The KKA pass by-laws and there is a by-law on the issue of compensation. While the local government in Gulu moved that it shall endorse the bye-laws to give them legitimacy, given that the Constitution prevents them from exercising any legislative or executive powers, the legal status of these bye-laws is unclear.

The objective of the traditional restorative justice such as that administered by the KKA is to promote reconciliation and is more concerned about life after the incident or conflict. Since punishment is not conducive to meet these objectives, it is generally discouraged or is in the form of the offender having to go through a ritualistic cleansing by ‘stepping onto an egg’ or drinking a concoction of a bitter root i.e. the Mato Oput.

Mato Oput as a means of reconciliation has got more to do with psychosocial reintegation of the offender than serve the objective of justice to the victim. Judge Kasule summarized the practice saying ‘Mato Oput was used in respect of murder in the community. When a member of a clan kills

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18Article 246 clause 3(c), Constitution of Uganda
19Article 246 clause 3(f), ibid
someone from another clan, the two clans got together and encouraged the killer to confess to the crime. Once he does it, his clan seeks reconciliation and forgiveness.’ Among the weaknesses of Mato Oput as one of the transitional justice mechanism are:

(a) It does not deal with offenses such as rape, gang rape, mutilation, abduction, disappearances etc.

(b) The reconciliation is based on payment of compensation from one clan to the clan of the offender. Since all the people are poor in Northern Uganda, there is little or no capacity to pay.

Mato Oput has been traditionally used by village elders to resolve disputes between clans. It is therefore not clear how will it apply to a dispute involving the LRA, the people of Northern Uganda and the Ugandan Government. ‘How will Mato Oput be performed with mid- or top-level commanders, the Ugandan Government and UPDF perpetrators, or neighboring regions? Elders are not in every instance well placed to facilitate justice and reconciliation.’ And as pointed out by several women in their statements, ‘elders are not necessarily representative of or sensitive to the justice needs of women and youth, nor do they even agree on the necessity of adapting local mechanisms designed to address ordinary crimes to the extraordinary crimes committed in the conflict.’ Indeed, Uganda lacks precedent on where and how forgiveness was used for crime on such a scale as the conflict of northern Uganda. The extent of the crime and damage is beyond anything for which forgiveness as a solution to the civil war can entirely be trusted. The traditional system is thus overwhelmed with the dimensions and the scale of the conflict.

The Paramount Chief has affirmed that cultural norms were made to protect the women, which is now used against them. However, such affirmations

21ibid at 114
22ibid
23Nassali: 2010 at 2
remain unsubstantiated with no account of what these norms were or how they protected women. Since culture is dynamic and ever changing, there is always a question as to what is culture, who defines it and when does it change. While there is broad recognition of customary law within the Ugandan legal system, its application depends on a strict proof of any practice being part of the culture and ‘even African judges could not rely on their own knowledge of the customary law because it is oral and liable to different interpretation.’\textsuperscript{24} There is a general consensus which is borne out by testimonies of the respondents of this rapid gender audit that ‘traditional justice mechanism is male dominated and tends to unwittingly reinforce women’s marginalization.’\textsuperscript{25}

For women, the practical difficulty with considering the traditional system as an alternative to national or international justice therefore continues to be its limitations in doing justice to women. Ugandan society, like other societies around the world, is a patriarchal society and traditions in such a society often weigh heavily against the interests of women. Several respondents raised concerns about how the system treats women.

‘We have recognized rights in the Ugandan law in terms of women’s issues but the traditional system does not.’(PVP)

‘The compensation in the traditional system is often something like ‘pay 800 shillings or 4 cows to the family of the victim if you rape somebody’s wife. This needs to be reviewed because the husband is viewed as owner of the property including women. It is the woman who suffered and the husband or the family is compensated.’ (HURIFO)

The representative of ACCORD added another dimension. ‘Traditionally, rape was not common but domestic violence was. A 14 or 17 years Acholi girl would be married and therefore they do not consider defilement to be out of normal. They

\textsuperscript{24}ibid at 6
\textsuperscript{25}ibid at 11
looked at age difference between couple and if this is high, it was considered an offense. The clan administered the justice. The parents of the victims would call a meeting with the clan of the both parties where they would present the case and find a solution. Then there was also mob justice. The men of the girl’s clan would simply beat up the offender and that’s it. The justice depended on emotion because of a sense of responsibility and compensation. They performed ceremonies as part of the resolution and gave goats/cows as compensation to the family/clan of the survivor.’ (ACCORD)

With the KKA established as an institution, one of its ministers said, ‘A raped woman reports to Rwot Kwor (a woman), who reports to Rwot Kweri (man). They organize a meeting of the Counsellors where the matter is discussed. They try to settle the matter with the husband and counsel him to accept the woman and not divorce her. Rape of a woman of the same clan is referred back to the State. Indeed, the KKA respondent agreed that rape is a criminal offense, which must be referred to the formal legal system.

Girls that return back from the bush are left without the support or belonging to any clan. The Paramount Chief instructs the clans to accept their children back from bush or their girls after putting them through some cleansing rituals. Rituals performed helps with the psycho-social problems of bush children who see demons and have nightmares.’

In fact it is this last purpose that the traditional system best serves in the case of abducted boys and girls coming back from the bush. The LRA abducted these children and used them as foot soldiers to commit horrible crimes. When they returned, they are faced with many psychological problems and are unable to integrate into the society. Cleansing rituals for such offenders may have the function of symbolic acceptance and forgiveness of the circumstance of their wrong-doing. For some of the offenders, it may perform the function of release from a sense of guilt, shame and fear of the society and helping them to move on with their lives in the same society.

PVP however raised concern about the cleansing ritual in the crime of rape and pointed out that in the case of rape, it is the victim or the survivor who has to go
through the cleansing. ‘Rape was considered a taboo in the traditional system and something to be prevented. But years of war made it normal and that taboo was broken. The people nevertheless consider it to be bad and believe that the victim must undergo a cleansing ritual. If no cleansing ritual is performed it is considered a bad omen. The traditional system thus considers psychological assistance of the victim by cleansing as justice for abused women. The perpetrator is not touched.’ (PVP) There are additional problems with rape during conflict. Often women do not know who did it and sometimes it is gang rape. It is often difficult to identify the perpetrator and in most cases, women have been infected with the HIV virus and are completely “destroyed.” ‘Cleansing ritual for raped women is not enough, they need compensation to go back to school and have a better life. The traditional mechanism is inadequate to deal with it.’ (PVP)

### iii) International Crimes Division:
Complimenting the jurisdiction of the International Criminal Court

The President of Uganda, in an effort to enforce accountability for the crimes in the conflict raging for 20 years referred the situation in Northern Uganda to the Prosecutor of the ICC for investigations.\(^26\) Although atrocities were committed by both the LRA and the UPDF, the referral was specific to investigating atrocities by the LRA thereby at once politicizing the referral. By accepting to investigate the LRA specifically\(^27\), the ICC cast a shadow on its credibility and impartiality.

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\(^{27}\) A year later in October 2005, the Office of the Prosecutor issued arrest warrants against five LRA commanders. However, these warrants have not been executed and three of the five commanders are now reported dead. See Moreno-Ocampo, Luis. (14 October 2005). ‘Statement by Chief Prosecutor on Uganda Arrest Warrants.’ Available at http://www.icc-cpi.int/library/organs/otp/speeches/LMO_20051014_English.pdf and statement of the Prosecutor, Luis Moreno Ocampo. (8 November 2007). ‘Information about the death of Otti-Prosecutor.’ [online]. Available at <http://www.icc-cpi.int/library/cases/ICC-02-04-01-05-258_English.pdf>
From the survivors’ point of view, the selective investigation of atrocities by LRA unwittingly suggested that the victims of LRA are somehow more worthy of justice than those who suffered at the hands of the UPDF. It significantly de-legitimized ICC’s ability to garner support of the people of Northern Uganda for its investigations.

Pursuant to the investigations, arrest warrants were issued in 2005 against five commanders of the LRA. These arrest warrants have not however been executed as all the five commanders have been at large since the issue of the warrants. Currently, two of the five namely Raska Lukwiya and Vincent Otti are reported dead and one, Okot Odhiambo is rumoured dead. Joseph Kony and Dominic Ongwen are still at large reportedly in Southern Sudan. The arrest warrants, if executed, would see two LRA commanders charged and prosecuted on various counts of crimes against humanity, particularly count one of sexual enslavement and count two of rape. The execution of the warrants has been stalled following peace negotiations and the Cessation of Hostilities Agreement between the Government of Uganda and the LRA. Justice for victims, including women victims of sexual violence of the conflict in Northern Uganda has thus effectively stalled at the international level beginning a circle of impunity.

Since the referral, there have been many research and debates on the ways in which justice at the International Criminal Court is limited. First, as already mentioned above, the referral pertained to atrocities committed by the LRA and not the UPDF. Justice for violations by UPDF is, for the moment, not a possibility at the international level.

Second, although there is nothing in the statute and other documents of the ICC that restricts the extent and nature of prosecution, given the fact that conflicts by definition involves a large number of perpetrators and victims, the Court has set itself an objective to pursue accountability for crimes committed by those with

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the highest of responsibility. The prosecution target of the ICC therefore is limited to leaders and commanders of armed rebel groups and armed forces of States. A large number of perpetrators who implement the command, policies and orders of the leaders and commanders escape the accountability net of the ICC. ‘How many women will benefit from justice at the ICC? The ICC also depends on State’s goodwill to arrest the offenders and therefore most of them will never be arrested. At the end of the day, there is no justice for a greater majority of people/women who have suffered.’

Third, in situations of conflicts, a wide variety of crimes are committed that do not necessarily rise to the gravity threshold of the core crimes that triggers jurisdiction of the ICC. Thus, crimes that cannot be classified as war crimes or crimes against humanity are not investigated by the ICC.

Finally, in the situation of Northern Uganda, the political debates on conflict resolution are pitched as negotiating peace away for justice or vice versa. The consequence has been that the ICC is used as a stick for political negotiations and settlements undermining the justice aspect inherent in peace for what seems like a tentative cessation of hostilities, given the fact that the agreement agreed to have not been implemented.

Pursuant to the complimentarity principle enshrined in the ICC statute, the ICC can investigate and prosecute only those situations that the State concerned is unable or unwilling to do so. The principle that was originally intended as a pre-condition to the exercise of ICC’s jurisdiction, is now used as a means to overcome the second limitation mentioned above. In other words, it is now understood that the national legal system of the State in question should be left to investigate and prosecuted all the cases that the ICC will not and hold the alleged perpetrators accountable before a national court.

For the State’s national legal system to pick up from where the ICC leaves, it is important that the system has the capacity and the legal ability to ensure accountability for violations in the same manner that the ICC does. It implies that the laws, rules and procedures of the national system are in full compliance with
the international standards as set in the ICC statute and its supporting documents of the Rules of Procedure and Evidence and the Elements of Crimes. To ensure such compliance and demonstrate legal ability, the Ugandan government passed the Ugandan International Criminal Court Act, 2010 (ICC Act). Accordingly, an International Crimes Division attached to the High Court of Uganda has been established and tasked with applying the ICC Act 2010 to crimes committed during the conflict and to enable domestic investigations and prosecutions to hold a large section of perpetrators accountable.

Despite passing the ICC Act, it is not clear if the government of Uganda has fully complied with the complimentarity requirement of demonstrating the State’s legal ability. While the ICC Act 2010 referred to the same sections as the ICC with regard to the crimes that would be tried i.e. genocide, crimes against humanity and war crimes; and conferred the force of law to ICC’s Rules of Procedure and Evidence (RPE), it does not refer to the articles in the ICC statute providing for victims participation and reparation, thereby seriously limiting the victims role in any justice process initiated under the Act.

Another area of concern is Article 19 of the Act that deals with the general principles of criminal law. Accordingly, for the purpose of proceedings for an offense under the sections 7, 8, and 9 of the Act, the applicable principles of criminal law is ‘the provisions of Ugandan law and the principles of criminal law applicable to the offense under Ugandan law’ and ‘the person charged with an offense may rely on any justification, excuse, or defense available under the laws of Uganda of international law.’

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32 Ibid. Article 5(c)
33 Ibid. Article 19 1(b) and 19 1(c)
However, the laws of Uganda fall short of matching the international standards of justice in prosecution of sexual violence crimes. The proceedings of a criminal trial for rape or defilements in the courts in Uganda are replete with gender bias and influenced by patriarchal notions of women’s roles in society. Lawyers, judges and other court officials bring their beliefs about morality and women’s sexuality in the courtroom proceedings thereby significantly undermining women’s human rights. Accordingly, women’s testimonies of sexual violence are considered incredible unless corroborated; women’s sexual histories are used to discredit their testimonies and slander their character: women with prior sexual experience are considered ‘unrapable,’ and legal protection is denied to sex workers or those with different sexual orientation. Victims of rape thus experience the legal proceedings as being ‘raped all over again.’ That these laws may be relied on in the proceedings, allow lawyers to bring in defense, excuse and justification that are otherwise restricted under the ICC’s RPE.

The rules of procedure and evidence for the ICC relies on women’s testimony with no need for corroboration, prohibits slander of women’s character and inference of ‘sexual availability’ based on women’s sexual history. It also restricts the ‘consent’ defense that is routinely brought in a rape case and leaves its admissibility to the discretion of the Court. In addition, according to article 21(3) of the ICC statute, the Court is required to apply the statute and the rules or procedure and evidence without any discrimination and in accordance with international human rights standards. Unless the above changes are incorporated in Uganda’s criminal procedure, there is very little hope for justice for women victims of sexual violence in conflict situations under the national legal system or the newly created International Crimes Division.

Finally, there are several concerns with regard to the impending functioning of the International Crimes Division. The most significant among them is the question of retroactivity. The ICC Act, 2010 applies most of the key provisions of the Rome Statute but is silent on the retroactivity principle in Article 24(1)\(^{34}\) of the Rome

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\(^{34}\)The article relates to the principle of non-retroactivity which states that no person shall be criminally responsible under the Rome Statute statute for conduct prior to the entry into force of the statute.
Statute implying thereby that the Act is intended to take effect retroactively. In addition, section 1 of the ICC Act, 2010 provides that part III, IV, V, VI, VII and VIII that are procedural in nature and deals mainly with matters relating to cooperation with the ICC, shall apply before the coming into force of the Act. The ICC Act, 2010 despite taking cognizance of other principles of law already applicable under Ugandan law, stands in contradiction of Article 28(7) of the 1995 Constitution of Uganda which provides that no person shall be charged and convicted of an offence founded on an act or omission which did not constitute a criminal offence at the time it took place. Given this ambiguity in the ICC Act, 2010 with regard to its application retroactively, the fundamental principle of statutory interpretation apply – that is the ambiguous provisions must be construed against the state and in favor of the liberty of the accused person. If indeed the Act cannot be construed to apply retroactively, it leaves the situation of domestic prosecution of perpetrators of the conflict in Northern Uganda un-addressed completing the circle of impunity.

The ICC Act, 2010 despite taking cognizance of other principles of law already applicable under Ugandan law, stands in contradiction of Article 28(7) of the 1995 Constitution of Uganda.
Most of the respondents were of the view that establishing a Truth, Justice and Reconciliation Commission (TRC) is important to help heal the conflict-ridden society of Northern Uganda. The establishment of a TRC is waiting for the peace process to end, a process that is not yet concluded, as the parties have signed the agreement. According to PVP, there is a need for a national reconciliation for people to know who is responsible for the crimes. But given that the government has drafted a bill on national reconciliation but not tabled it, casts doubts about government’s commitment to establishing the TRC. Any process of TRC will have to record all forms of violations by all the parties to the conflict. This will also potentially bring into official records the atrocities by the government’s armed forces, the UPDF.

The government’s policy of providing the rebels with amnesty does not require the rebels to confess to the violations they commit. All they have to do is to denounce the rebels without having to admit to what they did or apologize. The rebels returning with amnesties have positions in the ruling government or State armed forces and salaries to live a good life but their victims, particularly the women continue to be regarded as ‘ex-combatants’ and are left with children, infected with HIV virus and have no land, clan or other livelihood option with which to fend for themselves.

The war related situation of justice is such that perpetrators are well cared for including jobs and medical care but the survivors have no access to medical care or treatment, suffer mental trauma, unable to be engaged in productive ways and are generally damaged. The survivors face double jeopardy. ACCORD anticipates that a TRC will bring out such sentiments from the people and there is an expectation that the government of Uganda will respond to the needs of the victims of the conflict.
The efforts towards a peaceful end to the conflict in Northern Uganda have brought the notion of justice or the lack thereof to the center-stage. The long conflict broke down governance institutions including the judiciary and made justice dysfunctional in Northern Uganda. The referral of the situation to the ICC for investigation was the first effort at foregrounding justice as a means to cessation of the conflict and bringing about peace. However, because the referral is perceived to serve political ends rather than justice for victims and survivors; and because of ICC’s dependence on cooperation of State parties, its investigation and indictment lack credibility. Justice at an international level has thus far proven to be a non-starter.

The pitching of justice against peace by the parties to the conflict and the people of Northern Uganda after the referral to the ICC have raised an interest in exploring the notion of homegrown justice. Efforts have since been made to identify and resurrect traditional mechanisms of justice that have long been forgotten in practice. But as discussed above, the practice of traditional systems is relevant to inter-personal or inter-clan disputes around issues of theft, land rights and murders that occur in an otherwise peaceful community. Its ability to deal with atrocities of the scale and magnitude in Northern Uganda involving government of Uganda is restrictive. The role of traditional systems however cannot be undervalued for the psycho-social healing of the perpetrators from a sense of guilt and soothing of survivors from pain.
Traditional system is informed by and seeped in patriarchal values that prioritize women’s traditional roles over women’s human rights. Justice from this system is more inclined to enforce and perpetuate the patriarchal values that deny women their rights rather than secure it. The potential of women’s involvement in these systems therefore, both as practitioners and as subjects is limited unless the systems are completely transformed to be gender just, rights-informed and provides a life of dignity to women. Transitional mechanisms of justice like a TRC that may give a voice to women and address the issue of compensation has not been established.

The decision to try most of the perpetrators of crimes in Northern Uganda in the International Crimes Division nationally under the ICC Act 2010 is fraught with constitutional and fundamental legal ambiguities, the primary one being the ambiguity around the retroactive application of the Act. Its reliance on Ugandan law for interpretation and application of some rules and procedure brings about inconsistency with international standards that the courts are required to follow. The lack of specific recognition of rights of victims to participate in the proceedings and to reparations is another matter of concern. With the ICC Act 2010, Uganda has now acquired the technical and legal ability to try international crimes. However, given the general state of the judiciary as a whole with lack of all manner of resources for its efficient functioning, the ability of the new international crimes division in the High Court to do justice where other courts have failed is restricted.

The enormous challenges of the different systems of justice make it clear that justice for survivors of the conflict in Northern Uganda is not yet quite within reach. During the years of conflict, violence against women was mostly sexual in nature such as rape and other forms of sexual abuse. It was more often perpetrated by the police, armed forces, rebels and other persons in positions of authority; and less by persons in intimate relation to the woman. It was a phase where one saw less of domestic violence and more of violence by other people. Post-conflict, the situation has reversed. While sexual violence has not abated, domestic violence is rising disproportionately.
For women therefore justice remains an intangible dream. Justice at an international level did not take off and therefore could not address crimes against women. Justice from the courts in Northern Uganda is fraught with challenges that frustrate women at all levels – from registration of the violations to the filing of a case in court and the process in the courts itself. Traditional justice is inherently biased and anti-women. Other institutions and NGOs attempts to assist women access the justice system have had limited and short-lived success.

Thus, while it is clear that the solution to ending the conflict in Northern Uganda and bringing about lasting peace lies in these multiple systems of justice functioning simultaneously and effectively complimenting each other, each of the system have failed to include and address women’s views, interests and needs for justice. Those interviewed in the rapid assessment survey nevertheless made several suggestions and recommendations as way forward to break the impasse and make more room for women to seek justice for violations in general but war-related ones in particular.

The key suggestions that emerged from the survey are:

- Given the dysfunctional state of the courts in Northern Uganda, strengthening of judicial institutions was identified as one of the important step towards justice provision in general and for women in particular. The measures to strengthen judicial institutions extends to the following, among others:
  
  o Additional resources for the Court
  
  o Reopen courts that were closed during the conflict and take legal and judicial services closer to people
  
  o Strengthen the police force to enforce order of custody and maintenance
  
  o Organize gender sensitization program for magistrates and other officers of the Court.
  
  o Support of NGOs such as FIDA-U as ‘Friend of the Court’ to support and guide women seeking justice in the Court and at the same time provide legal support to the magistrate.
Adopt the ‘social contract model’ toward prevention of conflicts. It would require that members of a community or society agree to live by a prescribed social standard to achieve a certain social objective. For example, toward the end of gender justice and prevention of violence against women, the contract may include provisions that husbands don’t beat up their wives with a set monitoring mechanism and do’s and don’ts that would help achieve this objective. It may involve community projects aimed at bringing men and women to work together as a community. The idea being that the more they work together, the more likely they will bond with feelings of brotherhood and sisterhood; and the less likely they will harm each other or be violent.

As a precondition for justice, extend special consideration to the victim of abduction who has become a mother as a result of the conflict. The consideration should take the form of assistance to pursue education for themselves and their children and training with special skills for their economic empowerment.

Popularize the role of the Commission and inform women of the circumstances they can approach the Commission. The Uganda Human Rights Commission has a Human Right Court, which performs a quasi-judicial role and orders the State to pay compensation to victims of torture or violation of right to life. Most of the secondary victims of such violation are women and therefore the beneficiaries of the compensation awards too have been women. Moreover, the Commission also supports women to secure the letter of ‘administration of estate’ to run their land and estates in case of land dispute.

Empowerment/self-help in the face of lack of response from the authorities is another measure that has been implemented successfully. The children who came back with children of their own earlier wanted to shed the label of being ‘child mother’ to integrate in the society. But when the families and clans rejected them, they had to work towards accepting the situation. Subsequently, they decided to stay single and fend for themselves. They have no social attachments to any clan or community and majority of them are sex workers. They formed the Association of Child Mothers to provide support to each other.
Establishing mechanisms that puts the many cases in the special courts for cases related to women in a fast-track for speedy disposal. While speedy trials does not mean short-changing due processes of law, it would involve trainings to gender sensitize officials of a fast-track court that is adequately resourced and staff to speedily but sensitively handle all cases concerning women.
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