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Justice and Reconciliation Project (JRP)

WORKSHOP ON ACCOUNTABILITY AND RECONCILIATION IN UGANDA: JUBA PEACE TALKS

6TH – 7TH MAY 2008
FAIRWAY HOTEL

WORKSHOP REPORT

****Final report****

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1.0 Acronyms

GDNF	Gulu District NGO Forum
JRP	Justice and Reconciliation Project
KKA	Ker Kwaro Acholi
LRA	Lord's Resistance Army
GoU	Government of Uganda
ICC	International Criminal Court
FPA	Final Peace Agreement
PM	Prime Minister
MP	Member of Parliament
RNE	Royal Netherlands Embassy
DPP	Directorate/Director of Public Prosecutions
UHRC	Uganda Human Rights Commission

2.0 Executive Summary

This workshop follows the conclusion of the Final Peace Agreement (FPA) in Juba between the Lord's Resistance Army (LRA) and the Government of Uganda (GoU). Mediated by the Government of Southern Sudan (GoSS) under Chief mediator Dr. Riek Machar, the vice president of Southern Sudan, this remarkable agreement which began two years ago was to be signed by LRA leader Joseph Kony on 10th April 2008. However, he did not sign as expected and instead sought clarifications on the specificities on the protocol of accountability and reconciliation as well as the disarmament, demobilization and re-integration agreements. In particular, the LRA leader Joseph Kony wanted to know more about the Acholi traditional justice system of "Mato Oput", its linkage to the proposed special division of the High Court and other formal institutions in the agreements.

It was on the basis of this that His Highness Rwot David Onen Acana II, the Acholi Cultural leader with the assistance of the Justice and Reconciliation Project (JRP)¹ was tasked to lead a consultative process that would bring together like minded actors to deliberate in an attempt to provide clarity to the LRA leaders' concerns. Therefore, on the 6th and 7th May 2008, a workshop was convened at the Fairway Hotel Kampala. The objective of the workshop was to clarify the procedural steps required for the implementation of the Agreement on Accountability. As a result, the workshop was to produce an explanatory note outlining procedures on key technical issues in the Agreement on Accountability and Reconciliation that was to be made immediately available to the LRA leadership.

In arriving at these, the conference organizers identified key themes to be discussed, and these included: (i) the role of investigations and self-disclosure; (ii) the criteria for allocation of individuals to the various proceedings; (iii) description of various accountability institutions (courts, traditional justice, and truth-telling mechanisms) and their jurisdictions; (iv) the relationship between the various accountability institutions, and, (v) the possible outcomes of the proceedings for individuals..

The two day workshop was attended by 124 participants composed of; the GoU delegation led by the Permanent Secretary in the Ministry of Internal Affairs; the LRA delegation; traditional, cultural and religious leaders from Northern Uganda; selected members of civil society from Kampala and Northern Uganda; members of the Ugandan Parliament; members of the Ugandan Judiciary; representatives from government organs such as the Justice and Law Order Sector; Uganda Law Reform Commission; Uganda Human Rights Commission; the Amnesty Commission and various donor Representatives. The workshop was funded by the Royal Netherlands Embassy and its proceedings facilitated by the Legal Advisor to the mediation.

The key procedural linkages identified were:

Traditional Justice System

- a) Traditional justice will involve Truth-telling; Reconciliation; Compensation (Symbolic)
- b) It will be a Voluntary Process
- c) Process of Traditional justice will involve Sensitization of communities and the LRA; Reception arrangements to include community representatives (chiefs, religious and other leaders,) and government officials; Other reception arrangements within communities using local arrangements and cleansing ceremonies, then reintegration

¹ A project of Gulu NGO Forum and the Liu Institute for Global Issues, for more information about this project visit www.justiceandreconciliation.com

- d) Facilitators in the traditional justice process will be Traditional Chiefs, Clan leaders, Ludito Kwor and local leaders.
- e) Confessions and admissions by perpetrators are not to be used against individuals in criminal proceedings.
- f) There will be two categories of returnees for purposes of accountability i.e. Leaders (requiring special arrangements for reception and security); and Others, who can commence traditional justice system processes immediately.

Accountability – General:

The Agreement (AI3) provides for 2 processes: (i) formal (ii) non formal.

- a) Formal process will be for those accused of committing serious crimes and violations.
- b) The non formal system will be applied for the rest of the returnees.

Formal processes:

- a) Special division of the High Court (SD). Judiciary reports that it is ready to conduct trials. New legislation would elaborate procedures.
- b) There were also suggestions that the trials should be conducted by a 3 or 5 person bench.
- c) Appeals shall be either to the current Court of Appeal or to a Special Appeals Chamber. Consider the needs for a special appellate system – personnel. Special procedures including Amicus Curiae (expert legal representation) briefs to support trials.

Process of repatriation from outside Uganda (Assembly Areas);

- a) Trigger for repatriation is the signing of the Final Peace Agreement, upon which a Transitional Period of 30 days commences. GOU and LRA have obligations during this period.
- b) LRA is expected to fully assemble in Ri Kwanbga.
- c) GOU to commence establishment of the Special Division and Investigations and making representations to the UN Security Council for suspension of ICC warrants (Cc 36-37 IMM). There is Provision for extension through the Observers Forum.

Post-Transitional Period

- a) The LRA shall be repatriated into Uganda: first to general reception point. GOU is to make security arrangements for the safety of the LRA and leaders. Returnees will have choice on destination for reception. Leaders to remain in approved areas. During this time, however, no individuals will be under arrest.

Investigations:

- a) Charges shall only be proffered on the basis of investigations.
- b) No provisional arrests pending investigations.
- c) After a charge has been preferred, under current law, there is a power to detain and to discharge.
- d) Investigations are to be impartial and conducted by an independent unit under the DPP
- e) All cases shall be referred to the Special Division of the High Court

- f) Training of States Attorney (according to the DPP) has commenced and they should be in position to begin work immediately

Linkage between the Special Division of the High Court and Traditional Justice Mechanisms:

- a) There should be cross references between the two systems in order to guard against self incrimination.
- b) The Special Division should have lay assessors sitting in on trial
- c) Views of victims and communities are relevant in proceedings and should be sought. Legal representation provided that this is done

Sentencing Principles:

- a) The death penalty is excluded in the Special Division of the High Court (clause 6.3)
- b) Procedures should enable accused persons/suspects to cooperate with investigations and provide for plea bargaining.
- c) Views of victims and community should be taken into account.
- d) Where the accused has already undergone traditional and community reconciliation this should be taken into account.
- e) In other cases, the Court will establish whether or not the accused and victim communities wish to undergo reconciliation and procedures to enable community processes during sentencing will be put in place
- f) Rehabilitation of perpetrators and victims should be the ultimate objective

What is the situation where ICC warrants remain outstanding?

- (a) The parties have agreed that trials of the LRA suspects will be in Uganda and in accordance with national laws.
- (b) In any event, where the agreement collapses during the validity of the COH, the LRA is allowed safe passage out of the Assembly Areas.

FIRST DAY (6TH MAY 2008)

3.0 Introduction

3.1 Welcome remarks

The Programme Coordinator, GDNF/JRP, Mr. Michael Otim welcomed all participants on behalf of KKA and JRP and briefly introduced the two day working programme. Archbishop John Baptist Odama then led the participants in an opening prayer. Introductions then followed; Dr. James Alfred Obita (Chairman LRA delegation) introduced the LRA delegation. Dr. James Kagoda (Permanent Secretary Ministry of Internal Affairs) conveyed apologies from the GoU Chief negotiator Dr. Ruhakana Rugunda and Minister Okello Oryem and others as they were out of Kampala on official business. He then introduced the rest of the GoU delegation. The rest of the participants at the workshop introduced themselves.

Opening remarks were then made by the Chairman of the LRA delegation, the Leader of the GoU delegation and His Highness Rwot David Onen Acana II. Below were some of their remarks:

3.1.1 Chairman LRA Delegation

The reason for failure to sign the Peace Agreement is because Kony wanted clarification on traditional justice mechanisms and their relation to the High Court and other formal institutions. When we carried out peace negotiations in Juba, we didn't have enough time to spend in the field with fighters to explain the relation between the ICC, the High Court, and traditional justice. This made it very unclear to them. The expectation at the time was that we (LRA delegates) would provide these explanations in Ri-Kwangba before the signing of FPA but because of a number of unforeseen circumstances we failed to get a signature on the FPA. The frustrations we have had should not overpower us. After this meeting, we can come up with a suitable document that will explain to the High Command all of their concerns on issues of accountability and reconciliation, and henceforth reassure them that the Agreement at Juba is a good one. At this point it is important to try to explain that the peace talks are not to trap Joseph Kony, as is rumoured. Every issue of accountability needs to be explained to him clearly as it stands without any measure of condoning impunity. So, this workshop will provide the clarity we need to take to the field. Proceedings in the workshop as well as the final document should be as simple as possible, in a layman's language. Finally, I want to reassure people that yesterday I had a telephone conversation with Joseph Kony himself - he is aware of this meeting and has given it his blessing. He is not dead; we talked for half an hour. I talked to other commanders too, they are alive.

3.1.2 Chairman GoU delegation; (Represented by Permanent Secretary Ministry of Internal Affairs, Dr. S. Kagoda)

'Dr. Rugunda instructed me to deliver several messages to workshop'. On behalf of the GoU, the permanent secretary thanked the organizers and facilitators for the effort in bringing everyone together and all participants for the time they have given. 'We thank you for the guidance and encouragement throughout the whole peace process. We also believe that we have negotiated excellent agreements for peace. In many cases, the agreements specify the obligations of both parties. We have informed Cabinet and Parliament about all of the Agreements we have signed and they have read them. Cabinet instructed the PM to instruct all

government agencies and departments to immediately put in place mechanisms and procedures for implementing the obligations in the Agreements. He is aware that various departments received that instruction and that many of them have begun putting in place procedures and mechanisms that implement government obligations. We believe that what we are discussing here is for the good of us, and for the good of the country’.

3.1.3 Lawi-rwodi of Acholi

The Leader of the GoU Delegation, the Chairperson of the LRA delegation, leader of opposition in Parliament; MPs present; Members of the Judiciary present; Members of civil society; Cultural and Religious leaders present; Ladies and gentlemen;

The path to peace in northern Uganda has been long, torturous and arduous. Several attempts were made in the past to resolve the conflict peacefully through dialogue, but despite these many attempts, the goal was not always achieved. This has meant that for over two decades now, peace has been elusive for the people of northern Uganda. However, the Juba Peace Talks, which have lasted for close to two years now, have been hailed as the best opportunity so far for the return of lasting peace to northern Uganda. Since the talks started in July 2006, the delegates at the Juba Peace Talks have worked their way through the five agenda items which set the pace for the talks. As a result of their hard work, several agenda items were signed. These include among others the important agenda item on Accountability and Reconciliation. I take this opportunity to thank the Government of Uganda and LRA delegations for their perseverance, tolerance, and patience which led to the signing of these agenda items. Victory however eludes us, because the Final Peace Agreement has not been signed, and was postponed on several occasions.

The decision to postpone the signing was disheartening. The Final Peace Agreement was not signed because the LRA leader Joseph Kony wanted clarification on the issue of accountability and reconciliation. In particular the LRA leader wants to know more about the Mato Oput Acholi traditional justice system and its linkage to the proposed special division of the High Court and other formal institutions in the Agreements. That is why we are gathered in this room today: to provide answers to the questions that have been posed by the LRA. If we successfully come up with these answers, the LRA will most likely sign the Final Peace Agreement. The task that lies ahead of us today sounds simple but in actual sense is difficult. We are tasked with coming up with satisfactory answers on accountability and reconciliation, and in particular how the formal and informal justice systems will operate. Putting aside the academic explanations, we have to come up with simple interpretations which will be understood by the LRA leader Joseph Kony, and will instill confidence in him to sign the Agreement.

The outcome of our deliberations must be a message that clearly points out the steps that will be followed in pursuing accountability and reconciliation after the signing of the Peace Agreement. The message must be a guarantee to the LRA that the Peace Agreement is well intentioned and aimed at restoring peace in northern Uganda. At Juba, negotiations brought the LRA affected areas to near total peace. All efforts must therefore be geared to salvaging the Juba peace process as it made it possible for security and humanitarian improvements to prevail. We must not allow the efforts which have been put into the peace process for over two years to go to waste. This would amount to a betrayal of the highest order to the people who have entrusted us with the delicate task of safely delivering the olive branch of peace to its final destination.

In addition to the above, improvement of war-affected people should be consolidated and sustained despite how the negotiations end. The return of IDPs and other reconstruction and relief activities must continue and in this regard, we need to exercise maximum potentials and engagements by all stakeholders. To the Government of Uganda and the LRA, the time for negotiation for the moment is over and there is need to work together to overcome the challenges. There is also need to closely study impacts and relations of Mato

Oput on the ICC and the Special Division of the High Court. In conclusion, as we embark on the difficult task of answering these questions, we must remember that the eyes of the world and in particular that of the people of northern Uganda who have suffered for over twenty years are now focused on Juba. Everybody is eagerly awaiting the outcome of the talks, with the hope that this outcome will be positive. It is the duty of we who are gathered in this room as experts in our various fields to make this outcome positive. I wish everyone a fruitful deliberation and welcome the Deputy Ambassador of the Netherlands to open the workshop.

3.1.4 Official opening – Michel Rentenaar, Deputy Ambassador of the Royal Netherlands Embassy

The workshop was officially opened by the Deputy Ambassador of the RNE. In his brief speech he stated that the international community has been supporting the talks for a long time. But for the past two years we have not just limited our effort to funding; 'We provided political and moral support in addition'. Unfortunately, while the agreement has been agreed, the planned signing did not take place. The peace process has entered a critical phase and the next meeting which will take place in Ri-Kwangbha will be of importance. It is not often that such an opportunity presents itself and so we intend to uncover some of the unclear issues yet again over the next two days. Participants gathered here therefore have a great responsibility of clarifying the paragraphs in the agreement as a basis for signing the peace agreement.

Thanks to KKA and JRP for having organised this workshop. They have been our partners for many years. I wish to conclude by saying that the donors to the peace process stand united and we are talking to others to see how we can coordinate future funding. The weight of this peace agreement is shifting gradually from Juba to Kampala. It is up to the parties and the participants to make the final step. I wish you success and hope to be informed of the outcome.

3.2 Workshop overview, aims and structure (Mr. Barney Afako, the Legal Advisor to the Chief Mediator and Workshop Facilitator)

The lead facilitator informed the participants that the two days were going to be working days that would necessitate them to 'scratch' their heads over legitimate questions in the Agreements. 'We will start by examining the text (Agenda Item 3 and its Annex, Comprehensive Solutions, Implementation Protocol and Final Ceasefire)'. He walked participants through the documents. First he emphasised that, 'we need to reach an understanding on what the process of accountability should be for an individual who shall be going through this right from the stage of DDR.' For people in DR Congo (LRA still in the bush), we need to give them a step-by-step approach to show them what they should expect on return, most especially for those concerned about their fate. Assuming the entire people in the room were in Congo, what sort of questions would they ask on accountability and reconciliation? We need to come up with these questions and most importantly provide answers for them. How would you want it explained to you if you were in that position?

On specific questions regarding institutional linkages proposed in the Agreement (i.e. Mato Oput, Special Division of the High Court and a reconciliation body), what is it?, how does it function? how is it linked to Mato Oput and how is it linked to Special Court? It is crucial that we need to understand the content of the legislation that is needed (However it is not necessarily to draft it in the next two days, but to know what needs to be covered).

During the next two days, we shall try to follow the individual from current situation where they are still in the bush all the way to either reintegration and/or accountability in a formal sense. The methodology over the two days shall be very critical and questioning one. If you don't understand something, don't let it go, ask the question right away because we shall have to deal with all the nagging questions. By the end, everyone

should be able to give an outline of accountability in simple terms. Panellists will come to clarify, but also provide suggestions for ways forward.

There are two ways that the Agreements have been divided: formal and non-formal processes. We should keep these in mind. Formal processes are driven forward by the state – courts, prosecution, and truth-telling body. Non-formal are traditional justice practices, etc. Both are crucial. We need to understand step-by-step what an individual will go through in either process. Who are the key people? What steps are they taking? Today we will start with traditional and community justice processes (presented by JRP) and then will look at formal processes (investigations, charges, courts). We will make linkages between the two types of processes. They will fit in with each other by the end of the day – bringing the strands together. We are addressing implementation before the signing, which is why there is no legal basis yet for the Special Court. But they (High Court) have been thinking of ideas on how the Special Court shall work. So we expect more input into key areas for the court from the participants, and those who are busy thinking along that line, day and night. In the Annex to the Accountability Agreement –pg. 3 (clause 7 on – “A special division of the High Court of Uganda shall be established...”) explains what legislation is needed to implement the Special Division. Our task today is to come up with some of the content and proposals on composition and on substantive law and the recognition of traditional and community justice. But we shall not discuss the rules of procedure, at least not today (too complicated).

4.0 Integrating Traditional justice: Panel presentations and discussions

Members of the panel included: Mr. Otto James, Rtd. Bishop Mark Baker Ochola and Lino Ogora. This panel was chaired by Commissioner Aliro Omara, who introduced the discussion by highlighting some of the issues mentioned by the Legal Advisor to mediation in his overview of the workshop earlier on. He urged members to stick on the key questions without elaborate explanation on the rituals of traditional justice.

4.1 Acholi traditional justice: A presentation by Ogora Lino Ogora, Justice and Reconciliation Project)

Whereas traditional justice may not offer comprehensive answers to the problems on accountability and reconciliation in northern Uganda, many people acknowledge the fact that it is part of the solution, and a significant part at that. Traditional justice mechanisms of the ethnic groups in northern Uganda include Mato Oput of the Acholi, Kayo Cuk for Langi, Ailuc of Teso, Ajupe of the Kakwa, Ajufe of the Lugbara, Aja of the Alur, and Tolu Koka of Madi among others. Traditional justice is based on certain key principles which include trust, voluntariness, truth-telling, compensation, and restoration. Based on these principles there are several symbolic ceremonies in Acholi aimed at restoring harmony at the family, community and inter-clan levels. One of the most prominent of these rituals is Mato Oput or the drinking the bitter root, which involves a symbolic process of confession, mediation and payment of compensation in the case of murder and offers an all-encompassing process for promoting reconciliation within communities. Other symbolic rituals include: Nyono Tong Gweno (stepping on the egg), Moyo Kom (cleansing of the body), Moyo Piny (cleansing of an area) and Gomo Tong (bending of the spear), among others.

The insights in this presentation were mainly drawn from a workshop that was convened in Juba by cultural and religious leaders on the 17th and 18th of April 2008. They highlight some of the important steps and ceremonies that will need to be followed in the event that the FPA is signed and the LRA come home from the bush. They include the following;

- a) Confidence Building and Other Preparatory Measures: One of the outputs of this recent workshop was the recognition that there will be need for preparatory measures of some kind given the fact that in the twenty years in which the conflict has lasted, cultural values have been lost, and a new generation which has a limited understanding of the traditional justice may have sprung up.

There will therefore be need for sensitization of both the LRA and the community in the North in order to prepare them for traditional justice practices. There will also be a need to make preparations for ensuring that all ex-LRA who wish to join the army are first made to reconcile with the community. Traditional leaders and elders will therefore request the Government to allow this to be possible after DDR has taken place, rather than letting the ex-combatants who wish to join the army to go ahead and do so immediately after DDR as stated in the Agreement yet to be signed.

- b) Reception: LRA fighters who will return home after the signing of the Final Peace Agreement will be received by the Paramount Chief of Acholi, accompanied by other religious and cultural leaders on behalf of the people of northern Uganda.
- c) Welcome Rituals and Ceremonies: Following the reception, communal welcoming rituals and ceremonies will then be conducted for all the ex-combatants. These include rituals such as Nyono Tongwenno (stepping on the egg) and prayers which will be conducted by religious leaders.
- d) Reintegration: The ex-combatants will then be considered ready for re-integration into their communities. Since each and every returnee may face unique re-integration needs/ difficulties which will have been brought about by the different individual bush experiences, more individual elaborate ceremonies will need to be conducted after the ex-combatants have been reintegrated into their communities in order to address these needs. These ceremonies include, among others, Moyo Kum (cleansing of the body to rid it of evil spirits). In addition, communal cleansing ceremonies (CCC) will also need to be conducted after re-integration has taken place in order to address issues which affect communities as a whole. These cleansing ceremonies include, among others, Moyo Piny (cleansing of areas where mass massacres were committed) and Tumu Cere (the offering of sacrifices on hill tops to appease spirits of the dead). Ex-combatants who committed crimes of murder or manslaughter will then be expected to engage in Mato Oput in instances where they know their victims. Victims on the other hand can also initiate the process of Mato Oput in instances where they know their perpetrators. There is also need for further consultation in order to come up with ideal mechanisms for inter-tribal reconciliation. These mechanisms include, for example, Gomo Tong (the bending of spears).
- e) Leadership Structure and Procedures: In line with the principle of collectivity, clans will take responsibility for crimes committed by their members. It will be the responsibility of clans to ensure that their clan members reveal crimes that they committed during the conflict. Every clan in Acholi has clan leaders and elders who will ensure that this is done. Clan elders will hold closed sessions with returnees in their clans with a view of getting them to confess. The course of action to be taken will then be decided by the clan elders after the perpetrator has confessed. In every clan also, there is a unit of leadership referred to as Ludito Kwor who will be in charge of the mediation process within their clans. The Ludito Kwor in each clan will in turn forward cases that require mediation between their clan and others to a neutral clan for mediation. In Acholi there are several clans who are all capable of mediating between two clans in conflict.

The Ludito Kwor from the mediating clan will be tasked with ensuring that perpetrators confess and that the two clans agree on compensation. Mediators have a crucial role to play in the process of reconciliation. They have to ensure that they act as a link between perpetrators and victims, verify information from all sources including the clans of the perpetrator and the victim, and ensure that all parties participate in the process. They should be people who are trusted by both sides, are neutral, faithful and committed to their work. The mediator has to go back and forth between the clans of the victim and the perpetrator to get information. He has to be satisfied that complete information has been obtained. The victim clan should be satisfied with the information. Perpetrators who have

committed multiple crimes against many clans shall have a mediator sent to each of the clans, one at a time.

- f) Information Sources: Traditional justice mechanisms will need to be supported by various sources of information to enable effectiveness and proper implementation. These sources of information include, but are not limited to:
- i) Ex-LRA who have returned home; In most cases ex-combatants were present when certain crimes were committed, so they can be able to provide testimony.
 - ii) Families, clans and close relatives whom returnees are likely to confide in; These people will in turn pass on the information they receive to the clan leaders for action. The clans and communities of perpetrators will put pressure on them to reveal the whole truth;
 - iii) Community members will be another source of information because in the communities, people know what happened to them and which perpetrators were responsible.
 - iv) Additional information can be got from the religious leaders, government courts and other agencies, NGOs, social workers, etc. Religious leaders for example can aid in information gathering from perpetrators through holding confessions. However, confidentiality must be taken into consideration when sharing information from these sources.
- g) Investigations; will involve three main parties. These are: a) the victim's clan; b) the mediating clan; and c) the perpetrator's clans. All these parties will conduct independent investigations in order to reach a consensus concerning a given crime. All cases shall be documented in each of the districts and then collected at a central pool, where they will be analyzed to see which cases can be dealt with at what level. This will be done by the Chief Arbitrator who will be identified in each of the districts in northern Uganda. After the information has been pooled, then victims and perpetrators can be brought together on an agreed date. If an individual is a suspect in multiple crimes, then all the clans will come and listen to the case against that individual and then penalties are to follow if guilt is assigned. Some important considerations will be kept in mind when soliciting information from perpetrators: the investigator for example must be competent and possess good interpersonal skills; investigations should not be hurried and should take place at the pace of the perpetrator who should be allowed to voluntarily engage in the process; and confidence-building should precede investigations where the parents and close relatives of perpetrators should be involved.

In regard to the above therefore, preliminary investigations will be conducted by family members and close relatives of perpetrators before matters go public. Communal courts will be convened by Rwodi in order to facilitate public truth-telling and fact-finding. At these courts, witnesses will be called in to testify, and if no progress is attained then referrals will be made.

- h) Post-Fact-Finding – Steps to Reconciliation: After fact-finding, the parties concerned will go through several stages as they move towards reconciliation and restoration of relationships. These include;
- 1) Pre-admission, where the mediator will shuttle back and forth between the perpetrator and victims' clans with the information he has got and advise them about the best way forward;
 - 2) Admission of wrongdoing has to be made by the perpetrator's clan and a willingness to pay the compensation also declared to the mediator. This news is conveyed by the mediator to the victim clan;
 - 3) A cooling off period will follow; in which the victim clan is given time to mourn their dead and when they are ready to receive the compensation then they will send a message to the perpetrator's clan through the mediator;

- 4) Symbolic compensation will then be proposed by the mediator to the victim's clan. The victim's clan has to accept the compensation after seeing that the perpetrator's clan is serious and penitent. Ker Kwaro Acholi has a set of written rules which sets the amount of symbolic compensation depending on the circumstances surrounding the crime;
 - 5) Mato Oput: After the victim clan has accepted compensation, the ceremony of Mato Oput will then take place. ²
 - 6) Restoration: After the Mato Oput ceremony has taken place, relations between the two clans will be considered fully restored.
- i) Crimes under Consideration: There is need for a mapping of all crimes committed in northern Uganda in order to find out the natures of the crimes and how best they can fit within the available structures of traditional justice mechanisms. Cases will be classified according to three levels, i.e. level 1, 2 and 3.
- a) Level 1, as the highest level, will deal with crimes committed on a large scale and crimes of a grave or gruesome nature (even if they are not large scale). The Paramount Chief of Acholi will preside over cases at this level after they have been identified by elders and clan leaders at the community level.
 - b) Level 3 will deal with simple straightforward cases, such as one-on-one killings, and will be handled at the community level by the Ludito Kwor concerned.
 - c) Level 2 will be an intermediary level that will draw from levels 1 and 2.

Ker Kwaro Acholi has a set written by laws which show the procedures to be followed when addressing any given crime. These crimes include, for example:

- a) Loss of life: Mato Oput will be used to handle cases involving loss of life. However, the ritual of drinking the bitter root will only occur in instances where crimes were committed intentionally. For unintentional killings, the Mato Oput will not involve the drinking of the bitter root.
- b) Ambushes: these will be categorized as intentional, and the perpetrators, if known, will be held accountable.
- c) Rape
- d) Arson
- e) Theft
- f) Child abduction: if the child who has been abducted dies, then the child abductor has to pay death compensation. If the child does not die but returns home safely, the abductor is required to pay a fine, and Moyo Kum is conducted for the child.

In case an individual has committed multiple crimes alongside murder, Mato Oput will take place as the final ceremony following the successful resolution of all other crimes and will mark the

² This ceremony varies across different clans. Some clans for example hold the ceremony in the home of the perpetrator, while others hold it by the side of a stream. However, it involves the perpetrator and victim's clans contributing a sheep each for the ceremony. The perpetrator's clan provides a goat in addition. This goat is given to the mediating elders to be slaughtered for a feast at the end of the ceremony. The two sheep are cut into halves as they are facing opposite directions and the halves are exchanged by the perpetrator and victim clans. The rest of the ceremony then proceeds with elders giving words of advice, and making Agat (calling upon the gods to bless the occasion). The drinking of the bitter root symbolizes the end of the Mato Oput ceremony. This is done by three people from each of the two clans, who drink the bitter root simultaneously in pairs while kneeling, with hands tied behind their backs.

conclusion of the reconciliation process. There is also need for further exploration of the most appropriate mechanism for inter-tribal reconciliation, such as Gomo Tong an Acholi ritual that takes place between two clans who have been having disagreements. It involves the bending of a spear to symbolize the end of conflict. This will also call for the identification of an arbitrator who is skilled in cross-cultural negotiations.

j) Compensation

The inability of perpetrators to make meaningful reparations to victims is one of the biggest challenges facing the use of traditional justice mechanisms, because after years of conflict many communities in northern Uganda are impoverished. Compensation, as has always been the case in the past, will be kept symbolic and a minimum standard will be set. This method has already been tried and tested in Acholiland where Ker Kwaro Acholi maintains a set standard for symbolic compensation. Clans should be encouraged to help in payment of the compensation on behalf of perpetrators. Alternatively, the clan of the perpetrator can raise a certain sum of money which is then topped up from the reparations fund. In case of failure by perpetrators to raise the amount required for compensation, another option could be to get them to make reparations in other forms, such as community work. Another option is to consider using the reparations fund that the Peace Agreement will put in place in order to help in making compensation for perpetrators who are not able to do so. However this should be done in consideration of the fact that compensation in Mato Oput is meant to be punitive and has to be made using hard-earned resources of the perpetrator's clan.

- k) Documentation and record keeping is important, especially in monitoring the process of reconciliation. It is vital that proper statistics and records are kept, and that parties who have gone through traditional justice processes are monitored. The office of the Paramount Chief will be in charge overall record-keeping and maintenance of statistics of traditional justice mechanisms across northern Uganda. At a community level, documentation of proceedings and record-keeping will be done by the secretary who sits on every committee of the clan elders. These records will periodically be remitted to the office of the Paramount Chief.

4.2 Panellists' and participants' reactions on traditional justice concerns

4.2.1 Acholi elder perspective(Bishop Ochola):

Remarked that the presentation on traditional justice was clear and precise. However, he requested to shed more light on the issue of reception of those who shall return from captivity. He urged that those who have been away for many years have to be received not only by the cultural leaders or chiefs, but by the communities themselves. The need for *nyono tongweno* as a means of acceptance to the community was stressed. The community involvement in this process of 'stepping of an egg' shows that formerly abducted persons have to get into some form of renewed relationships living side by side with the communities who welcome them.

Since the purpose of *nyono tongweno* is to purify those who have committed atrocities or come into contact with bad omens while away from home, there is need for those who return from captivity to acknowledge the crimes they have committed. Acknowledgement and atonement through communal truth-telling is an important reflection of remorse of the child. Stepping of an egg should therefore go on with some element of truth-telling so that children publicly acknowledge the crimes committed. This should be viewed as an expression of remorse where a child reveals the whole public truth of what happened in captivity. It is only here that the process of reconciliation and healing is triggered. Forgiveness will only come when the truth is revealed.

4.2.2 Acholi elder perspective (Mr. Otto James, Human Rights Focus):

He agreed with the two speakers, but also added that, 'in order for all these things to happen we ought to link it to the issues of trust, voluntarism, and truth-telling'. Voluntarism is most important in that the person to whom all these apply will have made voluntary confession. Voluntarism is embedded in the belief of having clean members of the society. This then brings us to the concept of *Mato Oput*. Unlike other people who consider *Mato Oput* as the ultimate end result, *Mato Oput* is a very small significant component of a bigger process of reconciliation and healing in our society. *Moyo kum* is also equated with cleansing of the body ('I am deviating from how my colleague understands *Moyo kum*'). Unlike what the presenter mentioned in his paper, *Moyo kum* should instead be viewed as diagnosis to find out what the problem is. This is done by slaughtering a goat, among other rituals, in order to interpret the environment against the patient, before coming to cleansing such as issues of *nyonyo tongweno*. Death as a deliberate act by the member of the community doesn't call for a mediator. The offending clan can send 'unarmed' emissaries to acknowledge this guilt. Where there is too much tension, a neutral clan mediates, before the final restoration of relationships through symbolic reconciliation. As for reparation and compensation, the perpetrator should be more preoccupied with compensation rather than reparation. Reparation should be channelled to communities while compensation goes to the individual bereaved family. Reparation should be met by the Government as put forward by John Locke's theory of the state, 'It is the responsibility of the state to protect its citizens.'

4.2.3 Panellists' and participants' discussions (summary)

Participants had ample time to provide comments, seek clarifications and feedback. The following is a summary of the main issues that emerged;

- a) Reparations: Variations in the amount required for compensation by the perpetrators is necessary because families have lost a lot and the necessary economic resources to cater for compensation during traditional justice have deteriorated during the long conflict – unlike the past. Such variations should also consider the magnitude of the offences where perpetrators could easily become overwhelmed and so reconciliation becomes a problem.
- b) Compensation should not block reconciliation, because in the past the amount demanded for compensation was in such a way that the clans could afford. Compensation is supposed to be symbolic. An example of this is the value of a cow as an item for compensation; in the case of killing in Acholi it was only 50,000shs. It was meant to be afforded, but not to incriminate a clan.
- c) Culture is never static and it should meet the current justice demands. We need to contextualise some of the challenging bits in the Peace Agreement. It is reparation that calls on a wide range of actors, including the international community.
- d) Co-existence, support and cooperation with the legal judicial system of accountability: A suggestion for the adoption of the legal system to address some of the limitations of traditional justice system was proposed. For instance, according to one participant, he noted that the legal system should come in where the perpetrators who undergo traditional justice fail to conduct him/her according to the community expectations. Even in the event that there were only traditional justice systems prevailing, cases of revenge killings are inevitable, therefore there is need to institute formal legal proceedings. The two systems should therefore operate alongside each other to serve as a check.
- e) Since colonialism, it has been noted that traditional systems of conflict resolutions have been recognised among communities affected even where the perpetrator has been legally sanctioned or

jailed, traditional justice was considered by the communities upon serving full jail sentences by the perpetrator to promote community reconciliation and social harmony. An example of traditional justice being administered while the offender was still serving a jail sentence was noted by one participant who urged that these two systems should co-exist alongside each other. Traditional justice operated alongside formal justice since colonialism. An example of Mato Oput going on as someone is serving his sentence. Much as traditional justice focuses on healing, there is need to send a message that violence cannot be condoned.

- f) Double jeopardy: Closely related to the above, the principle of double jeopardy was raised. Whether confessions done in a traditional justice process could be used against the victims in a formal process is an issue worth noting. This fear was allayed in view of the principle of cooperation that is proposed in the Annex to the Agenda Item 3 Agreement, where the Special Court shall always cooperate with the traditional justice in their proceedings.
- g) Entry point: It seemed confusing to some participants as to where the entry point shall be for those returning from the bush after DDR. On the whole, it was noted that there shall be only one entry point for the returnees where reception and subsequent cleansing ceremonies such as *nyono tongweno* shall be done. At a general level, all members of the LRA shall be welcomed in the country, but as they go into their communities, they shall meet their respective cultural leader, for instance, the Paramount Chief in Acholi. Respective rituals shall be performed as one goes down to the community and the family levels.
- h) LRA will be handled as a unit: to emphasis this fact, one egg shall be used as an expression of this. Every LRA upon return shall step on one egg and be cleansed. It also follows that no one shall be presumed a criminal until when the truth comes out in a communal truth-telling process during *nyono tongweno*.
- i) Traditional justice will be necessary as a central part for accountability and reconciliation: This does not mean it is the central and only necessity for accountability and reconciliation. This is partly because almost everybody in Uganda comes from societies where there are traditional justice practices promoting reconciliation. The clause as outlined in the Annex of the Agreement for Agenda Item 3 of the does not mean that traditional justice is exclusive.

5.0 The special division of the high court and other accountability institutions

Members of the panel included: Jane Anywar, Principal Judge James Ogoola, and Chaired by Commissioner Aliro Omara.

5.1 Presentation on Special Division of the High Court– by Principal Judge James Ogoola

His presentation provided the following information on how the special division of the high court would operate;

- a) Panel of judges: The special court shall have a panel of judges as opposed to a single judge. This is because of the complexity of cases involved.
- b) Unlike in the ‘ordinary’ high court there will be need for some new procedures for instance to address victims’ reparations.
- c) Considering that we are doing cases of international nature, the special court shall consider provisions in the Geneva conventions as well as the Rome statute in its set up, although the methods of investigations shall be independent – not informed by the findings of ICC.
- d) The court shall be as per the agreement in the annexure on accountability and reconciliation.

- e) Where the perpetrator is ready to confess, we should see which mechanism should be more efficient and cost effective. Either the traditional justice mechanism to deal with those who are ready to admit the crimes they committed or the need for prosecution.
- f) Uganda has got the expertise necessary for the special court.
- g) About how long the court will take to conclude cases, traditionally the special court will take quite long. Drawing from other experiences of legal proceedings for example in Arusha; 10 cases were handled in 10 years. But the broader outlook of what shall be viewed by the Special Court is reconciliation; therefore we should make the mechanism as expeditious as possible keeping in mind the idea of justice.
- h) There shall be pre trial particularly at this time when we are not sure where the criminals will go (either traditional of special court: who should, or who should not be handled by this court).
- i) There shall be some need for legislation for the special court establishments. Issues of composition shall have to be looked into.
- j) Reconciliation and restoration: 'we are dealing with a situation which is special and it needs everything special. The aim is to clean our society'. If the purpose of this law is to reconcile, then restoration should be emphasised. The issue of reconciliation, restoration and healing should be seen as one of the governing doctrines in the accountability and justice debates, and especially in the proposed special court as recognised by the agreement and most importantly the Ugandan constitution. Accountability proceedings (even the special court and other formal processes) are to promote reconciliation. A system that doesn't jeopardise the principle of conflict resolution and reconciliation, so that's why there was need for an alternative system.
- k) The Special court is for non state actors, but this shouldn't be seen as a way of letting non state actors off the hook, because there are other ways state actors can be checked. For instance investigations into alleged violations are for both the state and non state actors, and can be used to have state actors accountable for their crimes. When proven that systems to deal with state actors are inadequate, other means of pressure can be applied.

5.1.1 Panellists' and participants' discussions on the court (summary)

In the discussions that followed, other members of the panellist as well as participants raised, clarified and agreed upon some of the following issues:

- a) The LRA representative clarified that the LRA are willing to have those who are responsible for the most serious crimes tried
- b) The principal judge reassured the participants that there are adequate personnel with ability to handle the Special Court process. However initial preparations are needed and are being made.
- c) The panel of judges will be necessary with the majority drawn from Uganda plus a few from other African countries with similar and peculiar experiences.
- d) There are provisions for appeal either to the court of appeal or special court of appeal.
- e) The issues of sentencing, rehabilitation, reconciliation, cooperation, etc are well catered for in the agreement.
- f) As per the relationship between Mato Oput and the special division of high court, the law will have to pave way for such provisions. In a nutshell, the special court shall factor Mato Oput in its procedures.
- g) Whereas the state actor will not go to special court, the laws will not stop them from being charged. The forum of adjudication will differ. Non state actors will not face death sentence while state actors will face death penalty.

6.0 A detailed Description of Various Accountability Institutions (Legal Advisor to the mediation, Mr. Barney Afako)

Mr. Barney Afako, the lead facilitator took the participants through this session by clarifying various clauses in the main agreement as follows;

- a) Clause 4.1. Formal criminal and civil justice measures shall be applied to any individual who is alleged to have committed serious crimes. Clause 6.1. Formal courts provided for under the constitutions shall exercise jurisdiction for the most serious crimes ... This provisions looks beyond the existing structures (legal criminal justice system) to saying that the criterion for going to the criminal system is individualistic. This looks at the class of persons that will fall under the formal court. Annex agreement sets out what this formal court is.
- b) Clause 1 of the annexure does not limit the application of the principle agreement. They shall be implemented pursuant to the principle agreement.
- c) Clause 7: A special division for those individuals alleged to have committed serious crimes. The special division won't try 100 people or even 20. It will try particular individuals who are responsible for the most serious crimes i.e. the top people responsible for ordering, therefore only a handful. Most LRA will not be held liable.
- d) The court gives victims legal representation, protection of witnesses. It gives provisions for legislative process to set up judges, registry, and the substantive laws to be applied, rules of procedures.
- e) According to clause 9b, this court will recognise traditional justice in the proceedings. This suggests that the agreement doesn't look at traditional justice as an exclusive system. The challenge is to find out what fits where? For example a criminal who returns home may be held liable to uphold the values of traditional systems and participate in Mato Oput. At times there will be mutual sharing of roles in the areas of cooperation, investigation, etc clause 15 sets out the areas of cooperation.
- f) On investigations: Every single crime begins with investigation. Prosecution shall be based upon systematic, neutral and independent process of investigation. It must not be up hazard, should identify types of standards, and should be independent with no prejudging of whether someone has committed crimes or not. The annex says the govt shall establish an agreement for carrying out investigations and other processes, including compositions, how to handle special groups like children, etc. It should give guidance to the unit on how to carryout investigations and (clause 13 on what investigators do). The principle agreement allows people to cooperate with other proceedings. Clause 15 sets out the way a person should be handled in the process.
- g) Investigations shall be independent, impartial, and shall be the sole responsibility of the DPP, where everyone is presumed to be innocent until the DPP investigates the matter and puts it forward. Not even the work of the ICC will be used to arrive at crimes committed. The investigations are independent.
- h) On the inquiry into past violations: Another provision is inquiry into the past and related matters. Clause 2.2 and 2.3 sets out principles. According to clause 4 the government shall establish a body to consider and analyse any relevant matters including the history of the conflict, to inquire the manifestations of the conflict, to hold hearings and sessions in public and private, make provisions for witness protection, etc. This body almost plays a judicial function and it is an important body because it addresses the past whereas the courts will focus on individuals who committed atrocities.

- i) On Amnesty process and UHRC: The main agreement recognises Amnesty and UHRC as having certain crucial roles to play. Their potentials shall be utilised. The agreement makes sure that these two bodies should continue to have a role so long as they don't contradict each other. Amnesty shall require more elements of accountability unlike at the moment where there is no requirement to disclosure and no individual responsibility for crime committed. According to the agreement, those who are not of interest for prosecution with the DPP shall undergo such processes, for instance the abducted children. The agreement stipulates that the amnesty process should be able to allow individuals to establish some level of reconciliation.
- j) Background of Amnesty: An explanation of the Amnesty process and how it came into play was done. The Amnesty came into play as a strategy to end numerous rebellions at the time, most notably in northern Uganda. Since the war wasn't coming to an end due to an Amnesty statute passed in 1997, the government decided to extend the amnesty process further by replicating the same statute in 1998. This came about as a result of continued appeal by religious and Acholi leaders. In 2002 as a result of continued lobby of parliament, the Amnesty Act was established. The Amnesty Commission was established to implement the Amnesty law and has been receiving reporters and reinserting them into the communities till present. Amnesty was comprehensive, was for anyone above the age 12. Amnesty now covers anyone who has been involved in rebellion and is still applicable for those in the bush when they give up rebellion.
- k) When it comes to the Juba agreement, it was agreed that in order to instil some sense of accountability and reconciliation there was need to revisit the amnesty. So, as it stands now, the Amnesty law needs to be revisited, and as realised in the agreement clause 12(4), the majority of people will go through amnesty. This means amnesty cannot be scrapped, but can be amended to reflect the new emphasis on accountability and reconciliation. The discussion that begun in Juba should be carried on in this workshop to see how amnesty can work amidst these circumstances without rubbishing the essence /intention of amnesty law. If not amended, the amnesty act can be embarrassing. Amnesty is essentially a DDR process since it facilitates the process. While, this is so, the accountability dimension still remains at large, with the work of special court, and traditional justice still in place. These are the areas we shall deliberate on if we are to go on with amnesty as elaborated in the agreement;

6.1 The role of Amnesty Commission (by representative of the Amnesty Commissioner)

The presenter apologized on behalf of Hon. Justice Onega, the Amnesty Commissioner, who was out of the country and would join the participants the following day. He then went ahead to make a brief presentation on Amnesty. He then went ahead to highlight the following;

- a) On amendment; in 2002 there was an amendment of the act to prevent those who rejoin captivity from getting amnesty. The amendment of 2006 allows the minister to present a list of people whom he feels are not liable to get amnesty for approval. However, the minister has not yet done this to date.
- b) When someone wants amnesty he goes to the chief, army unit, police officer, or local leaders, denounces rebellion and gets amnesty. He fills a declaration form that he has abandoned rebellion. Declares and fills a form about his personal information of where he has been and who his superiors were etc, and then when he satisfies government he is granted amnesty.
- c) According to the Juba agreement, the Amnesty Commission is mandated to carryout repatriation, and I would like to say the AC is ready to effectively undertake this task. We shall have to do counselling, sensitisation, documentation and grant amnesty to those who qualify. Some of these

activities will be carried out in Juba (e.g counselling and sensitisation), while amnesty shall only be granted when someone is in Uganda.

- d) Sensitisation and counselling will be a continuous process as many people have been in captivity there for a long time. We are currently assessing the reception centres available. We shall give them reinsertion packages, and then eventually when they have undergone other processes they will be taken home.
- e) After these the Amnesty Commission will team up with traditional leaders to ensure that the reporters are reconciled with their communities. To prepare ourselves we are recruiting additional staff with particular expertise in administration, procurement, referrals skills, management, accounts, etc, to handle reintegration.
- f) We are teaming with our partners IOM, UNDP who are willing to help us open liaison offices in South Sudan, UNICEF and child protection agencies to help in counselling, among other stakeholders.
- g) To date we have got over 23,000 reporters all over the country who have benefited from amnesty. Out of this 12, 000 are from LRA affected areas. This figure leaves out those who reported directly back into the community, whose number is not known. Some people went direct into the communities because they were afraid of Amnesty. They believed it was a ploy by government to have them registered and later arrested. At the time of establishment of amnesty, it took a lot of time for communities to understand the process and intentions, as well as the operations.
- h) The Amnesty Commission has got 3 reception centers in Gulu, Kitgum (also caters for 7 districts), Arua (also caters for those districts in West Nile region) and Kasese (also caters for those in Western Uganda).
- i) Amnesty is granted once, and the amnesty certificate is given to those who have denounced rebellion. Those with amnesty certificates will not be prosecuted by the courts of law. However amnesty certificates shouldn't be seen as a passport for committing other crimes. Those who receive amnesty are supposed to be law abiding citizens, failure of which the law takes its course. Even those in prison who have not been convicted can be given amnesty. However, it is important to note that amnesty is a voluntary process that requires one to first apply. No one is forced to get amnesty.

6.2 The role of Uganda Human Rights Commission (Commissioner Aliro Omara)

Commissioner Aliro Omara highlighted the following as the role that the UHRC would play in implementing the peace agreement;

- a) As UHRC, all we do is connected to investigations. UHRC has been there for 11years and over time a body of expertise has been developed to investigate violations of human rights. So, in areas of investigation our expertise could be utilised.
- b) Secondly, we are experienced in information gathering through public hearings, especially on issues regarding the past violations. We have so far documented a number of cases some of which are in our annual reports. This body of information is there for anyone who wants to utilise it. However, as rightly put forward this morning, there will be a lot sensitisation required on issues like Mato Oput and other process. This means UHRC could draw on the bulk of expertise from its civil education branch to do sensitisation.
- c) Regarding accountability, we can initiate investigations on our own. However it is so important that legislation is developed to provide for linkage. For example as it stands now, if someone goes

through Mato Oput, UHRC can still go ahead and carry out investigations so long as there is any call from witnesses or victims. However, I believe if the legislation supports us, we could retrospectively provide some further mediation for those who approach the commission even after Mato Oput.

- d) We also have a counselling section that can be utilised. As a form of recommendation, the investigation team of investigators will have to be seen as independent and impartial. Where necessary the UHRC shall draw on experts both locally and internationally in order to address the uniqueness of the crimes committed.

6.3 Panellists' and participants' discussions on the role of Amnesty and Uganda Human Rights Commission

The following issues were discussed and agreed upon by panellists and participants:

1. Generally the Amnesty Commission is ready and has started initial work by
 - a) Identifying packages necessary to be given to returnees
 - b) Strengthening their services through recruitment
 - c) Seeking support from other stakeholders
 - d) Identifying and supporting the existing reception centres
2. The Uganda Human Rights Commission has a bulk of expertise that could be used in:
 - a) Sensitisation and outreach
 - b) Carrying out investigation
 - c) Mediation
 - d) Public hearings
 - e) Gathering information and documentation
 - f) Uganda Human Rights Commission could still incorporate additional expertise locally and internationally

SECOND DAY (7TH MAY 2008)

7.0 The role of DPP (by the Deputy Director of Public Prosecutions, Amos Ngolobe)

The director of public prosecutions made a presentation about the potential contribution the DPP will have in the proceedings. The following issues were highlighted;

- a) He is committed to playing his part in ensuring that whatever is agreed upon is implemented.
- b) We support the idea of having assessors. Assessors play an important role in the justice system. However, we should be careful about partial assessors.
- c) We also support the plea bargaining process because it reduces the time it takes to get through the formal system. We don't have plea bargaining in Uganda; it could be introduced in the legislation.
- d) DPP represents victims of crime and also the community. That's why when we are prosecuting cases; we are taking into account the feelings of the community. However, the community is also represented through the defence case. Even after conviction, but before sentencing, the community and witnesses can also be involved.

- e) What is the linkage between formal and traditional justice systems? For example, sentences have been put in place for offenses in the formal system and sanctions in the traditional system. Would it be possible for the formal system to sentence using traditional sentencing norms? And vice versa. Cases could be referred from one system to another. If you have been through the formal justice system and you have been acquitted, then does the traditional justice system have jurisdiction over you (double jeopardy)? This should be discussed. Our view is that one should move from one system to another.
- f) Alternative Sentences; Sentences to promote reconciliation within communities and between individuals, take into account past reconciliation processes. What if people don't accept an apology, and therefore don't accept compensation and reconciliation? Ask accused if prepared to undergo reconciliation.
- g) Investigations by DPP; According to the Principle Agreement: Part 4, no one is allowed to open their own investigations except for the special unit established by the GoU. We know that we will be using investigative teams lead by state attorneys and other forensic experts. There will be follow up, training. What is important is that only cases where there is evidence will they be brought to the special court. Involvement of the community is key.
- h) Where will suspects be kept during investigations? Suspects can only be held once a charge has been made (i.e. at the end of an investigation). They cannot be detained before a charge.

8.0 Steps to be followed: The 'path' to accountability and reconciliation

A recap was made of all the discussions over day one and day two and an outline of steps that would be followed on the path to Accountability and reconciliation was outlined as follows:

- 1.) Transitional period (according to the agreement on implementation and monitoring mechanisms) will be triggered by the signing of the FPA. It will last for one month and if necessary the chief mediator may extend it for no longer than 30 days.
 - a) The LRA will be expected to leave DRC and travel to the assembly point in South Sudan (Ri-Kwangbha). It will mark the start of the DDR process (Clause 40).
 - b) Clause 36: GoU establishes a) Special Division of High Court (SDHC) and b) investigations and c) inquiry body and d) draft legislation. Priority is on investigations and Special Division of the High Court because of the need to prepare to address issues of accountability and reconciliation.
- 2) Relocation of LRA to Uganda and to multiple reception areas across conflict-affected areas. Certain categories of people will not be bothered by investigations e.g. children. The majority of people will not be needed as witnesses.
- 3) Traditional Justice Mechanisms will then commence as the ex-combatants leave the community and re-integrate into the community
- 4) Formal justice mechanisms; Complete investigations will take place and charges will have been preferred by the time ex-combatants arrive at reception centres.
- 5) Pre-trial stage; there will then commence a period of pre trial after people have come into Uganda where various issues will be sorted out and more investigations conducted. Some of the issues include the following;

- a) Cooperation: if an individual works with the authorities to uncover what has happened in the past that is a positive thing.
 - b) Legal representation is needed. At what stage should this be provided?
 - c) Medical investigations and support, psycho-social counselling, are also components needed at this stage.
 - d) Community involvement
- 6) Charges: when we know for sure who is going to trial then charges will be proffered
- 7) Trials commence. However is there any role for traditional justice? What role should TJ and communities have in the trial process? How should the trials recognize them? Traditionally, DPP takes one side, etc. One suggestion is that there be assessors for the trials – a way to have community involvement. Community representatives can play the role of assessors at trials. The area of victim representation can be addressed as well. It may be that interests of victims conflict, so there could be class representation. One way to accommodate victim representation is to give it time: there are so many victims over such a wide area, that trials or formal justice will have to accommodate those logistical challenges. It must also be remembered that the Special Division court does not have the death penalty. This has already been established.

9. Annex

9.1 Attendance list

S/N	Name	Designation/Institution	Contact
1	David Onen Acana II	Lawirwodi of Acholi	davidonen@yahoo.com
2	Otinga Atuka Otto Yai	Rwot, Amuru	0772 910 378
3	Mr. Okot Ngomlokocoo Cosantino*	Elder, Gulu	
4	Rwot Okot Francis Latyet*	Rwot, Pader	
5	Odoki John (Elder)	Elder, Kitgum	0772 999 676
6	Rwot Justo Obita	Rwot, Kitgum	
7	Ocan Jimmy Luwala	Rwot, Gulu	0772 459 411
8	Saverio J. Okello	Elder, Gulu	0772 691 541
9	Gabrela Lakot	Gulu	
10	Martin Okidi Oluma	Elder, Gulu	
11	Okello John Samuel	Youth, Gulu	0772 524 791
12	Oywak Joseph Ywakamoi	Rwot, Pader	0772 004 834
13	Michael Otim	Minister, Ker Kwaro Acholi	0772 626 382
14	Raymondo Toorach	Elder, Gulu	
15	Alekua Ja'afar	Agofe of Lugbara	0752 326 749
16	H.H Iya Ronald Banaoceai	Madi Cultural Leader, Adjumani	0782 875 784
17	Augustine Osuban	Emorimor Teso Cultural Leader	
18	Rwoth Obyomo	Cultural leader, Nebbi	
19	Archbishop J. B. Odama	Gulu Archdiocese	0772 602 943

20	Rtd. Bishop Mac Baker Ochola	Kitgum Diocese	0777 912 225
21	Bishop Onono Onweng	Anglican Bishop of Northern Uganda	0772 838 193
22	Sheik Musa Khelil	Khadi, Gulu	0772 317 391
23	Sheik Hassan Mbarak Angiro	Khadi, Teso	0782 908 590
24	Sheik Ibrahim Angiro Mpira	Khadi, Lango	0712 853 342
25	Mr. Ochen Julius	LC V Chairperson Kumi, Teso	
26	Ms. Evelyn Amony	Gulu	0751 962 021
27	Arop Poppy Paul	Kitgum	0782 331 789
28	Mr. James A. A. Otto	Executive Director, Human Rights Focus	0772 794 797
29	Mr. Boniface Ojok	Justice and Reconciliation Project	0782 306 473
30	Mr. Owor Lino Ogora	Justice and Reconciliation Project	0772 835 076
31	Ms. Letha Victor	Justice and Reconciliation Project	0774 833 437
32	Ms. Santa Ogwetta	Gulu District NGO Forum	0772 375 413
33	Mr. Komakec Emon	Justice and Reconciliation Project	0782 450 530
34	Ms. Anyeko Ketty	Justice and Reconciliation Project	0772 688 574
35	Dr. James Alfred Obita	LRA Delegation	0772 450 496
36	Peter Ongom	LRA Delegation	
37	Okwonga Yusuf Adek	LRA Delegation	0712 526 433
38	Dr. Oonyu Etaabun	LRA Delegation	0782 897 640

39	Oloya Charles		0774 443 901
40	Caleb Alaka	Legal Counsel LRA	0772 401 987
41	Latim Geresome	Ker Kwaro Acholi	0782 509 724
42	Jessica Huber	Norwegian Refugee Council (NRC)	0772 711 792
43	Okello Samuel	Ker Kwaro Acholi	
44	Alekua Ja'afar	Traditional Leader Agofe	
45	Lilian Achayo	Gulu	0714 342 464
46	E.Y Komakec	RDC Amuru	0772 565 559
47	Source Opak	Iteso cultural Union	0772 615 978
48	Oonyu Stephen	Iteso Cultural Union	0753 737 322
49	Ojulowg Patrick	Iteso Cultural Union	0782 363 612
50	Odok Peter W'Oceng	Pader District	0772 419 523
51	Norbert Mao	LCV chairperson, Gulu	0772 222 246
52	Okot Lapolo	RDC Pader	0392 960 991
53	Costantino Okot	Elder, Gulu	
54	Rwot Oryang Francis	Ker Kwaro Acholi	
55	Mr. Amos Ngolobe		0772 467 553
56	Justice James Ogoola	Judge, High court	
57	Ms. C. Baine Omugisha Catherine	JLOS	0714418885
58	Chris Dolan	Refugee Law Project	0782764269
59	Justice P.K. Onega	Amnesty Commission	0772509381
60	Damian Kato	Amnesty Commission	0772465019
61	Moses Draku	Amnesty Commission	0777 658 644
62	Okello Julius	Amnesty Commission	0772 332 240

63	Fred Kyakulaya	Amnesty Commission	0772 420 135
64	E. Grace Ociti	Amnesty Commission	0772 665 828
65	Hajat Amina Munuulo	Amnesty Commission	0782 706 987
66	Ganyana Miiron	Amnesty Commission	0772 698 999
67	Owiny Dollo	Judiciary	0772 489 319
68	Mr. Aliro Omara	Commissioner, UHRC	0772 377 173
69	Lady Justice Namanya		
70	Mr. Warner Ten Kate	Office of the UN Special Envoy of LRA Affected Areas	0772 766 555
71	Okello Okello	Parliament of Uganda	0772 503 528
72	Oceng DA Penyto	Parliament of Uganda	0712 136 865
73	Aol Betty Ocan	Parliament of Uganda	0772 591 702
74	Amuriar Oboi	Parliament of Uganda	0772 672 045
75	Oyet Simon	Parliament of Uganda	0772 989 357
76	Akbar Godi	Parliament of Uganda	0782 008 595
77	Betty Amongin	Parliament of Uganda	0772 410 457
78	Prof. Ogenga Latigo	Parliament of Uganda	0772 456 718
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95	Bryan Burton	Canada Consulate	0414 346 000
96	Kees Kingma	World Bank	0782 452 201
97	Pal Wrange	Embassy of Sweden Consultant	0773 992 892
98	Melina Platas	The Independent	
99	Kabuye Wahis	Mama F.m	0772 308 129
100	Abuusa Aminah	Radio Bilul F.m	0711 274 826
101	Geoffrey Kaweesa	Sanyu F.m	0774 390 186
102	Mutebi Robert	Media one/ Bob fm	0782 893 600
103	Milton Olupot	The New Vision*	0772 413 842
104	Semwenga Jimmy	Media	0772 359 799
105	David Musenze	Radio West	0712 399 836
106	Mutebi Robert	Media one/ Bob fm	0782 893 600
107	Dr. S. P. Kagoda	Member GoU delegation	0414 231 103
108	Capt. Chris Magezi	Member GoU delegation	0714 292 222
109	Mr. Sam Engola	Member GoU delegation	0772 468 890
110	Amongin Aporu	Member GoU delegation	0772 450 496

111	Maj. Timothy Konyogonya		
112	Kyomukama Samuel	Min. of Internal Affairs	
113	Prof. M N Kakooza	Uganda Law Reform Committee	0772 419 793
114	Biriobonwoha Pius P	Uganda Law Reform Committee	0772 422 594
115	David Pulkol	Africa Leadership Institute	0392 822 705
116	Charles Bongomin	Netherlands Embassy	0414 364 000
117	Apio Immaculate	Women's Organization	
118	Anna Wrange	Swedish Embassy	0772 790 973
119	Hon. Santa Okot	LRA Delegation	0712 118 938
120	Michel Rentenaar	Netherlands Ambassador	0414 346 000
121	Oryang Lagony	Ker Kwaro Acholi	
122	Maj. Haruna Ndema	LRA Delegation	0772 514 012
123	Ms. Jane Adong Anywar	LRA Delegation	0772 370 739
124	Peter J	Danish Embassy	0774 266 621

9.2 Guiding issues and questions for discussions during the workshop

Investigations and Fact-finding

- How long would it take to establish a Unit as envisaged by the Act? How long would investigations realistically take?
- Would investigations include interviews with perpetrators? If so when would these take place?
- How can effective legal representation be assured at the investigation stage? Who would be responsible for arranging for legal assistance?
- Which institutions and processes would the investigations feed information into (Prosecutions, truth telling, amnesty)?
- What cooperation mechanisms need to be put in place to ensure this takes place, if at all?
- The Agreement recognises voluntary disclosures by individuals: at what stage can these disclosures be made? Who should be responsible for eliciting and receiving the information?
- What practical steps and procedures should be taken to ensure the credibility of disclosures? What safeguards should be taken?

Traditional and Community Justice Processes

- What are the main elements of traditional justice processes?
- What methods of fact-finding and adjudication will be used?
- Elements of Non-traditional processes (e.g. religious).
- How can the quality of adjudication be assured and maintained across the various communities?
- What level of participation should community expect?
- How long will the process take?
- What is expected of offenders? What support can they expect to prepare for and during the process?
- How should community processes be monitored and reported?

Special Division High Court:

- Proposals on Composition; Substantive law; Procedures; and Appeals.
- Pre-trial Supervisions.
- Should hearings be before a panel of Judges?
- Trial Process – Is there a need for new procedures, if so in which areas (outline only)?
- What role could be given for lay participation in the work of the Special Court?
- How long are trials expected to take, including appeals?
- What new legislation is required?
- What is the policy towards private prosecutions?

Truth-telling Mechanisms, UHRC, Amnesty Process

- What is a truth-telling envisaged by the agreement (apart from traditional and community adjudication)? Are these to be centralized under one administrative oversight?
- What legal framework is required for establishing a truth body?
- At what levels should truth-telling processes be promoted?
- What are the minimum standards to uphold? How will the process be monitored and overseen for compliance?
- What should an individual with relevant information expect from a formal truth-telling body (c.f. role of the Amnesty Commission)?
- If participation in non-formal mechanism is voluntary what is the implication of an individual's non-participation?
- What length of time should the various processes take?

Uganda Human Rights Commission

- Is there a suitable role for the UHRC with respect to implementing the agreements with respect to accountability, analysis of the past, or reconciliation?
- If so, in what way?
- If not, how can the skills and expertise of the UHRC be used for the implementing the agreement?

Amnesty Commission:

- Centrality and continuation of the amnesty process. The majority of persons will be formally received through the Amnesty act process (as revised): what is the current process for the amnesty?
- What, if any, changes are required in the procedure for applying for amnesty to bring it into line with the Agreements?
- Any person involved in armed rebellion is currently entitled to apply for the amnesty. Which cases should go directly through the Amnesty Commission?

Amnesty Process and other traditional and formal processes

- What administrative and liaison arrangements could be established to enable better coordination and referrals to other formal and community institutions.
- There are bound to be borderline or undetected cases: How should the Commission or any other institution deal with the unexpected serious perpetrator?
- What additional skills and administrative measures will be required by the AC?

Pre-Trial Processes: Investigations and Role of Judiciary

- A limited number of prosecutions are envisaged by the Agreement. At the investigation stage, what criteria can be adopted to ensure that those who might be prosecuted or become key witnesses are not subjected to other proceedings prematurely?
- What security arrangements should be made for individuals who might be the subject of later proceedings? What is the most appropriate legal basis for this?
- Should there be judicial supervision of the period that a person is subject to restrictions? Should the Special Division be responsible for all pre-trial supervision?

- Disclosure and Cooperation. The Agreement encourages individuals to disclose relevant information at the pre-trial stage, and to be credited for this. What safeguards should be put in place to ensure (i) accuracy of statements; (ii) to protect individuals from self-incrimination?
- What provisions should be made for encouraging and ensuring participation of victims at the pre-trial stage?

The Special Division (Trial Stage) and Post-Adjudication Phase

- Which class of persons should appear before the Special Courts (jurisdiction *ratione personae*)? What crimes or violations should the court handle (jurisdiction *ratione materiae*)?
- What further criteria should be adopted to implement the policy of limiting formal process to the most serious offending and violations be further refined?
- What is the optimum number of persons who can be tried before the special Division, given the constraints of time and resources?

Special Division and Traditional Justice

- Recognition of traditional and community based processes. For an individual who is being investigated, what, if any, aspects of traditional or community justice processes can proceed at the (i) pre-trial and (ii) trial stages?

Special Division and other Truth Bodies

- How should the relationship between the Special Division and formal truth-telling bodies be defined and managed? How to prevent contamination of witness evidence, self-incrimination or conflict of jurisdiction issues?
- By what mechanism will legal aid will be made available to individuals and victims, including at the pre-trial stage?

Special Division, Sentencing, Sanctions and Reparations

- Describe range of sentencing and sanctions options in the formal and non formal processes.
- Is there a requirement for legislative recognition of sanctions?
- Reparations: principles relating to individual reparations and collective reparations.
- Provisions relating to the Trust Fund (Interpretation of Agreements)? What instruments are required to establish a fund?
- Relationship between Trust Fund and formal and non-formal bodies. The agreement envisages the Special Division making orders for reparations: Should the trust fund available to all adjudications?
- How can one avoid overburdening an individual with sanctions and reparations in the formal and non formal processes?
- How should Non-formal sanctions and reparations within Communities be monitored?