Refugee Law Project Working Paper No. 21

PARTIAL JUSTICE:

FORMAL AND INFORMAL JUSTICE MECHANISMS IN POST CONFLICT WEST NILE

May 2007

REFUGEE LAW PROJECT

Vision
Human rights for all people in Uganda irrespective of their legal status. This vision is informed by relevant international laws as well as the Constitution of Uganda.

Mission
To empower asylum seekers, refugees, deportees, IDPs and host communities in Uganda to enjoy their human rights and lead dignified lives.

Mandate
- **To promote the protection, well-being and dignity of forced migrants and their hosts.**
- **To empower forced migrants, communities and all associated actors to challenge and combat injustices in policy, law and practice.**
- **To influence national and international debate on matters of forced migration, and justice and peace, in Uganda.**
- **To be a resource for forced migrants and relevant actors.**

All of the above is achieved through a combination of activities broadly categorised under legal aid and counselling, research and advocacy, and training and education.

Plot 9 Perryman Gardens, Old Kampala
P.O. Box 33903
Kampala, Uganda

Telephone: + 256 414 343 556
Fax: + 256 414 346 491

research@refugeelawproject.org

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The Refugee Law Project Working Paper Series is a forum for sharing information on issues relating to forced migration in Uganda. All comments are welcome and the RLP reserves the right to revise any Working Paper.

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Executive Summary

The following working paper is closely based on a report commissioned by DANIDA's Democracy, Justice and Peace Program (DJPP), as one part of a two-part assessment of justice delivery for the people of West Nile,[1] and was written by Lucy Hovil and Moses Chrispus Okello. It focuses on the relationship between different mechanisms of justice in West Nile's post conflict context, and people's perceptions of their relevance and accessibility at a community level. It stresses the importance of knowing and understanding not just the extent to which crime is registered at an institutional level (as reflected in available statistics on crime), but also the extent to which people feel that justice mechanisms are meeting their needs – not least as this is one indicator of whether the current state of peace in the West Nile region will prove sustainable.

Findings show that the majority of civilians living in West Nile are living in something of a justice vacuum: on the one hand traditional or informal mechanisms of justice are being subsumed by formal, national structures of justice, and are being corroded by the gradual breakdown of village life that comes with increased urbanisation and so-called 'modernisation'. On the other hand, central government-controlled formal mechanisms of justice appear chronically under-funded, misunderstood within the communities, and susceptible to corruption. Justice is seen to be accessible only to those with the money to buy it. The official structures – which are clearly struggling with very limited resources – are seen as incompetent at best and corrupt at worst. Either way they are widely regarded as incapable of delivering justice in their current form.

The sense that justice has been commercialised is alienating for those who cannot afford to pay for their rights, as well as jeopardising the rights of the accused. This generates profound frustration both within the communities, and among security personnel. While this scenario is not necessarily unique to the region, in the specific context of West Nile, which is coming out of decades of civil conflict, it deserves careful attention, as well as raising questions about the need for specific transitional justice mechanisms.

The report on which this paper is based resulted from field research conducted in the West Nile Districts of Nebbi, Arua, Koboko, Yumbe, Moyo and Adjumani from 16 – 30 November 2006. The research team consisted of Joan Aliobe, Paul Arinitwe, Eunice Owiny, Moses Chrispus Okello, Lucy Hovil and Chris Dolan, all of the Refugee Law Project. The authors of the current paper are also indebted to Ejoyi Xavier and the DANIDA reference group for commenting on earlier drafts, to Chris Dolan for his valuable input throughout, and to DANIDA for funding the publication of an independent RLP Working Paper.

[1] The other part was a Civil Society Stakeholder Mapping in West Nile presenting an overall picture of the justice-related institutions functioning in the region. A UNDP sponsored survey of the Justice Infrastructure in West Nile and other parts of northern Uganda is due in mid 2007, but does not form part of this project.

KEY FINDINGS & RECOMMENDATIONS

- Many of the official mechanisms of justice are inaccessible to the majority of people – both physically and financially. **In the short to medium term therefore, a significant increase in both *pro bono* legal aid activity and paralegal services is critical. The former can provide a critical entry point to the formal justice system, while the latter can also serve as a means of increasing civic education.**

- Although the 'chain-link' system (a mechanism designed to increase co-ordination between all actors and stakeholders throughout the processes of justice) was generally perceived in a positive light, in the majority of districts it is not functioning due to logistical and financial reasons. **The chain-link and the entire justice, law and order sector partners require re-invigoration in order to permit greater co-ordination and interaction – not only between different security and justice mechanisms, but also between such mechanisms and the communities.**

- Numerous interviewees stressed a pervasive level of ignorance of rights within communities, particularly with reference to the rights of children and women. **Therefore there is a need for increased community-based constitutional and human rights education throughout the region.**

- Findings showed widespread concern over increased levels of rape and defilement in all the districts. **Therefore there is an urgent need for better survivor-centred prevention and response strategies to be established, including continuous community awareness and empowerment, and the provision of response services in hospitals. In addition there is need to streamline or create new procedures for the reporting and referral of rape and defilement at Police Stations and in hospitals.**

- Issues of land inheritance, particularly for women, are seen as a major problem and a significant cause of domestic abuse. **In order to counteract conflicts arising over the inheritance of land, community level education is required to encourage people to write wills - and to do so in a manner that is respectful of gender rights and ensures the best interest of children.**

- The role of Grade Two Magistrates is perceived as particularly compromised due to their generally low levels of education, and they are seen as a major obstacle to justice. **Therefore, GIIs should either be phased out or their educational level upgraded. At the same time the numbers of Grade One Magistrates and Chief Magistrates should be increased in all magisterial areas of West Nile.**

- The state of prisons in the region is very poor and they do not appear to be serving any form of rehabilitative function. **Conditions need to be improved to reach acceptable standards, and prisoners should have access to education and other rehabilitation services. In addition, all prisons should have juvenile wings and female detention facilities.**

- Prisons are often located significant distances from police stations and court houses, causing logistical problems and frustrating the administration of justice. **Facilities should be provided nearer to towns or clustered near each other (i.e., police, courts and prisons close together) in order to limit logistical problems.**

- The current living standards and remuneration of police officers are amongst the factors impeding their ability to effectively police the region. **Police welfare needs to be improved. At the same time, auxiliary forces need to be paid on time, and to receive the necessary training to carry out their work. In addition, police need to be given the resources they need to carry out their job – for instance, with the resources to cover thorough and full investigation of cases including the expense of certain medical examinations. There was also a general consensus that for the police to become more effective, there is an urgent need for increased sensitisation and community-based policing.**

- Chronic delays in resolving land wrangles are causing serious problems. **Steps should be taken to clear the backlog of cases pending before the now crippled land tribunals. In addition, clarification should be sought over which institution is currently mandated to resolve land disputes, and a more expedient system should be instituted, with a corresponding public information campaign.**

- Overall, formal mechanisms of justice are perceived as irrelevant and inaccessible. **This perception could be, in part, counteracted by constructing and staffing more sub-courts in sub-counties as well as by increasing police presence in rural communities.**

- Allegations of corruption within the institutions were common throughout the research and signal a widespread lack of trust in the formal mechanisms. **Such allegations need to be carefully scrutinised and dealt with throughout the whole system, and judicial processes need to be made more transparent.**

- Informal mechanisms of justice and the LC structures are seen by communities to play a critical role in the administration of justice, yet it is often unclear how they do or should interact with formal mechanisms of justice. **The specific roles of different structures need to be clarified if appropriate levels of training to take place and if the linkages between informal and formal structures are to be strengthened, e.g. through codification of those elements of traditional practice that are in line with human rights standards.**

- West Nile is in transition from a long-standing conflict situation to a newly established peace. Alongside the general weaknesses of many key services, of which the justice system is just one example, there is a legacy of violations from this conflict which the standard justice mechanisms would not be equipped to address, even if it were functioning more strongly than is currently the case. **As in other conflict-affected parts of the country, most notably the Acholi sub-region, there is a need to consider the establishment of a broad range of justice mechanisms to adequately address the legacy of nearly twenty years of conflict.**

- Access to justice in West Nile is critically linked to the wider socio-economic context in the region. While many of the issues outlined are likely to be similar across Uganda, it is important to be mindful of the specific post-conflict dynamics that still play an important role in the West Nile region. **Consequently, the government and international community need to deliver on promises of development in the region which were made on the eve of the signing of the peace agreement, and continue to acknowledge the specific post-conflict dynamics of the West Nile region and allow sufficient time for reconstruction and recovery.**

List of Acronyms

CBO	Community Based Organisation
CID	Criminal Investigative Department
DJPP	Democracy, Justice and Peace Program (DANIDA)
FIDA	Federation of International Women Lawyers
JLOS	Justice Law and Order Sector
LCs	Local Councillors
LDUs	Local Defence Units
LRA	Lords Resistance Army
NRC	Norwegian Refugee Council
RLP	Refugee Law Project
SGBV	Sexual and Gender Based Violence
SPCs	Special Police Constables
TPO	Transcultural Psychosocial Organisation
UN	United Nations
UNRFII	Uganda National Rescue Front II
UNDP	United Nations Development Programme
UPDF	Uganda People's Defence Force
WNBF	West Nile Bank Front.

1 Introduction

1.1 West Nile: A post-conflict context

The West Nile region is currently emerging from – and struggling to live with the consequences of – more than two decades of conflict which began in 1979, when the majority of the population were forced to flee following the ousting of Idi Amin Dada.[2] Major characteristics include a continued perception of deliberate marginalisation of the region as evidenced in the poor provision of services, significant numbers of ex-combatants, and its location on the borders of Uganda with two of Africa's most volatile states, namely Sudan and DRC.

There is a widespread perception in West Nile that the region has been systematically marginalised from the development trajectory of Uganda as a whole. It is well illuminated by Mark Leopold's article, *'Why Are We Cursed?': Writing History and Making Peace in North West Uganda*,[3] which emphasises the extent to which there is a widely held belief within West Nile (specifically with reference to Arua) that the region "is regarded by other Ugandans as an inherently violent place".[4] The article goes on to demonstrate how, since the time of Amin, "the relationship between the people of West Nile and the Ugandan state has… remained an uneasy one,"[5] something that is also well recognised in Hansen and Twaddle's edited collections on post-Amin Uganda.[6]

This sense of marginalisation has been regularly underscored, for instance by mass displacement in the post-Amin years, amnesic responses to past conflict, and by the lack of development within the region since their return from exile. As the RLP's 2004 report states, this alienation – both perceived and real – was identified as a root cause of the different conflicts that have plagued the region. Four years after the 2002 peace agreement between the UNRFII and government, feelings of marginalisation and alienation within the region continue to run high. Although the West Nile Development Conference (WNDC), which was promised in the 2002 Peace Agreement, finally took place in December 2005, many of the pledges made, particularly on the expedient delivery of a wide range of services, have yet to be met. Given the current attention being paid to the need for long-term recovery programmes in northern Uganda (including an attempt to subsume the WNDC into the Peace, Recovery and Development Plan (PRDP) regardless of the uniqueness of the West Nile Conflict), failure to fulfil the promises of the WNDC are likely to be taken as further confirmation of the historical marginalisation of West Nile.

Given the widespread perception of marginalisation, the presence of considerable numbers of former combatants needs careful scrutiny. Two recent studies suggest that, while ex-combatants are not generally being scape-goated for crimes in the region, their integration into civilian life should not

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[2] For an overview of conflict in West Nile from 1979 onwards, see Zachary Lomo and Lucy Hovil, *Negotiating Peace: Resolution of Conflict in Uganda's West Nile Region*, RLP Working Paper 12, June 2004.

[3] Mark Leopold, *'Why Are We Cursed?': Writing History and Making Peace in North West Uganda*. Royal Anthropological Institute, 2005.

[4] Leopold, p. 212.

[5] Leopold, p. 215.

[6] H.B. Hansen and M. Twaddle (eds), *Uganda Now*. London: James Currey, 1988; *Changing Uganda*. London: James Currey, 1991; *From chaos to order: the politics of constitution-making in Uganda*. Kampala: Fountain Publishers, 1995; and *Developing Uganda.* Oxford: James Currey, 1998.

be taken for granted.[7] While the findings of both studies appear to hold – namely that there are no clear indications of an imminent return to rebellion – it is concerning that the same idleness and the same waiting for government and donor help continues.

The potential for a return to insecurity is underscored by the fact that West Nile shares international borders with two of Africa's largest and least stable states. Although recent developments in both Sudan and DRC are encouraging in terms of their potential for peace, there is no guarantee that this will be the case. With borders that are hard to patrol, and a considerable flow of light and small arms in the Great Lakes region, it is even more critical that the law and order sector be robust in its response to crime. It raises questions, for instance, over how crimes committed in the context of conflict or an immediate post-conflict phase, and that fall within the ambit of universal jurisdiction,

should be dealt with, and to what extent national police organisations should and can pursue criminals across international borders.

1.2 The relationship between justice and peace

For regions emerging out of conflict, the collapse of institutions is often one of the most visible legacies and rebuilding these institutions, particularly those relating to justice, law and order, is key to stability in any recovery process. This working paper therefore, considers the current context of justice in West Nile with regard to its physical, economic and legal accessibility, as well as the interaction between both formal and informal processes of justice. In doing so it draws on the UN Security Council's definition of justice as:

> an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interests of victims and for the well-being of society at large. It is a concept rooted in all national cultures and traditions and, while its administration usually implies formal judicial mechanisms, traditional dispute resolution mechanisms are equally relevant.[8]

In particular, meeting the responsibility to deliver justice effectively should be a key concern. The UN has argued that "the consolidation of peace in the immediate post-conflict period, as well as the maintenance of peace in the long term, cannot be achieved unless the population is confident that redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice."[9]

A situation in which justice is largely inaccessible will not only fail to serve the interests of the victims, the rights of the perpetrator and the wider society, but will continue to underscore disaffection for a central government that appears to have neglected the region. At the same time, problems associated with informal processes – in particular lack of accountability and formalisation within the national structures – undermine community structures that could play a critical role in post-

[7] *Community Dynamics in West Nile: A Situation Analysis*. Danida, June 2004; and *Reintegration and Reconstruction in West Nile: A Risk Analysis*. Danida, May 2005. The first (2004) focused on post conflict community dynamics in the region, specifically those associated with the reintegration of ex-combatants. The second (2005) presented a broad-based risk analysis on the situation in the region, with a particular focus on the ongoing process of reintegration of former combatants, and on the proposed West Nile Development Conference.

[8] *Ibid.*

[9] UN and the Rule of Law, *ibid* fn 1.

conflict healing. As a result it is vital that relevant and workable justice mechanisms, both formal and informal, are created or better supported, and go hand in hand with increased investment and development in the region.[10]

But how does such a definition apply in a context such as West Nile, a region that has only recently negotiated a peaceful end to over two decades of violent conflict and is still in an immediate 'post-conflict' phase? For it is now generally recognised that dealing with the visible legacy of conflicts is not enough. As the UN has noted:

> helping war-torn societies re-establish the rule of law **and come to terms with large-scale past abuses** [emphasis added], all within a context marked by devastated institutions, exhausted resources, diminished security and a traumatized and divided population, is a daunting, often overwhelming task. It requires attention to myriad deficits, among which are a lack of political will for reform, a lack of institutional independence within the justice sector, a lack of domestic technical capacity, a lack of material and financial resources, a lack of public confidence in Government, a lack of official respect for human rights and, more generally, a lack of peace and security.[11]

While the paper is centred primarily on access to justice issues affecting post-conflict West Nile and the complexity of balancing formal and informal mechanisms of justice, it also highlights the fact that achieving post-conflict stability requires the sequencing of a range of justice mechanisms around carefully tailored transitional and long term strategies. In this regard it is important to note that the amnesty process in West Nile, while effective in ending rebellion, has failed to hold former combatants and their leaders accountable for their actions at any level. Instead, ex-combatants feel that their livelihoods are the responsibility of the government and there is a danger that their disgruntlement could increase. Simultaneously, amnesty is causing dismay among victims of the conflict who not only see the packages offered to ex-combatants as rewarding rebels, but whose constant yearning for closure, by way of formal recognition of their suffering (e.g. through some form of reparations), remains unaddressed.

Thus issues of long-term reconciliation remain a concern, and West Nile continues to face the challenge identified by the UN and captured by the OECD, namely "how to facilitate post-conflict justice that both promotes reconciliation and prevents impunity"[12]

2 METHODOLOGY

Information regarding current access to justice in West Nile is extremely limited. The districts of Moyo, Adjumani and Nebbi were covered by the recent *Joint Survey on Operations of Local Council Courts and Legal Aid Service Provision* report, but no systematic research has been done into

[10] See, also, RLP Briefing Note. *"Anytime Anything Can Happen"? Traditional Mechanisms of Conflict Resolution in West Nile and the Potential for Reconciliation.* December 2005. Specifically, it considers a number of tensions between more traditional forms of conflict resolution and more formal and institutional forms.

[11] Report of the Secretary General on *The rule of law and transitional justice in conflict and post-conflict societies*, UN SC S/2004/616, General 23 August 2004.

[12] See for instance, Development Assistance Committee, Mainstreaming Conflict Prevention: Equal Access to Justice and the Rule of Law, OECD Issues Brief, 2005

justice needs and delivery specifically in West Nile.[13] As a result, the primary material for the DANIDA study comprised of field research carried out in all six districts of West Nile from 16 – 30 November 2006. The field research team comprised a lawyer, human rights and humanitarian law expert, a psychosocial counsellor, and an educationist. During the field research, one member of the team focused on gathering data available within each district relating to issues of justice and interviewing security and judicial personnel, while the other researchers conducted interviews at community level in each district.

The method was primarily based around qualitative, one-on-one interviews, each of which was recorded in full and then transcribed for purposes of analysis. Interviews were conducted at two separate sites in each of West Nile's six districts. These were chosen according to information gained at a district level, and with a view to incorporating any significant contrasts within the districts – for instance between rural and urban areas, or between areas that were close to a police post and areas with less accessibility. A total of 103 interviews were conducted. Of these, 53 were with officials – including security officials, local and central government officials, and members of the police (local administration police, special police constables and central government police), judiciary (grade I, grade II, grade III and Chief Magistrates where they existed) and prisons systems (prison officials as well as inmates). Fifty-eight interviews were conducted with members of the communities living in the region, of which 24 were with women. Community members interviewed also included school teachers/head teachers, elders, medical officials working within the communities and business people. In the case of interviews conducted within the communities, a standard snowballing method was used in order to locate individuals to be interviewed.

In combination, the information gathered presents an impression of people's understandings of justice mechanisms within the region at a particular moment in time, which is further illuminated when juxtaposed against official crime statistics.

As the study is qualitative in nature, the individuals interviewed cannot necessarily be said to be representative of all those living in West Nile. While this is a limitation of the study, given the relatively small number of individuals that could be interviewed within the time allocated, the method allowed for a depth that is often missing in more quantitative studies, and availed interviewees the space to put forward the issues they regarded as most salient. Despite the wide variety of locations chosen and the range of officials and community members interviewed, the data shows clear patterns and indicators of pertinent issues surrounding justice in the region. As such it acts as a credible pointer to some of the critical justice issues as perceived both by the communities and by those working from within the official structures. In addition, although in the analysis phase the data was disaggregated by district, patterns were identified and the frequency of patterns and themes examined and analysed, the similarities between districts were more striking than the differences. In addition, it is important to note that making direct comparisons between districts is problematic given that several of the districts covered were only recently carved out of pre-existing ones. Therefore the report presents data primarily in regional terms, and only mentions district-specific information where relevant.

[13] Legal Aid Basket Fund and UNDP/UNCDF, *Joint Survey on Operations of Local Council Courts and Legal Aid Service Provision*, July 2006.

However, when disaggregated along community members/official lines, the data shows some striking differences of viewpoints. This disaggregation is therefore maintained through most of the report in order to show both the similarities and contrasts in the way in which both groups perceive the situation.

Finally, it is important to note that the data is not compared specifically to the rest of the country. The information that would be needed in order to do this in any consistent and methodologically acceptable way does not currently exist. The recent study carried out by Judge Justice James Ogoola, for instance, presents countrywide data without regional disaggregation – although it is worth noting that the report states that Arua and Moyo were amongst the few Chief Magistrates Courts to submit full returns during the course of the study. This lack of national information makes comparative analysis across districts or between one district and the rest of the country extremely difficult and arbitrary.[14] As Ogoola himself comments, "It is apparent that obtaining returns from High Court Circuits and Magistrates Court continues to be a big problem. Courts have to be literally pushed to forward returns from both civil and criminal cases. This makes it difficult to plan. The data sent to Data Centre is not in the form of reports and is very difficult for a lay person to interpret."[15] Therefore the extent to which the findings are specific to West Nile, and the extent to which they have greater national relevance, remains unclear as yet. A forthcoming study by UNDP will hopefully help to address this deficit in information.

Furthermore, the data obtained from the police was often not sufficiently consistent to allow a coherent and complete picture of the nature and trend of crimes reported to be compiled. As noted elsewhere in this paper, police records were often incapable of generating statistics that could allow for a year-by-year analysis of trends. And since some of the statistics were recorded under general themes – for instance cases of domestic violence involving assault are often recorded under assault – it was impossible to establish the frequency of such cases and to reach definite conclusions regarding the trends. In several of the districts visited, it was the research team's visit that prompted officials to compile their data, while in other instances the researchers had to compile the data themselves.

The paper begins with an overview of crime trends in the region before looking specifically at a number of crimes that were seen to be either on the increase, or of serious ongoing concern – namely gender-based violence (GBV), sexual offences, and crimes associated with land ownership. It then looks at perceptions of formal judicial structures – from the police to the courts – and shows the extent to which official justice mechanisms are seen as dysfunctional and inaccessible. The following section considers the role played by informal justice structures, while the final section draws the analysis together and concludes.

[14] "The Current State of Affairs in the High Court and the Role of Division Heads and Registrars", Principal Judge Justice James Ogoola, paper presented at the Judge's Conference, Kampala, 6 February 2006.
[15] Ibid., p. 11.

3 Crime trends in West Nile

3.1 Crime statistics

Assessing crime trends in West Nile is not easy. The lack of consistent data is itself an indicator of the state of flux in which the various judicial institutions find themselves, not least because there are three parallel systems of justice in operation: formal mechanisms represented by the police, judiciary and prison system; informal mechanisms that include the roles played by elders and cultural leaders; and the 'alternative justice mechanisms' represented by local government officials such as LCs. Although the latter two systems have been castigated in many studies, their involvement in the delivery of justice, as noted in the definition of justice above, is not necessarily problematic: as noted by the UN, justice "is a concept rooted in all national cultures and traditions and, while its administration usually implies formal judicial mechanisms, traditional dispute resolution mechanisms are equally relevant."[16]

In principle, therefore, traditional justice mechanisms and alternative justice mechanisms all serve to further the delivery of justice. What is in question is the varying extent to which these different institutions have "regard for the rights of the accused, for the interests of victims and for the well-being of society at large." Insofar as traditional mechanisms of dispute resolution are geared towards addressing the social implications of individual infractions and are readily accessible to victims and communities at a moderate cost, they clearly have a role to play. However, traditional mechanisms do not adhere to the rules and standards established under more formal mechanisms - and, some would argue they are in contradiction to the latter. Indeed, many of those working within more formal mechanisms regard traditional mechanisms as inferior to, interfering with and jeopardising the course of formal "justice". This tension between the formal and the informal leads to poor co-ordination between the different mechanisms, and has contributed significantly to the state of flux referred to above – often at the expense of victims and society as a whole.

Against this background, the relationship between crimes actually committed and crimes officially reported varies considerably, and depends, for instance, on the motive for reporting and the proximity to reporting mechanisms. For example, in the traditional system of conflict resolution and justice – which is more accessible – crimes are rarely recorded: instead they are reported to elders who depend on rote memory for both the recording and storage of cases and for the procedures to be followed in processing them. Some would therefore argue that these systems are arbitrary, depend on the whims of individuals and lack consistency. A further argument is that such systems were never designed for mediation in modern-day conflicts, which are proportionately larger and comparatively more complex. At the same time, alternative mechanisms such as the LC courts, which are a hybrid of the formal and the informal, do not have the mandate to resolve certain disputes. While in practice they do actually intervene, and to some extent intercede in such cases, they refrain from recording them due to the obvious legal implications of doing so.

[16] Report of the Secretary General on *The rule of law and transitional justice in conflict and post-conflict societies*, UN SC S/2004/616, General 23 August 2004.

Furthermore, perceptions of crime levels are also at times at odds with recorded levels: in Moyo, for instance, while several informants in rural areas talked of a reduction in crime levels,[17] crime rate statistics at the Police Stations showed an increase in the number of recorded cases from 340 in 2003, to 1118 in 2005.[18] This was also the case in Koboko, where one respondent said more crimes were being committed in urban than in rural areas. In Yumbe, one of the few districts where statistics are disaggregated by rural and urban areas, crime rate statistics indicate a higher prevalence of crimes committed in rural areas. Thus in 2003 a total of 204 crimes were recorded at the Police Station, of which 114 were committed in the rural areas, 89 in urban centres and 1 recorded as a highway robbery.

Therefore, in order to build up as reliable a picture as possible of what is happening on the ground, this study draws upon two main sources of information: official crime statistics[19] and interviews with security and judicial personnel, and people's impressions of crime trends within the communities in the different districts. Combined, these sources indicate some of the perceived and actual trends in crime within West Nile. However, it is important to note that, given the lack of consistency in records and therefore in official crime statistics, it is impossible to generate reliable, region-specific statistics out of the official material collected. Furthermore, it is not possible to assess levels of criminality or access to justice relative to other parts of the country.

3.2 Perceptions of crime trends

Overall, there was consensus that crime levels, although generally on the increase, had not dramatically changed in most areas since the time of the peace agreement in 2002. Thus while crime rates had risen overall in Moyo, there were particular areas where there was a perception that crime levels were falling: according to a security official in Nyadri sub-county in Maracha district, for instance, "crime is reducing drastically compared to last year".[20]

The most notable exceptions to this overall impression of stability in crime levels include significantly increased rates of defilement recorded in official police statistics and reported by informants on the ground; an increase in reported robberies, theft and assault of all kinds; a less dramatic but notable increase in land disputes reflected in statistics and interviews; and an increase, or ongoing concern, regarding levels of domestic violence. This last issue, though not reflected in crime statistics (mainly because it is often recorded by the Police as simple or aggravated assault depending on the severity of the case), was nevertheless referred to in numerous interviews.

Official statistics in Arua district, for instance, show that reported cases of murder decreased from 55 in 2000 to 42 in 2005, while in the same period reported cases of robbery had increased from 27 to 102 and reported cases of defilement had increased from 106 to 286. This trend was fairly widely reflected throughout the region: numerous informants, both community members and security personnel, talked of the fact that crime was generally stable, but specifically mentioned an increase

[17] Interview with community worker, Metu sub-county, Moyo, 26/11/06.
[18] Interview with GII Magistrate, Moyo, 27/11/06.
[19] During the course of the field research the research team was able to obtain reported crime statistics from the police, courts and prisons from all districts except Maracha. However, crime statistics for many of the districts are problematic given the number of new districts that have been created. Arua, for instance, has significantly decreased in size during the past four years, while Yumbe, Koboko and Maracha are all relatively new districts. Most statistics for criminal offences however still remain stored in Arua, without disaggregating according to the new Districts.
[20] Interview with security official, Nyadri sub-county, Maracha, 22/11/06.

in theft, assault, land-related crimes, defilement and domestic violence. In most instances, the nature of these offences was said to be related to the socio-economic status of the offender. In Adjumani, for example, a police officer described the majority of cases recorded as being poverty-induced or crimes for survival,[21] such as theft of foodstuff.

A number of additional crimes were mentioned within specific districts – for instance smuggling in Arua,[22] and drug abuse (which was also mentioned as a trigger for some of the above named crimes) in Koboko. The latter also saw a high incidence of road accidents linked to traffic offences, with 150 cases registered in 2005 and over 300 in 2006.[23] Furthermore, several security officials talked of a clear correlation between the harvest period (when more money and goods are in circulation) and higher crime rates.[24]

Contrary to widely held stereotypes that ex-combatants are likely to turn to criminality in a post-conflict setting, it is also significant that crime dynamics were generally not directly attributed to the presence of ex-combatants in the area. Although a minority of informants asserted that many ex-combatants were out of work and 'idle', there was no automatic correlation between their presence and crime levels in the area. Instead, concerns about the presence of ex-combatants continue to focus on the fact that they still feel that the government has not delivered on its promises to them, and are waiting for further "reinsertion" assistance.[25] Others referred positively to the fact that many ex-combatants have joined politics at all levels, and take this as an indicator of their integration into the communities.[26] Notwithstanding the above, a minority of respondents felt that the presence of ex-combatants continues to act as a destabilising force within the community, and they argued that most reported incidents of gun related crimes involved ex-combatants. Specifically, this was understood within the wider socio-economic environment of the region, characterised by a lack of legitimate opportunities. Within this context, however, there was also reference to the fact that many adults in West Nile were at one stage or another involved in the numerous rebellions that have taken place in the area, implying that the term 'ex-combatants' has broad implications.

Of greater general concern to security officials was the linkage between crime and the proximity to the borders with Sudan and DRC. The fact that West Nile is next to two of Africa's largest and most unstable states clearly poses challenges to the Justice Law and Order Sector (JLOS), such as the cross-border movement of criminals seeking to escape justice. In addition, such proximity to international borders also encourages refugees who have committed offences in their host country, to return to their country of origin in the hope of absconding from the law, without establishing whether it was safe to return. Such challenges were articulated most frequently in Koboko, which is near both the DRC and Sudan borders. As a government official said,

> What makes the border a problem is that people living along the borders are related and the criminals can easily sneak there and find refuge. But of late, due to the collaboration between the security organs in both countries, their safe havens have been destroyed. But guns are still moving around with ease. And smuggling is common.[27]

[21] Informal Conversation with Police Officer, Adjumani Police Station, 29/11/06.
[22] Interview with security official, Arua, 19/11/06.
[23] Interview with court official, Koboko, 21/11/06.
[24] Interview with court official, Koboko, 21/11/06.
[25] This extent to which ex-combatants feel entitled to assistance from the government is linked to the way in which the Amnesty process has, effectively, bought rebels out of the bush without emphasising their own responsibility. For more detail, see RLP Working Paper 15, 2005.
[26] Interview with local government official, Metu sub-county, Moyo, 26/11/06.
[27] Interview with government official, Arua, 20/11/06.

Koboko was also the district where most complaints about the presence of refugees were made.[28] In this regard, however, most individuals interviewed also appeared to be using refugees as scapegoats for explaining the prevalence of crime in the area.

Overall, the crimes that were most commonly referred to were GBV and other sexual offences (most notably defilement and domestic violence against women), and land related crimes, a general trend that was supported by a legal aid provider in the region.[29] Although other offences occur and were referred to – in particular incidents of common assault and petty theft – these three stand out from the data and will be dealt with individually. Combined, they point to some of the wider cultural and socio-economic dynamics that are critical to gaining a more general understanding of the spectrum of justice issues within the region.

3.3 Gender Based Violence and other related sexual offences

The prevalence of GBV and other sexual offences throughout the region was a major concern expressed by many interviewees. Specifically, people talked about high rates of 'defilement', and expressed their concern that domestic violence was widespread. The following section therefore deals with these two specific forms of GBV as they were the ones most commonly talked about.

3.3.1 Issues of rape and defilement

Both in the communities and among security officials, there was widespread reference to the fact that 'defilement' is rampant and is seen to be increasing dramatically throughout the region. It was talked of as something of a 'new' crime within the region, and is clearly an issue of grave concern to many.[30] In spite of the fact that many cases go unaccounted for, the number of *reported* incidents of defilement has gone up significantly in all districts where statistics are available.

Defilement is defined under the Penal Code Act as "sexual intercourse with a girl under the age of eighteen." Death is the maximum penalty for such an offence. This provision of the Penal Code also makes attempted defilement a crime punishable by up to eighteen years in prison, "with or without corporal punishment." According to this definition, the ingredient of a crime of defilement is determined by two main factors: age of the female victim (or survivor), and actual or attempted sexual intercourse. Under this law, an adult woman who has sex with a minor boy is not deemed to have committed defilement; the offence is covered under Section 147 on "Indecent assaults on boys under eighteen", which carries a maximum sentence of "imprisonment for fourteen years, with or without corporal punishment." In an attempt to make the offence of defilement gender neutral, Parliament has proposed an amendment to the Penal Code to broaden the definition of defilement to include attempts to perform unlawful sexual intercourse with a person below the age of eighteen, to create the offence of aggravated defilement, and to provide redress by way of compensation to survivors of defilement.[31] While the law making for such changes has been passed by parliament, it is yet to be assented to by the president and will await commencement by the responsible Minister before it takes effect. In the interim, the applicable law therefore remains the Penal Code Act in its original form.

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[28] For instance interview with headmaster, Koboko, 22/11/06.
[29] Interview with legal aid worker, Arua, 20/11/06.
[30] For instance interview with headmaster, Koboko, 22/11/06.
[31] Refer to Penal Code Amendment Bill No. 20 of 2006.

On top of the legal definition currently being in a state of flux, respondents used the term 'defilement' to cover a wide spectrum of social scenarios and alleged crimes, from the rape of girls under the age of 18, to consensual sex that had come to the attention of the girl's family (generally as a result of her becoming pregnant). In some cases, defilement only became an issue several years after the fact, for instance when the 'defiler' had defaulted on paying bride price, by which time the defiled had passed the age of consent. Many people specifically highlighted the negative consequences of defilement for girls who were in school, particularly in cases where a girl was unable to finish her education due to falling pregnant. This was even the case in girls who were over the age of 18 but still in school. As a result, they were often referred to as needing specific 'protection' from 'defilement'. One head teacher, for instance, stated that a protective regime should enable girls to complete their education: even if the girl is above the age of consent – which is common in a rural context where children start education at a later age – there should be a mechanism akin to the defilement law for protecting such school-going individuals.[32] This attitude shows both the value put on education by some parts of the population, and their recognition of the social implications of girls becoming pregnant while still at school. However, it is important to note that the need for girls to complete their education was by no means universally accepted: many of those interviewed, for instance, argued that the poor rate of school attendance by girls was symptomatic of a society that continues to see limited worth in educating girls.

Given these broader social dynamics, which confirm those presented in RLP's Working Paper 20,[33] it was impossible to discern accurately the extent to which the use of force was prevalent and, therefore, the extent to which 'defilement', as defined in national law, is taking place. However, a number of issues came out clearly in relation to the way in which 'defilement' was both talked about and regarded.

First, regardless of definition, it is clear that sexual abuse of young girls is a major and growing concern, particularly given that the perpetrators are often their peers or, in many instances, older people of standing within the communities. For instance, across the region, informants talked of teachers 'defiling' girls within the school environment. As one woman in Yumbe said, "There is a lot of defilement here, especially of school girls by teachers and young men."[34] Likewise court officials in Nebbi talked of how defilement was common in primary schools and that in most cases the defilers are teachers.[35] There was also frequent reference to businessmen and 'people with money' taking advantage of girls who were desperate to make money – linking their vulnerability to widespread poverty in the area.

Second, the way in which informants defined and subsequently dealt with the issue of defilement was closely linked to forced/early marriage: in the majority of incidents, 'justice' was seen to have been achieved either if the girl was married off to the alleged 'defiler' upon receipt of an acceptable bride price, or if (where marriage was not possible) compensation was paid to the family of the girl. In cases where compensation was sought, a number of informants linked it, just like marriage, to

[32] Ibid.

[33] See Noah Gottschalk, *'Giving out their daughters for their survival': Refugee self-reliance, 'vulnerability' and the paradox of early marriage.* Refugee Law Project Working Paper no. 20, April 2007. Specifically the paper demonstrates how the broader social implications generated by refugee settlements interacts and promotes early marriage within the region.

[34] Interview with woman, Ombaci Yia, Yumbe, 25/11/06.

[35] Interview with MII, Nebbi town, 17/11/06.

the social standing of the girl at the time of defilement and her potential within the community. In most cases, compensation or marriage was perceived to be synonymous with justice. While this kind of justice does not redress the victims, it was seen as meeting societal demands for tangible justice and providing some sort of closure to the issue at stake. In short, justice was seen as communal rather than individual.

Many informants, however, talked of 'defilement' being used as a business by families who effectively 'sold' their girls. The interviews indicate that the "business of defilement" takes two dimensions: either families of the defiled demand financial favours in order to keep the matter out of court, or families of the girls first set them up with men and then make financial demands on the very same men in the form of dowry payments or, at the least, payment for 'spoiled studies'.

Either way, collusion within families in search of financial gain exacerbates the phenomenon. In particular, concerns were raised over the way in which girls who had been sexually assaulted were then made to suffer further for the material benefit of their families. As a woman in Yumbe said, "Cases of rape and defilement are common but nothing gets done to the culprits... Defilement is on the rise because the culprits are not brought to book, and also sometimes parents interfere with the justice system. They sacrifice their daughters for cows and money."[36] Thus, the needs of the victim are not of primary importance, and to many, the dowry system appears to be "aiding defilement".[37]

Third, given the benefits associated with obtaining a dowry, the majority of 'defilement' cases appear not to be reported to the police. As a widow and mother of three children said, "People say, once the girl has been spoilt, what is the point of the court system? What can they do? It is better to sort it out within the community."[38] Or, in the words of a medical worker in Koboko, "The boy gets prosecuted and is sentenced to jail, then what? The process is expensive and they are left with nothing."[39] Furthermore, it was clear that parents are also under pressure not to 'humiliate' the community by reporting and exposing what has happened,[40] and it is normally the fathers rather than mothers who decide what action to take.[41]

As a result it is clear that in many instances the wider socio-economic environment is a dominant factor that seriously jeopardises people's inclination to pursue 'justice' within the formal mechanisms. Furthermore, it raises questions regarding how justice is perceived – in this case, there is something of a pragmatic understanding of justice, which emphasises the benefits of redress and compensation over and above a desire to see the perpetrator punished.

These socio-economic factors are further illuminated by the fact that, when cases *are* reported, it is generally as a result of a failure on the part of the girl's family to secure an acceptable settlement – as shown above. As a paralegal worker said, "Where they can't get financial benefit, they end up in court."[42] As such, the formal judicial process is used by families in a further attempt to intimidate the accused into submission: generally the boy or man in question is remanded until the case is either heard (at which point he is convicted and incarcerated, or the case is dismissed on the basis of

[36] Interview with woman, Ombaci Yia, Yumbe, 25/11/06.
[37] Interview with man, Yumbe, 24/11/06.
[38] Interview with widow and mother of 3 children, Okoro county, 18/11/06.
[39] Interview with medical worker, Koboko town, 21/11/06.
[40] Interview with man, Yumbe, 24/11/06.
[41] Interview with woman, Maracha town, 22/11/06.
[42] Interview with Para-legal, Arua, 20/11/06.

a number of possible technicalities including incomplete evidence), or dismissed without trial upon completion of the mandatory remand period.[43] Where this intimidation works and an agreement is reached prior to any formal hearing, cases can be withdrawn. As one security official in Nebbi noted: "when we are working on cases of defilement, the relatives are busy behind negotiating. The parties of interest become reluctant to cooperate with police."[44]

When asked how and why state attorneys in Moyo and Arua withdraw cases involving offences such as defilement, a number of explanations where advanced. First, in cases where the complainant has lost interest in the case, it is almost impossible for the prosecutor to obtain the complainant's testimony. To proceed in such a manner would therefore be tantamount to wasting the Court's time. Second, withdrawal of cases is also more likely in situations in which the girl in question was nearer to the age of consent, might have granted it, and therefore is not as 'vulnerable' as a child who is manifestly underage, and where the girl's exact age is difficult to ascertain. Third, the circumstances under which the alleged offence of defilement took place is another important variable. For instance, if the minor in question is known to have met the defiler in a clearly marked adult area, this is considered a mitigating circumstance.[45] (Notwithstanding the above, any attorney wishing to withdraw a case has first to supply grounds for the withdrawal, and then obtain clearance from the Senior State Attorney.)

In this context, girls who have been abused have little, if any, ability to pursue justice for themselves. Furthermore they are often blamed for what has happened – numerous informants attributed the rise in 'defilement' to attending discos, the way in which girls dress, and the demands of modern urban life, particularly in a context in which growth in the availability of goods and advertising does not correspond with people's purchasing power. As a local government official said, "The young girls are very much interested in money and will always go for these men. They dress badly and the men are forced to defile them."[46] While it is not clear why the man felt "duty bound" to defile girls who "dressed badly", a student put this more sympathetically: "Girls are always blamed and in the end it is believed they are responsible. Society judges them without giving them an opportunity to defend themselves. It only looks at what benefit it can get out of the situation. The girl benefits nothing at all. She always remains the victim of injustice."[47] Most disturbingly, one community worker in Moyo district reported that in the preceding year more than 10 girls had committed suicide after becoming pregnant. In the informant's words they were "killing themselves out of frustration."[48]

Fourth, the dynamics surrounding defilement were often part of a wider tendency to regard children in general – and girls in particular – as economic assets, and the abusive consequences of these views. A man living in Moyo described the situation in his area:

> Child abuse is rampant. Most of the abuses are physical. Children are taken to the fields and they are kept there for long hours. When they come back they are expected to carry very heavy loads and there are punishments that include beatings… Parents do not know that children have rights. And children land up boycotting school because of being overworked.[49]

[43] Interview with local government official, Koboko town, 21/11/06.
[44] Interview with security official, Nebbi town, 17/11/06.
[45] Ibid. See also interview with security official, Moyo town, 25/11/06, who made the same point.
[46] Interview with local government official/youth representative, Nyapea Parish, 18/11/06.
[47] Interview with secondary student (m), Okoro county, 18/11/06.
[48] Interview with community worker, Metu sub-county, Moyo, 26/11/06.
[49] Interview with man, Metu, Moyo, 26/11/06.

Many respondents argued that such abuse of children's rights was a result of widespread ignorance of children's rights,[50] and that children fear to report abuse because it will make their situation worse.[51]

3.3.2 Issues of domestic violence against women

Another form of GBV talked about frequently throughout the interviews, but not reflected in official statistics, is that of widespread domestic violence against women and children. Although sexual violence is typically under-reported even in well-resourced settings worldwide, [52] the findings show that reporting in West Nile is almost non-existent. Thus while a rise in cases of defilement and land-related crimes were reflected in both crime statistics and people's perceptions on the ground (although the magnitude of the problem is clearly not reflected in the number of cases reported), issues of domestic violence against women are rarely reported to the police,[53] and only occasionally to the elders or LCs. Where they are reported, the police has taken to recording incidences within the general rubric of assault or aggravated assault, making it impossible to identify where trends and dynamics in domestic violence differ from ordinary cases of assault. Despite this lack of statistics, the vast majority of informants claimed that rates of GBV within the home were high. According to a government official in Arua, "domestic violence is rampant."[54] One young woman living in Yumbe said:

> A woman can never refuse her husband in terms of sexual relations. Men pay dowry and they demand that women are supposed to bear for them children. Otherwise they are beaten… Most women do not know their rights. They are not even aware that violence against them is criminal and punishable. There are no sensitisation programmes with regard to this kind of violence – domestic violence.[55]

The lack of reporting is strongly linked to the position of women within society, the distance between the victim and the nearest police station, and, indeed the victim/communities' perception of outcomes of such a process. As one widow and mother of three small children stated; "A woman has no voice. How will she seek justice?"[56] Additionally, the outcome of pursuing 'justice' further jeopardises the situation of the woman: if her husband is imprisoned, then she is left on her own - which often means she is left with nothing.[57] As another informant said, "If the man is put in jail then who buys the salt? When it is too much they tell the elders. Culturally it would undermine the family if such issues are brought out. It is very rare that a woman goes to the courts over such matters."[58]

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[50] Interview with legal aid provider, Arua town, 20/11/06.
[51] Interview with young woman, Aakoricaku, Yumbe, 25/11/06.
[52] This point is made in the UN's *Guidelines for Gender-based Violence Interventions in Humanitarian Settings.* IASC, September 2006.
[53] A government official in Arua commented that women within the municipality do sometimes turn to the police. Interview with government official, Arua, 20/11/06.
[54] Interview with government official, Arua, 20/11/06.
[55] Interview with young woman, Aakoricaku, Yumbe, 25/11/06.
[56] Interview with widow and mother of 3 children, Okoro county, 18/11/06.
[57] Interview with young woman, Aakoricaku, Yumbe, 25/11/06.
[58] Interview with man, Uwra County Odum, 19/11/06.

On the other hand, those women who do report normally do so to the elders or to the Local Councils. When asked what women do when they are being abused, one widow who had re-married, said, "Women do take matters to the elders but most times the elders think more of the good of the family than the pain of the woman. They aim at preserving the family. Most of the elders gathered to hear such cases are male, so there is a tendency for them to be biased."[59] And when women do go to the police, they are often referred back to the community. In other words, domestic violence is seen as a social issue and as such it is believed that it should remain outside the ambit of the formal justice mechanisms.

In general, the institution of elders, in this instance "old wise men" (T*emez*i in Kakwa or Bawara, sometimes confused with *Bamili* [opinion leaders] in Lugbara) mediates in a number of dispute types, including cases of domestic violence. Curses are used as a medium to ensure compliance with their rulings. As a paralegal worker said: "Police do not take domestic violence seriously. Unless they [the victims of domestic violence] come through service providers like us, they are largely locked out of the mainstream justice system."[60] As a result, women are left in a position where they have no support structures to turn to. In this context, the presence of FIDA in Arua appears to have had a positive impact – "it does not have much capacity, but their existence alone scares some men."[61] Notwithstanding their positive impact, however, the legal aid providers felt generally under funded and under-facilitated – and, therefore, compromised in their ability to have a credible presence in the region.[62] It is clear that for women to be helped in any meaningful way, there is a desperate need for greater presence of legal aid providers, not least to act as a critical link between women and official justice mechanisms, which remain particularly inaccessible to them – as will be demonstrated below.

3.4 Land-related crimes

A second specific source of crime that emerged clearly in the interviews was related to disputes over land boundaries and ownership. One obvious factor in this is simply a growing population putting additional pressure on available land. Another more context specific factor is the history of displacement within the region:

> Most people have been in exile for long and others who came earlier settled in safer places that were not their original lands… Most times elders sit to arbitrate such land wrangles because they are the ones who know the proper ancestral boundaries… Many people who know the claimed areas truly belong to them will not go to the land tribunal because the amended land act protects squatters, so they resort to [eliminating people] to get back their land.[63]

[59] Interview with woman, Ombaci Yia, Yumbe, 25/11/06.
[60] Interview with legal aid provider, Arua town, 20/11/06.
[61] Interview with local government official, Koboko town, 21/11/06.
[62] Interview with legal aid worker, Arua, 20/11/06.
[63] Interview with woman, Ombaci Yia, Yumbe, 25/11/06.

As a result, there was widespread reference to land disputes which ordinarily would be civil matters but in extreme cases result in criminal offences such as arson, criminal trespass and murder.[64] While a land tribunal mandated to resolve such disputes existed in virtually every district, they were said to be excruciatingly slow and to lack the capacity to solve the number of wrangles that emerge.[65] [66] In fact, there was considerable public frustration with the time taken by the Land Tribunal to finalise cases, with such delays often leading to land-related crime. Moreover, it is foreseeable that the number of land related crimes will only increase, given that activities of the Land Tribunals all over Uganda were halted in November 2006. There is currently no clear indication whether land matters will revert to the jurisdiction of magistrates' courts or be relocated to new institutions altogether. Furthermore, given that there has been customary ownership of land in West Nile, many informants suggested that it was only possible to rely on the elders to settle disputes. The fact that the use of cultural institutions has been codified in the Uganda Constitution and further given voice in the Land Act 1998, which recognises elders' supervision over customary lands and involvement in mediation of land disputes at LCII level, lends support to this viewpoint. As referred to in the definition of justice above, this is a specific area in which traditional dispute resolution mechanisms have been relevant to our understanding of the interaction between formal and informal mechanisms of justice and the extent to which they meet the definition provided by the UN.

One major shortcoming of this system, however, is its manifest gender biases: the traditional mechanisms show an over-reliance on men in solving many disputes, and these men tend to determine property issues involving women. Thus there was frequent reference to the fact that traditionally women have not inherited land, leaving them vulnerable to losing their homes when their husbands die. As a CBO worker said, "it's the women and the children who are victimised [over land issues] because the social system does not permit the woman to own property."[67] Furthermore, as the informant went on to say, "they do not know that if they are thrown off their land after being widowed that they can go to court". Given the essential importance of land in a largely subsistence economy, the implications of losing land are critical, and the establishment of gender-neutral mechanisms and processes should be prioritised.

4 Perceptions of formal mechanisms of justice: Institutional dysfunction

In light of this overview of some of the perceived and actual trends in crime in the region, it is critical to ascertain the ability of formal justice mechanisms to deal fairly with such crimes, both to protect the rights of the victim and the accused, and to effectively reduce crime rates within the communities, as emphasised in the definition of justice above. To an important degree, the scope of the formal institutions to act effectively will be determined by people's perceptions of their efficacy, as this will determine whether or not cases are referred to them. The following section therefore describes the way in which the formal institutional judicial structures – from the police to the courts and prisons – are perceived both by the communities they are supposed to serve, and by the officials who are running them.

[64] Interview with security official, Nebbi town, 17/11/06.
[65] Interview with security official, Nebbi town, 17/11/06.
[66] Interview with security official, Moyo town, 25/11/06.
[67] Interview with CBO worker, Nebbi, 17/11/06.

Overall, the data clearly shows that the formal institutional mechanisms of justice are perceived as dysfunctional by those they are supposed to serve. They are seen as lacking credibility, being chronically under-funded, and are often tainted by alleged corruption. This poor public image is in part a reflection of public ignorance regarding some of the limitations under which the institutions are operating.

4.1 Police

In all Districts visited, the ratio of police to the population averaged approximately 1:1200. In Nebbi, for instance, 224 policemen (including Special Police Constables - SPCs) serve a population of about 440, 000.[68] Despite these low numbers, the Police are the most visible face of, and entry point to, the justice system. Each district has a Central Police Station (CPS), with posts and out-posts theoretically located in County and Sub-county headquarters. Within the district, the District Police Commander (DPC) or appointed officers are overall in charge. All DPCs in the West Nile region are responsible to the regional Police Command based in Arua. As discussed below, this structure and the composition of the police force, while provided for in the Police Act, presents a bureaucratic impediment to the speedy processing of criminal cases, and contributes to delays in accessing justice.

4.1.1 Local Administration Police

Within the Districts, the police force comprises two other auxiliary forces– the Local Administration Police (LAPs) and the SPCs – all provided for under the Police Statute.[69] Until July of 2006, the LAPs were a force located within the Sub-Counties, operating under and funded by the Local Government. At the time of the research, respondents referred to a 1st July 2006 directive from the Central Government to integrate the LAP into the regular police force. By December 2006, this process had not taken off, due mainly to the fact that LAP transitional training had not been conducted. In the mean time, LAPs have gone unpaid due to the restructuring of the remuneration system that accompanied the above police directive – i.e., LAP funding was to transfer to the Central government, from the local administration. In practice therefore, LAPs continued to be separate but carried out duties of the regular police, including statement taking and in some instances criminal investigations, but without either adequate training or remuneration and indeed without a clear mandate.

4.1.2 Special Police Constables

On their part, the SPCs – a force which, according to the Police Statute, is constituted only when "an *unlawful activity*[70] has occurred or is likely to occur"[71] in an area, and "...when there is need to reinforce the members of the Force ordinarily employed for the maintenance of law and order in the area in respect of which they are appointed" – have, by default, become a permanent feature of the Police force in the region, due to insufficient numbers of regular police. In every district visited, SPCs far outnumbered the regular police.

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[68] Estimate Provided by Police Officer, while citing the 2002 Census, Interview with Police Officer, Nebbi Town Council, 17/11/06

[69] The Police Statute, Statute No. 13 of 1194 see Part II, Section 4 of the Police Statute and Part VIII Section 65 of Police Statute.

[70] An "unlawful activity" is defined in the Statute as including "a riot, an unlawful assembly or a disturbance of the peace". See Section 65 (3)

[71] According to the Police Statute, the Power to appoint Special Constables is derives from Section 65, and is supposed to be "made only when there is need to reinforce the members of the Force ordinarily employed for the maintenance of law and order in the area in respect of which they are appointed."

For instance in Koboko, there are 38 central government police and 105 SPCs.[72] In Yumbe, on the other hand, there were 57 regular police officers and 83 SPCs, bringing the total to 140. Although they have considerably less training, are hired on a contractual basis and, in the words of one officer, are 'learning on the job',[73] the public generally does not know the difference between the different branches of the police. Due to the lack of trained police, SPCs often handle "what they are not supposed to handle and mess up everything"[74] and, given the fact that they are not paid with any regularity, they are particularly susceptible to bribes.[75] And because the regular police do not have enough manpower to oversee all the SPCs, the latter often operate unsupervised. The lack of supervision has in turn impacted on the relationship between the two, and contributed to an atmosphere of suspicion and mistrust. As one senior police officer put it,

> On the whole, SPCs really help… we attach SPCs to most outposts under supervision of the central government police. But the number [of SPCs] is bigger and they are from the same area. Sometimes there is assumption of authority and [it is] used to their advantage, to the disadvantage of the police. Because they come from the same area, in some way there is abetting of crime. They collude with locals and have guns…there is some sort of conspiracy…. There is a way they lead to a disservice of criminal justice—leakage of information from the police. All said, they have been very helpful.[76]

The fact that SPCs have, by weight of numbers, become the more visible face of policing, has also resulted in confusion regarding the mandates of the SPCs and of regular police respectively. This factor alone, as one policeman commented, serves to distort the public image of the police, and thus lowers the morale of the regular policemen. As indicated elsewhere in this report, the use of SPCs presents a number of challenges to the maintenance of the law and enforcement of order, not least their own at times *ultra vires* behaviour.

4.1.3 Resource Constraints

Despite their critical role, however, there was frequent reference to the fact that the police do not have the resources necessary to do their job. As a result, they are unable to respond to reported incidents (unless the person reporting provides transport for them), or to effectively collect evidence. They are therefore confronted with numerous problems moving cases forward in the courts as will be discussed below. As one policeman said, "The public mistakes the police because of the problems the police have. When they call because they have been robbed, the police have no transport. So our quick reaction to the public is very poor. There is no money. Facilitation is zero."[77] For instance a security official in Yumbe described how he currently had 20 cases requiring investigation, but had only been provided with 50 litres of fuel with which to do so.[78]

In addition to lack of transport the police do not have the resources to pay for the collection and maintenance of evidence, let alone the facilities and wherewithal to analyse such evidence. In particular, there was frequent reference to the fact that women who have been raped themselves have to pay the 15,000/- needed for a medical examination. In addition, if the suspect also needs to be examined, the victim has to pay a further 15,000/- if the suspect does not have the money to hand.

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[72] Interview with security official, Koboko town, 22/11/06.
[73] Interview with security official, Koboko town, 22/11/06.
[74] Interview with businessman (former security official), Koboko town, 21/11/06.
[75] Interview with man, Yumbe, 24/11/06.
[76] Interview with Senior Police Officer, Yumbe Town Council, 22/11/06
[77] Interview with security official, Nebbi town, 17/11/06.
[78] Interview with security official, Yumbe, 23/11/06.

A policeman described the process they have to go through to have certain types of evidence analysed: "The experts who deal with this are in Kampala, and they are only two. So it takes long for them to get there and come back to get a report, and by then it is usually contaminated."[79] At the local level, such examination consists of a simple swab test that is unable to link the suspect with the alleged act and is therefore largely irrelevant in determining a suspect's culpability. Where the age of the victim or the suspect needs to be determined, for instance, this is arrived at by taking a person's dental count. As a result, cases rarely move beyond these initial obstacles, resulting in a logjam of pending cases that are stalled for lack of resources. Clearly, these bottlenecks to the administration of justice not only affect the victim: they also disregard the rights of the accused.

All of the police stations visited had inadequate systems for keeping records and files, and lacked even basic resources such as paper. None of the police records offices visited had computers. All suffered from the same infrastructural problems that confront everyone living and working in the region and have therefore taken to depending on donations from other organisation. In Moyo for instance, the only Criminal Record Book (CRB) available had been donated by UNHCR; when the team visited Moyo police station there had been no power for a week. As another policeman asked, "How do you expect officers to take statements when there is no stationery? Inspecting crime scenes is another nightmare… it's hard to store the exhibits so most things lose their value. Then the police get accused of frustrating justice."[80]

At the same time, several interviewees referred to the poor living conditions provided for the police: "Accommodation for the police is among the worst. A man with a wife and children are crowded into a single room, there is no privacy… They are frustrated at work and sometimes this translates into violence against their own family."[81] One policeman talked of how he only has one uniform, so when he is called out and his uniform is being washed he is unable to go.[82] Thus security officials themselves are caught up in the socio-economic context of West Nile, in which people are expected to carry out their tasks without the necessary equipment for doing so, and where the pursuit of justice is constantly dictated by people's access to economic resources.

4.1.4 Corruption

In addition to frequent complaints that the police have inadequate resources to do their own work, numerous informants talked of the fact that the only way to move cases forward with the police was to bribe them. One man talked of how, after being arrested by the police, he had paid 70,000/- bail of which only 20,000/- was recorded on the bail sheet.[83] He went on to describe the poor conditions in the police cell, where he slept on a bare floor in a cell that was even dark during the day. As a medical worker said, "People fear taking cases to the police because in most cases the police benefits more than the victim."[84] Or, as a woman living in Koboko said, "Today police work has turned into personal business and crime [has become] a good commodity… If you go to the police, you have to provide transport, pay to have your statement, in fact it has become a crime to report to the police."[85] And as a head teacher in Nebbi said, "It is difficult for a poor person to get justice. Where do you get all the money to pay the police when the offender can pay ten times more?"

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[79] Interview with security official, Nyadri sub-county, Maracha, 22/11/06.
[80] Interview with security official, Arua, 19/11/06.
[81] Interview with security official, Arua, 19/11/06.
[82] Interview with security official, Oloko sub-county, 19/11/06.
[83] Interview with teacher (m), Nebbi, 17/11/06.
[84] Interview with medical worker, Koboko town, 21/11/06.
[85] Interview with woman, Koboko town, 21/11/06.

As a result of all these factors, the effectiveness of the police force remains a serious concern. Most investigations fail, suspects are left on remand (if they have been produced and mentioned in court) until the six-month or three-month mandatory period when they are given bail, and then, in most instances, they never report back to the courts and the case dies out. The police also said cases fail because they have been reduced to mere conduits through which people pass on their way to court. According to one former police officer, police work has been reduced from investigation to mere processing of cases, since they can not detain people beyond the 48 hours stipulated by law under the watchful eye of human rights organisations.[86] In his words, we "merely wash our hands".[87]

As a result, police have a poor image within the communities, and access to justice within the formal structures is severely jeopardised as a result. Although the police themselves are acutely aware of this image, in their current state there is a limit to what they can do to change the situation. In some of the districts it was reported that community liaison officers and District Police Commanders were actively trying to improve public relations through outreach programs and radio presentations.[88] However, there is a limit to what one individual can achieve within a whole district: on the whole there was consensus that for the police to become more effective, there is an urgent need for increased sensitisation and community-based policing.[89] As one woman recommended, "Most police work should extend to the villages because right now they are difficult to access."[90]

In short, the impression given of the police, both from communities and the police themselves, is of a force that is distrusted by the communities, thoroughly demoralised, under-resourced, undervalued and, as a result, largely ineffective. As one policeman said, "It's common knowledge that the public's attitude towards the police is negative. They accuse the police of "killing cases" and perverting justice. But people need to understand that it is not only the duty of the police to effect justice."[91]

4.2 Courts

West Nile is divided into three magisterial areas of Arua, Moyo and Nebbi and is also served by a regional High Court located in Arua. The High Court, which has unrestricted jurisdiction in all civil and criminal matters, is hierarchically subordinate to the Court of Appeal and the Supreme Court, in that order. Due to the limited presence of structures and High Court judges in the country as a whole, the majority of cases in West Nile are handled by Magistrates Courts which are further subdivided hierarchically into the Chief Magistrate, Magistrate Grade I and Magistrates Grade II. While the magisterial courts, in particular the Chief Magistrates Court, are able to deal with most criminal offences that emerge within their locality, capital offences and other offences triable by the High Court, including rape and defilement, are generally referred to Arua High Court. In theory, therefore, access to justice is provided for, since every sub-county is supposed to have a court and every magisterial area supposedly has a magistrate.

In practice, however, justice is severely impaired by the lack of physical structures, inadequate logistics, and human resources. Although each magisterial area is supposed to be headed by a resident Chief Magistrate, in reality, there is currently only one Chief Magistrate for the entire region, and this person also doubles as the registrar for the High Court in Arua. This results in

[86] Interview with Former Police Officer, Koboko, 22/11/06.
[87] Ibid.
[88] Interview with security official, Nebbi town, 17/11/06.
[89] Interview with community worker (f), Koboko town, 21/11/06.
[90] Interview with young woman, Aakoricaku, Yumbe, 25/11/06.
[91] Interview with security official, Arua, 19/11/06.

numerous impediments in prosecuting cases within the jurisdiction of the Chief Magistrate, as the magistrate has to operate between the different magisterial areas on a rotational basis and cases have to be stayed until an opportunity to appear in a particular magisterial area presents itself: numerous respondents, particularly those working with the judiciary, attributed the large numbers of pending cases to the tight schedule of the Chief Magistrate and to the Grade I Magistrates who are either not at their duty stations or come to work late. As a result of this apparent lack of a sense of responsibility on the part of judicial staff, people's perception of the court system, including the role played by resident state attorneys, was at least as negative as that of the police. As a former police officer in Koboko said,

> The major frustration here is the lack of a magistrate. You find that the police cells have suspects to capacity. You want a person to go to court but find that the magistrate has gone to Kampala to check on his family. That's why they [inmates] spend even a week. The cell is full, some cases are clear; you do not want to abuse his [victim's] constitutional right. Human rights people are moving around, villagers at home expect you to take the suspect to court, the magistrate is not there eh, now, do I take them (inmates) to my house?[92]

This perception was compounded by widespread belief that the court system suffers from corruption. For example there was reference to court prosecutors asking for bribes: "They ask for bribes openly and actually twist cases to benefit criminals."[93] As one CBO worker said, "It is common knowledge that you do not go to court without money…."[94] With people being acquitted or given lesser sentences as a result of the magistrates being bribed,[95] the whole court process is compromised. This was in part due to the fact that in some districts, especially those that lack prosecutors, the Officer in Charge of Criminal Investigations in the Police also doubled as state attorney. This convergence of powers implies a lack of supervision over the work of CIDs: ordinarily, district attorneys are supposed to oversee the operations of CIDs and to ensure they do not overstep their bounds.[96]

Specifically, the use of Grade II Magistrates was frequently referred to as problematic. In the words of one security official,

> Their education levels are so low… And they are just money-minded… Here criminals are happy when they appear before the Grade II Magistrates court, as this is a sure way for them to get off the hook. You just need to gather enough funds.[97]

As a result, numerous informants talked of the extent to which Grade II Magistrates have lost their usefulness and should be phased off – "as they did with Grade II teachers."[98]

There was also frequent reference to the length of time that the processes of justice take. In Arua Chief Magistrates Court, for instance, there were a total of 2076 criminal cases pending trial.[99] At the end of 2005 there were 1903 cases pending. One local government official in Nebbi referred to a case of 2001 that had still not "taken off."[100] As a woman living in Koboko said, "The process is

[92] Interview with former police officer, Koboko, 21/11/06
[93] Interview with security official, Arua, 19/11/06.
[94] Interview with CBO worker, West Nile, 11/06.
[95] Interview with security official, Nebbi, 17/11/06.
[96] Interview with Court Official, Moyo, 24/11/06.
[97] Interview with security official, Arua, 19/11/06.
[98] Interview with local government official, Nebbi town, 16/11/06.
[99] Court Case Summary Statistics Form, Arua Chief Magistrates Court, as of 19/11/06.
[100] Interview with local government official, Nebbi town, 16/11/06.

long and many people do not take it to the end… People resort to sorting these cases at home - not really because they would not want to see justice done, but [because] the complications of going through the process make it impractical."[101]

Likewise, a paralegal described how cases can be adjourned several times over. This can be due to incomplete investigation, or witnesses who do not turn up, or to magistrates who are on vacation or absent for other reasons: "This fatigues the complainant and some end up abandoning cases so the suspects are dismissed and the next potential complainant is discouraged…"[102] Alternatively, witnesses turn up three or four times, their cases are never heard, and so they give up.[103] Even the police are frustrated: "You want a person to go to court but find that the magistrate has gone to Kampala to see his family."[104] Therefore, the court system, riddled with inconsistencies, does little to punish and prevent wrongs. Rather than being seen as a mechanism to promote well-being in society, it is seen as an irresponsible and corrupt institution that subverts the very notion of the justice it purports to uphold.

4.3 Prisons

Compounding the weaknesses of police and courts, there was widespread reference to appalling conditions in prisons, which one Community Development Officer described as "dirty and inhumane". [105] The lengthy judicial processes exacerbate the problem, leaving people in prisons while they await their trial and causing overcrowding. For instance Paidha prison in Nebbi, designed for 90 prisoners, currently holds more than double that number (189). It has a small section for women and an incomplete juvenile section: construction stopped in 2003 and has never been finished. Of the 189 inmates found during this research exercise, 134 were on remand. Although those on remand should be released on bail after a set period, it seems that not all are.[106] When questioned about the average length of stay on remand, a court official said "one month to two years."[107]

Furthermore, in some districts the prisons are a considerable distance from the courts, which causes logistical problems and puts increased pressure on already limited resources. For instance Nebbi prison is 22kms away from the town, "and there is no transport."[108] To transport suspects to the Court and where necessary to prison, the Police or indeed the prisons often have to negotiate with other district offices to secure the use of their vehicles for transporting prisoners and suspects. Likewise there is no prison in Maracha, so prisoners are taken to Koboko.[109] The fact that officials have to bring the prisoner in from considerable distances, often by public means, slows down and at times prevents trial processes: one story was told of a prison officer being jailed for letting some prisoners escape when they were being transported by public transport.[110] Although the Grade I magistrate (who is based in Arua) sometimes moves to Paidha (where the prison is) to hear the cases, similar complaints were made by other court officials regarding the fact that they then have to use public transport to accompany the magistrate.[111] In addition, in most cases there is nowhere to house juveniles who are generally handed straight back to their parents.

[101] Interview with woman, Koboko town, 21/11/06.
[102] Interview with Para-legal, Arua, 20/11/06.
[103] Interview with security official, Yumbe, 23/11/06.
[104] Interview with security official, Koboko town, 21/11/06.
[105] Interview with Community Development Officer, Nebbi, 17/11/06.
[106] Interview with prisons official, Paidha Prison, Nebbi, 17/11/06.
[107] Interview with prisons official, Paidha Prison, Nebbi, 17/11/06.
[108] Interview with security official, Nebbi town, 17/11/06.
[109] Interview with prisons official, Koboko town, 21/11/06.
[110] Interview with security official, Nebbi, 17/11/06.
[111] Interview with security official, Nebbi town, 17/11/06.

There were also comments made about the fact that the prisons system in no way 'reforms' those within it. It does not provide any form of vocational training or rehabilitation. As a man living in Yumbe commented, "The conditions in prisons are deplorable. People are forced to eat only once a day… they are involved in heavy work, which does not impact on the behaviour of the person… They do not know their rights and when they are treated this way they think it is part of the punishment."[112] Another informant said, "They usually come back worse people, especially when they have stayed long. Such people normally do other crimes immediately after release."[113] Thus, in the eyes of the community, those who go to jail do not come back 'reformed', thus defeating a significant motivating factor in the pursuit of justice.

5 Informal and Alternative Mechanisms of Justice

Given the justice vacuum caused by problematic access to the formal justice system, it is vital to understand the extent to which this vacuum is filled by 'informal' justice mechanisms. In West Nile, as in many other parts of Uganda, these include cultural institutions of elders and clan leaders, which often sit to mediate conflicts between and within families and communities, traditional peer control systems, and the LCs system, which has often been referred to as an "alternative justice system." In the view of one respondent, "Cases of a criminal nature are handled by the police and those of a civil nature are handled by the local council at various levels."[114]

5.1 The Elders

On the whole, traditional mechanisms were still seen to have an important role to play within the communities. Indeed, some felt they should be given more formal recognition. One Grade II magistrate in Nebbi, for example, argued that rather than the formal system consulting the elders in settling certain disputes, they should instead defer jurisdiction over such disputes to the latter.[115] People frequently described how crimes are first reported to individuals within the informal structures – not least as they are more accessible. The restorative potential of more traditional mechanisms was also widely mentioned – particularly in contrast to the formal (retributive) mechanisms, which were often referred to as 'divisive'. Numerous respondents argued that the informal mechanisms help to address wrongs committed, heal the communities affected by errant behaviour, and generally lead to closure on the matter, never to be brought up again. The extent to which such processes take place within the community was well recognised. A former security official from Koboko described the situation in this way:

> If a man kills a wife when they have 8 children, the relatives say "let the man stay [instead of getting imprisoned] and look after the children". The family of the wife wanted 15 cows. But due to murder laws, the family of the wife missed compensation and the children have remained unlooked after. People at home say, "who is going to look after the children?" In prison you do not suffer. The suffering moves from the man to the children and, at the same time, the family of the wife has also lost 15 head of cattle.[116]

[112] Interview with man, Yumbe, 24/11/06.
[113] Interview with man, Uwra County Oduim, 19/11/06.
[114] Interview with security official, Nyapea sub-county Nebbi, 18/11/06.
[115] Interview with Grade II magistrate, Nebbi, 18/11/06.
[116] Interview with businessman (former security official), Koboko town, 21/11/06.

Likewise a woman in Yumbe described the contrast between the two processes, showing the extent to which there is room for negotiation within more informal structures:

> Using elders is better because it is reconciliatory. But when issues go to the law, there is hardly any room for forgiveness. It strains relationships… That is not good because conflicts here are mainly among people who live in the same environment. Actually they are permanent neighbours… In police or at court, you are asked whether you committed the crime or not, they never ask the whys of things. So long as you are found to have committed the crime, you are subjected to standard procedure whether you are sorry about it or not.[117]

These examples are indicative of a general sense among respondents that informal mechanisms, based as they are within the communities they serve, provide more tangible justice for individuals: "The justice given by the police is not visible, yet the other alternatives are very visible."[118] From a more pragmatic perspective, one informant talked of how it is better to use the elders, as they are more "cost-effective."[119]

5.2 The Local Councillors

At the same time, the role of the elders was seen as distinct from that of the LCs. In the case of the latter, there was a particularly mixed response regarding their effectiveness, and some expressed concern over the extent to which LCs understood their legal limits.[120] As with the institution of elders, LCs were described as being nearer to the people and therefore easily accessible. However, just like the elders, LCs were described as having flaws, especially with respect to knowledge of their roles and a clear understanding of offences within their jurisdiction. And for those who do know, concerns were expressed over the extent to which they sometimes abuse their extensive powers. As one informant said, "LCs don't know their roles and are illiterate. They are very biased, especially where accepting bribes is concerned."[121] Others referred to the fact that they do not have any knowledge of the law or specific training in arbitration, and that they are more interested in obtaining their sitting allowances than in seeing justice done.[122]

Having said that, it is clear that elders and LCs do have a role to play. Except in those situations where the LCs overstep their jurisdiction, the fact that they are accessible and have some legal standing implies that they are often the most immediate source of redress for most people within the community. With respect to the existence of a reporting mechanism for defilement, one interviewee said:

> The structures exist. Because even in the remotest areas, people can run to LCs to say someone has defiled my daughter. LCs are aware these are issues of the police. Sometimes they even take the victims to report. But as I told you, somewhere in the middle, either the complainant withdraws… or there is a hostile witness.[123]

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[117] Interview with woman, Ombaci Yia, Yumbe, 25/11/06.
[118] Interview with local government official, Adjumani, 28/11/06.
[119] Interview with local government official, Yumbe, 24/11/06.
[120] Interview with court official, Koboko, 21/11/06.
[121] Interview with teacher (m), Nebbi, 17/11/06.
[122] Interview with CBO worker, Yumbe, 24/11/06.
[123] Interview with Local Government Official, Koboko, 21/11/06

Changes in the political structure of society, however, threaten to dilute rather than strengthen the role of LCs. With the introduction of multi-partyism, LCs are no longer party-neutral, and each individual LC necessarily represents a particular party affiliation: as one respondent said, the introduction of multi-partyism implies LCs are partisan, suggesting that the justice meted out through such a system will necessarily be biased.[124] In other words, while Uganda was still under one party rule, the behaviour of LCs was fairly predictable and their rules of procedure understood as applying to everyone in the same way regardless of whether or not they belonged to the National Resistance Movement. In the context of multi-partism however, the justice meted out by LCs, is dependent on the political leaning of both the LC and the individual seeking justice.

5.3 Mob Justice

Perhaps the most extreme example of informal mechanisms going completely wrong is the use of mob 'justice'. Although it was impossible to ascertain how often such incidents take place, several interviewees mentioned it taking place in their communities. As one man said, "There are growing incidents of mob justice when people are tired of [re-offenders who are still in the communities.]"[125] In particular, mob justice was associated with suspected incidents of witchcraft, which were seen as 'irresolvable' within the available justice mechanisms. [126]

6 How Accessible is Justice in West Nile?

The above description of access to justice in West Nile suggests that the majority of civilians living in West Nile appear to be in something of a justice vacuum. This situation has generated profound frustration – both within the communities, and among security personnel who are working against unbeatable odds – and the overwhelming perception that, in their current form, formal mechanisms are incapable of delivering justice. While an effective and accessible system of justice is critical in any context, the crisis in the justice system in the West Nile is particularly concerning given the fact that, as stated above, the region is still effectively in a process of transition to sustainable peace and development.

6.1 The formal justice system

As the brief overview of the police, court and prisons systems shows, formal justice mechanisms lack credibility among the communities they are supposed to serve. They are seen as generally inaccessible to the majority of the population, and therefore irrelevant and distant to the everyday lives of the communities. Furthermore, the whole system is seen as corrupt: an informant in Adjumani referred to a local saying that "a fish begins to rot from the head", before talking about corruption at every stage of the justice process.[127] It is evident that there is an unhealthy synergy between the lack of resources for the system, and a culture of bribery. Inevitably, therefore, people see justice as something that has to be bought. As a local government official in Adjumani said, "If you don't have money you won't see justice."[128] This commercialisation of justice has led to a chronic alienation of those who cannot afford to 'pay' for their rights.

[124] Interview with District Official, Nebbi Town Council, 17/11/06
[125] Interview with head teacher, Okoru County, Nebbi, 18/11/06.
[126] Interview with man, Kudwinyi, 18/11/06.
[127] Interview with local government official, Adjumani, 28/11/06.
[128] Interview with local government official, Adjumani, 24/11/06.

Furthermore, the lack of co-ordination between the different systems is apparent to anyone working within the system or trying to benefit from it. For instance, numerous informants from the law and order sector referred to a generally dysfunctional 'chainlink' system that was supposed to provide mechanisms for co-ordination between the different security and judicial mechanisms, and between these mechanisms and the communities. Although the idea behind the chainlink was generally viewed as positive, only in Moyo did it appear to be functioning – and even there, meetings were not seen to be happening with enough frequency.[129]

As a result, people are reluctant to report crimes to the police and to pursue cases through the courts. Furthermore, given that people are known to be able to 'buy' their way out of prison, it is often dangerous to report a case to the police. As one security official said, "Most hard core criminals have access to firearms and after being arrested, they are set free after a short while and then come and instil fear in the public because they reported the case."[130] As another man said, "People who report cases to the police are never liked."[131] This lack of faith in the system is compounded by the fact that few cases are properly pursued, and even fewer are completed. Such delays in the system undermine the whole process as justice is rarely seen to be done. A local government official in Arua summed up the whole process: "Most people see [the justice processes] as a waste of time – after all, in most cases you lose anyway. People have lost trust in the court system. When will a poor man ever have his case heard? People just give up. Then there is corruption at all levels of the judicial process… People ask for money to visit a crime scene, for the file to proceed to court, and for the magistrate to deliver a favourable judgment."[132]

There also appears to be a direct correlation between the physical distance separating the structures of formal justice and the people it is trying to serve, and people's ability to access it. Particularly in rural areas, there was widespread ignorance of judicial structures and mechanisms. For instance, it was apparent in many of the interviews that any person who had been arrested was assumed to be guilty: the concept of innocent until proven guilty was generally not understood. As one woman said, "The judicial system should move to the grassroots, then we would be able to see justice."[133]

6.2 The informal justice mechanisms

Although a number of respondents did express their support for informal justice mechanisms, many informants also expressed a degree of scepticism and dissatisfaction with the current way in which they are operating. In particular, there were concerns over the extent to which their functions are arbitrary and unsupervised. For instance a court official in Adjumani raised concerns over the fact that there are no proper procedures in place.[134] As one man said: "Sometimes the elders do not want to be seen implicating people who are wealthy."[135] Furthermore, there was recognition that this process is also liable to corruption: "[the elders] do not have financial support and can not sustain themselves. So they have a bias due to their search for survival."[136] Another concern which was noted, was that while LCs are seen to have a potential role to play, their jurisdiction remains

[129] Interview with security official, Moyo, 24/11/06.
[130] Interview with security official, Nyapea sub-county Nebbi, 18/11/06.
[131] Interview with man, Yumbe, 24/11/06.
[132] Interview with government official, Arua, 20/11/06.
[133] Interview with widow and mother of 3 children, Okoro county, 18/11/06.
[134] Interview with court official, Adjumani, 28/11/06.
[135] Interview with man, Kudwinyi, 18/11/06.
[136] Interview with MII, Nebbi town, 17/11/06.

ambiguous, and they receive inadequate training on their role within the wider processes of justice. There was also concern over the fact that women are generally excluded from such processes,[137] as this system generally relies on elders sitting to decide on matters affecting women, but with the affected women not present in the deliberations. Thus, "for the few women who dare to go to court, it's the same elders who go to court and give the evidence that denies the woman justice."[138] Nonetheless, despite such reservations many informants still thought informal mechanisms have an important role, not least because the justice takes place within the 'family setting'.[139]

6.3 Interaction between the formal and informal

In the light of this, it is clear that there is a critical need for unequivocal links to be built between the formal and informal mechanisms of justice, and it is clear that there is a potential role to be played by legal aid providers who can monitor both types of justice, and act as a linkage between them. Currently, these links do not exist, or if they do, are inadequate. At one level, this is an issue of location: informal mechanisms exist *in situ*, while the formal mechanisms are currently physically distant from where the majority of people live. Informal mechanisms are, literally, on the doorstep. And yet, on their own, they are inadequate: they cannot exist in isolation of the formalised, national processes. As a result, clear linkages between the different mechanisms need to be established.

A number of interviewees spoke of the LC system as a good illustration of what the linkages between the formal and informal justice systems might look like. Indeed, while the LC system has its roots in a particular political ideology, its operation in Uganda has since been interpreted as an attempt to find a compromise between customary and hard law. Similarly, while recognising that the LC system is an alternative, as opposed to a traditional, system of justice, a judicial official interviewed said, "I believe that if traditional leaders were allowed, they could help courts just like LCs do. But they don't have financial support, cannot sustain themselves, and are biased due to the search for survival. In the past people supported them. If they are strengthened, they can dispense justice without favour."[140] This respondent went on to suggest that traditional leaders may have a role to play in settling minor civil suits without having to transfer them to courts, as long as they are given a minimum understanding of procedures to follow. While recognising the need for heavy investments in the revival of the institution of elders, another respondent had this to say:

> In the past, when elders said, "don't do this", it was final. But we still have a generation problem. The generation now called elders was not brought up as good citizens. In this group [of elders], people at 13 and 14, had joined the army but they are now elders. Under these circumstances, I am not sure what social justice may be viable. But at least, we have some people who at 1971 were elders and are still alive. We can find a way to use them to indoctrinate others. But the influence of this other age group is a problem.[141]

Another way of linking the two mechanisms is through the work of paralegals. However, it is clear that currently, paralegal activity is negligible in the entire region. There is no regular paralegal presence for nationals in Nebbi,[142] Koboko,[143] Maracha, Moyo and Adjumani; FIDA is operating

[137] Interview with CBO worker, Nebbi, 17/11/06.
[138] Interview with CBO worker, Nebbi, 17/11/06.
[139] Interview with CBO worker, Nebbi, 17/11/06.
[140] Interview with a judicial official, Nebbi town, 17/11/06.
[141] Local Government Official, Koboko Town, 21/11/06
[142] Interview with security official, Nebbi town, 17/11/06.
[143] Interview with court official, Koboko, 21/11/06.

from a base in Arua, but has only two legal officers for the entire region and limited transport,[144] and Transcultural Psychosocial Organisation (TPO) is active in Yumbe. Norwegian Refugee Council (NRC) provides some legal aid for refugees, particularly in Arua and Moyo, and in Adjumani there are paralegal services for refugees in the refugee settlements, but this does not generally extend to the wider population. Given that such organisations have only limited regular contact with the communities, their role is often misunderstood. One woman talked of her reluctance to report to organisations such as FIDA because of the negative ramifications this would have within her village: "Most do not understand its [FIDA's] role and functions… In the villages people have a low opinion of it and they prefer to stay with their problems than go and then have your family broken, as they think that is FIDA's main role.[145] This misunderstanding can only be dealt with where there is far greater community sensitisation, and where paralegal activity is supported by numerous other activities.

Clearly, therefore, there is a need for an increase in legal aid activity throughout the region, which engages not only in civic education, but also acts specifically as a link between formal and informal mechanisms of justice. Their role is particularly important in cases that are currently under reported to the police, most notably domestic violence.

6.4 Transitional Justice for West Nile?

While the field-work for the report on which this paper is based was focused explicitly on access to formal and informal/traditional justice mechanisms, the need to give consideration to questions of justice during times of transition can be inferred both from the broader context and from the findings of the study. The broader context, in which there has been no formalised attempt to come to terms with the 'large scale abuses' that are almost certainly a part of West Nile's conflict history, suggests that if persistent perceptions of marginalisation are to be addressed, then specific recognition needs to be made of West Nile's recent history of conflict. To date this has not happened in any consistent and formal way. The peace dividends contained in the 2002 peace agreement, while important, are little more than token gestures: they mark the beginning of a process of recovery and reconstruction rather than a comprehensive transitional justice strategy that might generate the necessary conditions for meaningful reconciliation within the region, and between West Nile and the rest of the country.

Thus much more needs to be done. This study has demonstrated the weaknesses of institutions of justice within the region showing, in the first instance, the need for the rehabilitation of the justice system alongside other basic services. In addition, at the very least it is essential that transitional mechanisms, such as truth telling be put in place, as well as a more systematic process of reparations than that produced by the West Nile Development Conference (WNDC). While the WNDC is recognition of the mass suffering and destruction that took place in West Nile, as a collective symbolic process, it hardly addresses individual victimisation that often characterises conflict. At a more local level, the sense of impunity generated by the amnesty process may also need to be challenged: currently there is no accountability structure built into the process, and indeed some of the provisions of the Amnesty Act altogether foreclose any access to justice by the victims. Furthermore, West Nile offers something of a test case for other areas of the country that have experienced conflict. As the Government and donor community begin to deliberate post-LRA atrocities and consider which transitional justice mechanisms might mediate in the Acholi sub-region, it is critical that they do so with a view to the wider Ugandan context if they are to avoid

[144] Interview with legal aid provider, Arua town, 20/11/06.
[145] Interview with woman, Maracha town, 22/11/06.

such mechanisms simply reinforcing a sense of national fragmentation and unequal treatment. Ultimately, the frustrations and notions of marginalisation demonstrated through the case of West Nile point to the fact that for as long as Uganda's different histories of conflict are underestimated or remain unacknowledged, the potential for sustainable peace in the country will be considerably reduced.

Conclusion

In summary, formal mechanisms of justice are seen to be fundamentally dysfunctional, making their impact minimal to the communities they are trying to serve. Furthermore, the fact that they are seen as inaccessible means that communities are reluctant to engage with a system that they see as largely ineffective. At the same time, many of those working within the institutions are painfully aware of the shortcomings within their institutions, and are profoundly frustrated by the lack of infrastructure necessary to carry out their work effectively. Informal mechanisms of justice are unable to adequately fill the gaps in the formal system, for they are also in a state of flux: while they are clearly perceived to have an important role to play, they remain riddled with inconsistencies.

It is apparent, therefore, that justice, as defined in the introduction, is not adequately protecting and vindicating people's rights, nor preventing and punishing wrongs. In addition, it is not adequately promoting the rights of either the victims or the perpetrators. Furthermore, in a context of hugely limited resources, the potential for creating synergy between informal and formal mechanisms is not currently being realised. Much work needs to be done in order to better support access to justice throughout the region – a region that is struggling to come to terms with a history of conflict in order to achieve long-term stability.

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