

‘Two-Faced’ Acceptance of International Criminal Justice Accountability Mechanisms by Actors in the Northern Uganda Armed Conflict

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Robert Mugagga-Muwanguzi¹

1. Introduction

Since Uganda gained independence from the British on 9 October 1962, Uganda has been plagued by troubles, violence and conflict, with millions experiencing grave injustices and serious human rights violations.² Conflict in Uganda, as in many African states, has its roots in ethnic differences, marginalisation and colonial legacies (Lomo and Hovil 2004; Otim and Wierda 2010). At the end of each conflict, the country has had to grapple with how to confront the injustices and violence or, even more importantly, how to address gross human rights violations committed during periods of anarchy amidst the competing needs of establishing a reconciled, unified, democratic and peaceful society.

The conflict of over two-decade in northern Uganda, which is one of the longest armed struggles in the world, has caused devastation for civilians in the region and has resulted in gross human rights violations. To address this, a number of transitional justice and international criminal justice mechanisms (ICJ) have been discussed and some introduced with varying degrees of success. One of the most debated and contested of these is criminal prosecution through the International Criminal Court (ICC).

This study sets out to examine the views of different actors (victims, government and civil society) on the application of ICJ mechanisms in ensuring accountability for crimes committed during the conflict in northern Uganda. This research serves to close the gap in our understanding of whether and why people that have experienced what can be categorised as international crimes accept the application of ICJ frameworks and justice mechanisms.

This study reveals that perceptions of different actors towards the application of ICJ mechanisms in holding to account the perpetrators of international crimes have changed over time, due to varying interests and transitional justice interventions. Although at the outset of the

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² Since Uganda gained independence, it has had eight changes of government, five of which have been violent. These include the 1966 crisis which saw the then Prime Minister, Apollo Milton Obote, attacking the palace of Kabaka Mutesa I, who was the President. The country was further plagued by violence when Idi Amin took power from Obote in 1971 through a military coup. In 1979, Amin's government was toppled by a group of Ugandan exiles with support from Tanzanian forces. Obote returned as President after the 1980 fraudulent election, which resulted in the National Resistance Army (NRA) taking up arms against the government. Obote's government was overthrown in 1986 by the NRA, which is still in power. Since then, over 20 armed groups have attempted to dislodge it from power, with the longest and most brutal conflict being in northern Uganda.

ICC interventions in 2004 there was overwhelming opposition to the ICC, this trend has reversed and a more accommodating position has been taken. Increasingly, the ICJ is seen as part of an amalgamated solution, rather than a problem that threatens the community. Initially, the ICC was vehemently opposed, as it was perceived to jeopardise the pursuits for peace initiatives that were underway at the time and that the Court had exhibited bias by indicting only the LRA and leaving out the government forces. The shift in positions by the actors demonstrates a twin-faceted acceptance of the use of ICJ while at the same advocating for restorative mechanisms. The underlying thread also coming through this study is that actors would like to see a comprehensive scheme implemented by the Government of Uganda and other stakeholders, which would harness the ICC alongside domestic criminal prosecutions plus other transitional justice mechanisms or processes.

This paper is based on six months of fieldwork conducted between January and June 2016 in the districts of Soroti, Kumi, Lira, Apac, Pader, Gulu, Masindi, Kitgum, Adjumani (spread over northern, north-western and eastern Uganda) and Kampala. In total, 94 semi-structured interviews with open questions were conducted with various key informants from actor-specific groups. Semi-structured interviews are important in defining the areas to be explored, and also allow the researcher to pursue a response in more detail (Gill et al. 2008, 291). The issues that were under investigation needed further probing to get more insights and this was the best method to gather such information. The insights were complemented by observations during the field visits, as well as an analysis of written data in the form of legislations, Hansards, opinion polls, media articles and ICC-focused perception surveys. The primary information or data obtained from the respondents was then triangulated with the secondary sources to facilitate a deepened and contextualised analysis of the issues under investigation.

The interviews were conducted in English and, where necessary, in local dialects through interpreters. The aspect of safety and confidentiality (especially where specifically requested) was respected and adhered to by the researcher by omitting the names or adopting pseudo names. The interviewees were selected either because they had been affected by (or interfaced with) the northern Uganda armed conflict or the ICC in some form; or because they were particularly knowledgeable about the conflict or the ICC.

The actor groups from which the interviewees were selected are: (1) the direct and indirect victims of mass atrocities of the conflict, including cultural or traditional leaders, local government leaders, local politicians, community leaders and religious leaders; (2) civil society representatives including local and foreign non-governmental organisations (NGOs), lawyers, academics and in some cases religious and cultural leaders working under recognised entities; and (3) the government and state agencies, including both national and local government officers, parliamentarians, judiciary and members of the Ministry of Foreign Affairs, the President's office, the Intelligence Services, the local Police, the Directorate of Public Prosecutions, Uganda's Amnesty Commission, Uganda's Law Reform Commission and Uganda's Human Rights Commission.

Following this introduction, the next part of this study defines the key terms used in the study, before then dealing with Uganda's legacy of conflict, particularly the one in northern Uganda.

The next two parts examine how the three actors (victims, government or state, and civil society) have accepted or rejected ICJ mechanisms, and analyse which other transitional justice mechanisms the actors advocate to complement or replace ICJ mechanisms.

1.1 Meanings of Key Terms Used in the Study

A few terms frequently used in this paper need to be clarified. First, the term 'acceptance' which carries the meaning of 'agreeing, expressly or through conduct, to the principles or norms of ICJ accountability mechanisms in one or several manifestations of legal systems, institutions or processes being used in post conflict situations' (Buckley-Zistel 2016, 2). The acceptance (or rejection) of ICC accountability mechanisms or other proposed transitional justice mechanisms by one or several actors in this post-conflict situation is reflected through a range of various actors' statements, actions or lack of action, symbols and activities.

Second, the term 'ICJ' refers to that branch of public international law that encompasses the regulation and enforcement of individual criminal accountability for perpetrators of international crimes through international and national enforcement institutions or courts (Bellelli 2010; Brownlie 2008; Zahar and Sluiter 2008; Bassiouni 2003; Bassiouni 2005). The ICC, which forms a critical part of the ICJ framework, has jurisdiction over war crimes, genocide and crimes against humanity. Under the terms of the Preamble of the Rome Statute, the prosecution of international crimes rests with both the international community and individual states.

'Accountability' in the context of this paper refers to interventions, measures and mechanisms that hold the perpetrators of international crimes legally responsible for their actions (USIP 2009). It is the elimination of impunity through systems linked to transitional justice. Lastly, the term 'transitional justice' refers to the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation (UN 2010).

2. The Genesis, Causes and Impact of the Armed Conflict in Northern Uganda

2.1 The Genesis of Conflict(s) in Uganda

A number of studies (HURIPPEC & Liu Institute 2003; Refugee Law Project 2004; Beyond Juba Project 2010; Otim and Wierda 2010; Kustenbauder 2010; Otim & Kihika 2015) indicate that the root causes of Uganda's numerous armed conflicts lie, in part, in ethnic divisions aggravated by the British colonial policies, which set different ethnic groups against each other and superficially separated the country into a north-south divide. Apart from ethnic divisions, other factors that fuelled the emergence of conflicts and civil strife in Uganda include regional imbalances in levels of development, economic and political marginalisation (Rukare 2008), and a culture of the militarisation of politics (Kustenbauder 2010).

The armed conflict in northern Uganda can be traced to the Idi Amin era (1971-1979) when the Government attempted to eliminate Acholi³ army officers, who were regarded as a threat to the stability of the regime (Kustenbauder 2010; Otunnu 2002; Okumu-Alya 2009). Amin particularly targeted Acholi and Langi soldiers who were allied to Obote and perceived to be a threat to his regime.⁴

Both the regimes of Obote and Amin were characterised by civil unrest, torture, mass murders, disappearances and displacements. It is estimated that over 100,000 people were murdered during the reign of Idi Amin (International Commission of Jurists 1977). Since these atrocities were committed with impunity, successive regimes hunted down the perpetrators, and even the civilian population that had been loyal to the ousted regimes were not spared.⁵

2.2 The Causes of Armed Conflict in Northern Uganda

President Museveni's Government has faced a number of insurgencies that have tried to dislodge it since it came to power in 1986 (RLP 2004; Horovitz 2013).⁶ However, the most violent, profound and protracted of these has been the war with the LRA in the greater northern Uganda region,⁷ which has lasted for more than two decades. A number of factors have been advanced to explain why armed rebellion broke out in northern Uganda soon after the new Government of President Museveni took over. Central to understanding the emergence of the conflict is the colonial policy of dividing Uganda into north and south along ethnic lines that subsequently led to the underdevelopment, marginalisation, oppression and discrimination of northern Uganda in comparison to the south (Refugee Law Project 2014; ASF 2013, 31). The British economically favoured the south and discouraged the north from agricultural production, as the military was the occupation reserved for the people from the region (ASF 2013, 31-32). While these divisions were colonial constructs, they were later extended to the post-colonial era as the Acholi and Langi strongly believed that they were naturally militaristic (Wright 2011, 40). Consequently, when the British granted independence to Uganda in 1962, the north-south battle for power began. Obote ingrained this divide in national politics, which later led to the abolition of traditional monarchs (ibid, 41). The southern-dominated groups viewed the abolition as an attack on their constitutionally-guaranteed right (ibid) and waged rebellion against Obote.

This conflict started shortly after the capture of power by the National Resistance Army (NRA) on 26 January 1986.⁸ The troops that had served under the previous ousted regimes of the Uganda National Liberation Army (UNLA), Tito Okello Lutwa and civilians, formed the Uganda Peoples Defence Army (UPDA) in March 1986 to resist the new regime (Refugee Law Project

³ The Acholi are an ethnic group found in northern Uganda.

⁴ Amin originated from a separate ethnic group known as the Nubians found in north western Uganda (also known as West Nile).

⁵ <http://www.iss.co.za/pubs/Monographs/No99/Chap2.pdf> (Last accessed: 12 May 2016).

⁶ These include the Uganda Peoples' Democratic Army (UPDA), Uganda Peoples' Army (UPA), Holy Spirit Movement (HSM), Uganda National Rescue Fronts (UNLF) I and II, Allied Democratic Forces (ADF), Lords' Resistance Army (LRA), Peoples' Redemption Army (PRA), Uganda National Democratic Alliance (UNDA), Uganda National Liberation Army (UNLA), Lords' Army, Uganda Christian Democratic Army (UCDA), West Nile Bank Front (WNBFB) and the rebellion of Dan Opiro in Apac.

⁷ This region covers the sub-regions of Acholi, Teso, West Nile and Lango; which all occupy the northern half of Uganda.

⁸ Initially when President Museveni came to power, the national army was called the National Resistance Army (NRA) until 1995, when the force was renamed the Uganda Peoples Defence Forces in line with newly promulgated 1995 Constitution of the Republic of Uganda.

2004; Coppin 2009; Ayume 2003). In a bid to restore the status quo and regain power, the UPDA decided to wage an armed rebellion against the NRA. The NRA had also been accused of taking revenge on individuals who were perceived to be loyal and sympathetic to the ousted regimes. As a result, the UPDA easily gained support and trust of the Acholi population since it was assumed that the force was fighting to protect the interests of the Acholi population (HURIPEC and Liu Institute 2003). In June 1988, after protracted negotiations with the UPDA, a peace deal was reached between the rebel group and the Government, and some of them abandoned rebellion. However, with the Acholi resentment to the new regime still lingering, Alice Lakwena formed the Holy Spirit Movement (HSM) which drew on the spiritual belief that its founder was the Holy Spirit and was formed to continue with the struggle that had been started by the UPDA. She incorporated some of the soldiers who initially had been under UPDA but were hesitant to give up rebellion under the peace deal. However, because of the desire to appeal to the local populace for popular support, neither the UPDA nor the HSM committed serious atrocities against the Acholi population (HURIPEC & Liu Institute 2003). The HSM was finally defeated by the NRA in 1988 and Lakwena fled to Kenya.

The defeat of Lakwena created a vacuum regarding who would advance the interests of the Acholi population.⁹ Joseph Kony, formerly a mobiliser under the UPDA, exploited the vacuum and formed the United Holy Salvation Army, that later transformed into the Lord's Resistance Movement or Army (LRM, LRA) in November 1987 (Bainomugisha & Tumushabe 2005; Tindifa 2006; Refugee Law Project 2014). The LRA took a different approach from its predecessor rebel groups, as it created a huge humanitarian crisis and war zone, as Kony's 'worldview is steeped in apocalyptic spiritualism and he uses fear and violence to both maintain control within the LRA and sustain the conflict' (Refugee Law Project 2004, 10).

The LRA committed severe atrocities including massacres, maiming, abduction, mutilation, destruction of property, and rape (Temmerman 2001; HRW 2003; Petraitis 2003; OCHA 2004; Allen 2005; De Kasaija 2005; Finnstrom 2005; FHRI 2006; Keller 2007; Plaut 2009; ICTJ 2010; JRP 2010; Otim and Wierda 2010; Onyango-Obbo 2012; Walubiri 2014).

The UPDF is also accused of committing international crimes including the forceful displacement of civilians into internally displaced people's (IDP) camps, where they lacked not just the protection from attacks from the LRA but basic needs, such as food and healthcare while at the same time facing additional attacks of murder, torture and rape (Human Rights Watch 1997, 2003, 2004; Horovitz 2013). Some have described it as the 'biggest forgotten, neglected humanitarian emergency in the world' (Secretary of United Nations 2005, 19).

In a recent empirical study conducted by the Secure Livelihoods Research Consortium, it was reported that approximately 55 per cent and 28 per cent of households in Acholi and Lango respectively consist of at least one person who has experienced more than one serious crime, and these households continue to suffer from 'on-going war related injuries, less food security, less wealth, worse access to health care, education and water' (Mazurana 2014, 2). The two

⁹ Interview with a traditional leader from northern Uganda.

principal protagonists – the Government of Uganda and the LRA – in seeking to defeat the other have committed grave human rights violations (Horovitz 2013).

3. Trends, Drivers, Patterns and Dynamics of Accepting the Application of International Criminal Justice in Uganda

The debate on the application of ICJ mechanisms as part of a transitional justice process in ensuring accountability for perpetrators of international crimes has been a contentious one (Storelli-Castro 2011, 50; Sarkin 2014, 527). Perceptions among human rights and peace activists, victims, and state officials on the ICC and other transitional justice mechanisms have also changed over time.

For instance, a survey conducted by the Human Rights Centre in 2005 revealed that approximately 66 per cent of respondents favoured 'hard options' such as trials, punishment and imprisonment that could be linked with the ICC to deal with atrocities committed by the LRA.¹⁰ Only 22 per cent favoured 'soft options' linked to other transitional justice mechanisms such as reconciliation, reintegration and forgiveness. 65 per cent supported the amnesty process for the LRA, while 36 per cent stated that the formal court system should be used. 76 per cent supported the holding of perpetrators of serious crimes from both the LRA and the UPDF to account. Respondents identified their immediate needs as reparations for victims (81 per cent), availability of food (34 per cent) and a sustained peace (31 per cent). Only 27 per cent knew or had heard of the ICC, of which 91 per cent believed that the court contributed to peace (91 per cent) and justice (89 per cent).

However, a study conducted in 2007 showed a significant shift of 54 per cent in favour of soft options while 41 per cent supported hard options.¹¹ It also revealed that whereas 29 per cent favoured using the ICC option, 28 per cent favoured using Ugandan national courts. This study also showed that the most pressing needs of the respondents were health care (45 per cent), peace (44 per cent), education (31 per cent), food (43 per cent), agricultural land (37 per cent), money and finances (35 per cent) and justice (3 per cent). However, respondents had differing views on the means through which peace would be achieved. 90 per cent believed that it could only be attained through dialogue, 86 per cent felt it could only be possible through granting amnesties to the LRA, while 90 per cent supported the idea of putting in place a truth telling mechanism.

There were also varying opinions on the avenues to be used to hold the perpetrators of serious crimes accountable. The majority of the respondents (70 per cent) were of the view that it was essential to hold perpetrators of serious human rights abuses accountable. However, there were noted discrepancies in the avenues or institutions to be used; 20 per cent supported using the Amnesty Commission, 29 per cent felt that the ICC was the ideal place, while 28 per cent supported the use of the domestic courts. The opinions of the respondents show a positive reception to the use and the application of ICL in holding accountable the perpetrators of crimes

¹⁰ Findings of the survey were based on a study involving 2,585 people conducted in northern Uganda between April and May 2005.

¹¹ Findings of the survey were based on a study involving 2,875 people conducted in northern Uganda between April and June 2007.

committed during the northern Uganda conflict. The respondents specifically supported the use of domestic courts and the ICC. From the study, 60 per cent of the respondents knew of the ICC, of whom 76 per cent stated that the Court's interventions endangered peace negotiations, 64 per cent thought that it helped push the LRA to negotiate peace and 71 per cent thought it had helped to reduce violence in northern Uganda. The LRA agreed to peace negotiations in 2006 after the Uganda Government had referred the situation in northern Uganda to the ICC, which then initiated investigations. During the negotiation period, relative peace prevailed in the region and it was felt that any intervention proposing the prosecuting of LRA members would be ill-conceived and ill-timed and would only lead to a breakdown of the talks. However, to some, prosecuting the perpetrators remained an important issue in resolving the conflict.

The first two studies were conducted at a time when a significant part of the population in northern Uganda still lived in internally displaced camps and the LRA was still a big threat within Uganda. The studies show that livelihood, peace and basic social needs were the priority of the people. Opinions on the application of ICJ mechanisms to hold perpetrators accountable for international crimes committed during the northern Uganda conflict have drastically shifted due to varying reasons.

In the present study, the respondents in the three actor groups (victims, civil society and government) were asked to respond to two primary questions: (1) whether they accepted the ICJ as a viable mechanism to address the serious crimes committed in the northern Uganda conflict; and (2), the extent to which other transitional justice mechanisms influenced their acceptance of ICJ. The findings revealed that 55 per cent of the respondents perceived, recognised and accepted that the ICC was a viable mechanism to address the serious crimes committed in the northern Uganda conflict while 26 per cent rejected it. There were at least 19 per cent who were not sure or gave a mixed response that both accepted and rejected the ICC for different reasons.

Among the victims, the ICC was the most preferred institution (72 per cent), followed by traditional justice (72 per cent), truth commissions (66 per cent), and domestic courts (17 per cent). The civil society mostly preferred a truth commission and traditional justice (both at 71 per cent) as the most viable avenues to address the serious crimes committed during the conflict. This was followed by the ICC (36 per cent), and domestic courts (30 per cent). As for the Government representatives and their support for the different mechanisms, 69 per cent favoured the ICC, 50 per cent truth commissions, 56 per cent traditional justice, and 75 per cent domestic courts.

Thus, the topmost interest of the Government is formal judicial accountability through either the ICC or the national court (International Crimes Division). This perhaps explains why primarily the retributive mechanisms are already being used as interventions in Uganda driven largely by the Government. By contrast, the top priorities of both civil society and the victims are restorative mechanisms such as truth commissions and traditional justice. However, victims also strongly expressed their support for the ICC mechanism being used to ensure accountability and justice. Common to all three actor groups is that there is diminished support for an amnesty mechanism compared to the support for other mechanisms.

3.1 Uganda's Acceptance of the International Criminal Court

Uganda's experience dealing with serious human rights violations dates back to 1974, when Amin's Government created a Commission of Inquiry into the Disappearance of People in Uganda since 25 January 1971.¹² Its formation was a result of pressure from the international community and it was mandated to investigate the accusations of disappearances at the hands of the security forces during the first years of Amin's regime.¹³ Despite the Commission implicating the security agencies for human rights abuses, no one was prosecuted and the recommendations were ignored.

A second attempt to establish a body to address the rampant cases of human rights violations committed in Uganda was made in 1987, when a Commission of Inquiry into Human Rights Violations (CIHRV)¹⁴ was created. This Commission was to investigate all aspects of human rights abuses committed under the previous governments from the time of independence on 9 October 1962, until the NRM Government came into power on 25 January 1986. However, the Commission deliberately focused on atrocities committed by the opposition and recommended a limited number of cases for prosecution.¹⁵ These efforts have fallen short of addressing the root cause of conflicts in Uganda and in ensuring justice to the victims and accountability for perpetrators of international crimes.

Having failed to address the armed conflict in northern Uganda through peace talks and military means, the Government opted for recourse to the ICC. This multi-pronged approach of using the ICJ mechanism under the ICC and the domestic prosecutorial mechanism – the International Crimes Division (ICD) of the High Court of Uganda – was deemed to be a critical path in dealing with the LRA. The ICD was borne out of the 2006 Juba peace talks in fulfilment of the Government's commitment to the Agreement on Accountability and Reconciliation (Human Rights Watch 2010; Asiimwe 2012).¹⁶ Both the ICC and ICD are currently investigating, prosecuting and trying war crimes and crimes against humanity committed during the conflict. The ICC is currently trying Dominic Ongwen and Thomas Kwoyelo's trial is ongoing at the ICD.

The idea of establishing a permanent international criminal court gained momentum at the height of the LRA conflict. Uganda, along with other African states,¹⁷ played a crucial role in rallying support for the establishment of an international criminal court and overcoming the fear of losing state sovereignty and independence (APILU 2010). Uganda signed the Rome Statute on 17 March 1999 and ratified it on 14 June 2002 and was the first country to formally make a referral to the ICC, which it did on 16 December 2003 (Ocampo 2005).

The motives that informed the positive moves of the Government have been brought under scrutiny. Nouwen and Werner (2010, 951-953) contend that the driving factor behind Uganda's

¹² The Commission of Inquiry (Cap. 56), Legal Notice No. 2 of 1974.

¹³ Hayner, Priscilla B. (2002: 240).

¹⁴ The Commissions of Inquiry Act, Legal Notice No. 5 (May 16 1986).

¹⁵ BJP/IJR Parliamentary Training Report (2009: 11).

¹⁶ Paragraph 7 of the Juba Annexure of the Agreement on Accountability and Reconciliation provided for creation of a Special Division of the High Court to try individuals who are alleged to have committed serious crimes during the conflict.

¹⁷ Including Nigeria, Ghana, Kenya, South Africa, Morocco and Zambia.

choice of referral of the northern Uganda conflict was part of a military strategy and international reputation campaign, rather than out of a conviction about law and order. However, the Government of Uganda by referring the conflict situation to the Court noted: '[h]aving exhausted every other means of bringing an end to this terrible suffering, the Republic of Uganda now turns to the newly established ICC and its promise of global justice' (Ayume 2003, 3-4). It stated that it had referred the situation because 'without international cooperation and assistance, it cannot succeed in arresting those members of the LRA leadership and others most responsible for crimes' (ibid, 14). This move represented a politically motivated strategic acceptance of the ICC by the Ugandan Government. The Prosecutor formerly accepted the invitation in January 2004, and in July 2004, proclaimed that there was a reasonable basis for him to believe that international crimes had been carried out in the northern Uganda conflict that he would investigate beginning in August 2004. However, the Prosecutor noted that the referral required him to investigate not only the LRA, but the whole situation in Northern Uganda, including acts committed by government forces.¹⁸

On 13 October 2005 the ICC issued warrants of arrest for five top LRA commanders: Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen and Raska Lukwiya.¹⁹ Of the five, only Ongwen and his former leader, Joseph Kony, are still alive. The former was captured in 2014 in the CAR and is currently facing trial at the ICC,²⁰ while the latter remains at large. On 6 February 2015, Pre-Trial Chamber II took a decision to sever the proceedings brought against Ongwen from the original case brought against the other four LRA leaders since they had not been caught.²¹ He was formerly charged under ICC proceedings where he pleaded not guilty to charges including attacks against the civilian population in northern Uganda, murder and attempted murder, torture, cruel treatment, enslavement, pillaging, destruction of property, persecution, and other inhumane acts.²²

¹⁸ However, in a surprising decision by the Prosecutor, he stated that the crimes committed by the LRA were much more numerous and of higher gravity than those alleged to have been committed by government forces. It is also important to note that the ICC can effectively only try the most responsible individuals for serious crimes committed after 1st July 2002. Statement by the Chief Prosecutor Luis Moreno-Ocampo on 14 October 2005, available at http://www.icc-cpi.int/NR/rdonlyres/2919856F-03E0-403F-A1A8-D61D4F350A20/277305/Uganda_LMO_Speech_141020091.pdf. (Last accessed: 20 May 2016).

¹⁹ ICC, *Warrant of Arrest unsealed against five LRA Commanders*, ICC Press Release, October 14 2005 and ICC, *Warrant of Arrest unsealed against five LRA commanders*, ICC-CPI-20051014-110, October 14 2005. His name removed from the case according to the decision of Pre-Trial Chamber II, No.; ICC-02/04-01/05-248 of 11th July 2007. James Owich, 'ICC chief prosecutor assures massacre victims of justice', *Daily Monitor*, Kampala, Uganda, Tuesday, May 24 2016.

²⁰ ICC-02/04-01/15 and ICC-PIDS-CIS-UGA-02-007/15_Eng. Dominic Ongwen born 1975 in Coorom, Kilak County, Amuru district in northern Uganda, prior to his surrender to ICC custody of the ICC allegedly held the position Brigade Commander of the Sinia Brigade of the LRA. ICC-PIDS-CIS-UGA-02-007/15_Eng.

²¹ ICC Press Release, ICC Pre-Trial Chamber II separates Dominic Ongwen case from Kony et al. case, ICC-PIDS-CIS-UGA-02-007/15_Eng.

²² ICC-02/04-01/15-422-Red 23-03-2016 1/104 EC PT: Decision on the confirmation of charges against Dominic Ongwen. The charges against Ongwen relate to crimes allegedly committed in the internally displaced person (IDP) camps of Pajule, Odek, Lukodi, and Abok, as well as charges related to sexual and gender based crimes and the conscription and use of child soldiers. On March 23 2016, International Criminal Court (ICC) Pre-Trial Chamber II, composed of judges Cuno Tarfusser, Marc Perrin de Brichmbaut, and Chang-Ho Chung, confirmed all 70 charges that Prosecutor Fatou Bensouda brought against Ongwen.

3.2 Acceptance of International Criminal Justice Through the Enactment of the Geneva Conventions Act, the Creation of a Court to try International Crimes, and the Domestication of the Rome Statute

Uganda has since the 1960s demonstrated commitment to punish international crimes under its laws. It enacted the Geneva Conventions Act in 1964,²³ which criminalises grave breaches of the 1949 Geneva Conventions. The Act grants the state universal jurisdiction over breaches of the 1949 Geneva Conventions, committed by a person of any nationality whether in or outside Uganda.²⁴ The mandate to try offences committed under the Act lay with the ICD. Since the enactment, only Thomas Kwoyelo, a former LRA commander, has been charged for breaches stipulated in the Act.

As earlier noted, the Government established the ICD in fulfilment of its commitment under the Juba peace agreement which called for a Special Division to try perpetrators of international crimes. The proposal for the establishment of a Special Division within the High Court of Uganda was mooted in order to keep the LRA at the negotiations after the group had threatened to withdraw if Uganda did not withdraw the referrals it had made to the ICC about the LRA situation in northern Uganda.

The ICD has jurisdiction over the crimes of genocide, war crimes, and crimes against humanity, and other crimes relating to terrorism, human trafficking, and piracy, in addition to crimes under the 1964 Geneva Conventions Act, the Penal Code Act, or any other criminal law. To further empower the ICD to conduct trials, in March 2016, Special Rules of Procedure that provide guidance to international criminal proceedings in cases brought before the court were enacted by the Rules Committee (Nakandha 2016).

The Ugandan Government has further demonstrated its acceptance and embraced the norms of ICJ through the domestication of the Rome Statute by enacting the International Criminal Court Act (ICC Act) on 10 March 2010.²⁵ The Act grants the state universal jurisdiction over international crimes such as against humanity, war crimes and genocide as defined under the Rome Statute. The ratification of the two pieces of legislation demonstrates the country's commitment to ensuring justice and accountability for breaches of international humanitarian law and international criminal law.

The two moves by the Ugandan Government were significant, since the ICC is a court of last resort whose jurisdiction is triggered only when the national courts are unwilling or unable to prosecute perpetrators of international crimes.²⁶ Human Rights Watch (2010) has contended that one of the more salient impacts of the ICC in Uganda was to spur the development of a domestic prosecution and enforcement mechanism since historically the state had not exhibited the willingness to confront its past marked by mass atrocity. Indeed, Uganda represents a

²³ Ch 363, Laws of Uganda 2000.

²⁴ Section 2(2) of the Geneva Conventions Act 1964.

²⁵ The ICC Act 2010 was assented to by the President on 25 May 2010.

²⁶ Article 17 of the Rome Statute. Article 1 of the Rome Statute further states that the ICC shall be complementary to the national criminal jurisdictions.

classic example of a country that has taken concrete steps in creating structures that can competently investigate, prosecute and try perpetrators of international crimes. It has demonstrated a strong commitment towards the ICJ by not only signing and ratifying the Rome Statute but going a step further and creating a Special Division within the country's High Court and by domesticating the Statute through the enactment of the ICC Act.

Secondly, the trial of Kwoyelo before Uganda's ICD and the surrender of Ongwen to the ICC demonstrate the country's commitment to punish international crimes and to eradicate impunity. This is especially important since the ICC has observed that although it did not indict Kwoyelo, some of the incidents of perpetration of international crimes for which he was indicted were investigated by the ICC (Human Rights Watch 2012; International Criminal Court 2010).

3.3 Domestic Prosecutions as Part of the International Criminal Justice Mechanisms

The Rome Statute urges state parties to punish perpetrators of the most serious crimes.²⁷ The Statute does not replace but plays a complementary role to national and domestic criminal mechanisms.²⁸ A number of countries emerging from conflict have sought to bring to account perpetrators of gross human rights violations. For example, South Africa, Rwanda, Iraq and Argentina have resorted to using formal domestic justice processes with elements of ICJ.

In essence, the reasoning behind the ICD's establishment was that the court would deal with those not already indicted by the ICC and any other perpetrators that would be identified as responsible for perpetrating crimes during the conflict. If this reasoning holds true, it is the argument of the author that in enacting the ICC Act and in creating the ICD, the Government of Uganda was acting out of pressure from the LRA who did not want to be subjected to the ICC and it was at the same time protecting its officers and soldiers from being handed over to the same court. To date, the ICD has only one case involving Thomas Kwoyelo, a former low-ranking member of the LRA. He is currently facing charges for war crimes and crimes against humanity, including taking hostages, abductions, extensive property damage, and wilful killing.²⁹

Human Rights Watch (2012, 16) has argued that the creation of the ICD was very important since 'national trials for serious crimes in Uganda could make a major contribution to securing justice for victims of Uganda's two-decade conflict in the north between the LRA and the Ugandan army'. The Justice, Law and Order Sector (JLOS) Secretariat (2009, 1) also noted that:

'[d]omestic tribunals may foster a greater sense of local ownership, which may enhance the local impact of criminal trials and any potential deterrent effect. Successful domestic prosecutions may also help to invigorate the wider criminal justice system'.

²⁷ Preamble of the Rome Statute.

²⁸ Article 1 of the Rome Statute.

²⁹ Uganda v. Thomas Kwoyelo, HCT-00-ICD Case No. 02/2010 (2011) (Uganda), Amended Indictment, 1-25. Later, the DPP amended the indictment, adding 53 additional violations under the Penal Code Act.

The ICD's trial of Kwoyelo will in essence be a test of the Ugandan Government's ability as a state party to the Rome Statute to prove willing and able to prosecute perpetrators of gross human rights violations (Asiimwe 2012; Nakandha 2016). Despite all the important steps taken to create the ICD and launch it with the Kwoyelo case, the court faces serious challenges ranging from financial constraints to implementing key activities such as victim and witness protection, conducting outreach, building up the necessary infrastructure such as courtrooms with the requisite technology and recruiting sufficient specialised personnel.

Some respondents in this study noted that Kwoyelo' ICD trial, just like that of Ongwen by the ICC, had helped to increase optimism and interest in the formal justice mechanisms that are being used to redress the injustices of the conflict.³⁰ A good number of respondents thought that the ICD could be developed into an effective domestic accountability mechanism in order to deal with perpetrators of serious crimes.³¹

Other respondents argued that the ICD cannot be independent since it was working under the direct or indirect influence of the Government.³² In fact, as Tenove and Radziejowska (2013) observed, a good number of victims harbour serious doubts regarding the ability of the national court to ensure accountability and justice, since it is perceived as corrupt, partial, ineffective and biased towards any potential LRA indictees. This criticism against the ICD was raised by an interviewee, who stated:

'Although I strongly agree that the ICD is a viable mechanism for bringing the perpetrators of heinous crimes to account, and addressing human rights violations committed during the northern Uganda conflict, it would be extremely difficult for the state to hold one of their own to account for the commission of crimes during the conflict. Therefore, a neutral and external institution or organ such as the ICC is better placed to handle such cases'.³³

The domestic prosecution for perpetrators of international crimes is a critical factor in ensuring that people appreciate and have confidence in the justice process. This is, however, possible only if there is the political will to prosecute these crimes and the legal or justice systems are robust to guarantee the realisation of justice to the victims. Institutions that are strong and established on a firm legal framework are often accepted and entrusted by the people as viable avenues to ensure justice for victims. The ICJ mechanisms, however, complement the domestic processes especially in instances where States are unwilling or unable to prosecute such crimes.

³⁰ Interview with civil society representatives and academicians in Kampala City and Gulu District.

³¹ Interview with civil society representatives and lawyers in Kampala City and Districts of Lira, Soroti and Gulu.

³² Interviews with a number victims, lawyers and civil society representatives in Kampala City and Districts of Soroti, Lira and Gulu.

³³ Interview with experts/academics in Kampala City.

3.4 Victims and Civil Society Contestations in Accepting International Criminal Justice

3.4.1 Does the ICC promote Accountability and Deterrence While also Giving Closure and Justice to Victims?

This study revealed a growing desire for accountability, closure and justice among actors in northern Uganda through ICJ mechanisms like the ICC. A number of victims and civil society community workers were of the view that the ICC was the only neutral institution that could hold perpetrators of the armed conflict in northern Uganda accountable.³⁴ One victim noted that the ICC would be in a position to apprehend the LRA commanders.³⁵

If the trial of Dominic Ongwen is successfully held and concluded by the ICC it will be an assurance that not only justice has been done, but that it has been done for the victims of northern Uganda. The Victims’ Rights Group Uganda (2016), on receiving the decision confirming the charges against Dominic Ongwen, issued a supportive statement of the ICC noting that:

‘Aware that some African leaders have been unfairly critical of the ICC for the prosecutions it has undertaken despite the fact that the Court presently offers victims of serious crimes the best and only avenue to realise justice particularly in situations where states have been either unable or unwilling to genuinely investigate and prosecute perpetrators of serious crimes; UNWAVERED in recognising that the ICC decision confirming the charges against Dominic Ongwen is symbolic in as far as it provides the opportunity for all victims of the LRA’s violence to see justice; DELIGHTED to observe that the decision confirming charges sets an important precedent for Ugandan Courts and state actors including the UPDF to follow in pursuit for accountability following the crimes that were committed in Greater North’.

Most recently, the Acholi Paramount Chief, Rwot David Onen Acana II, has expressed support for the ICC trials, as a way of holding perpetrators accountable and ensuring justice for the victims (Owich 2016).

It has also been argued that the ICC would enhance the deterrent effect against violations of human rights. For instance, Bishop Emeritus Nelson Onono observed that the ICC trial of Ongwen would deter others from committing atrocities (ibid). Others have observed that the appearance of Ongwen before the ICC sends a strong message to other offenders that ‘killing innocent and unarmed civilians is a crime that one should not just get away with without being punished’.³⁶ The ICC was also perceived as a neutral entity because of its actions of trying or indicting heads of state, the military and civilians that perpetuated human rights violations.³⁷

³⁴ Views of victims in Gulu, Kitgum, Lira and Soroti.

³⁵ Interview with a victim in Adjumani District.

³⁶ Statement made by victim called Justine Ocan at Lukodi Massacre Anniversary as reported in Daily Monitor, Tuesday June 7 2016, p. 16.

³⁷ Interview with a lawyer in Kampala City.

Among the key figures that have been tried by the Court are the Kenyan President, Uhuru Kenyatta, and his Deputy, William Ruto. Others, such as the Sudanese President, Omar Al-Bashir have been indicted by the Court.

Some respondents attributed the peaceful atmosphere that existed during the 2016 presidential and parliamentary elections in Uganda to the ICC, as it was presumed that they would be targeted by the Court in case of violent outbreaks. While election-related cases do not fall within the jurisdiction of the ICC, these sentiments demonstrate the consciousness of the community about the existence of the Court and its potential to deter situations that would degenerate into violence.

Despite accusations levelled against the ICC for frustrating peace prospects in northern Uganda, the Court however contributed to bringing the LRA to the negotiating table with the Government of Uganda and in pushing the rebels out of the country's borders for fear of arrest (Tenove and Radziejowska 2013). The ICC's intervention in the northern Uganda situation also pushed the Ugandan Government to take a more active role in protecting the civilians (ibid.). Other people in the region opposed the peace talks and supported prosecution of the members of the LRA. For instance, one politician, Nahaman Ojwe,³⁸ stated, "Those who are insisting on peace talks are detractors, they are sadists. I don't support that. The man cannot talk. It's either through war or the court avenue [...] the ICC should go right away and bring the LRA to book' (Owich 2004).

Similarly, Felix Okot Ogong³⁹ supported the ICC prosecutions and noted:

"They should come here and do their independent investigation. Kony has to pay for the atrocities he has meted out. To those calling for dialogue. Which peaceful avenue? We have given him 18 years. He has not even told anyone that he wants to negotiate. He has no political agenda' (Owich 2004).

Reagan Okumu,⁴⁰ a representative of one of the areas greatly affected by the LRA conflict, noted that:

"What the ICC should do is to come down and do thorough investigation and commit all those who have committed war crimes to the international court. Not only the LRA, but also the UPDF have committed crimes. I think the best they should have done is to get hold of Kony first. Let them find a framework of getting hold of Kony' (Owich 2004).

These sentiments show the perceptions held towards ensuring accountability for perpetrators of heinous crimes, which is an important deterrent tool against future crimes. However, ensuring that all those who committed crimes – whether on the LRA side or the UPDF – should be equally held accountable as this will serve justice to the victims.

³⁸ Then Local Council V Chairman for Kitgum District

³⁹ Then a Cabinet Minister and Member of Parliament for Dokolo.

⁴⁰ Member of Parliament for Aswa and also member of the Presidential Peace Team.

3.4.2 Why the ICC's Intervention in the Conflict in Northern Uganda was Initially Opposed

When Uganda referred the northern Uganda situation to the ICC in 2003, it was vehemently opposed by the local human rights organisations, the elders and the people from the region. The opposition to the idea was premised on the fact that the court's intervention would perpetuate the conflict and frustrate any efforts to find peace (Otim and Wierda 2010). The referral and the Court's investigations had begun, which threatened to jeopardise the preparations for the peace talks between the LRA and the Government of Uganda. Human Rights Watch (2010) argued that the threat of prosecutions not only complicated but also ultimately stood in the way of peace.

The commencement of the ICC investigations into the northern Uganda conflict drew mixed reactions from the communities in the region, as some people supported the ICC's intervention while others viewed its actions as a threat to peace (Owlich 2004). Some religious leaders, such as Father Carlos Rodriguez, members of the diplomatic corps including Sir Emyr Jones Parry, then Ambassador of the United Kingdom to the United Nations, and a civil society member observed that the actions of the ICC undermined the prospects of achieving peace in the region (Owlich 2004).

Barney Afako, an active participant in the Juba peace talks, observed that, 'from the outset, the ICC and the Rome Statute were planted firmly at the heart of the talks. Although other parties adjusted their positions, the LRA, with the most to lose, remained implacably opposed to ICC trials'.⁴¹ In fact, as part of the conditions to sign the final peace accord, the LRA insisted on the withdrawal of the ICC indictments against their leaders. However, this request was rejected which resulted in the collapse of the talks. One religious leader interviewed in this study noted thus:

'Had it not been for the ICC, the conflict would have ended long time ago. For fear of arrest, Kony is still running. The further he stays in the bush, he commits more atrocities, there is fighting and more other things. We challenge it [ICC]. If you talk about arrest, you should arrest him. From 2003 to date; and we are in 2016 and you can't arrest him. What is the use of the law? If it doesn't work, it becomes no law. It was not timely'.⁴²

The concerns expressed by the different people were based on the fact that northern Uganda was experiencing relative peace at the time and normalcy had started returning. In fact, since 2006 when the Juba peace talks began, the region was peaceful and the LRA had shifted its bases to DR Congo and the CAR. Therefore, there were fears that the intervention of the ICC would result in another insurgency which would destabilise the region and lead to further suffering.

⁴¹ [http://www.c-r.org/downloads/11s_9Negotiating per cent20in per cent20the per cent20shadow per cent20of per cent20justice_2010_ENG.pdf](http://www.c-r.org/downloads/11s_9Negotiating%20in%20the%20shadow%20of%20justice_2010_ENG.pdf)(Last accessed 30 June 2016).

⁴² Interview with a religious leader in Gulu District.

3.4.3 The ICC: Impartial or Selective Justice?

Many expressed serious doubts over the ability of the ICC to try and bring to account all the perpetrators from all sides involved in the northern Uganda conflict. The Court was accused of selective prosecution that targets only one side of the conflict, namely the LRA. In failing to prosecute any UPDF soldiers, it had cast doubt on the abilities of the ICC to enforce accountability and ensure justice (Tenove and Radziejowska 2013). One respondent interviewed in this study argued that, 'the ICC can't investigate the Government of Uganda. They need it – they need the cooperation of the state'.⁴³

To give credence to this point, the then ICC Prosecutor Moreno Ocampo was accused of bias after he held a joint press conference with President Museveni to announce the Ugandan Government's referral of the situation in northern Uganda to the Court (Otim and Wierda 2010). The ICC, on the other hand, has strongly argued that it has not received evidence that points towards the UPDF having committed crimes during the conflict (Kersten 2016). In fact, the ICC Prosecutor explained further that his office analysed the gravity of all crimes that had been committed during the northern Uganda conflict and found that:

'Crimes committed by the LRA were much more numerous and of much higher gravity than alleged crimes committed by the UPDF. We therefore started with an investigation of the LRA. At the same time, we also collected information on other groups from a variety of sources. We collected documents and conducted interviews. We will continue to collect information on allegations concerning all other groups, to determine whether the Statute thresholds are met and the policy of focusing on the persons most responsible is satisfied' (Ocampo 2005, 3).

However, some scholars such as Kersten (2016, 1) have disputed this explanation and observed:

'For anyone who has travelled to northern Uganda and spoken to the people there, it is impossible not to be told of the UPDF and Government crimes. Even those who believe that the ICC's prosecutions of senior LRA rebels are appropriate also insist that the ICC should likewise prosecute members of the Government and UPDF who committed unspeakable crimes. The fact that the UPDF has been let off the hook is confusing to many. This anecdotal evidence of UPDF crimes is supported by heaps of substantive evidence and research'.

Respondents interviewed expressed concerns about the ICC's selective justice for indicting one party and observed that it becomes untenable that such a Court may be the most appropriate justice mechanism in a conflict or post conflict situation such as that of northern Uganda.⁴⁴

When the ICJ processes are perceived to be partial or their credibility, transparency and independence are questionable, they are often not accepted by the people, even if their primary

⁴³ Interview with a civil society representative in Gulu District.

⁴⁴ Interview with victim respondent in Gulu.

purpose is to advance the interests of the victims and promote justice. In order to ensure acceptance and legitimacy for institutions and bodies that are established to hold perpetrators of gross human rights violations to account and to ensure justice for victims, such entities have to demonstrate their ability and capability to effectively execute their mandate without external interference and not at the whims of any state or entity. However, criminal justice institutions and processes perceived to be influenced by anyone cannot be accepted by the wider society as viable entities worthy entrusting to deliver justice to the victims.

4. Victim's and Civil Society Perceptions on Using other Transitional Justice Mechanisms

4.1 Amnesty as Part of the Post Conflict Interventions

On 21 January 2000, Uganda adopted the Amnesty Act as a tool to help end the two-decade conflict. The enactment was to provide an incentive to the rebels to abandon rebellion and negotiate peace with the Government. Under the Act, the term 'amnesty' was defined as 'a pardon, forgiveness, exemption or discharge from criminal prosecution or any other form of punishment by the State'⁴⁵, and granted to 'any Ugandan who has at any time since 26th day of January 1986, engaged in or is engaging in war or armed rebellion against the Government of the Republic of Uganda'.⁴⁶ This law was intended to weaken and cause defections within the rebel groups, so as to neutralise them. In 2001 the Act was amended with a provision to prosecute individuals who rejoined the rebellion after being granted amnesty. The Amnesty Act also establishes the Amnesty Commission, which is a body charged with the roles of facilitating the reintegration of reporters.

As a result of the concerns of the international community on the blanket amnesties granted by the Government, and in order to address some of the inconsistencies between the Amnesty Act and the country's international obligations, in 2006, the Act was again amended to allow the Minister of Internal Affairs to declare certain individuals ineligible for amnesty. Amnesty laws that pose obstacles to the prosecution of human rights violations have been found to be invalid and incompatible with the international obligations of a state.⁴⁷ However, they are permissible under international law but within certain limits.

The Amnesty Act has gone through numerous amendments and extensions, as a result of pressure from human rights groups and civil society. In May 2012, the then Minister of Internal Affairs, Hillary Onek, announced the extension of the period of operation of the Amnesty Commission for a period of 12 months.⁴⁸ This was after the Minister had declared the lapse of Part II of the Act which outlined procedures for granting amnesty.⁴⁹ Any person who engaged in

⁴⁵ Amnesty Act 2000, s. 1.

⁴⁶ Amnesty Act 2000, ss. 2(1) and 3.

⁴⁷ JLOS (2012:9).

⁴⁸ Statutory Instrument No. 35 of 2012.

⁴⁹ Statutory Instrument No. 34 of 2012. Under section 16(3) of the Amnesty Act (as amended in 2006), the Minister of Internal Affairs may declare the lapse of the operation of part II of the Act.

war against the Government of Uganda would be liable for prosecution for such a crime. However, in May 2013, the provision was reinstated.⁵⁰

Uganda's current national Transitional Justice Policy draft that is before the cabinet re-affirms that 'there shall be no blanket amnesty and government shall encourage those amnestied to participate in truth telling and traditional justice processes' (JLOS 2014). This clarifies the current position and direction that the Government of Uganda is taking on the issue of using amnesties in regard to perpetrators of serious human rights abuses. In this regard, it has been pointed out that between 2000 and 2006, approximately 26,000 rebels from approximately 30 different rebel groups used the amnesty window and renounced rebellion (McNamara 2013, 662).

The opposition to the ICC intervention in the northern Uganda conflict was because of the Court's retributive justice approach that focuses on accountability for those responsible for committing gross human rights violations, which does not resonate well with many actors engaged with the conflict (Tenove and Radziejowska 2013). As far back as February 2004, a religious leader⁵¹ argued that the best option for resolving the northern Uganda armed conflict was through using amnesty alongside peace-talks (Owich 2004). One interviewee in the study noted:

'The ICC is not the most viable mechanism since it offers very little in terms of conceptualisation of the justice that the victims want. Apart from accountability, the victims are interested in restoring what was lost economically and socially, to which the ICC does very little in terms of remedy. The conflict destroyed a number of generations and the victims do not understand the ICC kind of justice that is presented to them. Victims want reparations and amnesty as part of justice but there is no guarantee that they will receive them from the Court'.⁵²

As the South African case illustrates, amnesties can turn out as a useful tool for peace-building and societal reconciliation. A majority of the respondents in northern Uganda were of the opinion that the amnesty law should be retained alongside the formal prosecution mechanisms. This was premised on the fact that it provides a platform for forgiveness and reconciliation between perpetrators and victims, and facilitates the process of reintegration of both abductees and reporters.⁵³ This same view would seem to be supported by the ICC Prosecutor who was recently quoted to have appealed to the communities of northern Uganda to forgive and reconcile with former returnee LRA fighters as a step towards achieving peace and even encouraged that the same be accorded to those still in the bush (Owich 2016). Some respondents among the victims and civil society were of the view that Kony and his commanders could be forgiven and reconciled with the communities if they laid down their

⁵⁰ IRIN (2013).

⁵¹ Bishop Emeritus John Charles Durkamsi of Lango Anglican Diocese.

⁵² Interview with a member of civil society in Kampala.

⁵³ Interviews with several victims, community leaders, religious and cultural leaders.

arms and apologized, as part of the restorative approach that should be adopted by the Ugandan Government. For instance, one individual from the civil society stated:

‘The ICC undermines traditional local justice mechanisms which have been existence for centuries. The local communities prefer the African traditional justice systems that emphasize restorative justice and are familiar to them’.⁵⁴

Despite the argument raised that the Amnesty Act was an important tool that helped the Ugandan Government to reduce armed rebellion in northern Uganda; it is in the same vein widely criticized as a tool promoting impunity through granting ‘blanket amnesties’. In fact, Otim and Kihika (2015) have argued that Uganda’s continued use of amnesties shows that the Government ‘lacks the coherence, commitment, and conviction to end impunity for serious crimes [...] the reinstatement of blanket amnesties demoralises those who have participated in criminal cases and dissuades others from becoming involved in the future’.⁵⁵ Since their introduction, there have been dissenting opinions rejecting the granting of amnesties to perpetrators of serious crimes in the northern Uganda conflict and insisted on using the ICC mechanism. For instance, one local northern Uganda politician⁵⁶ is reported to have stated:

‘The rebels simply don’t have any respect for amnesty, whether we extend it 100 times... So we would be fooling ourselves if you think the top LRA commanders are going to accept amnesty [...]. Otherwise, the evidence of atrocities, we have here in abundance. The amnesty can only be extended for the rank and file of the LRA, most of them originally abducted and conscripted into the rebel ranks’ (Owich 2004).

There were also varying opinions from respondents on the question of amnesty. Some respondents viewed the amnesty legislation ‘as a top-down approach to reconciliation which did not include the voices of victimized communities’.⁵⁷ The majority of the respondents observed that amnesty should involve community participation and should not be granted to individuals indicted by the ICC or the ICD or those engaged in perpetuating grave crimes.⁵⁸ Others were of the opinion that amnesty should not exclude those that were abducted and forced to commit atrocities and those that voluntarily abandoned rebellion. A limited number of respondents perceived the granting of amnesty as a way of promoting impunity and considered it a breach of international law obligations.⁵⁹ From the observation, it can be deduced that the people are receptive of prosecuting perpetrators of international crimes, alongside other transitional justice mechanisms. In fact, criminal prosecutions of perpetrators of gross violations of human rights - both through domestic courts and the International Criminal Court - should be part of the transitional justice processes, as it plays a critical role in deterring future crimes.

⁵⁴ Interview with a member of civil society from Lira District.

⁵⁵ Otim and Kihika (2015).

⁵⁶ Lt. Col. Walter Ochora, the then Local Council V Chairman for Gulu District

⁵⁷ Interview with a lawyer in Kampala, Uganda.

⁵⁸ Interviews with several victims in Gulu, Lira and Soroti Districts of Uganda.

⁵⁹ Interviews with lawyers and government officers in the Judiciary, Ministry of Justice, Directorate of Public Prosecution.

4.2 Truth Telling as Part of the Post-conflict Interventions

During the Juba peace talks, the issue of establishing a Truth and Reconciliation Mechanism featured prominently on the agenda and at the insistence of the LRA delegation, a motion was adopted on the need to examine the root causes of the conflict and the violations that occurred during the northern Uganda armed conflict through a truth telling mechanism (Afako 2002).

In this study, respondents interviewed across the board highlighted the need for establishing a Truth and Reconciliation institution for the entire country to investigate the source and effects of all the numerous conflicts in the country including the northern Uganda armed conflict.⁶⁰ Respondents, especially those from civil society, see this mechanism as a means that can be used to clarify the tragic history of the country since independence and as a source of answers on how the future of the country can be mapped out.⁶¹ In this respect, many stated that a truth telling mechanism can be used for accountability purposes where victims, perpetrators and witnesses can relay their stories for the benefit of experience sharing and documenting the conflict.⁶² In some cases, respondents carried the view that in establishing a Truth and Reconciliation Commission, it could have the quadruple advantages of promoting reconciliation, forgiveness, reparation and prosecution.⁶³ In this regard, a number of middle level government technocrats/officers were in support of using a truth seeking mechanism as part of Uganda's transitional justice approach alongside the ICC prosecutions against the LRA leaders.⁶⁴ It is important to note that the draft transitional justice policy recognises that the Government of Uganda, 'shall enact a transitional justice act and establish structures to facilitate truth telling at all levels' as part of the accountability, healing, reconciliation and peace processes used in Uganda (JLOS 2014).

A number of experts and respondents representing civil society contended that such a mechanism should however be an outcome of an Act of Parliament and whose membership should be drawn nationally from eminent persons cutting across religious leaders, cultural leaders, civil society, government, elders and the international community.⁶⁵ It was also suggested that when put in place, the truth telling and acknowledgement processes should be widely documented and disseminated (Refugee Law Project 2014). However, the Refugee Law Project (2014) notes that a truth telling mechanism might arouse negative emotions among victims and communities, backlashes for those that confess guilt and that the process could be ambushed and abused by politicians. In order for this process to be successful and widely accepted by all actors and stakeholders, a good number of respondents argued that the truth telling process should be all-inclusive, not miss criminal prosecutions and shall be supported by all actors in the conflict but not spearheaded by any of the parties to the conflict. Truth-telling mechanisms alongside criminal prosecutions of perpetrators should be part of the process of

⁶⁰ Interviews with government officials, civil societies and victims.

⁶¹ Interviews conducted in Kampala City, Gulu, Lira, Adjumani and Soroti.

⁶² Interviews with victims in Gulu, Lira and Soroti.

⁶³ Interviews with lawyers, government officials and academics in Kampala.

⁶⁴ Interviews conducted in Kampala City with officials of the Uganda Police Force, Ministry of Justice and Constitutional Affairs, Directorate of Public Prosecutions, Uganda Law Reform Commission, Uganda Amnesty Commission and Uganda Human Rights Commission.

⁶⁵ Interview with NGOs in Kampala City and Gulu District.

redressing the human rights abuses committed during the conflict. This process involves and engages the community as a whole, including victims, and provides a holistic approach to sustainable peace.

4.3 Traditional or Localised Justice Mechanisms as Part of the Post-conflict Interventions

Uganda's draft transitional justice policy takes cognisance of the fact that a traditional justice mechanism can be very useful in dispute and conflict resolution within conflict and post-conflict societies and to this end enjoins the Government of Uganda to put in place processes that shall include the use of this avenue (JLOS 2014). The use of traditional justice mechanisms to resolve conflicts has been formally recognised under any Ugandan laws or policies.⁶⁶ Many ethnic groups and rural communities of Uganda rely on such institutions to resolve conflicts or disputes.

A number of scholars have over the years called for the use of traditional justice mechanisms alongside the prosecution mechanisms (ICC and ICD) as one of the accountability processes for perpetrators of gross human rights violations committed during the northern Uganda conflict. For instance, Stig Marker Hansen stated that, 'the ICC should consult with traditional structures of Ugandan society and let traditional justice take place. But of course, this is not easy when they are bound by their own statute' (Volqvartz 2005, 1). Tenove and Radziejowska (2013) have stated that there is near unanimous agreement among community members of northern Uganda that children who were abducted and conscripted by the LRA should be subjected to traditional justice initiatives of the communities from which they came.

In this study, the ICC mechanism has been criticized because in the opinion of many respondents from the victims and civil society groups it does not promote societal reconciliation, restoration and rehabilitation of perpetrators and their victims.⁶⁷ It is also been argued that the ICC framework can only deal with a few implicated individuals (those most responsible), and ignores the majority of perpetrators.⁶⁸ In view of this criticism, many of the interviewees from civil society and the victim groups stated their desire for mechanisms that promote national and regional reconciliation, the necessity for victims to receive apologies from perpetrators, national commemoration events, and for the harm or injuries suffered by victims to be acknowledged, which could bring to account significant numbers of perpetrators. Many respondents from the victim groups and civil society, especially traditional and religious leaders, advocated for the use of traditional measures since they are seen as familiar, consistent with cultural beliefs and practises, run by a less corrupt system, and involve both victims and perpetrators.⁶⁹

⁶⁶ Article 129(d) of the Constitution of Uganda 1995 (Amended) provides for establishment of subordinate courts such as Local Council Courts which are mandated to handle small cases in communities.

⁶⁷ Interview with victims and civil society in Gulu, Lira, Pader, Kitgum, Adjumani and Soroti Districts.

⁶⁸ Interviews with two victims in Gulu and Soroti.

⁶⁹ Interviews with community, cultural and religious leaders from Gulu, Lira and Soroti Districts.

However, the challenges of applying traditional justice mechanisms to the northern Uganda situation arise from the fact that the conflict was not restricted only to Acholiland, but extended as far as the West Nile, Lango and Teso regions and to the neighbouring countries of South Sudan, DRC and CAR whose traditional justice systems are very different (Liu Institute for Global Issues 2007, 1; Gulu District NGO Forum and Ker Kwaro Acholi 2005, 67; Onyango 2007, 3; JLOS 2009, 45). The difference in the traditional justice mechanisms therefore makes it difficult to decide on what would be applicable to all communities that suffered from the conflict.

Secondly, the magnitude and the grave nature of the crimes committed during the conflict were the first of their kind in the region, and the Acholi traditional justice system has never been applied in handling such issues (Mukasa 2008). The application of traditional mechanisms would potentially be unrealistic since the practice was mostly tailored to dealing with minor crimes.

The context of the conflict in northern Uganda and the extent of its impact present a very complex situation in regard to the application of traditional justice mechanisms. A combination of measures – both judicial and non-judicial – seems to be the most appropriate to address the interests of the victims of the conflict.

4.4 Reparations in Post-conflict Interventions

Generally, reparations take the forms of compensation, rehabilitation, restitution, satisfaction and guarantees of non-repetition. Compensation seeks to provide economic or monetary awards for certain losses of material or immaterial nature. The 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law'⁷⁰ provides that compensation should be appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law. It includes any quantifiable damage resulting from any of the following: (a) Physical or mental harm; (b) lost opportunities, including employment, education and social benefits; (c) material damages and loss of earnings, including loss of earning potential; (d) moral damage; and (e) costs required for legal or expert assistance, medicine and medical services, and psychological and social services.⁷¹

Restitution seeks to restore the victim to the situation that that would have existed had the crime not happened. This may include restoration of liberty, enjoyment of rights, social status, family life and citizenship; return to one's place of residence; and restoration of employment and return of property.⁷²

Rehabilitation is another form of reparation recognised under international law. There is no universally accepted definition of the term (Redress 2009), but attempts have been made to

⁷⁰ UN Doc. E/CN.4/2005/L.10/Add.11.

⁷¹ Principle IX (20), Basic Principles on the Right to Reparation.

⁷² Principle IX (19), Basic Principles on the Right to Reparation.

define what it amounts to. The Committee against Torture has opined that rehabilitation for victims should be holistic and include medical and psychological care as well as legal and social services⁷³. In essence, rehabilitation should aim to restore, as far as possible, a victim's independence, physical, mental, social and vocational ability; and full inclusion and participation in society.

Guarantees of non-repetition seek to put in place measures that prevent the occurrence or outbreak of future conflicts. These include reviewing and reforming laws that perpetrate the commission of gross human rights violations, developing and strengthening conflict and dispute resolution avenues, strengthening judicial independence, and ensuring civil control over the military and security forces.⁷⁴

The Rome Statute in part enjoins the ICC to put in place principles regarding reparation and rehabilitation which might be given to victims when the Court orders a convicted person or through awards made through the Trust Fund for Victims.⁷⁵ It is not in dispute that a significant part of the communities of northern Uganda suffered serious violations of human rights and are in urgent need of reparation. The ICC's reparations program has been criticised for its limited capacity to meet the needs of the tens of thousands of victims and the lengthy periods it takes to obtain reparations as these come only after conviction, and exclude many victims from obtaining reparations as these apply to particular prosecuted crimes (Tenove and Radziejowska 2013).

For its part, the draft transitional justice policy recognises that reparation initiatives when used in post-conflict societies such as northern Uganda can reintegrate victims and can address outstanding challenges or issues in the communities emanating from the conflict or from the root causes and adverse effects of the conflict (JLOS 2014). The policy therefore envisages putting in place reparation programs for victims of the conflict through an established reparations fund (JLOS 2014).

The right to remedy and reparations has been a critical issue, especially in countries emerging from violent conflicts. This right is firmly embodied in a number of human rights instruments and declarations.⁷⁶ A number of respondents from the civil society and victims' groups outlined the need for adequate reparations for victims of gross human rights violations through the ICC and ICD frameworks.⁷⁷ Others contended that reparations play a big role in facilitating victims' recovery from past violations and support them in regaining their sense of dignity.⁷⁸ In fact one religious leader⁷⁹ expressed the view that victims cannot fully recover from the atrocities they

⁷³ General Comment No. 3 to Article 14 of the Convention Against Torture.

⁷⁴ Principle IX (19), Basic Principles on the Right to Reparation.

⁷⁵ Article 75 of the Rome Statute.

⁷⁶ These include: the ICCPR (Article 2(3)) which enjoins the state parties to 'ensure that any person who suffers a violation of the Covenant shall have an effective remedy'; Article 14 of the Convention against Torture of 1984 which provides that victims of acts of torture obtain redress, and fair and adequate compensation including the means for as full rehabilitation as possible; and Article 24(4) of the International Convention for the Protection against Enforced Disappearances, which provides that 'the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation'.

⁷⁷ Interviews in Lira and Gulu Districts.

⁷⁸ Interview with a lawyer in Kampala City.

⁷⁹ Bishop Emeritus Ochola, Kitgum Diocese.

suffered without some form of reparations and to this end were entitled to demand for them (International Justice Monitor 2016).

A number of respondents from victims and civil society in this study stated that it was important that reparations form part of all formal justice mechanisms used to redress the wrongs and crimes committed during the conflict.⁸⁰ A number civil society interviewees recommended that the Ugandan Government, with the help of the international community, should introduce a special reparations fund for victims to work alongside prosecutions undertaken by both the ICC and the ICD, otherwise the prosecutions would not be meaningful.⁸¹ In fact, one respondent advocated for the Government giving concrete support to reparation programs set up for the benefit of victims⁸². The International Justice Monitor (2016, 1) also quoted one victim stating,

‘Our children are suffering. We want the following reparations: sponsorship/scholarships for our children to go to school, good health facilities and vocational institutions. Reparations should not be left for the ICC alone. The Government of Uganda is the first responsible body to compensate us. If there is no money for reparations then the Government of Uganda should give us livestock so that we replace the ones we lost during the conflict. We want the Government of Uganda to compensate us in monetary terms and the money should be paid to every member of Lukodi because the Government failed to protect us’.

5. Conclusion

This paper has studied the acceptance by various actors of ICJ mechanisms vis-à-vis other transitional justice mechanisms such as truth telling, traditional justice and amnesties, with regards to the serious human rights violations that were committed during the northern Uganda armed conflict. It has addressed how the ICC and transitional justice mechanisms have been received in Uganda and how actors think they should be used to promote accountability, justice and peace. Although there is general consensus that international crimes were committed during the conflict, there are varying opinions among the various actors on how to deal with the perpetrators. Evident from this study is that most actors support an amalgamative use of both ICJ and transitional justice mechanisms to address the atrocities. It is also clear that opinions on using ICJ mechanisms are mixed between the actor categories. The study has shown that the intervention of the ICC in Uganda stimulated a ferocious debate over accountability of perpetrators of mass atrocities through criminal justice processes. The ICC Act and the ICD is in essence an effect of the ICC intervention in Uganda as the protagonists at the Juba Peace Process sought mutually acceptable options. These two closely linked frameworks represent milestones that reflect substantial goodwill and support by the Ugandan Government in accepting the ICC. However, there is tension caused by the continued existence of amnesty legislation in Uganda,

⁸⁰ Interviews conducted in Kampala City and other districts such as Gulu, Lira, Kitgum and Soroti.

⁸¹ Interviews with NGOs, academics and lawyers in Kampala City and Gulu District.

⁸² Interview with Lino Owor of the Foundation for Justice and Development Initiative.

and the failure to apprehend and prosecute both Government and LRA rebel officers who have responsibility for crimes committed during the conflict.

Many issues remained unresolved over how and where compromise will be reached between the interests and demands of different actor categories like the government, victims, the fighting forces of the UPDF and LRA plus the civil society. Despite the fact that there is evidence of acceptance among actors of the ICJ mechanisms of the ICC and ICD, there is also considerable interest and support for also using other transitional justice mechanisms. Both the ICC and the ICD are accused of practicing selective justice and bowing to the manipulation of the Government of Uganda since they have not indicted and prosecuted anyone on the Government side.

The conflict arose from a combination of factors including colonial policy, marginalisation of the region and to the military expediency of the NRA and other armed groups after Museveni's accession to power. During over twenty years of conflict, gross human rights violations and international crimes were committed by the LRA, the UPDF and the NRA. To date, only two ICJ mechanisms (ICC and ICD) have been used to redress the criminality, and with varying success. A number of other transitional justice mechanisms are being suggested as possible interventions to promote accountability, including a truth telling institution, amnesties and traditional justice initiatives.

For most actors in the situation, justice for the victims and accountability for perpetrators should be achieved by using a spectrum of transitional justice mechanisms that include ICJ interventions such as the ICC and the ICD, but also traditional justice systems, amnesty grants, truth telling and reparations as well as criminal prosecutions as part of accountability measures to address the injustices, harm and suffering of the victims. In the same spirit, many of the actors are also interested in mechanisms that do not just promote accountability, but also emphasise elements of reconciliation and peace within the communities of northern Uganda.

Particularly in the eyes of civil society and victims' groups, the use of truth telling and traditional justice mechanisms was heavily advocated as a key component of ensuring accountability for perpetrators of serious crimes in northern Uganda. Many observed that reconciliation within the region and between different regions of the country could be achieved after a national truth telling process had been implemented. Despite the significant support for using domestic prosecutions and transitional justice mechanisms, many respondents observed that there was little likelihood of their successful use without political support from the state leadership.

A significant number of actors were keen on perpetrators of serious human rights violations to face some form of accountability. Without a doubt, many view ICJ mechanisms as having the potential to address the wrongs and injustices of the conflict. It has been contended that international courts such as the ICC can only effectively address accountability for mass atrocities in conflict situations when complemented by genuine national justice processes (Concannon 2000; Burke-White 2008; Horowitz 2013). Without the ICC and ICD taking serious steps to explain why it has not prosecuted members of the UPDF or Government who are

thought to have been involved in the perpetration of serious crimes in northern Uganda, many actors across the board will continue to doubt the impartiality of the ICJ mechanisms and thus reject them.

Although Uganda put in place legislation for prosecuting international crimes, the Amnesty Act remains on the statute books. Although the Act grants the Minister power to declare certain individuals ineligible for amnesty, there are still concerns over who benefits from that. The selective application of the law, as noted in the case of Thomas Kwoyelo raises questions on Uganda's commitment towards eradicating impunity and holding perpetrators to account.

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