

The Search for Transitional Justice in Uganda: Global Dimensions

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Abstract

This thesis analyzes the development of national justice processes in Uganda in the wake of war in order to address key theoretical dilemmas that have recently emerged in the field of transitional justice. I focus on closely connected debates over the exclusion of socioeconomic justice, the relationship between international, national and local actors, the role of transitional justice discourse, and ultimately, the future of the field itself. Based on fieldwork undertaken in Kampala, the Acholi district and the temporary international arena created in Kampala for the 2010 ICC Review Conference, this thesis traces the role of local, national and international actors in the war itself, the search for peace, and the current 'post-conflict' period. I examine the ways in which actors at all 'levels' narrate the northern conflict and accordingly negotiate and contest the nature, scope and course of post conflict justice. I argue that the struggle for a meaningful approach to transitional justice is global in dimension. The power to define and perform postwar 'justice' is concentrated in the hands of the state. A high risk persists that Uganda's transitional justice policy will prove an empty performance of 'victor's justice.' International and domestic actors alike have shaped and justified the Ugandan Government's self-interested approach and facilitated the dominance of international criminal justice. Conversely, civil society actors at all levels in Uganda draw on transitional justice as a radical language of resistance to fight for meaningful change. As long as it fails to address socioeconomic issues and structural violence however, transitional justice discourse will ultimately fall short of giving political voice to local priorities, and activating long-term social transformation. I argue that the field of transitional justice must be re-envisioned to embrace socioeconomic justice, in order to impel the endless pursuit of a just society. This task will require the collective efforts of a global constellation of actors.

Acronyms

AAR	Agreement on Accountability and Reconciliation
ACS	Agreements on Comprehensive Solutions
AWDC	Acholi War Debt Claimants
BJP	Beyond Juba Project
CARE	Cooperative for Assistance and Relief Everywhere
CBO	Community Based Organisation
DRC	Democratic Republic of Congo
CICC	Coalition for the International Criminal Court
CID	Criminal Investigation Division
CORU	Coalition of Organizations for Reconciliation in Uganda
CPA	Comprehensive Peace Agreement
DPP	Department of Public Prosecutions
FPA	Final Peace Agreement
GOSS	Government of South Sudan
HSM	Holy Spirit Mobile Forces
HURIFO	Human Rights Focus
HRW	Human Rights Watch
Hurinet-U	Human Rights Network Uganda
ICC	International Criminal Court
ICD	International Criminal Division
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal of Yugoslavia
ICTJ	International Center for Transitional Justice
IDP	Internally Displaced Person
IPSS	Institute of Peace and Strategic Studies
JLOS	Justice Law and Order Sector
JRP	Justice and Reconciliation Project
KKA	Ker Kwaro Acholi
LRA	Lord's Resistance Army
NADC	Norwegian Agency for Development Cooperation
NATO	North Atlantic Treaty Organisation

NGO	Non-Governmental Organisation
NR	National Reconciliation
NRA	National Resistance Army
NRF	National Reconciliation Forum
NURP	Northern Uganda Reconstruction Program
NUTJWG	Northern Ugandan Transitional Justice Working Group
OTP	Office of the Prosecutor
PRDP	Northern Uganda Peace, Recovery and Development Plan
RC	Resistance Council
RLP	Refugee Law Project
SPLA	Sudanese People's Liberation Army
TRC	Truth and Reconciliation Commission
TJWG	Transitional Justice Working Group
UCICC	Ugandan Coalition for the International Criminal Court
UN	United Nations
UNDP	United Nations Development Program
UNLA	Ugandan National Liberation Army
UPDF	Ugandan People's Defense Force
UVF	Uganda Victims Foundation
WIGJ	Woman's Initiative for Gender Justice

Chapter 1: Introduction

Contrasting Meetings: Community Dialogue versus International Dialogue

In a bare clearing in a small village, a diverse group of people gathered under an ominous cloudy sky. Along with many other villages in Northern Uganda, the people of Lukodi have experienced decades of insecurity, social and economic devastation, displacement in crowded, squalid camps and attacks by both the Lord's Resistance Army (LRA) and Government forces. Just six years ago, the LRA raided Lukodi, massacring over sixty people.¹ In July 2010, a local Gulu-based Non-Governmental Organization (NGO), the Justice and Reconciliation Project (JRP), hosted a special promotional 'community dialogue' for Lukodi villagers to express their views about the complex issues of justice, reconciliation and accountability that are heavily debated in the wake of the northern war.² On one side of the clearing sat several rows of people in plastic chairs, including many members of the host NGO JRP sporting bright logo-printed T-shirts, representatives of the JRP's international donors, and Government staff involved in national transitional justice policy. Gathered opposite were around sixty Lukodi villagers: some sat cross-legged on woven mats while others stood. Between the two groups, technical crew from the popular local radio channel Mega FM recorded the interactions on camera. One by one villagers, NGO staff and transitional justice 'experts' from Gulu town put forward their views on justice after the war before heavy rain rapidly dispersed the crowds.

Clearly, this particular community dialogue event was in part a contrived performance for visiting donors and Government officials who had traveled from Kampala and beyond Uganda to attend the official NGO launch of JRP, which took place later that day. Despite this and the awkwardly distant seating arrangement, it was clear that the present members of the Lukodi community had an open platform to express their views. One villager

¹ See, Justice and Reconciliation Project, *The Lukodi Massacre: 19th May 2004*, JRP Field Note XIII (Gulu, The Justice and Reconciliation Project, 2011) <http://justiceandreconciliation.com/#/publications/4540226079> [Accessed 10 August 2011]

² Community Dialogue held by Justice and Reconciliation Project, Lukodi Village, Gulu District, 23 July 2010. Description of this event is based on the author's participant observation and discussion with several involved actors after the dialogue. Comments made by villagers in Luo were translated by attending Gulu NGO actors.

passionately declared that Lukodi people perceive both the Government and the LRA as perpetrators, and demanded to know why the International Criminal Court (ICC) had failed to address the crimes of Museveni's regime. He received enthusiastic applause. The guest speaker struggled to explain the ICC's legal justification for the limited nature of the ICC's intervention in Uganda in the local language (Luo), and eventually broke into English. Amongst a community deeply affected by the war, his attempts to explain why the ICC indicted only the LRA fell flat. Another villager asked who would compensate those who were tortured, lost property or were injured? Would the Government assist the economic recovery of Lukodi and the wider Acholi region? At one point, the MEGA FM facilitator put the Government actor on the spot, demanding, 'what is the national program concerning traditional justice, truth telling and reparations?' With visible reluctance, she stood and explained that two years after the war ended, nothing had yet been developed. Later that night the Lukodi dialogue and JRP launch was broadcast on national television.³ Over the picture, JRP staff urgently emphasized that the plight of Northern Uganda must be heard, and that the Government must respond.

A month earlier in the most opulent hotel-conference complex in Kampala, another diverse range of actors met for the ICC's first Review Conference. ICC officials, representatives of ICC member states, a host of international and domestic NGOs, donors, scholars, students and even a few conflict 'victims' met to review the impact of the ICC on various 'situation countries,' including Uganda. A widely held expectation prevailed throughout the conference that all actors present must support the development of the ICC to advance the global "fight against impunity."⁴ In his address during the opening of the conference, the ICC's prosecutor Luis Moreno Ocampo emphasized the grand vision that international criminal justice will "deter the crimes" and "protect the victims."⁵ The new international Court, he affirmed boldly, will "force political actors to adjust to new legal limits."⁶

A contradiction quickly became apparent between different NGO's portrayals of the impact of the international Court in Uganda. In the DVD 'The Reckoning,' widely

³ Personal observation, 23 July 2010

⁴ Participant observation at the Review Conference of the ICC, Kampala, June 2010

⁵ Moreno-Ocampo, Luis, Opening remarks at the Review Conference of the International Criminal Court, 31st May 2010, http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/Statements/ICC-RC-statements-LuisMorenoOcampo-ENG.pdf [Accessed 12 August 2011]

⁶ Ibid

circulated and screened at the conference by civil society groups, Ugandans are pictured as grateful, passive recipients of international criminal justice.⁷ In contrast, at a side event held in the ‘people’s space’ tent, another international NGO gave activists from Northern Uganda a platform to speak.⁸ Standing out amongst a sea of dark suits, a woman in vibrant patterned dress raised her voice. With passion, she recognized that the ICC might have something to offer, but demanded that both parties in the war face accountability. She declared that the ICC had failed to address Government crimes, and expressed doubt that the new domestic International Criminal Division (ICD) in Ugandan would prove any better.⁹ Most of all, she reflected, Northern Ugandans need economic opportunities, reparations and truth. “Many international people,” she contended, “see the ICC as the key justice body, but on the ground we see that it is ineffective.”¹⁰

Thesis conception:

Research Agenda

This thesis analyzes the development of national justice processes in Uganda in the wake of war in order to address key theoretical dilemmas that have recently emerged in the field of transitional justice. As commonly conceived, transitional justice comprises of a range of mechanisms and processes that aim to bring accountability, justice, and reconciliation as societies emerge from a period of violent civil conflict or authoritarian rule.¹¹ From an initial focus on criminal retributive justice, the field has expanded to also recognize a wider range of mechanisms, such as truth commissions, reparations, building the rule of law, and reconciliation processes.¹² While the concept of transitional justice is relatively new, it has rapidly taken root in the conceptual landscape and structures of international law, national governance and civil society worldwide. It has been institutionalized in ad hoc international

⁷ Yates, Pamela, Dir. *The Reckoning: The Battle for the International Criminal Court* (Skylight Pictures, 2009)

⁸ ‘Women’s Initiative for Gender Justice.’ Note that the Ugandan activists were also representatives of local based Non-Governmental Organizations or Community based groups.

⁹ Note that until mid 2011 the International Crimes Division (ICD) was referred to as the War Crimes Court. Throughout this thesis however, I refer to the ICD.

¹⁰ Author’s notes of the side event ‘Women’s Court,’ held by the Women’s Initiative for Gender Justice at the Review Conference of the ICC, Kampala, June 2010

¹¹ See United Nations Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies*, Report of the Secretary General, S/2004/616 (United Nations Security Council, August 2004)

<http://daccessddsny.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf?OpenElement> [Accessed 13 August 2011], p.4

¹² Ibid

criminal tribunals, a flurry of national truth commissions, and in the permanent International Criminal Court (ICC). Transitional justice has furthermore become embedded in the post-conflict development agenda of the United Nations (UN), and in the *raison d'être* of numerous international and local NGOs.

Recently however, criticism has emerged that rigorously contests the theoretical underpinnings, conceptual reach, and practical implementation of transitional justice. While many authors defend the traditional scope and aspirations of the field, a new wave of scholarship has cast doubt upon the liberal and legal underpinnings of transitional justice, and its narrow conception of 'justice.' Scholars critique the way in which transitional justice is often internationally or nationally imposed on local communities, and implemented in a manner that disguises the workings of political power. While some theorists accordingly argue that 'transitional justice' must be expanded and re-envisioned, others suggest that the concept is so tainted by its imperialist, legalistic origins that those seeking meaningful justice in the wake of war should forsake it entirely.¹³

This thesis explores the debate by drawing on an in depth case study of Uganda. Based on fieldwork undertaken in Kampala, the Acholi district and the temporary 'international arena' created in Kampala for the 2010 ICC Review Conference, I examine the 'political ecology' of transitional justice development in Uganda, tracing the role of a myriad of local, national and international actors in the war itself, the search for peace, and the current 'post-conflict' period in which the struggle for justice continues. I examine the ways in which actors at all 'levels' narrate the northern conflict, influence one another, and accordingly negotiate and contest the nature, scope and course of post conflict justice. Throughout, I pay particular attention to how involved actors draw on the concept of 'transitional justice.'

It should be noted that I use the terms 'international, national and local' simply to indicate the primary identity and 'level' of operation of individuals or groups. International, for instance, refers to actors foreign to Uganda, such as the inter-Governmental organization the ICC, foreign donors, and international NGOs, while 'national' refers to Government actors, or to domestic civil society groups with a nation-wide reach. 'Local' broadly denotes actors

¹³ Bell, Christine, 'Transitional Justice, Interdisciplinarity and the State of the Field or Non-field', *International Journal of Transitional Justice*, 3.1 (2009), 5

that identify and operate primarily within a local area (in this case, the Acholi region, Northern Uganda), such as civil society groups, communities, and religious and traditional leaders. Certainly, these categories are far from discrete. As I explore throughout this thesis, it can be difficult and even arbitrary to distinguish between these levels, as international, national and local actors often work in close collaboration, while some actors identify across different categories.

Thesis Argument

In this thesis, I demonstrate that there is a high risk that the Ugandan Government's transitional justice program will amount to nothing more than an empty performance of 'victors' justice' that fails to address the underlying structural and economic dynamics of the conflict, or engage with the priorities of war-affected communities.

While the Ugandan Government presents a war narrative that focuses exclusively on the atrocities of the LRA, both the Ugandan regime and international actors bear responsibility for the 20-year conflict. I argue that in their ardent pursuit of international criminal justice, many international and domestic actors have facilitated and justified the Government's portrayal of the conflict and its narrow, partial approach to justice. I examine the work of groups who have contested the Government's narrative of the war, and strategically drawn on transitional justice discourse to confront the State's self-interested justice. This challenge has stemmed not only from local groups representing local interests, but also from national and international players. The capacity of such actors to represent local justice priorities, however, is often severely limited by their failure to unequivocally encompass the idea of 'socioeconomic justice' in their advocacy.

Throughout this thesis I argue that in many ways, the struggle for a meaningful approach to transitional justice is global in dimension, transcending the categories of international, national and local. There is a strong tendency for the concept of justice to be monopolized by international criminal law, and manipulated by elite political interests. However, civil society actors at all levels can transitional justice as a radical language of resistance to fight for meaningful change in the wake of war.

The Ugandan case illustrates that the field of transitional justice must be re-envisioned to embrace socioeconomic justice in order to impel the endless pursuit of a just society. This can only be achieved through the collective efforts of actors at all levels.

Literary Contribution

This thesis contributes to three key, overlapping areas of debate that have recently emerged in the field of transitional justice. The first is the debate over whether structural socio-economic justice and development issues should be included within the scope of transitional justice. The second area concerns the role of international, national, and local actors in the conception, development and implementation of transitional justice processes. The final area addresses how involved actors use the language of transitional justice. This debate pivots around the extent to which transitional justice has come to represent an inherently hegemonic enterprise, and whether the discourse of ‘transition’ can be reworked and redeemed.

Theoretical debates in the field of transitional justice are reflected in rich, regionally specific discussions over the nature of justice, peace, and reconciliation in Uganda. Particularly since the Ugandan Government’s controversial referral of the ‘situation concerning the LRA’ to the ICC in 2003, a rapidly expanding literature has emerged that contests the impact and appropriateness of different justice ‘modes’ at the international, national and local level. Frequently, scholars that contribute to such debates are personally involved in the landscape of post conflict justice in Uganda. Many have worked for local or national NGOs, international NGOs, the Ugandan Government or the ICC. In the field of transitional justice, scholarship, practice and advocacy are closely intertwined.

The various scholarly positions that I will expound upon are often strongly divergent. Summarized in broad strokes, some authors defend the legitimacy of the ICC intervention, arguing that it acted within the confines of the Rome Statute. Others emphasize that war-affected communities welcome international criminal accountability. Conversely, other scholars criticize perceived outcomes of international intervention, arguing that the ICC quashed hopes for a peace settlement, undermined local ‘traditional’ processes, or validated the Government’s one-sided focus on the crimes of the LRA. The notion of local, ‘traditional’ justice has also come under considerable scrutiny. While many commentators note that

traditional mechanisms need to be adjusted to conform to human rights standards, others argue that traditional mechanisms commonly highlighted are simply not widely supported and could prove counterproductive. Within the debate, local and international justice, and traditional and retributive justice are often cast in opposition to one another. Scholars also rarely specifically include socioeconomic and development issues in the scope of justice. As yet, little research has examined the ongoing influence of the ICC and other international and domestic civil society actors upon the development of transitional justice mechanisms in Uganda. This thesis contributes towards this research gap.

Before I outline my research methodology and provide a structural ‘road map’ of this thesis, I explore the scholarly field of transitional justice. After providing a critical overview of the conceptual development of transitional justice and current trajectory of the field, I focus on the three areas of debate identified above.

Critical Debates in the Field of Transitional Justice: Literature Review

Unraveling the Liberal, Legalist roots of Transitional Justice

To understand the current debates in the rapidly developing field of transitional justice, it is vital to explore the origins of the concept. The founding scholars of transitional justice portray the concept as grounded in historical practice. While John Elster traces back the practice transitional justice thousands of years, Teitel locates its origins in the Nazi War Criminal trials at Nuremberg.¹⁴ She identifies three key phases in the history of its development.¹⁵ The first phase, according to Teitel’s ‘genealogy,’ emerged in response to World War II, and focused almost exclusively on criminal punitive justice. Following the end of the Cold War and the wave of ‘nation building,’ Teitel’s ‘second phase’ was characterized by the expansion of transitional justice practices to include non-criminal judicial alternatives, such as truth commissions. Teitel argues that in the third, current ‘contemporary’ phase, criminal justice mechanisms, non-criminal judicial tools and international and national approaches are increasingly recognized as complementary, while transitional justice has become ‘normalized’ through the expansion of international humanitarian law. While Teitel’s

¹⁴ Elster, Jon, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004); Teitel, Ruti *Transitional Justice* (Oxford: Oxford University Press, 2000); Teitel, Ruti, ‘Transitional Justice Genealogy’, *Harvard Human Rights Journal*, 16 (2003), 69

¹⁵ Teitel, *Genealogy*

genealogy of transitional justice neatly highlights major trends in dominant post conflict justice practices, the history she constructs tells a restricted story, and justifies a particular way of framing ‘justice’ following conflict and regime change. Like other prominent founding transitional justice scholars she offers little reflection on the contextual origin and deeper theoretical underpinnings of the term itself.¹⁶

Closer inspection reveals that the notion of transitional justice as it was originally conceived was grounded in an unquestioning faith in the primacy of civil and political human rights, liberal democracy, and a particular understanding of ‘transition.’¹⁷ Arthur’s analysis suggests that the field of transitional justice was born out of an ‘identity crisis’ of the human rights movement in the 1980s that took place as a series of oppressive dictatorships underwent regime change. Human rights activists and scholars identified that their work solely dealt with current abuses, rather than the question of how past violations of rights should be dealt with and future abuse prevented. A new focus on political transitions accordingly emerged, catalyzed by the 1988 Aspen Institute Conference “State Crimes: Punishment or Pardon,” which aimed to explore the “issues that arise when a Government that has engaged in gross human rights abuses is succeeded by a regime more inclined to respect those rights.”¹⁸ ‘Transition’ was widely assumed to refer simply to a transition to democracy and the rule of law. ‘Transition’ was not conceived as a long, open-ended process to develop the conditions necessary for a flourishing public sphere, but rather as a matter of implementing appropriate legal and constitutional reforms.¹⁹ This conception reflected a clear rejection of the previously dominant Marxist notion of transition, which envisioned a radical process of social and economic transformation at a structural level.²⁰ This reconfiguring of the notion of ‘transition,’ Arthur reveals, reflected a broader ‘ideological shift’ towards civil and political human rights, and the widespread decline of radical social movements.²¹ Transition became understood as a technocratic approach to implementing democracy and reform focused on the legal-institutional level.

¹⁶ Arthur, Paige, 'How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice', *Human Rights Quarterly*, 31.2 (2009), 321-67

¹⁷ Ibid

¹⁸ Arthur, p.351

¹⁹ Ibid, p.339

²⁰ Ibid, p.337

²¹ Ibid

Early advocates and founders of transitional justice quickly identified with the project, solidifying and advancing universal standards of justice. Internationally recognized principles for dealing with perpetrators of large-scale human rights abuse and restructuring states' political and legal apparatus came to be considered crucial to establishing democracy in states undergoing transition.²² Recalling the discussion at the field-defining 1988 Aspen Conference, Diane Orentlicher notes that “even for those who favored some local determination” there was general consensus that “Governments must comply with international legal obligations” to ensure accountability.²³ Conference scholars agreed on a minimal obligation to “acknowledge the truth,” and that whenever possible, Governments should prosecute perpetrators of large-scale atrocities to deter future abuses.²⁴ A deep-seated wariness of amnesties prevailed.²⁵ Orentlicher reflects that at the time she was convinced that international law could assist “the aims of fragile democracies.”²⁶ Some scholars such as Teitel recognize that the period of upheaval following a conflict or regime change is particularly ‘open to politics,’ raising the possibility of political abuse of transitional justice mechanisms by those in power. However, reflecting the unwavering faith of early transitional justice advocates international law, Teitel appeared convinced that international systems of justice and accountability could overcome potential abuse by state powers.²⁷

‘Transitional justice,’ was therefore originally an internationally defined and driven project, centered on the goal of ensuring accountability and truth in order to facilitate transition to a new liberal political order founded upon the rule of law. As initially conceived and promoted, transitional justice was defined in opposition to the previously prevalent Marxist-derived idea of economic and social structural transformation of society.

²² Turner, Catherine, 'Delivering Lasting Peace, Democracy and Human Rights in Times of Transition: the Role of International Law', *International Journal of Transitional Justice*, 2.2 (2008), 126

²³ Orentlicher, Diane, 'Settling Accounts Revisited: Reconciling Global Norms with Local Agency', *International Journal of Transitional Justice*, 1.1 (2007), p.12 cf. Orentlicher, Diane, 'Settling Accounts: the Duty to Prosecute Human Rights Violations of a Prior Regime', *Yale Law Journal*, (1991), 2537-615

²⁴ Orentlicher, *Settling Accounts Revisited*

²⁵ Ibid

²⁶ Ibid

²⁷ Teitel, *Transitional Justice*, p.33

The Expansion of Critical Debate

The transitional justice paradigm as conceived by prominent scholars such as Teitel, Kritz and Elster, and embedded in international legal practice has been increasingly subject to rigorous critique. A scholarly struggle has emerged over the scope of the field and the very “nature, direction, and goals and ownership of transition itself.”²⁸ In recent years, transitional justice has increasingly been constructed as ‘interdisciplinary field.’ As Bell identifies for instance, the establishment of an interdisciplinary journal dedicated to transitional justice in 2007 was not a neutral act. Rather, it was part of a wider movement to prize loose the project of post-conflict justice from the dominant hold of legal discipline, and to expand the conceptual scope of ‘justice’ included in the field.²⁹

A major concern that runs through emerging critiques is that transitional justice has become construed as a “tool box” of legal and constitutional mechanisms that can be applied uniformly across all cases.³⁰ This conception of transitional justice can misleadingly depoliticize the application of justice mechanisms, disguise the workings of power, and moreover lead to narrow, legally focused reading of abuse and its remedy.³¹ Wilson’s critical work on South Africa’s Truth and Reconciliation Commission (TRC), for instance, demonstrates that the Commission served the core purpose of consolidating an “uncontested administrative authority” for the new ruling regime.³² Essentially, the mantra of ‘reconciliation,’ Wilson argues, enabled the post apartheid Government to pursue a project of political centralization. The near-exclusive reliance of the TRC on ‘factual-forensic’ evidence and focus on individual acts of violence moreover, failed to capture the breadth and depth of South African’s experiences.³³ As Wilson puts it, “the TRC’s account of the past was constrained by its excessive legalism and positivist methodology, which obstructed the writing of a coherent socio-political history of apartheid.”³⁴

²⁸ Ibid

²⁹ Ibid

³⁰ For instance see Bell: Leebaw, Bronwyn, 'The Irreconcilable Goals of Transitional Justice', *Human Rights Quarterly*, 30.1 (2008), 95-118; Nagy, Rosemary, 'Transitional Justice as Global Project: Critical Reflections', *Third World Quarterly*, 29.2 (2008), 275-89

³¹ For example, Hazan, Pierre, 'Measuring the Impact of Punishment and Forgiveness: a Framework for Evaluating Transitional Justice', *International Review of the Red Cross*, 88.861 (2006), 19-47

³² Wilson, Richard, 'Reconciliation and Revenge in Post-apartheid South Africa: Rethinking Legal Pluralism and Human Rights', (2010) <http://wiredspace.wits.ac.za/handle/10539/8146> [Accessed 11 August 2011]

³³ Wilson, Richard, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (Cambridge: Cambridge University Press, 2001), pp.33-34

³⁴ Wilson, *The Politics of Truth and Reconciliation*, p.20

The wave of critiques of the concept of transitional justice has given rise to a number of key, interconnected debates in the field. Below, I explore the three ongoing strands of critical discussion that I engage with in this thesis.

Should Economic Justice be included in the scope of Transitional Justice?

As Miller contended in 2008, “issues of development and inequality may become the next frontier of scholarly and institutional debates on transitional justice.”³⁵ A clear consensus has emerged that transitional justice must encompass processes of reconciliation and social healing. The question of whether structural violence, socio-economic justice and development issues should be included within the scope of transitional justice, however, is still deeply controversial.³⁶ As yet, issues of economic development and inequality are largely absent from the scholarship, institutions, and ‘international enterprise’ of transitional justice.³⁷ As Mani puts it, socioeconomic issues “seem to lie just beyond the traditional frontiers of transitional justice.”³⁸ The widely held view that transitional justice and economic development are strictly distinct spheres is evident, for instance, in a recent conference on donor strategies regarding transitional justice. Some participants made the recommendation that donors must weigh the “possible tradeoffs between supporting transitional justice and development priorities.”³⁹

While most scholars continue to take the exclusion of socio-economic issues from the scope of transitional justice for granted, a few authors have directly argued the point. A common case made is that widening the scope of transitional justice amounts to dangerous ‘conceptual stretching’ that could broaden the notion so far that it loses its “fundamental meaning and

³⁵ Miller, Zinaida, 'Effects of Invisibility: In Search of the Economic in Transitional Justice', *International Journal of Transitional Justice*, 2.3 (2008), p.273

³⁶ Note, the term structural violence was developed by Johan Galtung, see ‘Galtung, Johan, 'Violence, Peace, and Peace Research', *Journal of Peace Research*, 6.3 (1969), 167-91. For discussion in relation to the case of Rwanda, see Uvin, Peter, 'Development Aid and Structural Violence: the Case of Rwanda', *Development*, 42.3 (1999), 49-56

³⁷ As noted by Miller

³⁸ Mani, Rama, 'Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development', *International Journal of Transitional Justice*, 2.3 (2008), 253

³⁹ International Center for Transitional Justice, ‘Donor Strategies for Transitional Justice: Taking Stock and Moving Forward,’ Summary Report of Conference held in London, 2007, organized by the International Center for Transitional Justice and Department for International Development <es.ictj.org/images/content/8/0/808.pdf> [Accessed 11 August 2011]

purpose.⁴⁰ Duthie further develops this line of reasoning in an article that argues that while it is vital to pursue a ‘development sensitive approach’ to transitional justice, it remains unclear that the two spheres should directly engage.⁴¹ He contends that transitional justice measures such as truth commissions may lack the capacity, investigative skills or methodologies to directly address economic injustices, which are typically broader in scope than other crimes.⁴² Such an expansion in mandate could inundate and overwhelm a truth commission.⁴³ Moreover, he suggests, encompassing development issues could hinder the ability of transitional justice mechanisms to achieve accountability for mass human rights violations by distracting the public’s attention from atrocities focused on a smaller subset of ‘marginalized’ victims.⁴⁴ As Rama Mani suggests, the reluctance of most transitional justice scholars and practitioners to engage in social-economic issues is likely to reflect the fact that the scope of such injustices is “so wide, their victims so many,” while the agents are so nameless and faceless.⁴⁵ Certainly, socio-economic justice does not fit neatly into dominant models of transitional justice that focus on individual accountability, and reparation of individual victims.

A small handful of scholars however, contend that to exclude such issues can act to perpetuate injustice and fail to address key dynamics of a conflict.⁴⁶ Recently, Miller has strongly critiqued the international project of transitional justice for narrating both conflicts and transition exclusively in terms of physical violence and political change, obscuring the economic origins and consequences of war. Miller contends that the issue of whether to include socio-economic issues in transitional justice is not simply a pragmatic question of which institution or field is best equipped to implement development.⁴⁷ Rather, including or excluding socio-economic issues in transitional justice establishes whether or not they are issues of ‘justice,’ that require political change. Miller emphasizes that transitional justice

⁴⁰ Participant quoted in ICTJ, *Donor Strategies*. See also, Arriaza, L, and N. Roht-Arriaza, 'Social Reconstruction as a Local Process', *International Journal of Transitional Justice*, 2.2 (2008), 152

⁴¹ Duthie, Roger, 'Toward a development-sensitive approach to transitional justice', *International Journal of Transitional Justice*, 2.3 (2008), 292

⁴² Duthie, p.306

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Mani, *Dilemmas of Expanding Transitional Justice*, p.255

⁴⁶ For example Miller: Mani, Rama, *Beyond Retribution: Seeking Justice in the Shadows of War* (Malden, MA: Polity Press, 2002); Mamdani, Mahmood, *The Truth According to the TRC: The Politics of Memory, Truth, Healing, and Social Justice* (London: Zed Books, 2000); Vinck, Patrick, and Phuong Pham, 'Ownership and Participation in Transitional Justice Mechanisms: a Sustainable Human Development Perspective from Eastern DRC', *International Journal of Transitional Justice*, 2.3 (2008), 398

⁴⁷ Miller

institutions have a ‘definitional power’ that can demarcate the scope and nature of violations addressed in the aftermath of conflict.

The critical work of several scholars on South Africa’s Truth and Reconciliation Commission (TRC) underlines this point.⁴⁸ The TRC focused narrowly on acts of physical violence and abuses of civil and political rights, failing to address ongoing racially aligned social and economic disparity and exclusion.⁴⁹ Ross demonstrates the way in which the Commission emphasized overt sexual abuse against women, but ignored more subtle forms of violence experienced by women as a result of apartheid.⁵⁰ Wilson’s work reveals moreover that the reliance of the Commission on the abstract, moral notion of the “overriding evil of the apartheid system” replaced “historical analysis of concrete social conditions.”⁵¹ The ‘story’ of apartheid was painted as chiefly about racism and individual violations, rather than a system of abuses and economic inequities.⁵² Other scholars contend that failure to recognize and address the economic dimensions of a conflict or period of widespread human rights abuse may lead to renewed outbreaks of violence.⁵³ Ultimately, critics such as Mani argue that if people’s basic human needs and impoverishment is not addressed, victims may perceive that transitional justice measures enacted after a conflict are distant and ‘hollow.’⁵⁴

In this thesis I contribute to the debate through analysis of the role of socioeconomic issues in the underlying causes and dynamics of the Ugandan conflict, local perspectives on justice and postwar priorities, and factors influencing the current development of transitional justice processes in Uganda. I examine the reasons why different actors have included or excluded such issues within the scope of ‘transitional justice,’ and explore the implications of these decisions.

⁴⁸ Wilson, *The Politics of Truth and Reconciliation: Mani, Beyond Retribution*: Mamdani

⁴⁹ See particularly Mamdani: Nagy also makes this point, Nagy, *Transitional Justice as Global Project*, pp. 284-285.

⁵⁰ Ross, Fiona, *Bearing Witness: Women and the South African Truth and Reconciliation Commission* (London: Pluto Press, 2002)

⁵¹ Wilson, Richard, 'Anthropological Studies of National Reconciliation Processes', *Anthropological Theory*, 3.3 (2003), p. 367

⁵² Miller

⁵³ For instance, Laplante, Lisa, 'Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework', *International Journal of Transitional Justice*, 2.3 (2008), 331

⁵⁴ Mani, *Distributive Justice*: Vinck and Phuong, *Ownership and Participation*

The Disputed Role of International, National and Local Actors

As critical scholars increasingly contest the traditional frontiers of transitional justice, intense debate persists over the role of international, national, and local actors in the conception, development and implementation of transitional justice processes. As Bell puts it, this discussion reflects a wider global struggle over the “appropriate parameters of international intervention” within the internal workings of the state.⁵⁵ Unsurprisingly, this debate reflects parallel discussions that emerged in the closely related scholarship on humanitarianism.⁵⁶ Debate is frequently centered on the question of which ‘level’ is the most appropriate to define and enact transitional justice measures. While some scholars defend the role of the international community in stipulating the boundaries and goals of post conflict justice, others heavily critique such intervention and draw attention to the emergence of ‘bottom up’ approaches to transitional justice. After outlining this debate, I examine the subtler question of how diverse international, national and local levels interact and influence one another.

Many scholars and practitioners continue to advance the position that international actors can and should play a vital role in ensuring that transitional measures adhere to international laws and standards.⁵⁷ Such authors often maintain that transitional justice mechanisms implemented at the international level can provide greater legitimacy than nationally directed processes. Kaminski et al, for example contends that “international tribunals offer better prospects of due process and impartiality.”⁵⁸ The greater underlying conviction of many scholars however, is that the advancement of international law and institutions can generate the normative power to positively influence the values and practices of states.⁵⁹ Reflecting on the passing of the Rome Statute of the ICC, for instance, prominent legal scholar Schabas contends that the statute’s influence “will extend deep into domestic criminal law, enriching the jurisprudence of national courts and challenging prosecutors and judges to greater zeal in

⁵⁵ Bell, p.26

⁵⁶ For instance see Wilkinson, Rorden, ed., *The Global Governance Reader* (London: Routledge, 2005); Rajagopal, Balakrishnan, *International Law from Below: Development, Social Movements, and Third World Resistance* (Cambridge: Cambridge University Press, 2003)

⁵⁷ For instance, Akhavan, Payam, 'Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?', *The American Journal of International Law*, 95.1 (2001), 7-31; Bassiouni, MC, 'Accountability for Violations of International Humanitarian Law and other Serious Violations of Human Rights', in *Post-Conflict Justice*, ed. by MC Bassiouni (Ardsley, New York: Transnational, 2002)

⁵⁸ Kaminski, Marek, Monika Nalepa, and Barry O'Neill, 'Normative and Strategic Aspects of Transitional Justice', *The Journal of Conflict Resolution*, 50.3 (2006), 295

⁵⁹ Vinjamuri, Leslie, and Jack Snyder, 'Advocacy and Scholarship in the Study of International War Crime Tribunals and Transitional Justice' *Annual Review of Political Science*, 7 (2004), p.247

the repression of serious violations of human rights.”⁶⁰ A recent report from a conference on donor strategies for transitional justice similarly calls for donors to promote the application of international law in state policy.⁶¹ Faith in the spread of international values is also evident in the recent work of Juan Mendez, who like many other scholars applauds the development of a strong international norm against the implementation of broad amnesties in post conflict solutions.⁶² According to Mendez, this norm impels states to strive towards reconciliation while ensuring that the ‘inherent dignity’ of victims of human rights abuses is maintained, presumably through the trial of their perpetrators.⁶³ Mendez acknowledges recent critiques, and concedes that “we occasionally come dangerously close” to imposing solutions from afar without considering local views. She goes on to conclude, however, that international intervention does not “replace the judgment of domestic actors” but rather plays a critical role in prompting “war torn societies to live up to their international obligations.”⁶⁴

A comprehensive literature has emerged that critiques the international and nationally imposed approaches to transitional justice. Numerous authors have argued that despite the ideals of international legal scholars, all too often, transitional justice strategies simply reflect the self-interest of the international community or national elites.⁶⁵ Through this lens, international law is certainly not immune to power politics. Hazan draws on several case studies to argue that the implementation of balanced international criminal justice is dependant on the existence of political will at both the national and international level.⁶⁶ In the case of the International Criminal Tribunal for Rwanda (ICTR), Hazan argues that the international community lacked the geo-strategic interest and the political will to exert significant pressure on the Tutsi-dominated Rwandan regime to cooperate in the execution of ‘balanced’ trials.⁶⁷ The trials of the ICTR accordingly amounted to ‘victors’ justice.’⁶⁸ In contrast, the international community led by the United States exerted significant pressure upon Serbia to cooperate with the International Criminal Tribunal of Yugoslavia (ICTY), which Hazan contends was primarily an act directed at an international audience to publicly

⁶⁰ Schabas, quoted in Vinjamuri and Synder, p.351

⁶¹ ICTJ, Donor Strategies

⁶² Mendez, Juan, 'National reconciliation, transnational justice, and the International Criminal Court', *Ethics & International Affairs*, 15.1 (2001), 25-44

⁶³ Ibid

⁶⁴ Ibid, p.44

⁶⁵ For instance, Bell: Nagy: Turner: Oomen, Barbara, 'Donor Driven Justice and its Discontents: The Case of Rwanda', *Development and Change*, 36.5 (2005), 887-910

⁶⁶ Hazan, p.29-30

⁶⁷ Ibid

⁶⁸ Hazan, p.30 See also Oomen

criminalize Milosevic, justify the North Atlantic Treaty Organization (NATO) intervention and to “appease the guilty conscience of western opinion.”⁶⁹ Serbians and Croatians reacted with hostility to the mechanism, perceiving it as a “western instrument.”⁷⁰ Such international ‘justice’ interventions are shaped by the political interests of powerful states, and focused almost exclusively upon legal measures.

Critical scholars have further emphasized that international or nationally driven projects can hinder local-level approaches to justice, or simply lack meaning to those most affected by conflict.⁷¹ Wilson’s study of the TRC, for instance, reveals the extent to which national process failed to connect with local communities. At one level, as Wilson notes, there were simply very few initiatives taken by the “TRC to engage with the bodies that actually exercise political authority in the townships.”⁷² His fieldwork among the townships of the Vaal region exposed that many local actors held “disdain” for the TRC, some viewing strongly that reconciliation should be undertaken by legitimate community institutions. Moreover, many local community members in the Vaal region preferred vengeance and punishment, perceiving the strictly ‘reconciliatory’ approach of the TRC as weak and ineffective. Accordingly, the outcome of local court proceedings was not infrequently public flogging. National level justice, such work implies, is often discontinuous with local approaches.

Paul Gready makes the useful distinction between ‘embedded justice’ and ‘distanced justice.’⁷³ Distanced justice, Gready characterizes, includes mechanisms that are geographically remote from local populations, lack grassroots participation, and undermine local-level systems. Embedded justice, in contrast, has ‘high local visibility,’ and is at least partly locally defined and owned. Gready points towards the locally implemented ‘Gaccaca’ courts in Rwanda as an indigenous and participatory mechanism that marked a ‘revolution in transitional justice,’ although he notes that they, like other ‘embedded’ measures are not

⁶⁹ Hazan, p.30

⁷⁰ Ibid

⁷¹ For instance McEvoy, Kieran, 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice', *Journal of Law and Society*, 34.4 (2007), 411-40

⁷² Wilson, *Reconciliation and Revenge*

⁷³ Gready, Paul, 'Reconceptualising Transitional Justice: Embedded and Distanced Justice', *Conflict, Security and Development*, 5.1 (2005), 3-21

immune from local power dynamics.⁷⁴ He contrasts the Gaccaca courts to the distant, expensive ICTR trials that were largely unknown to Rwandans at the local level.⁷⁵

Other critics however highlight that even measures implemented at the local level can still reflect a ‘top down’ approach that appears alien to communities. Barbara Oomen, for example, contends that the supposedly ‘home grown’ and locally sensitive local Gaccaca courts in Rwanda actually reflected a donor-driven experiment to deal with a vast number of perpetrators.⁷⁶ Despite being implemented at the local level, the courts lacked the authenticity and popular participation to be effective.⁷⁷ Bett’s analysis of the international, national and local court systems instituted in Rwanda reaches similar conclusions. The role played by the international community and national Government, Bett contends, was “politicized by elite interests,” which pervaded “every level of Rwanda’s transitional justice.”⁷⁸

In response to such critiques, a wave of actors and critics contend that transitional justice must be re-envisioned and recreated as a truly bottom-up, locally driven and owned process.⁷⁹ Interestingly, theoretical advances in the field of transitional justice correspond with empirical developments. A shift away from ‘top down’ models of transitional justice has even been acknowledged rhetorically at the international level. A much-cited report by the UN Secretary General on transitional justice emphasizes the need to “eschew one-size fits all formulas and the importation of foreign models,” and rather base support on domestic assessments, needs and participation.⁸⁰ Several scholars have focused on locally derived practices and measures that operate completely independently of the national and international level. Lundy and McGovern emphasize the need for ‘home grown’ projects that are designed, conducted, and implemented within communities, allowing locals to exercise agency.⁸¹ Drawing on the example of a community truth-telling initiative in Northern Ireland,

⁷⁴ Ibid

⁷⁵ Ibid. See also Lundy, Patricia, and Mark McGovern, 'Whose Justice? Rethinking Transitional Justice from the Bottom Up', *Journal of Law and Society*, 35.2 (2008), p.276

⁷⁶ Oomen

⁷⁷ Ibid. For in-depth discussion, see Cobban, Helena, 'The Legacies of Collective Violence: The Rwandan Genocide and the Limits of Law', *Boston Review*, 27.2 (2002)

⁷⁸ Betts, Alexander, 'Should Approaches to Post-conflict Justice and Reconciliation be Determined Globally, Nationally or Locally', *European Journal of Development Research*, 17.4 (2005), p.749 See also Des Forges, Alison, 'Enemies Everywhere: the Concept of 'Self-defense' in the Planning of Rwanda's Genocide.' in *Rwandan Genocide Commemoration Conference* (University of Oxford, 2004)

⁷⁹ For instance, see various works in McEvoy, Kieran, and Lorna McGregor, ed., *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* (Oxford: Hart Publishing, 2008)

⁸⁰ UNSC, *The Rule of Law and Transitional Justice*

⁸¹ Lundy and McGovern, *Whose Justice?*, p.284

they contend that such approaches can be sensitive to local dynamics and create genuine dialogue between participants.⁸² Arriaza and Roht-Arriaza similarly explore the alternative ways that local Community-based organizations and NGOs effectively incorporate elements of ‘traditional’ Mayan practices into conflict-resolution and psychosocial healing techniques.⁸³ While noting that national level planners must learn from local dynamics and practices in order to inform their design of national programs, they conclude that Governments and international agencies must “at least aim to ‘do no harm.’”⁸⁴ This perspective on the role of the international, national and local actors in transitional justice focuses primarily upon local initiatives, placing little emphasis on the responsibilities of national and international processes other than to avoid obstructing local systems.

A few scholars have however also highlighted local or civil society efforts to influence national policy. In a rare assessment of the roles played by civil society in transitional justice, David Backer highlights that CBOs and NGOs have entered the realm of policy debates, playing an advocacy role regarding transitional justice mechanisms.⁸⁵ In the introductory chapter of the watershed publication ‘Transitional Justice from Below,’ McEvoy and McGregor emphasize that in contexts in which national systems are corrupt or incompetent, it is often community organizations, NGOs, or religious bodies that act as “the engines of change.”⁸⁶ Like a growing number of authors, they point towards the ability of such groups to mobilize in opposition to “powerful political or social... forces” from below.⁸⁷ Drawing on the case of Colombia, Diaz shows how ‘bottom up’ NGOs and civil society actors have challenged the Colombian state’s approach to transitional justice. Such work highlights the potential for various local actors to make demands in the development of national transitional

⁸² Lundy, Patricia, and Mark McGovern, 'Community-based Approaches to Post-Conflict Truth-telling: Strengths and Limitations', *Shared Space*, 1 (2005), 35-51; Lundy, Patricia, and Mark McGovern, 'Participation, Truth and Partiality', *Sociology*, 40.1 (2006), 71

⁸³ Arriaza and Roht-Arriaza

⁸⁴ *Ibid*, p.170

⁸⁵ Backer, David, 'Civil Society and Transitional Justice: Possibilities, Patterns and Prospects', *Journal of Human Rights*, 2.3 (2003), 297-313. Backer identifies, for example, that NGOs played a key role in spurring on South Africa’s adoption of the Truth Commission.

⁸⁶ McEvoy, Kieran, and Lorna McGregor, 'Transitional Justice from Below: An Agenda for Research, Policy and Praxis', in *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, ed. by Kieran McEvoy and Lorna McGregor (Oxford: Hart Publishing, 2008), p.3

⁸⁷ *Ibid*

justice processes.⁸⁸ Numerous scholars have called for national and international measures to engage with, and respond to voices from ‘the bottom up.’⁸⁹

The critical responses of numerous authors to the top heavy, international legalist approach to transitional justice has blossomed into a thriving literature that explores the roles of local, national and international actors. The field of critique, however, has much room for expansion. Firstly, there is tendency for scholars to simply focus on assessing the direct advantages or disadvantages of mechanisms imposed upon, or implemented at various levels, such as the irrelevance of distant international courts for local people, or the success of ad hoc community led mechanisms in dispute resolution.⁹⁰ On the whole, less critical attention has been given to the ways in which different actors across levels interact and influence one another and struggle over competing ideas. As Miller puts it, rather than “offering a critical exploration of the influence of one area [level of actor] on another” the literature tends to focus on the “lessons learned’ in a particular area.”⁹¹ While it is increasingly recognized that transitional justice as a “multi tiered system” or a “global project,” Millar’s work suggests that more attention needs be given to the role of various actors at all levels in the spreading of ideas and ideals and the production of different narratives.⁹² When scholars do address such questions, they tend to focus on the influence of one particular level on another (such as local actors on national process), rather than exploring the wider web of interrelationships at play. Secondly, as evident from the review of critical literature above, scholars also tend to portray the role of various levels as homogenous. With a few notable exceptions, little attention is given to the diversity and tension between roles played by international, national and local actors.⁹³

This thesis accordingly contributes towards the critical literature by focusing on the varied impacts and interrelationships of international, national, and local actors engaged in the development of transitional justice processes in Uganda. I pay particular attention to the way

⁸⁸ Diaz, Catalina, 'Challenging Impunity from Below: The Contested Ownership of Transitional Justice in Colombia', in *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, ed. by Kieran McEvoy and Lorna McGregor (Oxford: Hart Publishing, 2008)

⁸⁹ See McEvoy and McGregor eds. *Transitional Justice From Below*

⁹⁰ Recent exceptions include Diaz, and McGregor, Lorna, 'International Law as a 'Tiered Process': Transitional Justice at the Local, National and International Level', in *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* ed. by Kieran McEvoy and Lorna McGregor (Oxford Hart Publishing 2008)

⁹¹ Miller, p.290

⁹² Ibid

⁹³ Diaz is a recent exception.

in which actors *across* all levels construct, legitimize or challenge narratives about the war and transition, and how much attention they pay to the perspectives and interests of those most affected by the conflict. I critically examine, for instance, the ways in which the ICC, as well as a myriad of other international actors influence the construction of war narratives, and the development of transitional justice policy. Conversely, I also explore the diverse approaches of different national and local actors towards Governmental and international actors and institutions. I draw attention to the way in which complex webs of actors are drawn into a struggle focused at the national level. I argue that both international actors and civil society actors (both national and local) have significant capacity to cultivate or restrict the opening of critical political space where dominant discourses and power imbalances of transition can be challenged.

Transitional Justice: A Language of Resistance to Hegemony?

The final, closely related area of discussion that I engage with throughout this thesis concerns the ways in which involved actors draw upon the *language* of transitional justice. While transitional justice has been increasingly recognized as a “discursive project” that is used to narrate and shape transition rather than a “neutral instrument” to bring about justice and reconciliation,⁹⁴ only a few scholars have critically examined the use of transitional justice discourse in particular contexts.⁹⁵ Study of the use of transitional justice discourse has wide implications. With the expansion of a deeply critical literature, a distinct sense of disillusionment with the concept of transitional justice has emerged. Bell describes a “growing unease among practitioners and in scholarship over the future direction of the field.”⁹⁶ Many scholars simply ignore such questions, and persevere with their critiques of the transitional justice framework. For scholars such as Bell however, the question appears to be whether transitional justice can be applied constructively as a useful concept, or whether the language is so deeply tainted by its imperialist, legalistic origins that it should be abandoned entirely by those seeking true transformation in post conflict societies.⁹⁷ In her review of ‘Transitional Justice from Below,’ Nagy furthermore queries:

If transitional justice reaches out more fully to rectify social inequality and structural violence, what makes it “transitional” rather than simply “justice? The question is not

⁹⁴ Miller, p.266

⁹⁵ Again, Diaz is a recent exception

⁹⁶ Bell, p.6

⁹⁷ See Bell, p.9

simply semantic. Governments deploy the current toolkit and language of transitional justice even as they “other” victims, minimize their own involvement, and consolidate unequal power relations.⁹⁸

The question lingers, has transitional justice come to represent an inherently hegemonic enterprise, or can a discourse of ‘transition’ also be effectively used by actors seeking meaningful change?

Many scholars are pessimistic. Hazan argues that transitional justice discourse is often used as a façade for ongoing injustice.⁹⁹ In the case of Iraq, Hazan demonstrates how the language of transitional justice was used to frame ‘justice’ as a transition from the rule of Saddam Hussein to liberal democracy, and to detract attention from the question of the ongoing occupation and war crimes of the United States.¹⁰⁰ Nagy, who argues that transitional justice has become a “global project” that typically “involves a delimiting narration of violence and remedy,” appears similarly pessimistic about application of transitional justice discourse.¹⁰¹ Arthur’s critical work in tracing the conceptual history of transitional justice as explored above, leads her to seriously question whether it is better to “simply reject the transitional justice framework altogether.”¹⁰² She queries, “Should transitional justice be folded into the anti impunity movement centered on the development of international norms and law?” She cynically notes that this would represent “an unsurprising historical outcome given the expansion of... ‘international justice.’”¹⁰³ Perhaps most intriguingly, Bell cautions that attempts to re-envision transitional justice and decolonize “law’s hold over the field” comes with certain dangers.¹⁰⁴ She warns that efforts to deeply displace the field’s heavy focus on accountability “risks undoing what in practice is still a fragile consensus,” and stripping the concept of its normative power for local justice struggles.¹⁰⁵ Without reaching a conclusion, Bell raises the concern that the notion of transitional justice is so deeply enmeshed in the global acceptance of international law and standards of accountability that to radically critique or widen its focus could weaken the entire concept.

⁹⁸ Nagy, Rosemary, "Transitional Justice From Below: Grassroots Activism and the Struggle for Change. By Kieran McEvoy and Lorna McGregor, eds.", *Law & Society Review*, 43.3 (2009), 707-09

⁹⁹ Hazan

¹⁰⁰ Ibid

¹⁰¹ Nagy, *Transitional Justice as Global Project*, p.276

¹⁰² Arthur, pp.362,-363

¹⁰³ Arthur, p.363

¹⁰⁴ Bell, p.26

¹⁰⁵ Ibid

A number of authors however have highlighted that transitional justice discourse can also be used as a language of resistance. Scholars who draw attention to the role that civil society can play in challenging central Government policy have also contended that such actors have resourcefully drawn on transitional justice discourse to frame their position. Most notable are key studies of the Columbian case by Uprimny and Saffon, and also Diaz.¹⁰⁶ Uprimny and Saffon demonstrate that the language of transitional justice was adopted by both the Columbian Government and various civil society movements, but applied in different ways, for divergent purposes.¹⁰⁷ The Government adopted transitional justice in a “manipulative” manner, as a “rhetorical instrument” that was not followed by any practical transformation. Effectively, the Government’s use of the discourse served to disguise ongoing impunity. In contrast, Colombian civil society groups used the language of transitional justice “democratically” to contest the Government’s discourse and demand guarantees of non-recurrence. While the authors conclude that manipulative uses of transitional justice prevailed, they emphasize that it is important to recognize the value of democratic uses of the discourse that bring victims into the “center of discussion.”¹⁰⁸ Diaz’s analysis similarly highlights that “at the very least” transitional justice gave the NGO and civil society sector “a framework within which to critique the understanding being propagated by the state.”¹⁰⁹ Interestingly however, from the author’s description it appears that Colombian civil society group’s conception of ‘transitional justice’ did not extend to include socio-economic issues. Rather, they focused on demanding that the Government combat impunity.

In this thesis I contribute to the emerging debate through exploration of how transitional justice discourses are conceptualized, articulated and strategically utilized by different actors in Uganda. I pay particular attention to the way the concept of ‘transition’ is conceived in the Ugandan context in which no regime change has taken place, and what is included in the understandings of ‘justice’ projected by different actors. Drawing on original fieldwork, I address a number of unanswered questions raised by different scholars. Firstly, I explore the central question of the extent to which ‘transitional justice’ can be effectively reworked as radical language of emancipation. Secondly, I address Bell’s concern that a radically

¹⁰⁶ Diaz: Saffon, Maria Paula, and Rodrigo Uprimny, 'Uses and Abuses of Transitional Justice in Colombia,' PRIO Policy Brief 6 (2007) <dejusticia.org/admin/file.php?table=documentos_publicacion&field.> [Accessed 11 August 2011]

¹⁰⁷ Saffon and Uprimny, pp.14- 15, 19-20: See Also Diaz, p.214

¹⁰⁸ Saffon and Uprimny, p.14

¹⁰⁹ As summarized in McEvoy and McGregor, 'Transitional Justice from Below: An Agenda for Research' in *Transitional Justice from Below* ed. by McEvoy and McGregor, p.7

expanded conception of transitional justice (for example to include socio-economic justice) could reduce the ‘normative power’ of the framework, which is ultimately derived from the concept’s strong, expanding foothold in the international arena. Finally, I take up the question posed by Nagy of what, if anything is distinctive about the undertaking of *transitional* justice as opposed to ‘justice.’

Methodology: Multilayered Fieldwork in Uganda

In addition to the wealth of available scholarly literature and fieldwork notes on the war and postwar justice issues in Uganda, this thesis is based upon original fieldwork undertaken in Uganda over the course of three months from 31st May till the 31st August in 2010. My fieldwork took place in four different ‘spheres’ in Uganda. The first was the temporary ‘international arena’ that descended upon Kampala for the first ever ‘Review Conference’ of the ICC that took place over two weeks in early June. The second was the ‘national’ level in Kampala, in the realm of policy makers and NGO advocates. The third was the ‘local’ NGO scene of Gulu town. The fourth ‘sphere’ of my fieldwork took place in several villages in the Acholi region.

Throughout this fieldwork experience, my goal was to gain insight into the experiences, perspectives, and struggles of a broad spectrum of actors involved at different levels in the field of transitional justice development in Uganda. My research agenda changed, unfolded and ultimately expanded throughout my time in the field, and was repeatedly shaped and reshaped by my encounters. As well as conducting interviews and engaging in participant observation (specified below), wherever possible I also collected relevant reports, Government financial data, and DVD’s, which are included in the Bibliography. This included key reports produced by Uganda’s Justice Law and Order Sector (JLOS), such as the report of the 3rd Forum on Transitional Justice. Data collected from the Ministry of Finance related primarily to the Government’s budgetary allocations to the Northern Uganda Peace Recovery and Development Plan (PRDP).

My interviews were largely unstructured; my initial questions were shaped to the particular role or position of the interviewee, while further prompts flowed from our conversation. Overall, I conducted seventy-two interviews that ranged between twenty minutes and an hour and a half in length. Interviews were either recorded in note form, or via digital voice

recorder according to the preference of the participant. All interviews were undertaken with full informed consent, and wherever possible I provided participants the opportunity to check and adjust their interview transcript.

With the exception of individuals who specified otherwise, throughout this thesis I ensure that my respondents cannot be individually identified. As explored further below, I adopted an especially careful approach when interviewing rural community members affected by the war, particularly former abductees of the LRA.

The ICC Review Conference in Kampala drew together the ‘professional family’ of the international justice scene, as well as many actors involved in post conflict justice in Uganda. Throughout the two-week event, I engaged in participant observation, attending a wide range of official plenary sessions and side events, as well as the daily morning ‘strategy’ meetings of the umbrella NGO, the Coalition for the International Criminal Court (CICC), and various social gatherings. In particular, I focused on different actors’ portrayals of the impact of the ICC upon Uganda, the development of formal criminal justice in Uganda, and representations of the perspectives of war-affected communities. I observed the spaces in which critical voices emerged and local voices were given a platform to speak, and the spaces in which such voices were excluded. As well as making extensive ‘field notes,’ I engaged in many informal conversations and several formal interviews with a variety of actors: international and national Ugandan NGOs, international scholars of the Ugandan case, state delegates and local Ugandan civil society representatives.

My fieldwork at the national level in Kampala was largely facilitated through the contacts I made at the ICC Review Conference. In total, I spent three weeks undertaking this aspect of my fieldwork. My key goal in this ‘sphere’ was to explore the historical and current development of national transitional justice policy, and understand the way in which international, local and other national actors and institutions influenced this process. I also aimed to analyze the relationship and tensions between different actors, and the different modes of interaction of such actors with local war affected communities. My research was conducted primarily through in-depth interviews with political Government officials, international donors of transitional justice, and public servants in the Ministry of Justice and Constitutional Affairs, JLOS, the International Crimes Division, the Department of Public Prosecutions, and the Amnesty Commission. I also had the opportunity to observe several informal meetings between JLOS policy makers. Aside from Government workers, I also

interviewed the directors of a variety of national level NGOs, including the Ugandan Coalition for the International Criminal Court (UCICC), and the Refugee Law Project (RLP), which is heavily involved in policy advocacy in the area of transitional justice.

I spent five weeks in Northern Uganda working with a locally run NGO, the ‘Northern Ugandan Transitional Justice Working Group’ (NUTJWG). Part way through my process of exploring the ‘Gulu town’ justice scene and interviewing various key players (a range of local Government, judicial, and civil society actors), I was adopted by NUTJWG as a co-planner, research assistant, and errands runner. They were tremendously short staffed and overworked, while I was eager to try and see the field of postwar justice through the eyes of local NGO workers who had also suffered through the war, and considered themselves ‘transitional justice activists.’ Through NUTJWG, I was initiated into the local northern ‘NGO world’ of project proposals, donor grants and project reports, community engagement and advocacy work. During my time with this group, we organized and ran several community consultation exercises across the Northern region, held a strategic breakfast meeting for key NGO leaders in Gulu town, worked with the key Gulu NGO addressing transitional justice (the Justice and Reconciliation Project), and participated in a day-long celebration of ‘International Day of Justice’ in Lira. We also conducted research on Government compensation processes. Throughout this experience, I paid close attention to the way NUTJWG and other civil society actors perceived the concept and utilized the language of transitional justice, and engaged with grassroots communities and national actors.

My interactions with villagers in the Acholi region were facilitated by the community workers of the locally run faith-based NGO, Caritas Gulu. Over the course of three weeks, I spent time ‘moving in the field,’ largely in the sub counties of Unyama, Patiko and Paicho, where I observed their work and was given the opportunity undertake a number of interviews. I was particularly cautious with my approach, as the communities I engaged with had undergone a long period of extensive suffering, while many individuals had witnessed or experienced violence and atrocity. A trained, experienced Caritas local community worker accompanied me who knew the village members we interacted with. He approached individuals, explained the precise nature of my project, what the information would be used for, and asked if they would be comfortable to participate in an interview. He emphasized participation was voluntary, and that they were free to terminate the interview at any point if desired. In addition to ‘regular’ community members, I interviewed a range of local

councilors, traditional leaders, elders, and formerly abducted persons. In these interviews, I asked participants open questions about their experiences, priorities and expectations after the war, as well as more specific questions about their views on accountability, reconciliation and forgiveness regarding perpetrators, and their perspectives on local traditional practices. While I did not elicit information about their experiences during the war, sometimes participants offered their stories without prompting.

Besides deliberate research engagement, my perspectives on ‘justice’ issues and various narratives about the northern war was also inevitably flavored by the daily observations, encounters and experiences of everyday life in Kampala and Gulu. In Gulu town, I was privileged to live with the Anglican Bishop of Gulu (also chairman of the Acholi Religious Leaders Peace Initiative) and his family on site at the Anglican diocese compound. While in Kampala, I lived at an Anglican Parish at which large numbers of urban internally-displaced persons (IDPs) from the North come to worship. Conversations about the war, the role of NGOs in Gulu, and issues of justice and forgiveness with my extended host-families as well as guests and neighbors shaped my thinking.¹¹⁰

I make no pretense that my engagement in the field of transitional justice in Uganda was adequately ‘embedded’ or comprehensive. In the space of three months available to a master’s student there are obvious limitations to the depth of fieldwork that can be achieved. Furthermore, my fieldwork was stretched over four different ‘spheres,’ as described above. This was the inevitable cost of endeavoring to gain a sense of the interface between international, national and local actors involved in transitional justice, rather than focusing upon one level. In particular, I felt that my engagement at the ‘grassroots’ village level was lacking, although I learned a great deal from my interactions with local villagers. My trips to Acholi villages with Caritas were unfortunately forestalled due to a temporary lack of funding that prevented the community workers from making regular outings ‘to the field.’ Besides this constraint, I was hampered by my inability to speak Luo, and incapacity to live with my ‘participants’ in the village and become familiar with them, their perspectives and experiences over time; in short, to do ‘proper’ ethnographic fieldwork.

¹¹⁰ My findings represent the views of these people or associated organizations such as ARLPI; however their personal anecdotes and experiences inevitably affected my research process.

Road Map: Thesis Structure

This thesis is divided into six chapters. The second chapter explores the war in Uganda. I identify and critically deconstruct the dominant narrative of the conflict presented by the western media and the Ugandan Government, which has become contested in the subsequent struggle for transition. I highlight the socio-economic roots and consequences of the war, and the complicit role of both the Ugandan Government and foreign aid donors in inadvertently perpetuating the structural violence and marginalization of the north. I show that the international community has never been absent from the situation in Northern Uganda: international actors participated in, and helped to shape dominant representations of the conflict.

The third chapter analyzes Uganda's emergence from war, dealing with the critical formative period of 2003 (the year of Uganda's referral to the ICC) until 2008 (the final collapse of the Juba Peace process). I argue that in various ways international actors have had profound, yet contradictory influences on national processes in Uganda. I show how various international actors, as well as diverse domestic actors, have the power to cultivate or restrict the opening of critical political space in which dominant narrative about the war is justified or challenged. While the ICC acted to legitimize the Government's politicized discourse and narrow the trajectory of post conflict justice, other international, national and local actors acted to momentarily broaden the scope of 'justice' to address the deeper socio-economic roots and repercussions of the war, and compel the Government to submit to processes of accountability and national transformation. The language and concepts of transitional justice facilitated the efforts of such actors.

The fourth chapter explores the views of northern Acholi communities affected by the war, in order to ground my discussion of struggles over the development of transitional justice in an awareness of local post war priorities and perspectives on justice. I argue that the commonly drawn distinctions between local, traditional justice and international justice are not particularly helpful. A better distinction can be made between 'embedded' and 'indirect' justice. I found that people are generally more concerned with 'embedded justice:' they are more worried with tangible outcomes such as socio-economic rehabilitation, reparations, land access, and restoration of relationships with those around them, than far away symbolic acts that have little direct impact on their lives. I focus on two forms of embedded justice:

socioeconomic justice, and local-driven approaches to social reconciliation. These concepts transcend the categories of international, national and local. Socioeconomic justice necessarily involves the transformation of state policy. I argue that while the struggle for an inclusive, effective approach to social reconciliation must be centered at the local level, national and international actors must cultivate this process by challenging self-interested power.

In the fifth chapter I map the ‘political ecology’ of the current struggles over the development of national transitional justice that emerged after the failure of the peace talks in 2008. This chapter is based primarily upon original fieldwork. I show that while actors at all levels participate in this struggle, power is concentrated in the hands of the sovereign state. The trajectory of transitional justice in Uganda risks instituting an empty performance of justice that lacks meaning to those affected by the war, and is largely devoid of socio-economic justice. Throughout my analysis, I show that struggle for transition in Uganda is ‘global’ in dimension: international, national, and local actors play varying, often contradictory roles. Different Government actors, civil society groups and international players either critically challenge or justify and facilitate the Government’s dominant narrative of the war and convenience-driven approach to postwar justice. The discourse of transitional justice is used as a language of resistance, pressing the Government to engage in ‘transition’ in the absence of meaningful change. Unless transitional justice discourse is expanded to encompass socioeconomic justice however, its capacity to give political expression to local communities’ justice priorities will remain limited.

Chapter six draws on my experience of the 2010 ICC Review Conference to frame the conclusion of this thesis. I build on the arguments developed in previous chapters through a critical analysis of the Conference, which drew together the myriad of local, national, and international actors involved in transitional justice in Uganda. I highlight that the struggle for a meaningful approach to transitional justice in Uganda takes place in the wider context of the hegemony of international criminal law as the dominant mode of global ‘justice.’ Drawing on the Review Conference, I examine the role played by civil society actors worldwide in constructing and perpetuating this hegemony, and contrast the dominant portrayals of international justice at the Review Conference with the realities of the Ugandan situation. Finally, I explore the implications of my Ugandan field research for the three debates in the

field of transitional justice outlined above, reflects on the possibilities of future research agendas

Chapter Two: War in Northern Uganda

Introduction

While Uganda has often been heralded as a ‘champion of progress’ in international development circles, for over twenty years the people of Northern Uganda were enmeshed in a conflict of violence, displacement and social and economic deprivation. Until recently, the Ugandan Government successfully portrayed the northern situation as a localized war perpetrated by a northern rebel group, the LRA. The western media and various international NGOs have widely disseminated this view, caricaturing the LRA as an apolitical, incomprehensible terrorist group, solely responsible for the suffering of northern communities.¹¹¹ To understand the development of transitional justice processes in Uganda, it is vital to build a critical understanding of northern conflict. The struggle that has emerged over the best path to ‘justice’ and ‘transition’ in the wake of conflict reflects disputes about the nature of the war itself.

This chapter critically analyzes the key dynamics of the conflict in Uganda that transpired in 1986, providing a platform for discussion of the transitional justice development in following chapters. Drawing on the in-depth ethnographic fieldwork of scholars such as Dolan, Finnstrom, and Branch, this chapter challenges dominant narratives of the war, demonstrating that the northern conflict resulted from a complex interplay of local, national and international factors. For decades, Northern Ugandans were caught between the strategic violence of the LRA and the structural violence of the Ugandan Government, both of which were facilitated and perpetuated by various international actors and systems. I demonstrate that both the underlying roots and consequences of the conflict were characterized by the socio-economic marginalization of the north. I highlight that any approach to transitional justice that fails to embrace socioeconomic justice is accordingly inadequate.

¹¹¹ For example, ‘Girls Escape Ugandan Rebels,’ *BBC News Online*, 25 June 2003

This chapter is divided into five sections. First, I briefly trace the background and roots of the conflict through Uganda's colonial and postcolonial history. I pay particular attention to the ways in which economic divisions, geographic regions, and political interests became strategically fused by governing elites. This fusion eventually resulted in the north-south rift that underlies the LRA conflict. Secondly, I reconsider the LRA, demonstrating that contrary to common depictions, their actions followed a particular societal-based logic that emerged in response to patterns of regional economic and political exclusion.

The third and fourth sections address the intertwined roles of the Ugandan Government and international actors in enmeshing the north in a conflict of structural violence. In the third section, I consider the failures of the Government's military and diplomatic strategies to end the war. I argue that the Government's approach to the north was characterized by political expedience, interlaced by its financial and strategic relationships with international donors and allies. In the fourth section, I assess the Government's policy of displacing northern communities into 'protected villages.' This policy, which led to the increased insecurity and social and economic debilitation of northern populations, was facilitated by the uncritical provision of aid by international agencies, and the failure of the wider international community to challenge the Government's approach.

Colonial and Independence History: the Emergence of Regional Inequality

Since colonial times, governing elites in Uganda have constructed and strategically manipulated ethnic and regional identities in order to create a support-base for their political power.¹¹² Below, I trace the colonial and post-independence history of Uganda, focusing on the emergence of regional and identity based political and economic disparities that underlie the northern LRA conflict.

¹¹² For a thorough history, see Branch, Adam, 'The Political Dilemmas of Global Justice: Anti-Civilian Violence and the Violence of Humanitarianism, the Case of Northern Uganda,' Doctoral Thesis in Political Science (Columbia University, 2007)

In 1894, the area now known as Uganda was declared a British protectorate. The colonial rulers identified different ethnic groups, and prescribed them particular economic and administrative roles. As narrated by a local activist in Gulu Town in Northern Uganda:

When the British came the foundation of their rule was divide and conquer. We are a strong people and they preferred us to protect the territory. We were given the gun. But to the soft-spoken people in the South and West, the British gave education and business. For agriculture, we were given cotton, but in the south they were given coffee which proved much more lucrative. That was the foundation, but instead of breaking loose, we stuck to that. We kept that mentality.¹¹³

Northern ethnic groups (including the Acholi) were also often used as a pool of cheap labor employed in the south, while southern regions benefited from the introduction of cash crops and industry.¹¹⁴ Southern groups also gained greater influence in civil service.¹¹⁵ The early roots of economic disparity between northern and southern regions of Uganda can accordingly be traced to this period, as can the militarization of northern ethnic groups.¹¹⁶

While such divisions originated as colonial constructs, as the above quote suggests, political and socio-economic dynamics were generated that extended beyond the colonial era. Many Acholi, for example, adopted the idea that they were a ‘naturally’ militaristic tribe.¹¹⁷ More broadly, as Branch contends, British governance embedded “ethnicity as mode of rule, and a mode of... identification” in Uganda’s political landscape.¹¹⁸ The extent to which ethnic identity had become entangled with political privilege was reflected in the independence constitution of 1962. The constitution granted vastly disparate political positions to the ethnic groups of different regions. The Buganda kingdom received federal status, the Kingdoms of Ankole, Bunyoro and

¹¹³ Author’s interview with a local human rights activist (Gulu, July 2010)

¹¹⁴ Branch, *The Political Dilemmas of Global Justice* p.108: Doom, Ruddy, and Koen Vlassenroot, ‘Kony’s Message: A New Koine? The Lord’s Resistance Army in Northern Uganda’, *African Affairs*, 98.390 (1999), p.7

¹¹⁵ Doom and Vlassenroot, p.7

¹¹⁶ *Ibid*, pp.7-8

¹¹⁷ Dolan, Christopher, ‘Understanding War and Its Continuation: The Case of Northern Uganda,’ Doctoral thesis, Development Institute, London School of Economics and Political Science (University of London, 2005), p.71

¹¹⁸ Branch, *The Political Dilemmas of Global Justice*, p.93

Toro semi-federal, while district status was given to Acholi, Bugisu, Bukeida, Karamoja, Kigezi, Lango, Madi, Sebei, Teso and West Nile.¹¹⁹

The political maneuvers of post-colonial regimes generated further regional cleavages.¹²⁰ The rule of Obote I (1962-1971) inadvertently ingrained a divide between a 'nilotic' North and a Bantu 'South' in national politics, despite his initial attempts to abolish the British legacy of ethnic political disparity. Obote I, himself a northerner from Langi, abolished the federal status of the kingdoms converting all of Uganda into districts under greater central control. While many northerners welcomed this shift, southern ethnic groups interpreted the change as an "attack on their constitutionally-guaranteed rights."¹²¹ In order to gain support for the centralization of state power, Obote increasingly provided political patronage to northern ethnic groups and filled the army ranks with Langi and Acholi. In 1971, Amin, a northerner from West Nile, overthrew Obote in a military coup, violently expelling Langi and Acholi from the army, and later also from the ranks of the political elite.¹²² Under the second period of rule of Obote II (1980-1986) following the overthrow of Amin, Acholi once again dominated the army in the Ugandan National Liberation Army (UNLA), although they only regained limited political power.¹²³ By 1986, the pattern of manipulating ethnic identities to consolidate political power had become entrenched.

When Yoweri Museveni's National Resistance Army (NRA) took power through the civil war of 1986, Museveni framed his struggle as a southern revolution against 25 years of political and economic oppression by northern leaders.¹²⁴ As Branch argues, from the northern perspective this claim was implausible: northern leaders such as Amin economically marginalized and brutalized the northern Acholi and Langi, while Obote II severely restricted their role in the political arena.¹²⁵ For Museveni, however, initially framing his revolution in North-South terms enabled him to garner united

¹¹⁹ Dolan, *Understanding War and Its Continuation*, p.71

¹²⁰ See discussion in Branch, *The Political Dilemmas of Global Justice*

¹²¹ Ibid, p.120

¹²² Ibid, p.126

¹²³ Allen, Tim, *War and Justice in Northern Uganda: an Assessment of the International Criminal Court's Intervention* (London, Crisis States Research Centre, London School of Economics, 2005) <<http://www.dfid.gov.uk/r4d/PDF/Outputs/CrisisStates/AllenICCRReport.pdf>> [12 August 2011], p.10

¹²⁴ For a concise history, see Allen, *War and Justice in Northern Uganda*, p.10-11

¹²⁵ Branch, *The Political Dilemmas of Global Justice*, p.135: See also Finnstrom, Sverker, *Living with Bad Surroundings: War History and Everyday Moments in Northern Uganda* (London: Duke University Press, 2008), p.108

support for himself as a southwestern president from a still ethnically splintered south.¹²⁶ The fresh memory of UNLA slaughter of NRA and civilians in the Luwero Triangle, perceived to be carried out by northerners in the army ranks, and the brief seizure of power by the Tito Okello's Acholi soldiers in 1985 lent compelling support to Museveni's north-south narrative.¹²⁷ Just as rulers before him, Museveni carved regional divisions and enacted political and economic exclusion in order to cement his own power. In 1986 following the capture of Kampala, soldiers from both Okello and Obotes' armies began to return to the north. As Dolan describes it, for people in Northern Uganda this was a time of "holding one's breath and waiting for the worst."¹²⁸

The roots of the northern conflict can therefore be traced to the colonially wrought economic and political marginalization of the North, and the regional divides carved by successive postcolonial regimes. The following section examines the nature of the Lord's Resistance Army (LRA) movement that eventually emerged in Northern Uganda following Museveni's coup in 1986. After critically questioning dominant media portrayals of the rebel movement, I provide an alternative analysis. First, I identify a societal-based 'spiritual' logic in the LRA's goals and structure, influenced by previous northern movements. Next, I argue that the LRA initially emerged as a localized, politically charged struggle against Museveni's NRA. Finally, I explore the complex and fraught relationship between the LRA and the Acholi people, and the extent to which the rebels championed a genuine political message.

The Lord's Resistance Army

The nature and agenda of the LRA rebel movement is highly contested. The LRA, led by Joseph Kony, has inflicted untold suffering upon the Acholi people and other regions of Northern Uganda since its rise in 1988, and since 2008 against civilians in Congo and the Central Republic of Africa. While the LRA's motivations are disputed, their means of operation are widely documented: looting, rape, civilian massacres, burning of homes and land, mutilation, and the forceful abduction of civilians,

¹²⁶ Branch, *The Political Dilemmas of Global Justice*, p.137

¹²⁷ Allen, *War and Justice in Northern Uganda*, p.10

¹²⁸ Dolan, *Understanding War and its Continuation*

(disproportionately children) to serve as soldiers and rebels' 'wives.' Abductees are often forced to commit atrocities against people in their own villages, including family members.

Many commentators dismiss the LRA as irrational madmen or terrorists. Such observers note that Kony abducted and massacred the people of his own Acholi tribe, made strange declarations about instating rule based on the ten commandments, yet showed no sign of launching direct assault on Museveni's regime.¹²⁹ The most common depiction by the media is that the LRA is simply an incomprehensible rebel group with "no clear political agenda" and odd, pseudo-spiritual beliefs and practices.¹³⁰ Alternatively, the LRA have also been portrayed purely as proxy warriors of the Sudanese Government in tit for tat retaliation against Museveni's support of the Sudanese rebel group the Sudanese People's Liberation Army (SPLA).¹³¹

As recent scholarly works by Finnstrom, Branch and Dolan clearly and compellingly assert however, the 'official discourse' on the LRA is driven by the Ugandan Government in order to support their own meta-narrative of the conflict. In order to represent the northern conflict as an apolitical 'Acholi problem' to the rest of the country and international donors, Museveni's Government encouraged and fuelled the representation of the LRA as an irrational terrorist group. Demonizing the LRA served to disguise the role of the Government in inadvertently prolonging the northern conflict, and acting as perpetrators of violence. Those that questioned this interpretation could be branded as 'collaborators.' This dominant narrative of the war focuses exclusively on the crimes of the LRA, and ignores the complicity of the Ugandan Government. As explored in the following chapter, the ICC and its supporters have also adopted and disseminated this war narrative in order to defend the Court's narrow intervention. Struggles over the meaning of 'justice' in Uganda reflect disputes about the nature of the conflict itself.

The emergence of Kony's LRA cannot be separated from previous political movements that drew on local notions of a spiritual realm.¹³² Kony's movement bears

¹²⁹ For instance, 'The Rebels Have no Clear Political Agenda,' *BBC News Online*, 25 June 2003

¹³⁰ Ibid, see also Girls Escape Ugandan Rebels,' *BBC News Online*, 25 June 2003

¹³¹ See discussion in Dolan, *Understanding War and its Continuation*, p.109

¹³² For a more in-depth discussion, see Allen, *War and Justice in Northern Uganda*, pp.11-15

significant similarities to the Holy Spirit Mobile Forces (HSM) led by Alice Lakwena that rose to fight Museveni's regime in 1986.¹³³ Elements of Alice's movement reflected widely held local spiritual beliefs, such as the notion that 'good' spirits could 'possess' a spirit medium, guiding their actions.¹³⁴ It is clear from the experiences of returning LRA-abductees that similar spiritual notions deeply influenced the LRA's agenda and control structure. Analyses of the LRA provided by Dolan and Finnstrom reveal a highly organized group, ordered by a religious framework merged with military models of administration.¹³⁵ Kony claimed that his orders and strategic instructions derived from the spirits that possessed him, reinforcing the notion of his unquestionable authority.¹³⁶ Like Alice, Kony ultimately appeared to seek the creation of a cleansed, pure society of 'new Acholi.' As expressed by a former LRA abductee, "All the tribes who joined the LRA were to be the new Acholi community, 'Acholi Manyen.'"¹³⁷ This central vision cannot be separated from the political context in which the LRA emerged and the political goals of Kony's movement.

Kony's movement emerged as a locally orientated struggle against Museveni's NRA.¹³⁸ The emergence of the LRA in 1988 as the lone remaining northern rebel movement coincided with the NRA's bolstering of local governance and security structures. Local governance was consolidated through the establishment of local defense units and the strengthening of the Resistance Council (RC) system.¹³⁹ As Branch argues, Museveni's RC system amounted to a "decentralized, direct rule regime" administered by local agents that served the needs of Museveni's "ethnically exclusive central state."¹⁴⁰ The NRA excluded northerners not only from national politics, but also local governance: RC appointees were generally marginal locals who would prop up the regime, rather than prominent Acholi elders or politicians who

¹³³ Alice claimed to be possessed by a Christian spirit 'Lakwena,' who eventually guided her to lead her soldiers towards Kampala to topple the Government, and install a purer and more politically and economically inclusive rule. See Allen, *War and Justice in Northern Uganda*, p.13

¹³⁴ Ibid. Alice also emphasized the need to cast out 'bad' or polluting spirits ('Cen, 'joggi marac') through healing or cleansing rituals.

¹³⁵ See Dolan, *Understanding War and its Continuation*, p.120

¹³⁶ Ibid

¹³⁷ Formerly abducted youth, 'Jacob,' in Dolan, *Understanding War and its Continuation*, Annex B

¹³⁸ Branch, *The Political Dilemmas of Global Justice*

¹³⁹ Ibid pp.166, 169

¹⁴⁰ Ibid, p.170

could represent the community.¹⁴¹ In contrast to Alice's HSM that targeted the central Government, Kony's fight was against an internal enemy. To the LRA, the north-south divide had infiltrated Acholiland; the NRA had broken into the workings of Acholi society.¹⁴² Kony's goal of creating the 'New Acholi' emerged from his perceived need to purge the enemy from within. The emergence of the LRA can thus only be understood in the context of the societal logic of contemporary local spiritual and religious ideas as well as historical patterns of violent political repression and economic exclusion.

Understanding the political-religious framework of the LRA also helps to make sense of their activity pattern. While the LRA's targeting of suspected Government officials at the local level follows clear logic, violence against the broader civilian population is more complex. Elements of the LRA's communication with civilians through pamphlet dropping and the sending of messages through released abductees indicate that the rebels did seek popular support amongst Acholi communities. At times they called for 'all capable boys and girls to join the LRA so that they remove Museveni from the chair of Uganda.'¹⁴³ People were instructed to return from the Government's 'protected' camps to their homes so that they would not be killed in LRA attacks on the camps.¹⁴⁴ Other instructions appeared bent on disconnecting the Acholi population from the NRA regime. For example, edicts were circulated forbidding people to take information to the Government by bike, and not to obey Government troops.¹⁴⁵

To the extent that the LRA perceived that the population was against them and their goals, civilians became a target of extreme violence. The practice of looting and abducting recruits quickly alienated much of the population from supporting Kony's movement, which in turn fuelled further attack on the wider population. This pattern is perhaps particularly evident in the waves of LRA atrocities following the NRA's organization of local militias called "Arrow Groups" to fight the rebels after the failed peace talks of 1994.¹⁴⁶ The extent to which participation was voluntary or enforced is unclear. Shortly after their formation, the NRA deserted the Arrow Groups, leaving

¹⁴¹ Ibid, p.149

¹⁴² Ibid, p.171

¹⁴³ Dolan, *Understanding War and its Continuation*, p.127

¹⁴⁴ Ibid

¹⁴⁵ Dolan, *Understanding War and its Continuation*, p.126

¹⁴⁶ Branch, *The Political Dilemmas of Global Justice*, pp.176-179

them to face the rebels alone. The Government Minister of the North, Betty Bigombe, declared that the task of defeating the LRA was primarily “the people’s duty.”¹⁴⁷ In response, the LRA sent Bigombe a letter declaring that she had “brought death to the Acholi” by ‘inciting’ the people to mobilize against their movement.¹⁴⁸ As Branch describes it, the LRA embarked on a “campaign of collective punishment,” of killing and maiming.¹⁴⁹ In 1995 in Atiak, after defeating the home guards of the so-called protected camp, the LRA declared: “You Acholi have refused to support us. We shall now teach you a lesson,” before massacring 200 civilians.¹⁵⁰

Throughout its insurgency, the LRA articulated their goals in political terms, and acted to undermine the role of the NRM in the north. Their messages to the people included promises to remove the NRM from power (e.g. in 1988), and political criticism of Museveni’s regime.¹⁵¹ In 1999 when they managed to broadcast on radio for a number of days, spokespersons accused Museveni of economic corruption, overstaying in power, and encouraging mob justice.¹⁵² To the extent that the LRA gave some expression of the political and economic injustices of Museveni’s regime experienced by the Acholi, some people may have initially supported them, or felt a degree of sympathy.¹⁵³ For the general population however, the LRA was most clearly a perpetrator, and a source of suffering and insecurity. The LRA did not politically represent the people of Acholiland or the wider north, but their actions did serve a political purpose according to the internal logic of Kony’s movement. In pursuit of the vision of a New Acholi community, Kony sought to undermine and purge Museveni’s regime from all connection with the northern people. In addition to attacking Government actors, this involved widespread assault on the population, not only to punish and eliminate those perceived as Acholi traitors, but also to demonstrate that the Government had no power or will to protect or sustain them.¹⁵⁴

¹⁴⁷ ‘Gulu Assured of Unity, Peace,’ *New Vision*, 12 June 1991

¹⁴⁸ ‘Kony Still in Kitgum,’ *New Vision*, 5 July 1995, cited in Branch, *The Political Dilemmas of Global Justice*, p.179

¹⁴⁹ Branch, *The Political Dilemmas of Global Justice*, p.179

¹⁵⁰ ‘Kony Toll Rises,’ *New Vision*, 24 April 1995: ‘Kony Rebels Massacre 82,’ *New Vision*, April 1995, cited in Branch, *The Political Dilemmas of Global Justice*, p.207

¹⁵¹ See Dolan, *Understanding War and its Continuation*

¹⁵² Dolan, *Understanding War and its Continuation*, p.130

¹⁵³ For discussion on this contentious point, see Dolan, *Understanding War and its Continuation* pp.114- 117 See Also Branch, p.20: Finnstrom, p. 162

¹⁵⁴ See Doom and Vlassenroot, pp.26-27

To question the media's portrayal of the LRA as simply mad and incomprehensible is not to deny that the actions of the LRA are atrocious and politically and socially destructive. What is known of Kony even suggests that he has psychopathic tendencies; he is clearly highly charismatic, egotistical, cruel, strategic and apparently unremorseful. While Kony was crucial to the emergence of the LRA, it is also arguable that the movement was a product of long-embedded patterns of political violence, ethnic-based rule, and economic exclusion. A response to immediate ethnic-political grievances was given shape and expression through a locally derived (but arguably distorted) spiritual and religious worldview. Far from ad hoc and inexplicable, the LRA appears highly structured, organized and with a political component to their agenda.

While several commentators have suggested that the LRA is *simply* a pawn in the proxy war between Uganda and Sudan, it is clear then that the LRA was also consistently driven by its own goals.¹⁵⁵ Certainly, for some time, the LRA's relationship with the Sudanese Government vastly advanced its military strength and capacity. It is clear from numerous sources that particularly after 1994, the Khartoum Government provided the LRA with food, significant weaponry assistance, a safe haven and training facilities in Sudan.¹⁵⁶ The Sudanese regime supported the LRA in retaliation against the Ugandan Government's backing of the anti-Khartoum rebel group, the SPLA, and encouraged the LRA to directly attack SPLA forces.¹⁵⁷ Certainly, the LRA fulfilled a "political role on the chessboard" at a regional level.¹⁵⁸ However, as Dolan puts it, the LRA itself certainly did not perceive itself as "a collection of 'proxy warriors' dependent exclusively on the Government of Sudan." This is particularly evident from 2000, when the relationship between the LRA and Sudan began to break down as relations normalized between Uganda and Sudan. Dolan describes, for instance, that when the Sudanese Government proposed to shift the LRA's camp in Sudan 1000km northwards, Kony declined food and arms, and began to search for alternative alliances.¹⁵⁹ The LRA were not simply puppets of the Khartoum regime.

¹⁵⁵ For a contrary view, see Doom and Vlassenroot, p.28. Doom and Vlassenroot argue that "to an ever growing extent, Kony is fighting a proxy war and is even at the mercy of Khartoum," p.28

¹⁵⁶ See interviews discussed in Dolan, *Understanding War and its Continuation*, p.125

¹⁵⁷ Ibid

¹⁵⁸ Doom and Vlassenroot, p.29

¹⁵⁹ Dolan, *Understanding War and its Continuation*, p.125

Contrary to dominant Government-driven narratives then, the LRA movement emerged as a societal-grounded response to the Ugandan Government's political and economic repression of the North. As the northern situation developed, the Government used the portrayal of the LRA as apolitical and incomprehensible to deflect attention from its own complicity in the war. By demonizing the LRA, the Government suppressed the question of equal inclusion of the north in the economic and political life of Uganda. As I explore throughout this thesis, depictions of the LRA as apolitical are furthermore used to defend approaches to postwar justice that focus exclusively on LRA crimes. The following section examines the complicit roles of the Ugandan Government and wider circle of external actors in inadvertently allowing the war to continue for so long.

The Structural Complicity of the Ugandan Government and International Actors

Failure to End the War

In his thesis, Dolan raises the critical question: why did a war supposedly waged by a rebel group of 1-5,000 against a Government with 50-60,000 troops at its disposal and support from the US drag on for over twenty years?¹⁶⁰ This question has profound implications for the development of approaches to postwar justice. It is commonly argued that the Ugandan Government has been simply unable to achieve a peace agreement or military 'solution' to end the LRA's violence in the north. The Ugandan People's Defense Force's (UPDF's) military incapacity, Sudanese support of the LRA, and LRA's unpredictability are often cited as reasons that the Government failed to defeat the LRA militarily or negotiate a solution.¹⁶¹ In contrast, Dolan argues that the Government consistently lacked the political will to end the war, and furthermore deliberately perpetuated the situation for political gain.¹⁶² Dolan contends that it seems unlikely that "the LRA could survive for so long had the UPDF really wished to deal with them."¹⁶³ Dolan's argument is certainly attractive, and draws

¹⁶⁰ Ibid, p.109

¹⁶¹ For examples, see 'Disband Kony Rebels, Museveni Tells Sudan,' *New Vision*, 18 January 1995: 'Why the NRA has Failed to Finish off Kony,' *Monitor*, 12 May 1995, cited in Branch, *The Political Dilemmas of Global Justice*. See also Akhavan, Payam, 'The Lord's Resistance Army Case: Uganda's Submission of the First State Referral to the International Criminal Court', *The American Journal of International Law*, 99.2 (2005), p.409 Akhavan argues, "Uganda could not militarily thwart the LRA, primarily because of Sudanese Support."

¹⁶² Dolan, *Understanding War and its Continuation*

¹⁶³ Ibid, p.147

greatly needed attention to the responsibility of the Government for the suffering of northerners. However, I argue that within the context of a wider web of international alliances and donor relationships, the Ugandan Government's changing approach to the north is better described as shaped by political and economic expedience, rather than deliberate policy. As Branch contends, as "intentionality is extremely difficult to prove...the war is best thought of as a system."¹⁶⁴ Before I explore the deeper reasons for the continuation of the war, I first recount the failures of the Government's efforts to end the conflict.

In the years immediately following Museveni's 1986 coup, the Government's approach to dealing with 'the northern problem' was the marginalized, tortured inclusion of northern populations. While the Government refused to engage politically with northern rebel movements, northerners were also denied a political voice through meaningful participation in the new local political structures of the NRA.¹⁶⁵ As long as the rebels did not manage to build a support base, the NRA allowed the rebels to roam free, perpetrating violence against locals. A contemporary newspaper in 1987 declared that the NRA "seems only to be defending themselves" and doing "nothing to contain the situation."¹⁶⁶ The Acholi were described as "millet between two grinding stones," represented by the rebels and the NRA.¹⁶⁷ The NRA also allowed widespread cattle rustling. Following the emergence of the LRA as the sole rebel group in 1988, the regime increasingly perpetrated direct violence against civilians. As the war continued, however, the Government's role in the conflict became somewhat less clear.

Over the years, the Government intermittently engaged in various efforts to end the war, including a number of peace negotiations, military operations, and eventually the creation of an amnesty law in 2000. However, until international pressure on the regime increased after 2003, these attempts often appeared contradictory and lacked conviction. Until the radical commitment of the Ugandan Government and the LRA to the Juba Peace talks in 2006, the Ugandan Government's suspicious and antagonistic approach to negotiations regularly undermined the possibility of a

¹⁶⁴ Branch, *The Political Dilemmas of Global Justice*, p.187

¹⁶⁵ Ibid, pp.148-151

¹⁶⁶ 'Life in Gulu, Apac Remains Appalling,' *Financial Times*, 29 June 1997, in Branch, *The Political Dilemmas of Global Justice*, p.164

¹⁶⁷ Ibid

peaceful settlement.¹⁶⁸ The ‘peace talks’ of 1994 illustrate this pattern. Dolan’s analysis of the transcript of the talks clearly reveals that despite the courageous and well-intentioned efforts of Bigombe, the Minister of the North, the negotiations amounted to ‘war talks.’ Government representatives goaded and humiliated the LRA, preying on their insecurities.¹⁶⁹ When Kony demanded UN oversight of the talks and that the final negotiation be delayed by three to six months, Museveni publicly declared an ultimatum for Kony to surrender within a week or face military annihilation.¹⁷⁰ As Vlassenroot puts it, “this deadline destroyed the whole process of negotiations.”¹⁷¹

The Government continued to appear reluctant to reach a negotiated settlement with the LRA, or to allow their unconditional, peaceful return. Following increasing calls from local actors for peace in 1997 and 1998 Museveni is reported to have declared, “There is no compromise with these terrorists and criminals.”¹⁷² When the local civil society group Acholi Religious Leaders Peace Initiative (ARLPI) developed a dialogue with the LRA in 1998, their talks were disturbed by UPDF attacks.¹⁷³ As I will later explore in more detail, the Amnesty Act of 2000 was also undermined by the Government’s non-committal approach, and ultimately failed to achieve peace. The Act is generally agreed to have originated from popular pressure from civil society to bring home the rebels and forced abductees and end the war. As Dolan points out, however, given the President’s clear reluctance to enact the amnesty, and openly stated desire for the top commanders of the LRA to be excluded, it was unlikely to fully succeed.¹⁷⁴

While probably Museveni’s preferred ‘solution’, military attempts repeatedly failed to eradicate the LRA. As already noted, during ‘Operation North’, undertaken in 1991, the NRA removed significant national military support after establishing the locally recruited “Arrow Groups.” The northern population faced the onslaught of the LRA without sufficient assistance, while the Government failed to supply the Arrow

¹⁶⁸ Dolan, *Understanding War and Its Continuation*, pp.149

¹⁶⁹ Ibid

¹⁷⁰ Doom and Vlassenroot, p.24

¹⁷¹ Ibid

¹⁷² ‘Museveni Rejects Rebel Compromise,’ *New Vision*, 25 June 1998, cited in Dolan, *Understanding War and its Continuation*, p.149

¹⁷³ Dolan, *Understanding War and its Continuation* p.151

¹⁷⁴ Ibid. See also Allen, *War and Justice in Northern Uganda*, p.34

Groups adequate arms.¹⁷⁵ The Government's attacks on the LRA in the wake of the fruitless 1994 peace talks also failed to contain the LRA's increasing violence against civilian populations. While LRA and UPDF forces clashed intermittently, the next major Government military campaign against the LRA was not until 2002. While Operation Iron Fist involved approximately 10,000 troops, US logistical support and attack of LRA bases in Sudan, Kony and the LRA key commanders escaped and immediately continued to refill their ranks with new abductees.¹⁷⁶ In response to the attack, the LRA retaliated, moving unchecked through Northern Uganda and perpetrating massacres in new regions. The second offensive in 2004, while significantly better organized, also failed to capture the key commanders.¹⁷⁷ Repeatedly, the Ugandan Government failed to end the LRA war through military means.

An Internationally Supported War of Convenience

The question of the complicity of the Ugandan Government in the Northern Conflict has profound implications for the pursuit of postwar justice. As explored throughout this thesis, actors that support different approaches to justice offer very different accounts of the war. Actors that focus their postwar efforts on securing the criminal trial of the LRA (such as the ICC) naturally downplay or ignore the role of the Ugandan Government in the war. Critical groups that highlight the Government's complicity advocate for justice mechanisms that hold the state accountable, and seek broader transformation of the northern situation. Below, I demonstrate that in contrast to dominant war narratives, the Government bears significant responsibility for the perpetuation of the northern conflict.

While it is problematic to contend that the Government of Uganda deliberately perpetuated the northern war, it can certainly be demonstrated that the Government prioritized various strategic decisions that made it predictably difficult to conclusively defeat the LRA militarily. These decisions, as I explore below, were either directly prompted or facilitated by Uganda's profitable international donor relationships and strategic alliances. Furthermore, for a long time, failure to defeat the LRA or reach a peace agreement did not disadvantage the Ugandan Government. Rather, given the

¹⁷⁵ 'Rebels Massacre Over 60 Civilians,' *Guide*, 24 October 1991

¹⁷⁶ For discussion, see Allen, *War and Justice in Northern Uganda*, p.23

¹⁷⁷ *Ibid*

nature of Uganda's relations with the international community, the existence of the northern conflict often proved highly convenient.

Uganda's lucrative relationship with the US as an ally against terrorism undermined both the Government's ability and motivation to conclusively defeat the LRA. Firstly, US support underpinned Uganda's engagement in a 'proxy war' with Sudan, which led to the greatly enhanced military capacity of the LRA. As Branch notes, when Sudanese support to the LRA expanded from 1994, the LRA "suddenly had better uniforms than the NRA" and became very well armed.¹⁷⁸ Increasingly, the Ugandan Government explained the seeming inability of the UPDF to defeat the LRA with reference to 'the Sudan factor.'¹⁷⁹ However, it is clear that Sudan's support of the LRA was a direct response to Uganda's own backing of the SPLA.¹⁸⁰ It is reasonable to question why, for so long, Museveni did not seek a deal with the Sudanese Government to cease the reciprocal supporting of rebel groups.¹⁸¹ Uganda's key driving motivation, however, was to maintain its strong relationship with the US. In August 1993, Sudan had been placed on the US list of state sponsors of terrorism.¹⁸² Uganda's highly profitable relations with the US were largely grounded in the role Uganda played in "containing the Sudanese danger."¹⁸³ As Vlassenroot further explains, at the time, "Museveni [was] hardly in a position to displease Washington at the risk of losing material support."¹⁸⁴ Secondly, the prospect of further US support also weakened the incentive of Uganda to conclusively defeat the LRA. Uganda was able to solidify their relationship with the US by representing the LRA as an international terrorist group that must be contained by Government forces.¹⁸⁵ Particularly after 9/11, Museveni was able to position Uganda as a vital ally of the 'war on terror' and receive further significant financial, technological and

¹⁷⁸ Branch, *The Political Dilemmas of Global Justice*, p.182 See also 'Kony Rebels Get Better Weapons,' *Sudan vision*, 15 March 1994

¹⁷⁹ Branch, *The Political Dilemmas of Global Justice*, p.192, Branch cites several news reports: 'Why has NRA Failed to Finish off Kony,' *Monitor*, 12 May 1995: 'Disband Kony Rebels, Museveni Tells Sudan,' *New Vision*, 3 May 1995

¹⁸⁰ Illustrated in Dolan, *Understanding War and its Continuation*, p.125

¹⁸¹ Doom and Vlassenroot, p.28

¹⁸² Branch, *The Political Dilemmas of Global Justice*, p.197 For an extensive list of sources documenting US aid to the SPLA through Uganda, see Ahmed, Nafeez Mosaddeq, 'United States Terrorism in the Sudan: The Bombing of Al-Shifa and its Strategic Role in U.S- Sudan Relations,' *Media Monitors Network*, 22 October 2001, http://www.mediamonitors.net/mosaddeq16.html#_edn38 [Accessed 14 December 2010]

¹⁸³ Doom and Vlassenroot, p.28

¹⁸⁴ *Ibid*

¹⁸⁵ Branch, *The Political Dilemmas of Global Justice*

logistical assistance.¹⁸⁶ Ironically, Uganda stood to benefit from US assistance by paying lip service to its continued combat against the LRA, while also engaging in a proxy war that fueled the LRA's military strength.

It is also critical to recognize that for a long time, the relationship between the international donor community and Uganda was shaped by Uganda's image as an exemplary model of neoliberal reform. As I will explore in the following paragraphs, this dynamic profoundly shaped Uganda's approach towards the northern conflict. In 1987 Uganda accepted conditional loans from the International Monetary Fund (IMF) and World Bank (WB),¹⁸⁷ and from 1992 increasingly adopted neoliberal reforms. With an impressive GDP growth rate of 6%, Uganda became championed as a shining example of third world development and attracted increasing support from international donors.¹⁸⁸ As Branch argues, donors were reluctant for a long time to acknowledge the magnitude of the northern crisis because Uganda had become a 'success story' of national recovery and neoliberal reform. This trend is particularly evident for example, in the series of World Bank reports (1998, 2000 and 2004) that pay minimal attention to the northern crisis, instead hailing Uganda as an example of economic "post conflict reconstruction" since the time of Amin.¹⁸⁹ Such reports ignored the rapidly widening poverty gap between northern regions and the rest of the country and the growing security and livelihood crisis in the north.¹⁹⁰

Uganda's prized position amongst international donors allowed Museveni to use the northern war to justify a high military budget.¹⁹¹ The regime appeared to accrue several benefits from this. Improving the military was desirable in order to secure the regime's power base and allow economically exploitative military ventures into the neighboring Democratic Republic of Congo.¹⁹² Also, Museveni appeared to divert security and defense funds to patronage in order to sustain support.¹⁹³ Compared to donor contributions to the national budget, 'classified' security and defense funds

¹⁸⁶ Ibid

¹⁸⁷ Ibid

¹⁸⁸ Branch, *The Political Dilemmas of Global Justice*, p.192,

¹⁸⁹ Mwenda, Andrew, 'Uganda's Politics of Foreign Aid and Violent Conflict: the Political Uses of the LRA Rebellion,' in *The Lord's Resistance Army: Myth and Reality*, ed. by Tim Allen, and Koen Vlassenroot (London, New York: Zed, Palgrave Macmillan, 2010), p.51

¹⁹⁰ For discussion of various sources, see Branch, *The Political Dimensions of Global Justice* p.194

¹⁹¹ Mwenda, *Uganda's Politics of Foreign Aid*, p.49

¹⁹² Branch, *The Political Dilemmas of Global Justice*

¹⁹³ Mwenda, *Uganda's Politics of Foreign Aid*, p.50

were less tightly monitored. Military spending became a vast area of Government corruption.¹⁹⁴ A 2004 Commission of Inquiry, for instance, revealed numerous instances of the purchase of ‘junk’ military equipment and also noted that president Museveni often granted military tenders personally.¹⁹⁵ Many ‘ghost’ (deceased) soldiers remained on the UPDF payroll, most likely allowing higher-ranking officers to receive bounteous rewards.¹⁹⁶ These ‘benefits’ again simultaneously undermined Uganda’s ability to combat the LRA and its motivation to conclusively end the war. Increased opportunity for profitable cross-border military ventures and corruption of military funds directly advantaged Museveni’s regime, yet also helps to explain why despite significant military spending, the UPDF failed to eradicate the LRA from Northern Uganda. High-ranking military officers may also have perceived the continuation of the northern war as convenient, given their lucrative gains from presidential patronage.

The donor community propped up Museveni’s gross misuse of funding, and inadvertently allowed the regime to benefit from the guise of fighting the northern war. As Branch puts it, Uganda managed to strategically turn “its international reputation as a model of African leadership and its position as an ally in the war on terror into a capacity to use donor funding at its own discretion.”¹⁹⁷ Whenever donors challenged the extent of the Government’s military spending, Museveni simply appealed to the need to combat the extreme violence of the LRA. Donors complied, seemingly unwilling to deny the Government funds to deal with a rebel group causing many civilian deaths. International donors simply questioned the extent of the Government’s military budget, rather than the true use of ‘military’ funds, the failures of the Government’s efforts to fight the LRA, and further still, the broader appropriateness of focusing on a military ‘solution’ to the northern problem.¹⁹⁸

The northern war proved convenient for the Uganda Government in more ways than these. While the international community seemed willing to turn a blind eye, the Government exploited the opportunity to derive political benefit from the northern

¹⁹⁴ Ibid

¹⁹⁵ Mwenda, Andrew, and Roger Tangri, ‘Military Corruption and Ugandan Politics Since the Late 1990s’, *Review of African Political Economy* 98 (2003), p.3

¹⁹⁶ Branch, *The Political Dilemmas of Global Justice* p.185

¹⁹⁷ Branch, p.189

¹⁹⁸ Branch, *The Political Dilemmas of Global Justice*, pp.184-185

war by portraying the situation alternatively as an intra-ethnic struggle, or a fight against terrorism. By painting the situation as an intra-ethnic war, Museveni's regime fed preconceptions held by people in other regions that northerners are innately violent and militarized. As one Acholi elder commented, "the war has greatly degraded the Acholi in the eyes of other Ugandans, who view them as murderers, stupid and senseless."¹⁹⁹ At times, Museveni has perpetuated and drawn upon such characterizations to bolster his southern-central support base. The election campaign of 1996 provided a particularly clear example.²⁰⁰ Museveni's election team broadcast a radio advertisement featuring the voice of a man with a northern accent who hijacks civilians at a roadblock, robbing and killing them.²⁰¹ The broadcaster's voice-over warned listeners that if they elect opposition candidates, the northerners could regain power to the detriment of their security. The language of 'terrorism' also gave Museveni a guise under which to purge dissenting political voices within Uganda. Many political opponents including Acholi Members of Parliament have been accused of collaborating with the LRA, and have often faced persecution or political exclusion.²⁰²

The continuation of the northern conflict therefore resulted from the interplay of local, national and international dynamics. The international goals of the advancement of neoliberal reform and the war on terror contributed to a situation in which Uganda was able to profitably exploit funding opportunities in a manner that simultaneously undermined the Government's prospects of ending the war, and significantly diminished their incentive to do so. Below, I turn to an assessment of the Government's policy of displacing northern communities into 'protected' camps, and the role of international agencies in facilitating this process. As I demonstrate, it is in the encampment of northern populations that state actors can most clearly be identified as active perpetrators of structural (and physical) violence in the northern conflict. This analysis again has significant implications for the pursuit of justice in the wake of war. As I argue throughout this thesis, the narrow focus of many actors

¹⁹⁹ Acholi Elder speaking at a 1999 Conference, quote in Dolan, *Understanding War and its Continuation*, p.347

²⁰⁰ Mwenda, *Uganda's Politics of Foreign Aid*, p.54

²⁰¹ Ibid

²⁰² Branch, *The Political Dilemmas of Global Justice*, p.185 For example, see 'Uganda's Besigye Denies Treason,' BBC News Online, 4 April 2006

on the prosecution of the top LRA is accordingly a grossly insufficient approach to postwar justice. Rather, a comprehensive understanding of the war suggests that ‘justice’ must address the complicity of the state in the socioeconomic devastation of northern communities throughout the war.

Displacement in ‘Protected’ Camps: National and International Complicity in Dehabilitation and Dependency

In 1996, the Government embarked on a policy of shifting civilians (frequently forcibly) from their homesteads into camps called ‘protected villages.’ The numbers of displaced grew rapidly. Originally, the World Food Program (WFP) estimated they would need to provide for 110 000 people in the camps. By 2002, the WFP’s figure was 522 000.²⁰³ Following LRA violent reprisals in the aftermath of Operation Iron Fist, the number of displaced people had risen to 800 000.²⁰⁴ As recalled by a camp leader interviewed by Dolan, the objectives of establishing the camps were purportedly to “avoid abduction...save the lives of people ...[and] to cut communication between the masses and the rebels.”²⁰⁵ The curiously contrasting objectives of providing security and curbing rebel collaboration hints at the Government’s fraught relationship with those they were supposedly protecting.²⁰⁶ The following paragraphs outline the impact of the camps upon the civilian population.

The conditions of life in the camps led to widespread impoverishment and denial of basic human rights in northern war-affected communities. An Acholi woman explains:

The problems I faced in village are nothing compared to the problems in the camp. In my home, I farm my late husbands land and yield much food. In the camp, I have to wait for World Food Programme food. Only then can my children eat.²⁰⁷

While some economic and agricultural activity took place during the years of camp life, most people simply could not access arable land. From November 1998, civilians

²⁰³ World Food Program, ‘WFP Emergency Report 32,’ August 2002, <http://www.cidi.org/report/12988> [Accessed 13 August 2011]

²⁰⁴ Dolan, *Understanding War and its Continuation* p.158

²⁰⁵ Ibid

²⁰⁶ Ibid

²⁰⁷ Lucy’s story in Christie, Jackie, ed., *Today You Will Understand: Women of Northern Uganda Speak Out*, A Collection of Northern Ugandan Women’s Stories (Kampala, Integrated Regional Information Networks and FEMRITE, 2007) [On file with author], p.19

were ordered not to move more than 1km from the camp area.²⁰⁸ By 2000, approximately 10% of previously farmed land was still cultivated.²⁰⁹ The food rations provided by WFP and other food agencies were distributed unreliably and often in inadequate proportions, while access to clean water and sanitation was often lacking. Odek camp in 1998 for example, had only three pit latrines for 8000 people.²¹⁰ Crowded, unsanitary conditions combined with severely inadequate access to healthcare led to greatly inflated rates of mortality and morbidity.²¹¹ The severe erosion of access to adequate education will undoubtedly have long-term impacts for Acholi and other affected northern communities. One 2001 study showed for instance that only 17.86 % of men, and 16.14% of women completed primary school, while access to secondary schooling was even lower.²¹²

Significant evidence suggests that the Government's policy of displacement exacerbated the vulnerability of the population to the violence of the LRA. The UPDF largely failed to protect civilians. According to the records of the Acholi Religious Leaders Peace Initiative for example, Government forces placed in Kitgum and Pader districts intervened in only 33 of over 456 attacks on camps between June and December of 2002.²¹³ Rather than guarding the perimeters, UPDF quarters were usually positioned at the center of the camps, surrounded by civilian huts.²¹⁴ From his fieldwork, Dolan observed that UPDF responses to attack were frequently late, to the point that they usually arrived after the LRA had left.²¹⁵ Many civilians accordingly chose to leave the camps at night, seeking greater safety from attack and abduction by commuting to town centers, or sleeping in temporary hideouts (*Alups*) in the bush

²⁰⁸ Acker, Frank Van, 'Uganda and the Lord's Resistance Army: The New Order No One Ordered', *African Affairs*, 103.412 (2004), p.343

²⁰⁹ Acker, p.343

²¹⁰ Dolan, *Understanding War and its Continuation*, p.166

²¹¹ For an analysis of northerner's access to healthcare during years of encampment, see Dolan, *Understanding War and its Continuation*, p.210 See also Medecins Sans Frontiers, *Internally Displaced Camps in Lira and Pader, Northern Uganda: A Baseline Survey, Preliminary Report*, (Medecins Sans Frontiers Holland, November 2004)

²¹² International Organization for Migration (IOM), 2001, table 6, cited in Dolan, *Understanding War and its Continuation*, p.204

²¹³ ARLPI statistic quoted in Human Rights Watch, *Stolen Children: Abduction and Recruitment in Northern Uganda*, Report 15, 7 (Human Rights Watch, March 2003)

<http://www.hrw.org/reports/2003/uganda0303/uganda0403.pdf> [Accessed 13 August 2011], p.19

²¹⁴ Dolan, *Understanding War and its Continuation*, p.219

²¹⁵ Ibid

outside the camps.²¹⁶ In 2004, a survey showed that on one night, 20 000 children had commuted to eleven different commuter sites.²¹⁷

In many instances UPDF soldiers became the direct perpetrators of violence and crime against civilians. Reports of UPDF killing civilians accused of collaborating with the LRA were not uncommon.²¹⁸ A man now living in Patiko sub county recalled:

A UPDF soldier killed my father. They killed nine other people on the same day. They shot them; perhaps hoping that maybe they were some of the collaborators with the LRA, the rebels. This place [pointing to where the camp was] was a battlefield. The same thing happened in other villages.²¹⁹

Soldiers were reported to have exploited the encamped population, looted goods, demanded arbitrary manual labor from civilians, and perpetrated rape. Civilians increasingly felt caught between the two forces. Furthermore, to the encamped populations it was often unclear who the perpetrators were, particularly as the two armies often wore the same uniforms.²²⁰ It certainly appears that incidents of looting, destruction of property and attacks were undertaken by UPDF under the guise of the LRA.²²¹

Extreme insecurity, squalid, cramped conditions and forced reliance on food aid took a heavy social toll upon the encamped populations. Dolan's deeply involved fieldwork explores the ways in which people became debilitated, adopting self-destructive individual and collective behavior patterns in response to their surroundings.²²² Why did most people stay in the camps during the periods of relative peace instead of tending to their land? Dolan points to fear of Government reprisal, but also deep psychological and cultural debilitation that prevented people from resisting the situation. During my fieldwork in Gulu, many northerners also reflected upon the culture of dependency and idleness that developed during the period of

²¹⁶ See Allen, *War and Justice in Northern Uganda*, p.24; Dolan, *Understanding War and its Continuation*, p.227

²¹⁷ Falk, L., and others, *Sleepless in Gulu: A Study of the Dynamics Behind the Child Night Commuting Phenomena in Gulu, Uganda* (SCIU, 2004), quoted in Allen, *War and Justice in Northern Uganda*, p.24

²¹⁸ Dolan, *Understanding War and its Continuation* p.221

²¹⁹ Author's interview with a male Local Councilor 1(A) (Patiko sub county, Gulu District, July 2010)

²²⁰ Dolan, *Understanding War and its Continuation*, p.223

²²¹ For discussion see Dolan, *Understanding War and its Continuation* p.224-226

²²² Dolan, *Understanding War and its Continuation*: See also Finnstrom

encampment.²²³ To a great extent, people came to rely on the services provided at the camps, despite their inadequacy.²²⁴ Destructive patterns of alternative economic and social activity also emerged. While men increasingly engaged in heavy drinking, numerous women took up alcohol brewing to earn enough to feed their children.²²⁵ Widespread breakdown of local authority structures and social conflict resolution mechanisms also occurred.

The structural violence and devastation wrought by the Government's policy of encampment stemmed from a number of factors of convenience. As Vlassenroot contends, the policy of encampment is likely to have reflected the military goal of containing the situation by cutting off rebels' easy access to food, and segregating 'potential collaborators' from the rebels.²²⁶ The camps also served to demonstrate to outside observers that the Government was taking measures to shield civilians from LRA attack. As indicated in the above discussion however, the Government perceived little incentive to invest heavily in military protection or service provision for northern populations. In the absence of international scrutiny, it was more convenient for the Government to continue to divert military funds elsewhere.

While the acts of violence and neglect committed by UPDF soldiers were certainly a matter of individual choice, they also reflected the wider context of inadequate funding of the UPDF and an abusive military culture. Government troops were usually inadequately fed and paid, and often had to resort to stealing from civilians in camps.²²⁷ As Vlassenroot notes, poorly paid non-northern soldiers who perceived the conflict as an 'Acholi affair,' were unsurprisingly reluctant to risk their lives in a "foreign war."²²⁸ Retributive action against UPDF violence and abuse of civilians appeared to be rare before 2004.²²⁹ As I explore below, the Government was also able to render itself conveniently exempt from the responsibility of ensuring critical services for northern populations due to the extensive presence of international aid agencies.

²²³ Numerous interviews, Gulu Town, July-August 2010

²²⁴ Dolan, *Understanding War and its Continuation*, p.234

²²⁵ For in-depth discussion see Dolan, *Understanding War and its Continuation*

²²⁶ Doom and Vlassenroot, p.31

²²⁷ See Doom and Vlassenroot, p.30 Branch, *The Political Dilemmas of Global Justice*, p.204

²²⁸ Doom and Vlassenroot, p.565

²²⁹ Dolan, *Understanding War and its Continuation*, p.226

During the period of 1996-2003, the net impact of humanitarian organizations operating in Northern Uganda was to facilitate the Government's policy of displacement. Aid agencies undertook a range of approaches in response to the northern situation, including the establishment of reception centers for abducted children, and support of local peace initiatives and income generating activities.²³⁰ A significant proportion of aid, however, was dedicated to the provision of food and basic services in the 'protected camps,' as requested by the Ugandan Government in 1996.²³¹ By 2003 over half of the total aid money (US\$123.6 million) was spent on purchasing and distributing food packages.²³² Certainly the aid often provided much needed relief to large numbers of people.²³³ As Branch argues, however, the aid provided by organizations such as WFP facilitated the Government's program of encampment but failed to avert "a humanitarian disaster of vast proportions."²³⁴ The WFP provided food without questioning the wider political context, largely ignoring UPDF violence and Government structural complicity in the northern situation.²³⁵ In November 1996 the WFP's account simply read:

Escalation in insurgency since July 1996 by the LRA in the north of Uganda has continued to pose a threat to the lives and property of people... WFP has responded to the situation by arranging limited short term ad hoc distributions of food to the worst affected areas.²³⁶

International organizations acted to perpetuate the status quo and facilitate a culture of reliance on foreign aid amongst the encamped populations.²³⁷ Increasingly, populations were "taught", as Branch puts it, to "orientate their attention away from the state" as service providers, towards transnational agencies that ultimately lack any political accountability to the communities they serve.²³⁸ The national policy of creating the IDP camps was designed to transfer responsibility to the wide range of UN agencies, NGOs and donors that participated in planning and providing services

²³⁰ For discussion see Dolan, Chris and Lucy Hovil, *Humanitarian protection in Uganda: a Trojan Horse?* (Overseas Development Institute, Humanitarian Policy Group, 2006), pp.6-8

²³¹ Ibid

²³² Branch, *The Political Dilemmas of Global Justice*, p.329

²³³ Ibid, p.321

²³⁴ Ibid, p.331

²³⁵ For a more detailed discussion see Branch, *The Political Dilemmas of Global Justice*, p.333

²³⁶ World Food Program, 'Weekly Review,' Report no. 47, 29th November 1996
<http://iys.cidi.org/humanitarian/wfp/96b/0021.html> [Accessed 16 December 2010] cited in Branch, *The Political Dilemmas of Global Justice* p.329

²³⁷ Branch, *The Political Dilemmas of Global Justice*: Dolan and Hovil, *Humanitarian Protection in Uganda*

²³⁸ Branch, *The Political Dilemmas of Global Justice*, pp. 346, 561

in the camps. Little or no pressure was exerted on the Government to adequately protect civilians, provide basic social services for encamped civilians, or bring the situation to an end.²³⁹ While there were local NGOs that drew critical attention to abuses by state actors, until 2004, international NGOs that were in a strong position to leverage the Government were overwhelmingly quiet.²⁴⁰ Another humanitarian worker interviewed by Dolan commented that humanitarian actors the UN are "...just diluting the essence of the issue. They think they are doing protection, yet the Government is getting off scot-free."²⁴¹ NGOs may have preferred to stay 'apolitical' due to fear of expulsion or reprisal. Overwhelmingly however, the actions and inactions of most organizations reflected a 'disaster model' of humanitarian aid.²⁴² Politics was viewed as irrelevant: the people of Northern Uganda were perceived rather as 'passive victims' without agency.²⁴³ As Dolan argues, while state actors and the LRA both acted as the perpetrators of violence as well as economic and psychological debilitation, international humanitarian organizations acted as complicit bystanders.²⁴⁴

Conclusion

This chapter has critically examined the historic emergence and key dynamics of the northern conflict, challenging the dominant narratives of the war commonly presented by the Ugandan Government, western media and International NGOs. I have argued that it is misleading and inaccurate to simply narrate the northern situation as a war between the LRA and Museveni's regime. For over twenty years, northern civilians became enmeshed between the structural violence of the Ugandan Government and the atrocities of the LRA, which was facilitated by the actions and inactions of various international actors and institutions.

From the colonial roots of economic disparity, the emergence and expansion of the LRA rebellion, to the dynamics that drove the continuation of the conflict, socio-economic issues and national-international dynamics have factored strongly

²³⁹ Dolan, *Understanding War and its Continuation*, p.11

²⁴⁰ An exception is Human Rights Watch, *Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda*, Report, 17, 12, (Human Rights Watch, 2003) <http://www.hrw.org/reports/2005/uganda0905/uganda0905.pdf> [Accessed 13 August]

²⁴¹ Humanitarian worker, interviewed in Dolan and Hovil, *Humanitarian Protection in Uganda*, p.11

²⁴² Branch, *The Political Dilemmas of Global Justice*, p.318-321

²⁴³ Ibid

²⁴⁴ Dolan, *Understanding War and its Continuation*

throughout the northern war. Contrary to dominant narratives, the LRA did not act simply as irrational terrorists or religious fanatics. Rather, the LRA movement reflected a particular societal-based logic that emerged in response to historical patterns of political and economic exclusion and the immediate context of the NRA's coup. A complex interplay between the strategic interests of national and international actors served to perpetuate the war. The complicit role of international economic agencies and donors in the continuation of the war was underpinned by their vested interest in preserving the image of post-1986 Uganda as a shining example of neoliberal economic reform. The uncritical provision of funds by international actors eager to fight a 'war on terror' and promote this neoliberal agenda led to a situation in which Uganda was able to profitably exploit funding opportunities in a way that simultaneously diminished the Government's prospects of ending the war, and furthermore undermined their incentive to do so. Uganda's strategically beneficial siphoning of military funds to political patronage, provision of support to the SPLA, and engagement in exploitative military ventures in the DRC weakened the ability of the Ugandan Government to end the war or adequately protect encamped northern populations. In addition to the procurement of significant international funds with few strings attached, Uganda could exploit the northern situation for various political gains.

Finally, the socioeconomic roots of the conflict were reproduced and magnified in its consequences. Twenty years of deep insecurity and displacement in squalid camps brought about deep social and economic devastation amongst northern communities, and widening disparity between the north and the rest of the country. The international community actively participated in the policy of encampment through the uncritical provision of food aid, facilitating a culture of reliance on foreign agencies, and ultimately failing to challenge the Government's approach to the north.

As I explore throughout this thesis, the struggles over different approaches to post conflict justice are underpinned by very different accounts of the war itself. This chapter has established that a narrow focus upon the criminal trial of LRA commanders is inadequate. Actors that defend this approach downplay or ignore the complicity of the state actors in the war. Rather, 'justice' must also hold the state accountable for its role in the war. Furthermore, if 'justice' is to be meaningful it must

strive towards the transformation of the dynamics that drove the conflict itself: the socioeconomic marginalization of Northern Uganda. As I argue at greater length in subsequent chapters, transitional justice must unequivocally encompass the concept of socioeconomic justice.

In the following chapter, I examine Uganda's emergence from war, analyzing the critical period of 2003-2008. I focus on two significant developments in this period: Uganda's referral of the northern situation to the ICC, and the pivotal Juba Peace Process. Throughout my analysis, I explore the ways in which various local, national, and international actors can either cultivate or restrict the opening of critical political space in which dominant narratives of the war are justified or challenged. I identify the roots of transitional justice discourse in the radical space created at Juba, in which a range of actors at all levels critically confronted dominant narratives of the war. Actors in Juba demanded that post-war processes address the socio-economic roots of the conflict, its ongoing consequences, and the Government's accountability.

Chapter 3: Uganda's Emergence From War

Introduction

Even while the war persisted, from early 2004 a dynamic debate ignited over how peace could be brought to Northern Uganda, the nature of 'justice' that should be sought in the wake of conflict, and the relationship between the two. In late 2003, Uganda referred the 'situation of the Lord's Resistance Army' to the ICC. Early the following year, the ICC Prosecutor announced that the conflict would be the first case addressed by the new international justice institution, and the ICC commenced investigations. The ICC intervention created a storm of controversy in Uganda. Local civil society actors feared that the release of arrest warrants for LRA commanders would prevent a peaceful solution. Northern cultural and religious leaders contended that the ICC could undermine the possibility of applying 'traditional' justice processes that focus on forgiveness and reconciliation. The arrest warrants for Kony and four other LRA commanders released in 2005 also directly contradicted the blanket amnesty established in 2000. Furthermore, many perceived that the ICC was biased towards the Ugandan Government, as it indicted only the LRA and appeared to rely closely upon state security forces to conduct its operations.

On the other hand, key changes in the international environment paved the way to unprecedented engagement between the LRA and the Ugandan Government during the Juba peace talks from 2006-2008. The agreements reached at Juba presented a window of hope for definitive disarmament of the LRA and a fundamental shift in the Ugandan Government's approach to the North. The ICC indictments, however, proved to be a major stumbling block to the talks. The indictments shaped the course and content of the negotiations and underpinned their final demise. While hopes that a conclusive peace deal would be forged between the Ugandan Government and the LRA collapsed in November 2008, agreements signed during the negotiations have been officially adopted as the framework for the development of national transitional justice mechanisms in Uganda.

This chapter explores the path of Uganda's emergence from war. I argue that the international community had a profound yet contradictory influence on national processes in Uganda. I demonstrate how various international actors, as well as diverse domestic actors, have the power to cultivate or restrict the opening of critical political space in which dominant narrative about the war is justified or challenged. On one hand, the ICC acted to legitimize the Government's politicized discourse and narrow the trajectory of post conflict justice towards a focus on criminal trials of the LRA. Meanwhile, other international and local actors broadened the scope of 'justice' during the Juba Peace Process to address deeper socio-economic roots and repercussions of the war, and compelled the Government to submit to processes of accountability and national transformation. I demonstrate how the language and concepts of transitional justice helped facilitate the efforts of such actors. This chapter contributes to the regionally focused literature on the ICC intervention in Uganda through original analysis of the ICC's impact on the development of early transitional justice processes.

I divide this chapter into four sections. First, I explore the politics of Uganda's referral of the LRA conflict to the ICC. After analyzing the self-interested motivations of both the Ugandan Government and the ICC, I discuss the broad implications of ICC's narrow intervention in shaping discourse of violation and justice in Uganda. In the second section I examine the development of the Juba Peace talks. Firstly, I explore the drive from local civil society for a peaceful end to the war, and their hostile reaction to the ICC intervention. Secondly, I examine the conflicting roles of different international actors in the struggle to engage the LRA and the Ugandan Government in the Juba peace process.

In the third section, I analyze the Juba agreements, demonstrating that the peace talks provided a political space where dominant narratives of the war could be challenged. I argue that to a degree, the language of transitional justice facilitated the radical political gains made in Juba. In the fourth part, I examine the impact of the ICC on the Juba talks. I contend that the ICC inadvertently propelled the development of formal criminal justice ahead of other reconciliation measures provided for in the Juba agreements. Finally, I posit that the ICC ultimately derailed the peace process,

significantly weakening the Ugandan Government's obligation to implement the Juba agreements.

The Convenient Alliance of Uganda and the ICC: Narrowing the Scope of Justice

Motivations of Uganda's referral to the ICC

The international pressure upon the Ugandan regime that developed from 2003 transformed the Northern conflict in numerous ways. After years of apathetic silence, increasing critical international attention was cast upon the northern conflict and the role of the Ugandan regime. The visit of Jan Egeland (UN Under-Secretary for Humanitarian Affairs to Northern Uganda) in November 2003 marked a critical turning point in the approach of the international community. Egeland stated: "We must agree as an international community, the UN and donors, that this is totally unacceptable. Northern Uganda is the most forgotten crisis in the world."²⁴⁵ Egeland's call reflected a wider rise in awareness by top-level members of the UN and diplomatic circles. The immediate backdrop to the surge of critical voices was the dismal failure of the Government's military campaign Operation Iron Fist, which resulted in tragic retaliation of LRA violence against civilians. The UK Deputy High Commissioner (the representative of another key donor) declared in response that the "war effort has failed," while other donors questioned the Government's military approach towards ending the war.²⁴⁶ Donor misgivings also became evident as their contributions diminished. In the financial year of 2003-2004, donor support of the total Government budget slipped to 47% compared to 54% between 2000 and 2003.²⁴⁷

The Ugandan Government's referral of the 'situation regarding the LRA' to the newly established ICC appeared to be a strategic response to this mounting international pressure. The emergence of donor scrutiny upon the northern conflict and prospects of losing donor funds drove the Government to seek new avenues to gain the approval of

²⁴⁵ *The Monitor*, 11 November 2003, quoted in Refugee Law Project, 'Position Paper on the Announcement of Investigation of the International Criminal Court of the Lord's Resistance Army,' Kampala, 28th July 2004, <http://www.refugeelawproject.org/archive/2004/RLP.ICC.investig.pdf> [Accessed 11 August 2011]

²⁴⁶ Noted in Allen, *War and Justice in Northern Uganda*, p.32

²⁴⁷ Government of Uganda, 'Budget Speech 2003/04,' (Kampala, Ministry of Finance Planning and Economic Development, 2003), p.81

the international community. By referring the LRA to the ICC, Museveni's advisors perceived he could swing international favor back towards the regime by casting Uganda as a champion of the international justice movement and the fight against impunity.²⁴⁸ The legal advisor to the Government on the ICC himself explained Uganda's referral as an "attempt to engage an otherwise aloof international community by transforming the prosecution of the LRA leaders into a litmus test for the much celebrated promise of global justice."²⁴⁹ In casting itself as the new champion of international justice, Uganda could also counter international criticism levied at the regime for offering a blanket amnesty to the LRA.²⁵⁰

Referral to the ICC also reflected Museveni's desire to regain international support for UPDF military operations. As discussed in the previous chapter, Museveni's determination to keep the military option alive probably reflected his need to maintain the flow of donor funding to Uganda's military budget, which propped up his political patronage system.²⁵¹ Furthermore, in 2003 it is likely that Museveni feared defense budget cuts as donors increasingly doubted Uganda's military approach to the north. Referring the northern conflict to the ICC was likely to boost support for military action against the LRA, as the court required the capture of the top LRA commanders in order to put them on trial.²⁵² Statements issued by the ICC indeed lent support to a military approach. Soon after referral to the ICC, the Office of the Prosecutor (OTP) stated that the arrest of the LRA must be a key priority.²⁵³ It appears Uganda also anticipated international assistance in military efforts to capture the LRA.²⁵⁴

²⁴⁸ Refugee Law Project, *Position Paper*, p.5

²⁴⁹ In Akhavan, Payam, 'The Lord's Resistance Army Case: Uganda's Submission of the First State Referral to the International Criminal Court', *The American Journal of International Law*, 99.2 (2005), 403-21

²⁵⁰ For example, Amnesty International, *Uganda: First Steps to Investigate Crimes Must be Part of Comprehensive Plan to End Impunity*, Public Statement AFR 59/001/2004 (Amnesty International, 30 January 2004) <http://www.amnesty.org/en/library/asset/AFR59/001/2004/en/fa3a6b5f-d63b-11dd-ab95-a13b602c0642/afr590012004en.html> [accessed 11 August 2011]

²⁵¹ See Discussion in Chapter Two

²⁵² Branch, Adam, 'Uganda's Civil War and the Politics of ICC Intervention', *Ethics & International Affairs*, 21.2 (2007), p.184

²⁵³ International Criminal Court, 'President of Uganda Refers Situation Concerning the Lord's Resistance Army,' Press Release ICC-20040129-44, 29th January 2004, http://www.iccpi.int/menus/icc/press%20and%20media/press%20releases/2004/president%20of%20uganda%20refers%20situation%20concerning%20the%20lord_s%20resistance%20army%20_lra_%20o%20the%20icc?lan=en-GB [Accessed 11 August 2011]

²⁵⁴ See Nouwen, Sarah, and Wouter Werner, 'Doing Justice to the Political: The International Criminal Court in Uganda and Sudan', *European Journal of International Law*, 21.4 (2010), p.9

It is clear that Museveni's regime felt secure that state actors would not be subjected to the ICC's jurisdiction when it made the referral. The referral itself tellingly requested the ICC to investigate "the situation concerning the LRA."²⁵⁵ In January 2004, the ICC's decision to commence investigations was announced in an amiable joint press conference between Museveni and the ICC's prosecutor, Moreno Ocampo.²⁵⁶ While ICC representatives have since insisted that in 2003 the ICC prosecutor interpreted Uganda's referral to include all crimes committed during the northern conflict after 2002, Ugandan officials appear convinced that the ICC would only target the LRA.²⁵⁷ After investigations were opened into five LRA commanders, for instance, the defense minister assured Parliament that "the number of people to be handled by the ICC does not exceed five."²⁵⁸

The Self-interested Approach of the ICC

For the ICC, Uganda's self-referral offered a promising first case with which it could establish its credibility as an international institution.²⁵⁹ As Nouwen describes, in the wake of the Rome Statute's entry into force in 2003, the new staff of the ICC felt a sense of urgency to demonstrate to supporting states and NGOs that the Court was worthy of confidence.²⁶⁰ Ideally, a first case needed to assure dubious states that the ICC would not act with disregard for state sovereignty, and also avoid invoking the condemnation of the U.S, which openly sought to undermine the fledgling Court.²⁶¹ As many commentators have since recognized, the Ugandan case uniquely fitted such

²⁵⁵ International Criminal Court, *President of Uganda Refers Situation*

²⁵⁶ Allen, Tim, 'Bitter Roots', in *The Lord's Resistance Army: Myth and Reality*, ed. by Tim Allen, and Koen Vlassenroot (London, New York: Zed, Palgrave Macmillan, 2010), p.259

²⁵⁷ See Branch, Uganda's Civil war and the politics of intervention, p.188; Nouwen and Wouter, *Doing justice to the political*, p.12. cf. Akhavan, *The Lord's Resistance Army Case*.

²⁵⁸ International Criminal Court, 'Statement by the Prosecutor on the Uganda Arrest Warrants,' Office of the Prosecutor, 14th September 2005, <http://www.icc-cpi.int/menus/icc/situations%20and%20cases/situations/situation%20icc%200204/related%20cases/icc%200204%200105/press%20releases/statement%20by%20the%20chief%20prosecutor%20on%20the%20uganda%20arrest%20warrants?lan=en-GB> [Accessed 11 August 2011] referred to in Nouwen and Wouter *Doing Justice to the Political*, p. 10. Also note that Ugandan state officials still appear confident that they are cleared by the ICC. See Bekunda, Catherine, 'DP Wants ICC to Probe Local Massacres,' *New Vision*, 1 June 2010

²⁵⁹ Several scholars highlight this point: Nouwen, Sarah, 'The ICC and Complementarity Post Juba: Between International Imposition and Domestic Diversity', in *The International Criminal Court and the Juba Peace Process or Global Governance and Local Friction*, ed. by O.J. Francis and P. Wrange (forthcoming 2011); Clark, Phil, 'Law, Politics and Pragmatism: The ICC and Case Selection in the Democratic Republic of Congo and Uganda', in *Courting Conflict?: Justice, Peace and the ICC in Africa*, ed. by Nicholas Waddell, and Phil Clark (Royal African Society, 2008) <<http://www.crisisstates.com/downloads/others/ICCinAfrica.pdf>> [accessed 11 August 2011]

²⁶⁰ Nouwen and Wouter, *Doing Justice to the Political*, p.953

²⁶¹ *Ibid.* See also Branch, *Uganda's Civil War*, p.186

criteria.²⁶² Because Uganda referred the case itself, the ICC could feel simultaneously assured that Uganda would cooperate with its procedures, and that it would not come under the scrutiny of other member states for overriding state sovereignty. The U.S was unlikely to obstruct the intervention, as the LRA, an ally of Sudan's regime in Khartoum already featured on its list of international terrorists.²⁶³ Given the vested interest in achieving a successful first case to prove the functionality of the Court, the Court acted pragmatically to maintain the cooperation of the Ugandan Government. As indicated above, this involved refraining from subjecting state actors to the ICC's jurisdiction.

For its part, the ICC has staunchly justified its exclusive indictment of LRA in legal terms. Its initial indictments were explained in terms of the 'the gravity' criterion, which prescribes that only those individuals *most* responsible for the gravest crimes should be investigated and brought before the Court.²⁶⁴ In 2005, Moreno Ocampo accordingly explained:

...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...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.²⁶⁵

Legal analysts such as Nouwen and Schabas have described this application of the gravity criteria as "dubious," noting that regardless of "numerical differences" between the crimes of the Government and the LRA, the involvement of the state in crimes against civilians is arguably a "sufficient indication of gravity," given "the high risk of impunity for such crimes."²⁶⁶ The ICC's adviser Brubacher has also defended the ICC's impartiality on the grounds that the ICC is bound by non-retroactivity and can only investigate crimes that occurred after the 1st July 2002 when

²⁶² Ibid

²⁶³ Nouwen and Wouter, *Doing Justice to the Political*, p.953

²⁶⁴ The Rome Statute of the International Criminal Court, Article 17

[http://untreaty.un.org/cod/icc/statute/english/rome_statute\(e\).pdf](http://untreaty.un.org/cod/icc/statute/english/rome_statute(e).pdf) [Accessed 12 August 2011]

²⁶⁵ International Criminal Court, *Statement by the Prosecutor*

²⁶⁶ Nouwen and Wouter, *Doing Justice to the Political*, p.951, fn.52 See also Schabas, William, *An Introduction to the International Criminal Court* (Cambridge, New York: Cambridge University Press, 2007), p.191

the Rome Statute of the ICC came into force.²⁶⁷ Much of the worst physical violence that took place during the war, including that perpetrated by UPDF forces, took place before 2002, and is therefore automatically excluded from investigation by the Court.²⁶⁸

The Impact of the ICC Intervention on discourses of Justice

The ICC's intervention has continued to lend legitimacy to the Government's narrative of the war. The focus has remained on the crimes of the LRA, while the Ugandan Government has escaped the Court's scrutiny. Officially, the ICC has been careful to emphasize the OTP's impartial stance. However, the Ugandan Government's confidence that state actors will escape the jurisprudence of the Court appears warranted. Since 2008, annual ICC reports have carefully stated that the OTP "continues" to analyze "information in relation to alleged crimes committed by the UPDF and related national proceedings."²⁶⁹ Seven years after Uganda's referral however, no official proceedings have actually been opened into the alleged crimes of UPDF soldiers or other state actors, although ICC representatives formally state that the OTP is yet to reach a decision.²⁷⁰ Unofficially, the belief that the ICC will not investigate state actors is widespread. In 2006, the registrar of the ICC is even reported to have told Uganda's *New Vision* that "according to the chief prosecutor" no names will be added to the list of indicted individuals unless "any new crimes are committed."²⁷¹ News reports in Uganda have gone so far as to broadcast that the ICC has cleared the UPDF, emphasizing that the international Court "has not found evidence."²⁷²

²⁶⁷ Brubacher, Matthew, 'The ICC Investigation of the Lord's Resistance Army: An Insiders View', in *The Lord's Resistance Army: Myth and Reality*, ed. by Tim Allen, and Koen Vlassenroot (London, New York: Zed, Palgrave Macmillan, 2010), p. 266

²⁶⁸ Branch, *Uganda's Civil War*, p.186

²⁶⁹ International Criminal Court, 'Fifth Report of the International Criminal Court to the United Nations for 2008/2009,' A/64/356,

http://www.iccpi.int/menus/icc/reports%20on%20activities/court%20reports%20and%20statements/fifth%20report%20of%20the%20international%20criminal%20court%20to%20the%20united%20nation%20for%202008_2009 [Accessed 11 August 2011]

²⁷⁰ Brubacher, p.269

²⁷¹ See Lubangakene, Cornes, 'ICC Relies on State Strength,' *New Vision*, 14 April 2006

²⁷² Mugisa and Nsambu, "ICC Clears UPDF in the North,' *Saturday Vision*, 20th August 2008

The ICC's intervention has therefore acted to constrict the 'discourse of violation' in Uganda, limiting the scope of applicable justice.²⁷³ In part, the failure of the ICC to address the Government's role in the war reflects its narrow legal focus of justice upon extreme, physical violence rather than structural violence.²⁷⁴ The ICC's central mandate under the Rome Statute to prosecute the individuals 'most responsible' for 'gravest crimes' is ill equipped to recognize and address systemic, socio-economic injustices. While it is hypothetically feasible, for instance that the ICC could prosecute UPDF commanders for attacks on civilians, it is not conceivable that the ICC could hold Government actors responsible for their negligence and complicity in allowing social and economic devastation of northerners to persist. The ICC has therefore narrowly limited the conception of 'violations' committed in the Ugandan conflict to the physical atrocities of the LRA. The Court effectively lends international legitimacy to the narrative of "tolerable structural violence and intolerable physical atrocity."²⁷⁵

The intervention of the ICC accordingly served to refocus international attention exclusively on the LRA. While the Government had previously capitalized on the media's portrayal of the LRA as irrational terrorists to justify increased military budgets, the ICC indictments could be invoked to further demonize the LRA as internationally wanted criminals.²⁷⁶ The discourse advanced by the ICC itself bolstered this image of the LRA. Infamously, when an academic persistently asked, why the ICC had failed to prosecute state actors, Ocampo accusingly retorted, "If you want to support the LRA, fine! But you should know they are a criminal organization."²⁷⁷ Ugandan state officials have often invoked the ICC's intervention to recast attention on LRA crimes or defend the regime from critical accusations.²⁷⁸

On balance, referral to the ICC' has indeed rebuilt support amongst some international actors for the Ugandan Government and its military approach, and to

²⁷³ Phrase borrowed from Miller

²⁷⁴ Ibid, p.275

²⁷⁵ Ibid, p.266

²⁷⁶ See Nouwen and Wouter, *Doing Justice to the Political*, p.949

²⁷⁷ Quoted in Branch, Adam, 'What the ICC Review Conference Can't Fix' *African Arguments*, <http://africanarguments.org/2010/03what-the-icc-review-conference-can%E2%80%99t-fix/> [Accessed 11 August 2011]

²⁷⁸ See for example, Wasike, Alfred, 'Kony must apologize' – Museveni' *New Vision*, 30 July 2006

subdue critique of the UPDF.²⁷⁹ Support for a second Iron Fist attack on the LRA in 2004 following the dismal failure of the first attack is likely to have been bolstered by the ICC process. As I discuss in the following section, from late 2005, a new alliance of donors increasingly advocated that the Government pursue a peaceful settlement. However, the competing imperative of executing the ICC arrest warrants led other external actors and donors to continue to support military options throughout the Juba negotiations.²⁸⁰ Accordingly, when the Juba process finally collapsed, the joint forces of Uganda, DRC and Southern Sudan launched ‘Operation Lightning Thunder’ against the LRA in the DRC. This joint military offensive was declared “welcome” by the Security Council as an effort to “address the security threat posed by the LRA.”²⁸¹

Contrary to the contentions of ICC advocates therefore, the Court did not provide a “depoliticized venue for justice.”²⁸² Rather, the ICC’s intervention was both triggered and shaped by the self-interested goals of both the Ugandan Government and the International Court. The Ugandan Government sought to regain its international reputation amongst donors and boost support for military funding and ventures. For the ICC, the Ugandan case was a chance to establish its credibility. The ICC’s exclusive indictment of LRA leaders reflects a focus on physical violence rather than structural and socio-economic injustice, and also its reliance on the Ugandan Government’s cooperation. As I discuss further in chapter five, the ICC’s intervention inevitably has ongoing implications for the development of transitional justice processes in Uganda. Effectively, the decisions and discourse of the ICC has lent international legal credibility to the prevailing narrative that the suffering of Northern Ugandans is exclusively due to the LRA, and that little or no responsibility lies with the Ugandan Government. Post conflict ‘justice’ is cast primarily in terms of prosecuting leaders of the violent rebel group, rather than the ongoing transformation of the Government’s socio-economic and political engagement with Northern Uganda.

²⁷⁹ Branch, Adam, 'International Justice, Local injustice: The International Criminal Court in Northern Uganda', *Dissent Magazine*, Summer 2004

²⁸⁰ Schomerus, Mareike, *The Lord's Resistance Army in Sudan: A History and Overview*, (Geneva, Small Arms Survey, Graduate Institute of International Studies, 2007), p.38

²⁸¹ United Nations Security Council, 'Statement by the President of the Security Council,' S/PRST/2008/48, 22 December 2008, http://www.un.org/Docs/sc/unsc_pres_statements08.htm [Accessed 11 August 2011]

²⁸² As contended by Akhavan, *The Lord's Resistance Army Case*, pp.410-411

I now shift my focus to peace processes in Uganda, and the impact of the ICC. Before examining the development and implications of the Juba Peace process, I survey early efforts of northern civil society actors to push the Government towards peaceful resolution of the conflict.

The Road to Juba: the Role of International and Local Actors

Civil Societies Push for Amnesty and Peace Negotiations in Uganda

For many years, local Ugandan civil society organizations and activists built momentum for peaceful resolution of the northern conflict.²⁸³ A range of groups, notably the Acholi Religious Leaders Peace Initiative (ARLPI) and Human Rights Focus (HURIFO) called on the Government to engage in dialogue with the LRA, and to establish a blanket amnesty to draw combatants out of the bush.²⁸⁴ As Barney Afako puts it, many local advocates of the amnesty felt that “any threats of prosecution, even of a minority of combatants, would pose an obstacle to peaceful resolution.”²⁸⁵ After the Government undertook consultations that revealed widespread support, the Amnesty Act was enacted in January 2000.²⁸⁶ The Act established a blanket amnesty, offering immunity for all insurgency related offenses to those who denounce rebellion. While the popular support generated for the Amnesty around 2000 reflected many factors, in the context of prolonged suffering many northerners gave priority to ending violence and enabling the return of abducted children above retributive justice.²⁸⁷

Even before Uganda’s referral to the ICC, the Amnesty suffered from various problems that limited its success. As discussed in the previous chapter Museveni appeared to be ambivalent towards the Amnesty Act. Museveni’s lack of commitment was clearly demonstrated by his instigation of contradictory policies. The military

²⁸³ Allen, *War and Justice in Northern Uganda*, p.34

²⁸⁴ Barney Afako, ‘Reconciliation and Justice: ‘Mato Oput’ and the Amnesty Act,’ *Conciliation Resources*, (2002) <http://www.c-r.org/our-work/accord/northern-uganda/reconciliation-justice.php> [Accessed 12 August 2011]

²⁸⁵ Ibid

²⁸⁶ For summary see Government of Uganda, *The Amnesty Commission: Reconciliation in Action*, Report 2007-2008, (Kampala, Amnesty Commission, 2008) [On File with Author]

²⁸⁷ Numerous interviews, Gulu town, July-August 2010

offensive unleashed in 2002, Operation Iron Fist no doubt communicated to LRA leadership that the Government offer of reconciliation was far from secure and genuine. In the same year the Anti-terrorism Act was passed, which seemed to legally contradict the Amnesty Act.²⁸⁸ Secondly, for some LRA commanders, accepting amnesty implied the need for them to receive forgiveness for wrongdoing. Some LRA fighters clearly wanted a negotiated resolution, involving concession from the Government, rather than submissive surrender.²⁸⁹ Kony himself reportedly denounced the amnesty and promised violent retaliation for any of his soldiers that attempted to leave.²⁹⁰

While the Amnesty failed to lure the LRA leadership to abandon the rebellion, it certainly facilitated the return of many fighters and abductees. While in the first few years the bulk of returnees (called ‘reporters’) were from other rebel groups, in 2003 the number of LRA reporters that surrendered under amnesty had grown to 5000.²⁹¹ By January 2009, this number reached 12,503.²⁹² The growth in numbers from 2003 largely reflected improved communication of the Amnesty to the LRA.²⁹³ Interestingly, the numbers of reporters rose most suddenly in the wake of the Government’s renewed military offensive in early 2004. It is likely that while some LRA were simply given the opportunity to escape in the confusion, others were driven to accept amnesty due to the intensity of the UPDF’s onslaught and lack of food.²⁹⁴ Ironically then, while such military offensives acted as a deterrent for the LRA leadership to seek paths of reconciliation, in the particular case of the 2004 attacks it inadvertently facilitated the return of many rank and file LRA. Civil society group’s concerted efforts to secure an Amnesty process therefore enjoyed some success in disarmament and return of many LRA fighters.

²⁸⁸ For discussion see Refugee Law Project, *Whose Justice? Perceptions of Uganda’s Amnesty Act 2000: the Potential for Conflict Resolution and Long-term Reconciliation*, No. 15 (Kampala, Refugee Law Project, 2005) http://www.refugeelawproject.org/working_papers/RLP.WP15.pdf [Accessed 13 August 2011]

²⁸⁹ Allen, *War and Justice in Northern Uganda*, p.35

²⁹⁰ Ibid

²⁹¹ Allen, *War and Justice in Northern Uganda*, p.32

²⁹² Government of Uganda, *Report of the Amnesty Commission*, p.14

²⁹³ Author’s interview with a staff member of the Amnesty Commission, Gulu Regional Office (Gulu, July 2010) See for further discussion, Allen, *War and Peace in Northern Uganda*, p.33

²⁹⁴ Allen, *War and Peace in Northern Uganda*, p.33

In addition to lobbying the Government to instate Amnesty, a few key Ugandan civil society groups and NGOs passionately pushed for peace negotiations. The ARLPI in particular sought to keep lines of communication open with the LRA in the hope of rekindling a reconciliation process. At times, groups promoting peace faced vehement opposition from the Government. As the director of HURIFO in Gulu recalls, “they started calling us rebel apologists, others called us collaborators.”²⁹⁵ Until 2004, the efforts of such groups only produced scattered negotiations. In May, however, a team including Betty Bigombe initiated fresh talks with the LRA with funding from several interested aid donors.²⁹⁶

Against this backdrop, it is unsurprising that the ICC’s decision to commence investigations in Uganda, officially announced in July 2004, was met with dismay and fiery animosity by many civil society groups and local NGOs based in Northern Uganda.²⁹⁷ They feared that ICC involvement would ruin long sought after peace talks. Certainly, the prospect of indictments of the LRA starkly contradicted the blanket amnesty, further illustrating the Government’s lack of commitment to the Act. In 2004, Father Carlos Rodriguez of the ARLPI declared publicly that future ICC arrest warrants would:

...practically close once and for all the path to peaceful negotiation as a means to end this long war, crushing whatever little progress has been made during these years... Obviously, nobody can convince the leaders of a rebel movement to come to the negotiating table and that the same time tell them they will appear in courts to be prosecuted.²⁹⁸

The ICC process certainly hindered the peace talks underway during 2004. Nevertheless, the team managed to achieve a geographically limited ceasefire in November, which lasted into 2005. When the ICC arrest warrants were released that year however, Bigombe appeared to give up hope, declaring: “There is now no hope of getting them [the LRA] to surrender.”²⁹⁹

²⁹⁵ Author’s interview with the Director of Human Rights Focus (Gulu, August 2010)

²⁹⁶ Allen, *War and Peace in Northern Uganda*, p.35

²⁹⁷ For example, see Amnesty International, *Uganda: Agreement and Annex on Accountability and Reconciliation Falls Short of a Comprehensive Plan to End Impunity*, Public Report, (Amnesty International, March 2008) <http://www.amnesty.org/en/library/info/AFR59/001/2008> [Accessed 13 August 2011]

²⁹⁸ Father Carlos Rodriguez, Public Statement quoted in Branch, *International Justice, Local injustice*

²⁹⁹ ‘LRA talks over, says Bigombe,’ *The New Vision*, 10 October 2005

Perhaps most controversially, many religious and traditional leaders in Northern Uganda also portrayed the ICC intervention as threatening to local cultural forms of justice.³⁰⁰ At the time, such leaders argued that the ICC threatened to enforce a western, retribution-focused justice upon Northern Uganda, undermining the possibility of applying ‘traditional’ justice mechanisms that focus on forgiveness, reconciliation and compensation of victims’ families.³⁰¹ Particular emphasis has been given to *Mato Oput*, an extensive process of reconciliation between a perpetrator (usually of murder) and their family, and the victim’s family that culminates in a ceremony involving compensation and drinking of a ‘bitter root’ mixed with the blood of a goat or sheep.³⁰² In 2004, the Acholi Paramount Chief, Rwot Onen David II for instance stated:

We have the traditional culture. When someone kills, we have a system to stop the killing. That is why we did not have death as a punishment. Nor did we have jail sentences. Rather we had reconciliation- *Mato Oput*... Does the ICC not value community values of people? Does the ICC override all other systems?³⁰³

The retired Anglican Bishop of Gulu, interviewed by Allen in 2004 explained that: “God [has] revealed *Mato Oput* to our society... Acholi know that it is only through forgiveness that the problems can be solved... reconciliation is the only way.”

Numerous actors accordingly suggested that in the immediate interests of peace and reconciliation, even the LRA leaders should undergo traditional justice processes rather than formal criminal trials.³⁰⁴

As I explore further in the following chapter however, the issue of ‘traditional’ justice and its potential application is significantly more complex than portrayed by such leaders. The contemporary focus on the local mechanism, *Mato Oput*, largely arose from the attempts of international actors to facilitate the reinvigoration of ‘traditional’ leadership and reconciliation processes in Northern Uganda.³⁰⁵ Claims of traditional and religious leaders about *Mato Oput* and need to replace ICC trials with traditional

³⁰⁰ See Allen, *War and Justice in Northern Uganda*

³⁰¹ Ibid

³⁰² For further discussion see Refugee Law Project, *Peace First, Justice Later: Traditional Justice in Northern Uganda*, Working Paper No.17 (Kampala, Refugee Law Project, 2005) http://www.refugeelawproject.org/working_papers/RLP.WP17.pdf [Accessed 13 August 2011]

³⁰³ Acholi Paramount Chief Elect, Rwot Onen David Acana II, quoted in Allen, *War and Justice in Northern Uganda*, p.68

³⁰⁴ For example, Refugee Law Project, *Peace First, Justice Later*

³⁰⁵ See Dolan, *Understanding the War and its Continuation*, p.340

processes are best viewed in the wider context of the local-driven search for a peaceful solution to the war. Rather than accurately representing the widespread views of Acholi communities, their advocacy reflected a concerted effort to make a peace settlement possible, underpinned by their own personal convictions. A wide range of people supported and disseminated such claims regarding *Mato Oput* precisely because it was considered a possible road to peace. As I explore in the following chapter, while many Acholi people adhere to a spiritual worldview that could be described as ‘traditional,’ they have diverse opinions about questions of ‘justice’, trials, forgiveness and reconciliation.

I turn next to the Juba Peace process, which brought the contradiction between peaceful settlement and the ICC process to a head. The engagement of the Ugandan Government in the Juba talks was unprecedented. The seriousness of both parties at Juba is evident in several remarkable agreements signed between 2006 and 2008. Before exploring the radical nature of the agreements and the impact of the ICC upon the Juba negotiations, I analyze the radical changes wrought by international actors that brought together the parties at Juba.

The Fraught Road to Juba: the Conflicting Roles of International Actors

International actors played a vital role in bringing about the unprecedented engagements between the Ugandan Government and the LRA in the Juba Peace talks. The first critical changes that triggered the talks were political developments in South Sudan in 2005, and the decisive actions of emergent Sudanese leaders.³⁰⁶ On January 5th, a Comprehensive Peace Agreement (CPA) formally ended Sudan’s civil war, granting the SPLA the power to govern South Sudan. Unsurprisingly, the new semi-autonomous Government of South Sudan (GoSS) viewed the LRA as a significant threat to peace and security in a fragile postwar environment.³⁰⁷ While the northern Government in Khartoum had supported the LRA and provided them a base in the

³⁰⁶ See Schomerus, *The Lord’s Resistance Army in Sudan*, and also Atkinson, Ronald, ‘The Realists in Juba?’ An Analysis of the Juba Peace Talks’, in *The Lord’s Resistance Army: Myth and Reality*, ed. by Tim Allen, and Koen Vlassenroot (London, New York: Zed, Palgrave Macmillan, 2010)

³⁰⁷ See Teny-Dhurgon, Lt. General Riek Machar, ‘Report and Recommendations of the Chief Mediator of the Peace Process between the Government of the Republic of Uganda and the Lord’s Resistance Army,’ Juba, 16th June 2008 http://www.beyondjuba.org/peace_agreements.php [Accessed 12 August 2011]

south, the newly empowered GoSS sought to ensure that the LRA did not return to Southern Sudanese territory.³⁰⁸ In early 2006, the GoSS established contact with members of the LRA³⁰⁹ and declared that they must engage in negotiations and fully cease their operations in south Sudan, or face war with the SPLA.³¹⁰ As Dr. Riek Machar Teny-Dhurgon, the vice president of Southern Sudan and chief negotiator of the Juba talks put it: “The Government of South Sudan is more than just a mediator in this process; we are a key stakeholder.”³¹¹ Following concerted efforts of the GoSS to gain the commitment of the LRA and the Ugandan Government to restart negotiations in the early months of 2006, peace talks opened in Juba in July.

A number of closely related factors at the international level may have also motivated the LRA to engage seriously in the negotiations at Juba. Firstly, it is important to note that by early 2006 the strategic position of the LRA was significantly weakened. The critical support of the Khartoum Government had declined since 1999 and was further compromised by the signing of the CPA of 2005, which forced the Sudanese army to withdraw from the South.³¹² The LRA’s need for food and supplies, and their desire to avoid being completely forced from Southern Sudan by the SPLA may have provided the LRA with an immediate incentive to participate in the talks.³¹³ Controversially, Machar also gave US\$20,000 to the LRA in cash upfront.³¹⁴ Secondly, the approach of the GoSS’s mediation team must have appeared particularly palatable to the LRA, who had expressed renewed interest in peace talks since 2004.³¹⁵ The new leadership of South Sudan clearly acknowledged that the LRA had a legitimate cause, and that the Ugandan Government had previously lacked

³⁰⁸ See Schomerus, *The Lord’s Resistance Army in Sudan*, p. 25

³⁰⁹ *Ibid.*, p.28

³¹⁰ See Teny-Dhurgon, *Report and Recommendations*

³¹¹ *Ibid.*

³¹² Otim, Michael, and Marieke Wierda, 'Justice at Juba: International Obligations and Local Demands in Northern Uganda', in *Courting Conflict?: Justice, Peace and the ICC in Africa*, ed. by Nicholas Waddell, and Phil Clark (Royal African Society, 2008) <<http://www.crisisstates.com/downloads/others/ICCinAfrica.pdf>> [accessed 11 August 2011], p.22 While Akhavan attributes the waning of Sudan’s support to the LRA to the ICC referral, Sudan continued to provide support to the LRA up until 2005. See Schomerus, *The Lord’s Resistance Army in Sudan*

³¹³ Quinn, Joanna, *Accountability and Reconciliation: Traditional Mechanisms of Acknowledgement and the Implications of the Juba Peace Process*, a Paper Prepared for Presentation at the Conference, ‘Reconstructing Northern Uganda,’ London, University of Western Ontario, 9th April 2008 <http://politicalscience.uwo.ca/faculty/quinn/accountabilityandreconciliation.pdf> [Accessed 12 August 2011], p.27

³¹⁴ Atkinson, p.212

³¹⁵ *Ibid.*, pp.210-211

commitment to ending the conflict. For the LRA, it is likely that the prospect of external mediators that were prepared to engage politically sounded highly promising.³¹⁶ Furthermore, the GoSS mediation team supported the withdrawal of the ICC arrest warrants in order to facilitate a peaceful agreement.³¹⁷ Finally, while the frequently repeated mantra that ‘the ICC brought the LRA to the negotiating table’ is at best an overstatement by ICC advocates, it may accordingly hold some truth.³¹⁸ It is certainly possible that the LRA was in part spurred to participate in the talks to remove the ICC’s indictments.

Strong incentive for the Ugandan Government to engage in the talks was also brought about through the critical pressure applied by a range of international players. Despite the Government’s attempt to garner international support through its referral to the ICC, in 2005 Museveni’s regime faced heightened global criticism. Most conspicuously, the International Court of Justice ruled that Uganda had indeed violated international law during its military operations in eastern DRC.³¹⁹ Critical attention on the northern conflict also continued. In July 2005, the international pressure group Human Rights Watch published a highly damning report on the behavior of the UPDF in the north, in which it boldly concluded “UPDF forces were responsible for widespread abuses against the civilian population.”³²⁰ In addition, criticism of the squalid conditions of IDP camps increased as high profile international figures visited and the UN released a critical report on displacement.³²¹

In this context, a new alignment of foreign donors emerged that strongly favored peace effort over military endeavors to end the war. Critical of Uganda’s lack of press freedom and dubious 2006 electoral process, several of these donors reallocated

³¹⁶ In this vein, it is also important to note that the new leadership of Southern Sudan lacked the personal ties to Museveni’s regime that would have induced the mistrust of the LRA. The first president of southern Sudan, Dr. John Garang di Mabior who had close personal loyalties to Museveni died suddenly in a helicopter accident. Atkinson, p.210-211

³¹⁷ Ibid

³¹⁸ For examples of scholars that emphasize that the ICC brought the LRA to the negotiating table see Apuuli, Kasaija Phillip, ‘The ICC’s Possible Deferral of the LRA Case to Uganda’, *Journal of International Criminal Justice*, 6.4 (2008); Akhavan, *The Lord’s Resistance Army Case*

³¹⁹ The International Court of Justice, ‘Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda,’ <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=co&case=116&k=51> [Accessed 11 August 2011]

³²⁰ Human Rights Watch, *Uprooted and Forgotten*, p.2

³²¹ Perrot, Sandrine, ‘Northern Uganda: a ‘Forgotten Conflict’ Again? The Impact of the Internationalization of the Resolution Process’, in *The Lord’s Resistance Army: Myth and Reality*, ed. by Tim Allen, and Koen Vlassenroot (London, New York: Zed, Palgrave Macmillan, 2010), p.194

significant funding from Governmental budget support to the relief work and peace advocacy efforts of locally run NGO groups based in Northern Uganda. It was these donors (the “Group of Seven plus One) that formally united to supply financial and political support for the peace talks in Juba.³²² As Quinn notes, this group, which includes Belgium, Germany, Ireland, the Netherlands, Norway, Sweden, Canada and the United Kingdom provided great impetus for peace talks at Juba, and contributed to mounting international pressure for the Government to finally seek a resolution to the northern conflict.³²³

However, in 2006 Uganda found itself caught between the conflicting pressures of international actors. As emphasized by UN agencies, a stark contradiction existed between the Juba Process and the ICC arrest warrants.³²⁴ In the face of increased international scrutiny, the Ugandan Government appeared to falter between engaging in the Juba talks, and holding to the ICC process. The Ugandan Government became increasingly hesitant. In response to Machar’s proposal, Museveni stated on May 16th that if Kony was “serious about peaceful settlement” the Government would “guarantee his safety,” implying that the arrest warrants could be lifted.³²⁵ The next day the ICC reiterated strongly that Museveni was under obligation to honor the ICC process.³²⁶ Over the following months Museveni oscillated, at times appearing willing to negotiate in Juba, at others declaring that he would instead attack the LRA in the DRC.

The Ugandan Government’s dilemma in 2006 reflects the extent to which its policy is shaped by the need to maintain relations with the international community. On the one hand, it is possible that Museveni may have perceived that the peace talks offered a real opportunity to end the war and regain international prestige. As already noted, the talks had the political support of many important donors, as well as the United Nations. On the other hand, engaging seriously in the talks risked compromising the

³²² ‘Canada Calls on Ugandan Parties to Maintain Commitment to Juba Peace talks and Announces 2.5 Million Towards Peace Efforts,’ *Relief Web Updates*, 1 February 2007, <http://www.reliefweb.int/rw/RWB.NSF/db900SID/RMOI-6Y22R5?OpenDocument> [Accessed 11 August 2011]

³²³ Quinn, *Accountability and Reconciliation*

³²⁴ Noted in Perrot, p.199

³²⁵ ‘Uganda gives LRA’s Kony Ultimatum for Talks,’ *Sudan Tribune* 17 May 2006

³²⁶ See ‘Kony Must be Arrested- ICC,’ *New Vision* 18 May 2006

support of international advocates of the ICC. As a pragmatic attempt to keep both options on the table, Museveni initially presented the ICC arrest warrants as a flexible bargaining chip with the LRA. Even after the Ugandan Government commenced talks with the LRA party in July 2006, he stated that “if he [Kony] comes out, we can talk to the ICC to remove him from the list of those wanted for crimes against humanity” but if not, “we shall get him, and the ICC will prosecute him.”³²⁷

Nonetheless, the Government’s willingness to negotiate at Juba proved genuine.³²⁸ Grounded in the long-term efforts of local civil society groups and peace activists, international actors successfully forged a political space in which critical engagement could take place. Local civil society actors continued to play a crucial role, acting as “co-mediators.”³²⁹ Despite numerous delays and serious obstacles throughout the two years of talks, the interaction between the parties at Juba process was unprecedented.³³⁰ Certainly, at various points throughout the two years of negotiations the commitment of both sides to the talks faltered as parties expressed mistrust and made military threats.³³¹ Inevitably, the ICC arrest warrants proved to be a continual stumbling block. However as Schomerus contends, serious political engagement was evident in both sides’ extensive interactions with stakeholders and continued attendance of meetings.³³² Before the final collapse of the talks in November 2008, the negotiations resulted in the signing of a series of remarkable agreements, which I discuss in the following section.

³²⁷ Wasike, Alfred, ‘Kony Must Apologize,’ *New Vision*, 30th July, 2006

³²⁸ As Atkinson notes, the signing of the Agreement on the Cessations of Hostilities on the 26th August 2006 was a “historical development,” which provided an “anchor” throughout the negotiations: Atkinson, p.213

³²⁹ Afako, Barney, ‘Negotiating in the Shadow of Justice,’ *Conciliation Resources*, http://www.c-r.org/our-work/accord/northern-uganda-update/negotiating_justice.php [Accessed 11 August 2011]

Afako was the legal advisor to the chief mediator of the Juba talks

³³⁰ For an overview of the challenges faced in Juba, see Teny-Dhurgon, *Report and Recommendation*. See also Schomerus, *The Lord’s Resistance Army in Sudan*, p. 34-40

³³¹ *Ibid*

³³² Schomerus, *The Lord’s Resistance Army in Sudan*, pp.37-38

The Juba Peace Agreements: An Expanded Justice Discourse

In the unique circumstances engineered by international and local actors, the negotiations at Juba became a forum in which critical counter narratives of the war surfaced. Throughout the negotiations, the LRA delegation insisted that the “root causes” of conflict and violations committed by all parties must be examined, “regardless of the identity of the perpetrator.”³³³ As Dolan astutely observed, during the Juba negotiations “the Government’s political will to resolve the Northern Ugandan conflict [was] greater than at any point in the past.”³³⁴ In this context, the agreements wrought significant concessions by Ugandan Government. Two key agreements, together with their addendums, addressed the most pertinent issues. The Agreements on Comprehensive Solutions (ACS) focus on the underlying causes of conflict including political and socio-economic inequalities, while the Agreement on Accountability and Reconciliation (AAR) addresses the question of how to deal with violations and abuses committed during the war. If enacted together, these agreements have potential to unearth Government violations perpetrated during the war, and oblige state actors to assume responsibility and address inequalities in the north. As I explore at the end of this section, the radical political gains made at Juba were, to a certain extent, grounded in the language and framework of transitional justice, although this is perhaps less evident in the ACS.

Socioeconomic Justice, Truth Telling, and Reparations

Perhaps most significantly, the Agreement on Comprehensive Solutions (May 2007) and its implementation protocol (February 2008) requires the Government to directly address the socio-economic and political inequalities between Northern Uganda and the rest of the country.³³⁵ The extensive provisions outlined in this agreement cut to the heart of the underlying dynamics of the northern conflict. The preamble

³³³ Afako, *Negotiating in the Shadow of Justice*

³³⁴ Dolan, Christopher, *Uganda Strategic Conflict Analysis* (Department for Africa, SIDA Publications, 2006) www.sida.se/publications [accessed 11 August 2011], p.31

³³⁵ Government of Uganda, ‘Agreement on Comprehensive Solutions Between the Government of the Republic of Uganda and the Lord’s Resistance Army/Movement,’ Juba Agenda Item No.2 Agreement 2 May 2007, Juba, Sudan, http://www.beyondjuba.org/peace_agreements.php [Accessed 12 August 2011]; ‘Implementation Protocol to the Agreement on Comprehensive Solutions Between the Government of the Republic of Uganda and the Lord’s Resistance Army/Movement,’ Juba Agenda Item No.2 Agreement 2 May 2007, Juba, Sudan, http://www.beyondjuba.org/peace_agreements.php [Accessed 12 August 2011]

recognizes “the regional disparities...in terms of socio-economic and infrastructural development of the country as a result of history and the conflict.”³³⁶

It is worth considering the radical nature of the key provisions in the texts. Firstly, the agreement commits to include “all peoples in Uganda in governance,” remedying “any imbalances and disparities for the north and north eastern parts of the country.”³³⁷ Secondly, the Agreement commits the Government to address the social and economic development of Northern Uganda, particularly through the “fast-track” implementation of the Northern Uganda Peace Recovery and Development plan (PRDP). The implementation protocol to the agreement specifies that the Government must “revamp the institutions of health, learning and other social services in conflict afflicted areas,” and provide additional territory scholarships.³³⁸ Thirdly, the ACS includes specific compensation provisions for livestock and land. For instance, the protocol commits the Government to implement a restocking program, recognizing the “severe economic and social implications” of the substantial loss of livestock in the north.³³⁹ Assurance is also given that appropriated land will be compensated for.³⁴⁰ Finally, the ACS requires the Government to adequately support the return and resettlement of IDPs, and strengthen the capacity of District Land Boards to oversee land ownership disputes.³⁴¹

The AAR, which has received much greater international attention, establishes a role for both ‘formal processes’ and ‘non-formal processes’ for achieving accountability and reconciliation. Formal processes include mechanisms driven by the state, such as criminal prosecutions and truth telling bodies. Non-formal processes primarily refer to traditional justice mechanisms, which the agreement provides “shall be promoted...as a central part of the framework for accountability and reconciliation.”³⁴² The relationship between formal mechanisms and traditional justice, however, was

³³⁶ Preamble, Government of Uganda, *Agreement on Comprehensive Solutions*

³³⁷ Government of Uganda, *Agreement on Comprehensive Solutions*, clause 6.1. The Implementation protocol promises the establishment of an Equal Opportunities Commission in order to ensure against such disparities.

³³⁸ Government of Uganda, *Agreement on Comprehensive Solutions*, clause 10.2

³³⁹ Government of Uganda, *Agreement on Comprehensive Solutions*, clause 13.1

³⁴⁰ Government of Uganda, *Implementation Protocol to the Agreement on Comprehensive Solutions*,

³⁴¹ *Ibid*, clause 16

³⁴² *Ibid*, clause 3.1 Afako notes that the emphasis placed on traditional justice in the agreements reflected the input of religious and cultural community leaders, who effectively acted as “co-mediators” during the talks: Afako, *Negotiating in the Shadow of Justice*

essentially left undetermined. In the AAR, it is simply emphasized that there is no clear division between the two goals of accountability and reconciliation. According to the text, “the parties recognize that any meaningful accountability proceedings should... [also] promote reconciliation.”³⁴³

Underpinned by the LRA’s insistence that the roots and manifestations of the conflict be examined, the AAR provides for a truth-telling body.³⁴⁴ In the fraught, politically charged context of peace making, the Ugandan Government affirmed in the AAR (clause 7.2) that:

Comprehensive, independent and impartial analysis of the history and manifestations of the conflict, especially the human rights violations and crimes committed during the course of the conflict, is an essential ingredient for attaining reconciliation at all levels.

The specific clauses regarding ‘reconciliation’ in the AAR and its annexure are certainly vague.³⁴⁵ Given that the Government has often portrayed the conflict as a localized Acholi matter however, it is significant that the Agreement also specifies that reconciliation processes must be advanced “at all levels” (clause 7.2). It is implied that national reconciliation, presumably between marginalized regions such as Northern Uganda, and the Ugandan Government is vital. While the Agreement failed to specify details, the inclusion of a provision requiring “independent and impartial” analysis of the conflict marked a significant step.³⁴⁶

The Agreement also commits the Government to provide reparations for victims of the war. In the Agreement, reparation encompasses many measures; “rehabilitation; restitution; compensation; guarantees of non-reoccurrence and other symbolic

³⁴³ Government of Uganda, ‘Agreement on Accountability and Reconciliation Between the Government of the Republic of Uganda and the Lord’s Resistance Army/Movement,’ Agenda Item No.3 Agreement, Juba, Sudan, 29 June 2007 http://www.beyondjuba.org/peace_agreements.php [Accessed 12 August 2011]

³⁴⁴ Note that during the course of negotiations, community consultations undertaken by both parties revealed vast support for truth-telling processes. See preamble of the Government of Uganda, ‘Annexure to the Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord’s Resistance Army/Movement,’ Juba Agenda Item No.3 Agreement, 29th June 2007 [http://www.iccnw.org/documents/Annexure to agreement on Accountability signed today.pdf](http://www.iccnw.org/documents/Annexure_to_agreement_on_Accountability_signed_today.pdf) [Accessed 12 August 2011]

³⁴⁵ The Annexure of the AAR provides only sparse specifications for the establishment of a body for “inquiry into the past”

³⁴⁶ Government of Uganda, *Agreement on Accountability and Reconciliation*, clause 2.3

measures such as apologies, memorials and commemorations.”³⁴⁷ Firstly, it is notable that the definition of ‘victim’ adopted is extensive, including not only individuals, but also those who have suffered collectively as a result of the violations committed during the conflict.³⁴⁸ As Wrangé notes in his analysis of the Agreement, this definition is ambitious, reflecting the strong views expressed by local communities during the parties’ consultations.³⁴⁹ Secondly, the inclusion of the symbolic measures of apology and guarantees of non-reoccurrence are also significant. Reparations that include an element of apology would amount to acknowledgement from the Government of failure during the war, and stimulate future change. It should be noted, however, that the Agreement remains fairly vague on how a reparations scheme will be implemented, simply stating that “the Government shall establish the necessary arrangements.”³⁵⁰

The Question of Formal Accountability for State Actors in the AAR

While the elements of the AAR and its annexure discussed above are relatively straightforward, the provisions regarding criminal accountability for state actors have been subject to considerable debate. The annexure of the AAR provides for the establishment of “a special division of the High Court of Uganda” to try “individuals who are alleged to have committed serious crimes.”³⁵¹ While the following section addresses the origins of the inclusion of formal criminal justice in the agreement, here I focus on its applicability to state actors. Clause 4.1 of the AAR itself specifies that:

Formal criminal and civil justice measures shall be applied to any individual who is alleged to have committed serious crimes or human rights violations in the course of the conflict. Provided that, state actors shall be subjected to *existing* criminal justice processes and not to *special* justice processes under this agreement.³⁵²

³⁴⁷ Ibid, clause 9.1

³⁴⁸ See introductory definitions in Government of Uganda, *Agreement on Accountability and Reconciliation*

³⁴⁹ Wrangé, Pal, 'The Agreement and the Annexure on Accountability and Reconciliation between the Government of Uganda and the Lord's Resistance Army/Movement: A Legal and Pragmatic Commentary', *The Uganda Living Law Journal*, 6.1 (2008), pp.96-97.

³⁵⁰ Government of Uganda, *Agreement on Accountability and Reconciliation*, clause 16

³⁵¹ Government of Uganda, *Annexure*, clause 7

³⁵² Government of Uganda, *Agreement on Accountability and Reconciliation*, Clause 4.1 [Italics added]

A common interpretation of the agreement is that state actors bearing responsibility for grave crimes committed during the conflict would face the jurisdiction of the military court martial, while only LRA would be subject to the proposed new division of the High Court, the ‘International Crimes Division (ICD). Essentially, this understanding stems from the assumption that “existing criminal justice processes” refers to the court martial system which tries UPDF soldiers, while “special justice processes” refers to the new division.

The implications of this interpretation are vastly significant. For several reasons, restricting the trial of state actors in Uganda to the court martial would amount to partial justice. Firstly, the operation of the military court is non transparent. As a member of a prominent local northern NGO involved in transitional justice notes, “the court martial is very problematic because no civilians attend...and their records are classified and never released.”³⁵³ Secondly, while defenders of the idea of exclusively prosecuting state actors in the court martial often point out that it is a very harsh system,³⁵⁴ it could lead to impunity for state actors other than UPDF. Non-military state actors that could be implicated are unlikely to fall under the jurisdiction of the court martial.³⁵⁵ Finally, the court martial has a tendency to prosecute low ranking commanders rather than those most responsible. As a NGO critic contends: “Is the chain of command noted? Often the people who are shot are just foot soldiers. The guys who actually command these operations go scot-free!”³⁵⁶

The analyst Pal Wrange, however, has argued that the Agreement does not restrict the prosecution of state actors to the court martial.³⁵⁷ Wrange contends that the best interpretation of the proviso in clause 4.1 is that it was intended to exclude state actors from being subjected to any traditional justice processes that might be incorporated into the practice of the new ICD. He understands “existing criminal justice processes,” to include the proposed ICD because criminal prosecution in the High

³⁵³ Author’s interview with staff member of Justice and Reconciliation Project (A) (Gulu, June 2010)

³⁵⁴ Several Ugandan Government Officials emphasized this point in interviews.

³⁵⁵ [Author’s interview with Transitional Justice Working Group actor (C), Law Reform Commission (Kampala, June 2010): The TJWG actor queried, “Does the agreement presuppose that all state actors will be military personal? I think there may be some state actors who could be implicated, but who are not military personnel. Their actions were such that the court martial might not have jurisdiction to try them. So where would those ones fall?”

³⁵⁶ Author’s interview with staff member of Justice and Reconciliation Project (A) (Gulu, June 2010)

³⁵⁷ Wrange, *The Agreement and the Annexure*

Court is an *existing justice process*, even though the ICD will be a new division.³⁵⁸ Wrangé interprets "special justice processes" (clause 4.1) to refer to features such as traditional justice processes that might be introduced as special rules to facilitate reconciliation between LRA perpetrators and their victims. Wrangé argues that the inclusion of such special features was likely to simply reflect a "political compromise," allowing some LRA to receive more lenient sentences.³⁵⁹

Ultimately, as key actors involved in the Juba process recall, the key clause on accountability (4.1) was simply left ambiguous by its drafters.³⁶⁰ To clarify the wording of this clause would have forced the mediation to align with one side of a highly contentious issue.³⁶¹ According to involved actors however, most people left Juba feeling that state actors would probably not be brought before the special division.³⁶² This (albeit ambiguous) understanding that state actors might be exempt from the ICD certainly represents a significant weakness in the agreement, for the reasons outlined above.

However, it is also important to note that the ambiguity of the text perhaps deliberately leaves open the possibility of alternative interpretations such as Wrangé's. Significantly, the sentiment of many key actors involved in the talks was that that state actors should be accountable. At the Fairway workshop, the Principal Judge also emphasized that the Agreement should not be understood to let "state actors off the hook."³⁶³ Making a pointed reference to the court martial, he also stated that if it is "proven that systems to deal with state actors are inadequate, other means of pressure can be applied."³⁶⁴ In his 2007 commentary on the AAR, the chief legal analyst to mediator Barney Afako also makes several critical points, arguing that the

³⁵⁸ See Wrangé, *The Agreement and the Annexure*, pp.66-70

³⁵⁹ See Wrangé for in-depth discussion and analysis of the Agreements

³⁶⁰ Author's email correspondence with an analyst involved in mediation team, February 2011: The legal analyst wrote, "The mediation recognized ambiguity in the formulation [of clause 4.1]. This was a contentious point and for the mediation to tighten the wording would have meant coming down on one side of the argument... Most people left the room thinking 4.1 meant, state actors will not be brought before the special division of the high court."

³⁶¹ Ibid

³⁶² Ibid

³⁶³ Justice and Reconciliation Project, 'Workshop on Accountability and Reconciliation in Uganda: Juba Peace Talks,' Final Report of Workshop held at Fairway Hotel, Kampala, 6th-7th May 2008 http://www.humansecuritygateway.com/documents/LIGI_JRP_Uganda_workshopaccountabilityreconciliation.pdf [accessed 12 August] Referred to hereafter as 'Fairway Workshop Report'

³⁶⁴ Ibid

agreement essentially implies that state actors should be “subjected to investigations of the same yardstick.”³⁶⁵ While the ambiguity in clause 4.1 is clear, the Agreement can be broadly interpreted to promise to hold state actors accountable for their actions during the war. The Agreement again represents a not insignificant (if albeit imperfect) step towards holding the Government as well as the LRA accountable for its actions during the conflict.

The Role of Transitional Justice Discourse

The framework and concept of transitional justice was pivotal in shaping the agreements made in Juba. While the phrase ‘transitional justice’ is not specifically referred to in the text of either Agreement, the community consultations undertaken by both parties relied heavily upon a transitional justice framework.³⁶⁶ Notably, the legal advisor to the chief mediator of the Juba talks, Barney Afako, was an “expert on transitional justice.”³⁶⁷ In March 2008, an independent research report funded by the United Nations Development Program (UNDP) on transitional justice in Uganda was submitted to the Justice Law and Order Sector (JLOS) to build on, and complement the Juba agreements.³⁶⁸ Furthermore, during the negotiations, civil society, technical and political Government actors framed their discussions in terms of transitional justice, notably at the third JLOS forum on “Developing and Managing an Effective Transitional Justice System for Uganda” in August 2008.³⁶⁹ By providing a widely accepted theoretical framework and language, the concept of transitional justice assisted the development of the radical agreements made at Juba. As I explore in

³⁶⁵ Afako, Barney, *Reckoning with the Past: An Anatomy of the Agreement on Accountability and Reconciliation Reached in Juba on 19th June 2007*, Unpublished Paper (August 2007) [On File with Author] Afako firstly notes that the term ‘state actors’ in the agreement is certainly not synonymous with military personnel. Secondly, the clause does not specify which ‘existing processes’ state actors should face. Afako also comments that 4.1 “should not be thought to be a reference to the military courts martial.” Finally, Clause 4.2 of the agreement which states, “Formal accountability proceedings shall be based upon systematic, independent and impartial investigations” clearly applies to *all* proceedings, whether for state actors or non state actors.

³⁶⁶ Afako, *Negotiating in the Shadow of Justice*

³⁶⁷ Ibid

³⁶⁸ United Nations Development Program, *Transitional Justice in Northern, Eastern Uganda and some parts of West Nile Region*, Report submitted to the Justice Law and Order Sector (JLOS) Secretariat (Kampala, United Nations Development Program, March 2008)

³⁶⁹ Government of Uganda, ‘Developing and Managing Effective Transitional Justice System for Uganda,’ Report of the Third National JLOS Forum held at Imperial Beach Hotel, Entebbe, 30th July – 1st August 2009, (Kampala, JLOS, 2008) [On File with Author] Hereafter referred to as, ‘Report of the Third National JLOS Forum.’

depth in chapter five, transitional justice has predominantly been employed as language of positive transformation that assumes the Government must bear responsibility for its role in the war.

In 2008 however, it was already evident that involved actors seldom included socioeconomic issues in their transitional justice framework. Although the ACS, with its focus on economic injustices, was clearly conceived as part of the postwar justice package, the Agreement has since been kept distinct from transitional justice discourse. For instance, at the 3rd JLOS forum in August 2008 on transitional justice, almost exclusive focus was given to the issues of truth telling, reparations, traditional mechanisms and formal justice outlined in the AAR. While in passing, the Chief of Justice noted that northerners were particularly concerned with the process of return from displacement, it is clear that implementation of the ACS, including the ‘fast tracking’ of the PRDP, was simply not included in JLOS’s discussion agenda.³⁷⁰ As I discuss in chapter five, the failure of the transitional justice discourse to fully engage with socioeconomic justice has significant repercussions for the implementation of the ACS.

Despite this, the agreements signed in Juba were certainly radical and progressive. The negotiations carved a space in which counter narratives of the war could be expressed. In stark contrast to the ICC’s narrow demands for justice, the concept of justice encapsulated in the Agreements is broad, addressing social and economic injustices as well as the restoration of relationships at multiple levels. While the one-sided ICC intervention was shaped by the Court’s compliance with the Ugandan Government, at Juba the Government was required to engage with many parties in deep political struggle, addressing underlying causes of the conflict. Certainly, the Juba Agreements examined above are by no means comprehensive, and in many respects reflect the compromise of negotiation. However, the extent to which the Agreements reflected the post war vision of many Northern Ugandans is evident in the passionate calls from a wide variety of civil society groups for their implementation. In the final section I analyze the impact of the pending ICC arrest warrants upon the development of the Juba negotiations.

³⁷⁰ Ibid

The Impact of the ICC on the Juba Peace Talks

The ICC and the Trajectory of Transition: Towards Criminal Justice

While it is often posited that international criminal justice has a tendency to overshadow other transitional justice processes, little research provides detailed analysis of how this occurs at the domestic level in practice.³⁷¹ In this section, I demonstrate the ways in which the ICC intervention produced an urgent focus on the development of criminal justice mechanisms within Uganda's national transitional justice programs.

The Government's decision to fast track the implementation of formal criminal justice stemmed from the urgent need to terminate the ICC process. From the outset of the negotiations, the LRA delegation pointblank refused to sign any peace agreement unless the ICC arrest warrants against the top LRA leadership were withdrawn. Afako notes, "for the LRA, the prospect of its leaders being paraded before an international Court represented a particularly acute form of political humiliation."³⁷² The pivotal issue facing the mediation team in Juba was, therefore, to find a way to terminate ICC proceedings against the LRA leadership. Under the Rome Statute, the sole legally viable avenue to permanently halt ICC proceedings is the principle of complementarity, enshrined in Article 17 of the Rome Statute.³⁷³ According to this principle, a case is inadmissible before the ICC if genuine domestic investigations and trials have taken place or are underway in a state that has jurisdiction over the case. In other words, the only way to terminate the ICC process was for the Ugandan Government to conduct its own domestic proceedings against the individuals for whom the ICC had issued arrest warrants.³⁷⁴ By 2007 when the AAR was drafted and signed, the Ugandan Government appeared willing to take this path.³⁷⁵

³⁷² Afako, *Negotiating in the Shadows of Justice*

³⁷³ The Rome Statute of the International Criminal Court, Article 17

³⁷⁴ For further analysis of the principle of complementarity see Nouwen, Sarah, 'The ICC and Complementarity Post Juba: Between International Imposition and Domestic Diversity', in *The International Criminal Court and the Juba Peace Process or Global Governance and Local Friction*, ed. by O.J. Francis and P. Wrangé (Forthcoming 2011)

³⁷⁵ That year, a representative of the Government of Uganda declared that the Government could "sign a deal, undergo national trials for crimes, and then approach the international criminal court's judge to

The nature of ‘domestic processes’ that would be conducted against the LRA in place of the ICC however, was a point of contention at Juba. Initially, both the Government and LRA parties to the talks expressed the view that traditional justice mechanisms should provide the required domestic substitute for ICC proceedings.³⁷⁶ As noted above, various local leaders promoted traditional justice since 2004 for this very reason: the application of ‘traditional justice’ was closely associated with prospects of achieving peace. For the LRA, altogether avoiding formal criminal trials was no doubt particularly attractive. However legal analysts at Juba advised that traditional justice mechanisms were unlikely to meet the complementarity standards of the ICC’s Office of the Prosecutor (OTP), given that such rituals do not involve formal prosecutions.³⁷⁷ As traditional justice mechanisms would not suffice, the Agreement specifies the establishment of the ICD to satisfy the complementarity principle.³⁷⁸

Despite contrary concerns of international observers, it was apparent that the Ugandan Government anticipated conducting uncompromising formal criminal prosecutions against the indicted LRA commanders. International critics feared that the somewhat ambiguous provisions of the AAR relating to the relationship between formal justice and traditional processes could effectively result in an insufficient trial and consequently, impunity.³⁷⁹ However at a civil society led workshop that brought together representatives of the Government and LRA to clarify aspects of the Juba Agreements, Ugandan actors agreed unequivocally that individuals responsible for the most serious crimes would face criminal prosecution in the ICD, without the benefit of alternative penalties and non-formal mechanisms.³⁸⁰ ‘Alternative’ mechanisms would apply only to lower ranking LRA, and former abductees. While it cannot be certain that Kony himself was prepared to accept this solution, LRA representatives at

have the referral revoked.” Quoted in Cocks, Tim, ‘Uganda, Rebels Agree Local Justice for War Crimes’ *Reuters Africa*, 2 July 2007 <http://africa.reuters.com/wire/news/usnL02700067.html> [Accessed 12 February 2011]

³⁷⁶ Nouwen, *The ICC and Complementarity Post Juba*

³⁷⁷ Nouwen, *The ICC and Complementarity Post Juba*

³⁷⁸ Government of Uganda, *Agreement on Accountability and Reconciliation*, clause 3.1

³⁷⁹ For example of international concern, see Amnesty International, *Uganda: Agreement and Annex*. For discussion of the ambiguity in the Juba Agreements regarding the relationship between traditional justice mechanisms and formal criminal justice, see Wrangé, *The Agreement and the Annexure*, p.75

³⁸⁰ See ‘Presentation on the Special Division of the High Court,’ by the Principle Judge James Ogoola in ‘Fairway Workshop Report,’ p.17.

the workshop “clarified that the LRA are willing to have those who are responsible for the most serious crimes tried.”³⁸¹

It became evident in Juba that the need to instigate domestic criminal proceedings in place of the ICC was *urgent* if the peace deal was to be signed. Article 17 of the Rome Statute is clear that it is not sufficient for Uganda to be ready to conduct investigations; genuine investigations and prosecution must be underway before a challenge to the ICC’s jurisdiction can be made.³⁸² This legal requirement put the parties at Juba in an extremely difficult position. Essentially, the LRA leadership would have had to sign the Final Peace Agreement (FPA), leave Garamba, and submit itself to investigations and trials in Uganda before the Government could even challenge the ICC’s admissibility to the case on the grounds of complementarity. This would be intimidating to the LRA. It is likely that Kony feared that the peace talks were designed to entice him out to hand him over to the ICC.³⁸³ Simultaneously, this process could not take place until the ICD was fully established, which would also take time.

The strategy outlined in the Agreement on Implementation and Monitoring was designed to address this dilemma. This Agreement, signed on the 29th February 2008, established a one-month ‘transitional’ period that would take effect immediately following the planned signing of the FPA.³⁸⁴ During this transitional month, the agreement committed the Government to “urgently” take measures to implement the AAR, and “give priority” to establishing the ICD.³⁸⁵ The Government was also obliged upon the signing of the FPA to request that the UN Security Council demand the ICC to defer prosecution of LRA leaders.³⁸⁶ The Agreement was clearly designed to buy the Ugandan Government time to establish the ICD in order to challenge the ICC’s admissibility, assuring the LRA that they would not face arrest by the ICC.

³⁸¹ See summary of panel discussion in ‘Fairway Workshop Report,’ p.17

³⁸² The Rome Statute of the International Criminal Court, Article 17

³⁸³ See comments of the Chairman of the LRA delegation in ‘Fairway Workshop Report,’ p.7

³⁸⁴ Government of Uganda, ‘Implementation Protocol to the Agreement on Comprehensive Solutions Between the Government of the Republic of Uganda and the Lord’s Resistance Army/Movement,’ Juba Agenda Item No.2 Agreement 2 May 2007, Juba, Sudan, http://www.beyondjuba.org/peace_agreements.php [Accessed 12 August 2011]

³⁸⁵ Government of Uganda, *Implementation Protocol*, clause 36

³⁸⁶ *Ibid*, clause 37: This clause of the Agreement refers to Article 16 of the Rome Statute, which provides that the ICC must suspend prosecutions and investigations if a Security Council resolution adopted under Chapter VII of the Charter of the United Nations requests accordingly.

The impact of the ICC process upon the negotiations in Juba was therefore to propel the development of formal criminal justice ahead of other reconciliation measures provided for in the Juba agreements. Even after Kony failed to sign the FPA on the 10th April, preparations for the new division went ahead rapidly in hope that the agreement could still be signed. By the end of July, the judiciary had appointed a team of judges and a registrar for the special division.³⁸⁷ By mid 2010, while the ICD was almost operational, JLOS had largely failed to work towards implementing other mechanisms outlined in the AAR that could have held Museveni's regime responsible for its actions during the war. In retrospect, many JLOS actors recognized that the need to rapidly create a domestic alternative to ICC proceedings played a significant role in establishing this trajectory.³⁸⁸ The pressing need to 'deal' with the ICC arrest warrants at Juba evidently made the development of formal criminal justice mechanisms a priority.

Furthermore, it appears that the ICC process instilled a sense of need to strive towards the "international standards" of criminal justice amongst technical Government actors.³⁸⁹ Many JLOS actors adopted the approach that precisely replicating the practice of ICC was necessary to successfully challenge the ICC's admissibility, and furthermore generally desirable. A state official in August 2008 emphasized the need to "put in place laws and systems that would be seen as internationally acceptable."³⁹⁰ A senior judge similarly stressed, "the ICC wants us to do everything the way they did it."³⁹¹ Interestingly, as Nouwen reveals, the Ugandan Government's plans to model the ICD on international standards of criminal law resulted from a *perception* of the ICC's requirements, rather than the complementarity threshold specified in the

³⁸⁷ See 'Report of the Principle Judge of the High Court,' in 'Report of the Third National JLOS Forum,' pp.11-12

³⁸⁸ Numerous JLOS actors I interviewed reached this conclusion. For example, one JLOS actor reflected, "Because there was pressure from the LRA for us, the Government, to ask the ICC to withdraw, we needed to be in a position to implement the complementarity principle in Uganda. I think that is part of the reason there was *more* pressure to set up the formal justice process, to have that law in place, and to set up the court." Author's interview with Transitional Justice Working Group actor (C), Law Reform Commission (Kampala, June 2010)

³⁸⁹ Evident from discussions with various JLOS actors. This argument is also made in Nouwen, *The ICC and Complementarity Post Juba*.

³⁹⁰ See 'Report of the Third National JLOS Forum,' p.15

³⁹¹ Interview quoted in Nouwen, *The ICC and Complementarity Post Juba*

Rome Statute, which is much less stringent.³⁹² This misperception stems from the complementarity benchmarks promoted by international NGOs, as well as the imprecise oratory of the ICC itself.³⁹³

The rhetoric of international actors as well as the fixtures of international law therefore compelled Uganda to prioritize the replication international justice mechanisms over other approaches. Rather than relying on existing national criminal justice mechanisms, Uganda perceived it necessary to establish new facilities, buildings, staff, procedures and legislation that could meet broadly interpreted ‘international standards.’ As I explore in subsequent chapters, such measures are costly.

The ICC Warrants and the Failure of the Peace Talks

Ultimately, the ICC arrest warrants proved to be an unassailable stumbling block to the peace talks at Juba. For its part, the ICC expressed strong resistance towards their case being taken away. Following the signing of the annexure, the pretrial chamber rapidly notified Uganda that until ICC Judges had determined that a challenge to admissibility was successful, the Government was obliged to arrest and surrender the LRA to the ICC as soon as they set foot on Ugandan territory.³⁹⁴ In March 2008, a delegation of the LRA met with ICC legal advisors.³⁹⁵ After the meeting, the OTP emphasized to journalists that: “we assess that our case is and remains admissible and the Prosecutor has indicated that he will fight any admissibility challenge in court.”³⁹⁶

³⁹² Nouwen, *The ICC and Complementarity Post Juba*.

³⁹³ As Nouwen points out, the complementarity ‘benchmarks’ provided by International NGOs are often more extensive than those outlined in the Rome Statute. For example, see Cattin of Parliamentarians for Global Action quoted in Glassborow, Katy, ‘Uganda Insists Peace Not at Odds With ICC’ *Institute for War and Peace Reporting*, 22 April 2008 <http://iwpr.net/report-news/uganda-insists-peace-not-odds-icc> [accessed 12 August 2011]. For further discussion, see Nouwen, *The ICC and Complementarity Post Juba*

³⁹⁴ International Criminal Court, ‘Prosecutor v. Kony, Pre Trial Chamber Noted Request for Information From the Republic of Uganda on the Status of the Execution of the Warrants of Arrest,’ ICC-02/04-01/05, Pre trial Chamber, 29 February 2008 <http://www.icc-cpi.int/library/cases/ICC-02-04-01-05-274-ENG.pdf> [Accessed 10 December 2010]

³⁹⁵ According to the ICC’s senior legal advisor, the meeting was an opportunity to rectify the LRA delegations “misconceptions about the way the court operates.” Senior legal advisor of the ICC, ‘Mochochokov,’ quoted in Glassborow and Eichstedt, ‘Ugandan Rebels to Appeal ICC Warrants’ *Institute for War and Peace Reporting*, 18 March 2008, <http://iwpr.net/report-news/ugandan-rebels-appeal-icc-warrants> [accessed 12 August]

³⁹⁶ Ibid

Representatives of the Court further emphasized that the arrest warrants: “have to be executed, the top LRA commanders have to be isolated, marginalized, must receive not support, direct or indirect, they must be surrendered to the Court.”³⁹⁷ The hostile stance of the ICC is likely to have caused the LRA to doubt that the arrest warrants would ever be withdrawn.

The impasse between the parties at Juba and the ICC proved intractable. As a reporter at the time neatly put it, “the LRA says it will not sign the Agreement unless the ICC lifts the indictments, yet Uganda cannot ask the Court to do that unless the Agreement is signed.”³⁹⁸ Following Kony’s failure to conclude the FPA on the 10th April 2008, the timeframe for him to sign the Agreement was extended until the end of November. Immediately before the agreed date, Kony met with cultural and religious leaders involved in the Juba negotiations.³⁹⁹ As one participant described, Kony gave an exceedingly long speech, in which he repeatedly stated that he would not sign the agreement until the ICC arrest warrants were removed.⁴⁰⁰ The following day, the gathered leaders were informed by the LRA that Kony would not sign the Agreement, and were held at the meeting place while Kony fled. While Kony’s exact motives for repeatedly failing to sign the FPA remain uncertain, the ICC arrest warrants were evidently a significant factor.

Shortly following Kony’s failure to sign the FPA, Museveni launched the military venture Operation Lightning Thunder against the LRA, quashing the hopes of many civil society actors that negotiations could continue. As noted above, advocates of the ICC seeking the arrest of the top LRA commanders had kept the possibility of this joint military venture between Uganda, DRC and Southern Sudan alive in case of such an eventuality. LRA bases in Garamba Forest in Congo were bombed, but ground troops failed to launch an attack for several days. As a result, the LRA escaped, and Kony and his key commanders once again eluded capture. In response to the sudden attacks, the LRA unleashed a campaign of violence against Congolese

³⁹⁷Ibid

³⁹⁸Ibid

³⁹⁹ As described by Ronald Iya, a cultural leaders who participated in the Juba Negotiations: Iya, Ronald, 'Encountering Kony, A Madi Perspective', in *The Lord's Resistance Army: Myth and Reality*, ed. by Tim Allen, and Koen Vlassenroot (London, New York: Zed, Palgrave Macmillan, 2010), p.182

⁴⁰⁰He also complained that the mediator was biased towards the Government, and that no one had condemned recent attacks on the LRA by the Congolese and SPLA (ibid)

civilians. By January 2009 the LRA had roamed into northeastern DRC and the Central African Republic (CAR), leaving a trail of destruction in their wake. It is estimated that in just this brief period over 700 civilians were abducted and 1000 lost their lives.⁴⁰¹ To this day, the top LRA commanders wanted by the ICC are yet to be arrested. The LRA remains active, and continues to commit atrocities in the DRC, CAR, and Southern Sudan. While those living in Northern Uganda have experienced increasing physical security and stability from 2007 and there is an ever-growing sense of peace, LRA violence is clearly not over, merely exported across Uganda's borders.⁴⁰²

The failure of the parties to sign the final agreement at Juba undermined the obligation of the Government to fulfill its 'transition' promises. While the unsigned Juba AAR has been officially adopted as the framework for the development of a transitional justice process, it is still unclear how much of the Agreement will be implemented. As Dolan, the director of Kampala based Refugee Law Project mused, will the peace Agreements in Juba be:

...regarded by the Government of Uganda as marking the end of the problem rather than the beginning of its resolution? Will the political will which is demonstrated in the talks be sustained in the process of meeting commitments made during those talks?⁴⁰³

Essentially, Dolan asks whether the Government will pursue any form of 'transition' or 'justice' in the wake of the war. This question drives Chapter Five, in which I explore the development of transitional justice mechanisms in Uganda after the failure of the Juba talks, and the lasting impacts of the ICC intervention.

Conclusion

Reflecting on the emergence of peace in Uganda and the impact of the ICC's intervention, in 2010 Tim Allen concluded:

For a long time it was hard to see how Government soldiers deployed in the war zone could have had protection of the population as their primary objective. During the past few years that situation has changed. At least in part, that is due

⁴⁰¹ Allen, *Bitter Roots*, pp.17-19

⁴⁰² Allen, Tim, Holly Porter, and Mareike Schomerus, 'Postscript: A Kind of Peace and a Exported War', in *The Lord's Resistance Army: Myth and Reality*, ed. by Tim Allen, and Koen Vlassenroot (London, New York: Zed, Palgrave Macmillan, 2010)

⁴⁰³ Dolan, *Uganda Strategic Conflict Analysis*, p.31

to greater international scrutiny of human rights issues directly and indirectly associated with the ICC involvement. Has that really been such a bad thing?⁴⁰⁴

While the ICC has undoubtedly increased international attention on the conflict in Northern Uganda, this chapter demonstrated that the impact of the ICC's intervention cannot be so simply surmised or conflated 'directly and indirectly' with the influence of other international groups. International actors have had profound, yet ultimately contradictory influence on national processes in Uganda, relating in disparate ways to the demands and perspectives of local civil society groups. The interventions of different international actors served to narrate vastly different stories about the conflict and its remedy.

The ICC's intervention did not reflect an impartial effort to hold the perpetrators of war accountable, but rather the dovetailing of self-interest of the Ugandan Government and the ICC. Seeking an easy case to establish its institutional credibility, the ICC did not challenge the Ugandan Government, in order to secure its ongoing cooperation. The ICC's intervention lent support to a discourse of justice that narrowly confines the definition of 'violation' to extreme physical atrocity, overlooking structural and socio-economic injustices. On balance, the ICC's intervention lent international legitimacy to the Government's dominant narrative of the war, further 'demonizing' the LRA.

As discussed, the radical political space that was created in Juba resulted from the culmination of local and international efforts to secure a negotiated end to the war. While many advocates of the Court contend that the 2005 ICC arrest warrants 'brought the LRA to the negotiating table,' I have demonstrated that it was the decisive actions of high level international actors, riding on the back of many years of local level work that cultivated the conditions where the unparalleled negotiations could take place. Drawing heavily on the language and concepts of transitional justice, the Juba Agreements presented a strong counter narrative of the war, and promised to hold the Government accountable. The Agreements radically expanded the scope of justice to address socio-economic inequalities, structural injustices and affliction, and restoration of relationships at all levels. The subsequent failure of

⁴⁰⁴ Allen, *Bitter Roots*, p. 260

involved actors to specifically encompass socio-economic injustice in transitional justice discourse, however, could compromise such gains.

Ultimately these different international approaches contradicted each other. In several key ways, the ICC intervention directly undermined the radical political gains wrought in Juba. Firstly, the ICC served to create pressure and momentum to prioritize formal criminal trial of the indicted LRA leaders in Uganda ahead of the other measures agreed upon in Juba. Predictably, some scholars are likely to perceive this as a major triumph of the domestication of international law; the success of the ICC's influence in precluding the possibility that blanket amnesty was included in a peace agreement. However, this pressure served to constrict the domestic scope of justice prioritized after the war to urgent efforts to replicate the ICC's lopsided mode of justice that failed to address socio-economic dimensions of violation or the role of the Government. As I demonstrate further in Chapter Five, the drive in Uganda to prioritize criminal justice reflected not only the Government's pragmatic efforts in 2008 to secure peace, but a subtler instillation of the language and aspiration of attaining 'international standards of justice' amongst various technical actors in JLOS. Secondly, the ICC was a major factor in the eventual derailment of the Juba process, thereby compromising the future implementation of the radical agreements.

The following chapter explores the views of northern Acholi communities affected by the war. This grounds my discussion on the struggle over the nature of 'justice' and 'transition' between civil society and international actors in an awareness of local post war priorities and perspectives on justice.

Chapter 4: Local Approaches to Postwar Justice

Introduction

Scholars and civil society actors vigorously debate the question of which approaches to dealing with the war and its aftermath best serve and reflect local needs and priorities. Inevitably, while the war dragged on, the nature of postwar ‘justice’ was closely related to the question of how best to secure peace. Typically, these debates pivoted around the relevance of various mechanisms and strategies to local communities: the trial of perpetrators by the ICC or national courts, the Amnesty Act, traditional justice ceremonies, and to a lesser degree, truth telling and reparations. In particular, scholars have focused on the extent that the widely proclaimed Acholi ‘traditional’ culture of reconciliation and forgiveness is broadly manifest in local opinion and practice. The vast majority of scholars, it should be noted, do not frame socio-economic recovery and reform as a *justice* issue prioritized by locals. As already evident, many actors have claimed a stake in these issues: the Ugandan Government, the ICC, international and domestic NGOs, and cultural and religious institutions. The development of a national transitional justice program will inevitably reflect an unevenly balanced struggle between these parties, who often portray local needs very differently.

This chapter explores the diverse views of Acholi communities affected by the war, in order to ground the wider discussion of transitional justice in an awareness of local justice priorities. I draw upon several key studies and surveys, as well as my own observations and interviews from fieldwork undertaken in mid-2010. As identified in Chapter One, transitional justice scholars heavily debate the role of international, national and local actors in transitional justice. Academics also dispute whether socioeconomic development issues should be included in the scope of transitional justice. Addressing both these debates, I contend that the commonly drawn distinctions between international, national, and locally implemented justice, and traditional and criminal justice are not particularly helpful. Rather, I develop the

concepts of ‘embedded’ and ‘indirect’ justice, adapting a framework first outlined by Paul Gready.⁴⁰⁵

‘Embedded’ justice encompasses actions that directly and tangibly affect people’s lives and work, and restore broken social and economic situations caused by the war. Conditions are fostered in which war affected communities can “rebuild their family and social relations, relations with the land, and livelihoods.”⁴⁰⁶ Embedded justice can include processes initiated at both the local and national level, and can also be fostered by international actors. I focus on two particular forms of ‘embedded’ justice: socioeconomic justice (in which the state must play a central role), and local processes of social and spiritual restoration, including traditional mechanisms. ‘Indirect justice,’ on the other hand, encompasses processes that affect individuals or communities intangibly, remotely, or purely symbolically. This concept does not simply refer to processes in which locals never directly partake. It is entirely possible for ‘justice’ processes which local people participate in to serve a broader symbolic purpose and not directly impact people’s lives. For instance, people may participate in local trials or a public inquiry commission, and gain wider symbolic value from the experience, but not receive tangible change to their daily social and practical reality. Drawing on this framework, I develop several key arguments about local approaches to justice after the war.

This chapter is divided into four sections. The first provides an overview of the various scholarly and advocacy positions on local approaches to justice and accountability. The second explores the views and experiences of local communities towards a core aspect of ‘embedded justice:’ socio-economic and livelihood issues. In particular, I highlight social and economic development, land conflict, and reparation. I contend that these issues are top priority postwar ‘justice’ issues. In the third section I address another form of embedded justice: local processes of social and spiritual

⁴⁰⁵ See Gready: Gready develops the concepts of ‘distanced’ and ‘embedded’ justice. While I draw inspiration from Gready’s framework, the distinctions I draw are somewhat different (see Chapter One for discussion of Gready’s framework). Accordingly, I use the term ‘indirect’ instead of ‘distanced,’ and also modify the definition of ‘embedded’ justice.

⁴⁰⁶ Human Rights Focus, *Fostering the Transition in Acholiland: From War to Peace, From Camps to Home* (Gulu, Human Rights Focus, 2007)
<http://www.rohan.sdsu.edu/~abranh/Publications/Human%20Rights%20Focus%20Fostering%20the%20Transition.pdf> [Accessed 13 August 2011], p.vi

restoration. First, I dispel the exaggerated claims made about local traditional justice processes. I then argue that the struggle to develop a more inclusive, flexible and effective approach to the restoration of local level relations must take place primarily amongst local communities. Involved international, national and local civil society actors, however, can nurture this development, while taking care to avoid entrenching current local power imbalances.

Finally, in the fourth section, I examine the diverse views of local villagers on broader issues of the accountability of leading perpetrators and the resolution of the northern situation. I argue that for most Acholi people, these issues are questions of ‘indirect’ justice. While many Acholi viewed the broad questions of forgiveness, accountability and punishment as pivotal during the Juba process when peace seemed to hinge on these issues, I found that such issues are now generally deemed less important than more tangible, proximate justice concerns. Nevertheless, I contend that local Acholi have strong, and often divergent opinions regarding the best way to deal with perpetrators of crimes, reflecting the varied influences of a multitude of involved actors.

Literature Review: Local Approaches to Postwar Justice in Northern Uganda

Local Justice Approaches: Controversial Claims

Debates on the nature of local approaches to justice in Northern Uganda usually pivot around questions of whether and how ‘traditional’ practices should be applied to the North’s transition from war. Firstly, as mentioned in the previous chapter, Acholi religious and traditional leaders originally zealously promoted the role of traditional justice in achieving justice and reconciliation at both a local and national level. Such leaders fervently attacked the ICC’s intervention, arguing that it reflected the neocolonial imposition of a western form of justice that was alien to local communities. In the context of the search for peace, leaders emphasized unequivocally that Acholi people value forgiveness and reconciliation rather than trial and imprisonment.⁴⁰⁷ At times, such leaders called for top LRA leaders to engage in

⁴⁰⁷ See discussion in previous Chapter

Mato Oput ceremonies rather than face the criminal trials of the ICC. Even when it became apparent during the Juba Peace talks that the ICC would not withdraw its indictments unless Uganda tried LRA leaders in a national court, some leaders continued to advocate that ‘traditional justice’ should nevertheless play a central part in post war transition processes.⁴⁰⁸

The dramatic contrast between the ICC intervention in Uganda and the fervent contentions of northern cultural and religious leaders sparked a flurry of research on local approaches to justice in Acholiland, most particularly the role of traditional justice. Domestic Ugandan NGOs and their affiliated foreign scholars carried out much of this research. Typically, their reports present a more subtle view. Most contend that traditional justice has an important role to play, but also highlight its current shortcomings. Authors have widely varied opinions, however on the role traditional mechanisms should play in relation to national and international processes.

Several authors emphasize that cultural leaders must lead the way to modify traditional mechanisms to the post war context. The seminal 2005 report “Roco Wat I Acholi,” for instance, argues that as traditional structures and practices are currently weak, the traditional leadership institution Ker Kwaro Acholi (KKA) should “embark upon a cultural revival.”⁴⁰⁹ The report argues that the specific ritual *Mato Oput* cannot be easily adapted, as “the requirements of *Mato Oput* do not easily translate to the scope and scale of the present conflict.”⁴¹⁰ Furthermore, traditional practices suffer from a number of limitations, such as exclusion of women from leadership positions. Accordingly, KKA must work with communities to develop and initiate modified traditional justice processes that would be suitable to the war context. The authors envision a reasonably structured index of traditional practices.⁴¹¹

⁴⁰⁸ See comments made by traditional leaders in ‘Report on the Third National JLOS Forum,’ pp.15-17

⁴⁰⁹ Liu Institute for Global Issues and Gulu District NGO Forum, *Roco Wat I Acholi, Restoring Relationships in Acholi-land: Traditional Approaches to Justice and Reintegration* (Vancouver, Liu Institute for Global Issues, Gulu District NGO Forum, 2005)
http://www.ligi.ubc.ca/sites/liu/files/Publications/JRP/15Sept2005_Roco_Wat_I_Acholi.pdf [Accessed 13 August 2011] p.78 Hereafter referred to as *Roco Wat I Acholi*

⁴¹⁰ *Roco Wat I Acholi*, p.76

⁴¹¹ *Ibid*, pp.69-70 for example, the report states: “The mechanics of adapting traditional justice still need a great deal of work... Which rituals and by-laws would extend to different levels of war crimes? Certain types of atrocities committed in this conflict may have no precedent, such as abductions or mutilation.”

Other authors have extended this argument to claim that with adequate ‘modification,’ traditional practices could legitimately meet the requirements of the international community. A 2005 Refugee Law Project (RLP) report suggests that if appropriately adapted and codified, traditional mechanisms could conform to international justice and human rights norms, and potentially even replace the ICC process.⁴¹² They accordingly recommend that:

...the expectations of the community ought to be written down so that everyone in the community knows or is able to access such rules. These rules would then also inform the decisions taken by the elders or community leaders. This would clearly address any questions of bias and flexibility.⁴¹³

Such codification, they suggest, could “satisfy neutral observers” (presumably international actors).⁴¹⁴

Increasingly however, some reports have cautioned against the formal codification of traditional practices. A 2009 study by the Institute of Peace and Strategic Studies (IPSS), Gulu University, entitled “Community perspectives on the *Mato Oput* process,” also supports the adaptation of traditional processes by cultural leaders to the current context.⁴¹⁵ The authors strongly specify however, that the Government should refrain from making detailed policy regarding *Mato Oput*, or seek to codify traditional practices, but rather allow “for local autonomy.”⁴¹⁶ The role of the Government and domestic NGOs should be to support institutions in Northern Uganda that draw on traditional mechanisms.⁴¹⁷ In contrast to the early contentions of

⁴¹² Refugee Law Project, *Peace First, Justice Later: Traditional Justice in Northern Uganda*, Working Paper No.17 (Kampala, Refugee Law Project, 2005)

http://www.refugeelawproject.org/working_papers/RLP.WP17.pdf [Accessed 13 August 2011], p.48
Note: this point is not made particularly strongly. The authors also note that “traditional mechanisms could be allowed to work in conjunction with the activities of the International Criminal Court” (ibid)

⁴¹³ Ibid

⁴¹⁴ Ibid

⁴¹⁵ Anderson, Jessica and Rachel Bergenfield, *Community Perspectives on the Mato Oput Process: A Research Study by the Mato Oput Project* (Collaborative Transitions Africa, the Institute for Global Leadership, Institute for Peace and Strategic Studies, Gulu University, 2009)

[http://www.internaldisplacement.org/8025708F004CE90B/\(httpDocuments\)/F1A4C4A98929FB7CC125765F0078943B/\\$file/Community+Perspectives+on+Mato+Oput.pdf](http://www.internaldisplacement.org/8025708F004CE90B/(httpDocuments)/F1A4C4A98929FB7CC125765F0078943B/$file/Community+Perspectives+on+Mato+Oput.pdf) [Accessed 13 August 2011], p.21

⁴¹⁶ Anderson and Bergenfield, p.9

⁴¹⁷ Ibid: the report furthermore recommends that NGOs explore the possibility of supporting the practice of traditional mechanisms by providing resources for compensation.

traditional leaders, the IPSS study argues that both formal trials and traditional mechanisms have a role to play after the war.⁴¹⁸

Another recent perspective is that the principles of local traditional justice must inform the development of national transitional practices. A 2009 report entitled 'Tradition in Transition' contends that traditional practices and values are relevant on both the local and national level.⁴¹⁹ The report refrains from concluding on whether traditional practices should be adapted and formally codified into national law, or left flexible. Rather they emphasize that traditional principles must be "integrated into a national transitional justice process."⁴²⁰ The authors identify broad "fundamental principles or elements" of traditions across regions, and argue that many of these elements are already encompassed in the mechanisms specified in the Juba AAR framework, such as a truth telling body, and a reparations scheme.⁴²¹ Furthermore, the report identifies how these mechanisms could be designed in way that is sensitive to traditional principles. For instance, they suggest that a truth-telling process should be based on inter-active dialogue rather than individualized confession.⁴²²

In contrast to many of the reports identified above, a few authors deliberately seek to analyze and understand local 'traditional' justice processes 'on its own terms,' without reference to international standards or national mechanisms.⁴²³ Recently, Baines argued that the true meaning and value of local processes "slip under the radar when 'justice' after war is studied from universal definitions and standards, or where the 'local' is defined solely as a space for intervention, not comprehension, not knowledge, not capacity."⁴²⁴ In several articles, she examines how local, traditional processes in Northern Uganda promote 'micro level' social construction in the context of the war's aftermath. Baines argues that through engagement in the spirit world,

⁴¹⁸ Ibid

⁴¹⁹ Beyond Juba Process, *Tradition in Transition: Drawing on the Old to Develop a New Jurisprudence for Dealing with Uganda's Legacy of Violence*, Working Paper No.1, (Kampala, Beyond Juba Project, 2009) http://www.beyondjuba.org/working_papers/BJP.WP1.pdf [Accessed 13 August 2011]

⁴²⁰ Beyond Juba Project, *Tradition in Transition*, p.5

⁴²¹ Ibid, p.4 these include: 1) cleansing and welcoming, (2) punishment, (3) truth telling and responsibility, (4) reparations, and (5) reconciliation and forgiveness.

⁴²² Ibid

⁴²³ For example, Finnstrom and Baines See Baines, Erin, 'Spirits and Social Reconstruction After Mass Violence: Rethinking Transitional Justice', *African Affairs*, 109.436 (Jul 2010), 409-30: Finnstrom

⁴²⁴ Baines, *Spirits and Social Reconstruction*, p.430

locals seek to understand and exert control over their own situations, and actively seek moral rejuvenation and restoration of social relationships.⁴²⁵

Finally, while the above authors locate significant value in traditional approaches, anthropologist Tim Allen has consistently critiqued the potential role of traditional justice in peacemaking and postwar transition. In effect, Allen argues that the enterprise of ‘traditional justice’ is irretrievably tainted by local power dynamics, and lacks meaning for much of the Acholi population. Firstly, he contends that the recent focus on local Acholi rituals simply reflects an invention of ‘tradition’ by self-interested local elites supported by foreign donors.⁴²⁶ Secondly, Allen argues that while Acholi have diverse views, overall his research found “no widespread enthusiasm for *Mato Oput* ceremonies.”⁴²⁷ In defense of the ICC intervention, Allen contends that in his fieldwork he encountered no “general rejection of international justice,” rather concern that arrests will never be made and the ICC will simply prove toothless and ineffective.⁴²⁸

Beyond finding little local support for the application of *Mato Oput* ceremonies within the war context, Allen argues that focusing on traditional justice could prove destructive. Firstly, Allen objects that a postwar justice process that leans too heavily upon ‘traditional justice’ risks implying that the war was simply a local affair, and that Government bears no responsibility. The reconciliation of LRA with northern civilians through traditional rituals such as *Mato Oput*, he argues, risks further “demonizing” northerners, reinforcing notions that they care less about human rights abuses than other people.⁴²⁹ Secondly, Allen warns against codifying traditional justice mechanisms into a legal transitional justice framework.⁴³⁰ While numerous authors argue that traditional mechanisms can be adapted to meet human rights standards, Allen believes that embedding traditional rituals in the formal legal system

⁴²⁵ Ibid, p.1

⁴²⁶ See Allen, *Bitter Roots*, pp.247-249

⁴²⁷ Allen, *War and Justice in Northern Uganda*, p.86

⁴²⁸ Ibid, p.5

⁴²⁹ Allen, *Bitter Roots*, p.260

⁴³⁰ He makes this point most forcefully in his article Allen, Tim, 'Ritual (Ab)use? Problems with Traditional Justice in Northern Uganda', in *Courting Conflict?: Justice, Peace and the ICC in Africa*, ed. by Nicholas Waddell, and Phil Clark (Royal African Society, 2008)

<<http://www.crisisstates.com/downloads/others/ICCinAfrica.pdf>> [accessed 11 August 2011]

could result in further entrenchment of gender-based hierarchies and local elite power.⁴³¹ While recognizing that traditional spiritual practices may be helpful for the social reintegration of returning abductees, overall, his analysis reveals little of the constructive social role of traditional practices portrayed by Baines and others.

The Exclusion of Socioeconomic Issues in the Conceptualization of Justice

Overall then, most study of local approaches to justice focuses on the highly contentious topic of ‘traditional’ practices and approaches, often in relation to formal criminal justice. Less critical scholarly debate has formed around the issue of local views on other transitional processes such as truth telling and reparations. With some exceptions, most authors affirm that these mechanisms are locally supported, and that elements of these mechanisms can be located in traditional practices.⁴³² The most striking omission in the literature on local justice priorities and approaches, however, is consideration of socio-economic recovery beyond reparations schemes.

While numerous reports and studies emphasize that socio-economic rehabilitation is an essential and locally prioritized part of Northern Uganda’s wider recovery from war, very few works clearly identify this process as an issue of ‘justice.’ In RLP’s 2005 work discussed above, for example, a clear line is drawn between social and economic development and ‘justice,’ which is narrowly conceptualized to include measures for dealing with the past, such as retribution, reconciliation, and truth telling. In their conclusion, the authors contend that:

Any successful post-conflict rebuilding must necessarily address elements above and beyond simply issues of ‘justice.’ ...The reconstruction process must also consider tools needed to support a life unencumbered by the devastation of war: economic stability, physical rebuilding of homes, hospitals, roads and schools.⁴³³

Also written in the context of ongoing displacement and an uncertain peace, an excellent 2007 report entitled “Fostering the Transition in Acholiland: From War to Peace, From Camps to Home,” by Gulu-based Human Rights Focus (HURIFO)

⁴³¹ Allen, *Bitter Roots*, p.260

⁴³² See research reports and field notes by the Justice and Reconciliation Project, available at <http://justiceandreconciliation.com/#/publications/4540226079> [Accessed 13 August 2011] an exception is Human Right’s Focus 2007 Report

⁴³³ Refugee Law Project, *Peace First Justice Later*, p.51

similarly contends that “In our research, we found an absolute primacy of demands for peace, return and reconstruction over demands for justice.”⁴³⁴ They forcefully argue that ‘justice’ or reconciliation interventions must come second to the need for people to return home from the camps and rebuild their livelihoods, and the need for rehabilitation of services and infrastructure.⁴³⁵

Frequently, involved scholars and advocates have accordingly limited their conceptualization of postwar ‘justice’ measures that address the everyday practical priorities of local communities to reparations or compensation policies. For instance, while HURIFO’s 2007 report highlights a range of critical socio-economic issues, its recommendation relating to the development of postwar justice mechanisms focuses exclusively on compensation.⁴³⁶ While the report also includes recommendations concerning land access and the facilitation of voluntary return from camps, they are not categorized as matters of justice.⁴³⁷ As I discuss in the following Chapter, this position prevails.

As this brief literature review demonstrates, many authors advocate that traditional justice mechanisms be advocated to the postwar situation, though their positions differ as to how traditional mechanisms should interface with justice implemented at the national and international level. Allen, conversely, deeply challenges the entire enterprise and emphasizes that local communities have not rejected international justice. While various scholars also draw attention to the local recognition and demands for truth telling and reparations, scholarship on local approaches largely excludes socioeconomic issues from the scope of justice.

In the rest of this chapter, I explore local perspectives and priorities regarding postwar justice, drawing on the concepts of ‘embedded justice’ and ‘indirect justice’ to shape my discussion. While the literature discussed above has helped to break down the often-assumed dichotomies between local, national and international justice, retributive justice and restorative justice, I argue that the broad distinction between

⁴³⁴ Human Rights Focus, p.16

⁴³⁵ Ibid, p.vi

⁴³⁶ Human Rights Focus

⁴³⁷ Ibid, although it should be noted that the report focuses on community reparations, rather than individual reparations

embedded and indirect justice provides a further helpful framework to acknowledge widespread local priorities, but also the diversity of local views.

Socio-Economic Justice Issues: the Linchpin of ‘Embedded Justice’

While many scholars draw a sharp distinction between social and economic recovery and ‘justice,’ this section demonstrates that socioeconomic issues are a critical aspect of ‘embedded justice.’ Socioeconomic recovery and development are top postwar priorities for most northerners. Given that the current livelihood and land struggles of local northerners stem directly from the war in which the Government bears significant responsibility, it is arbitrary and misleading to exclude these concerns from the scope of justice. This issue is not merely semantic. As I explore in subsequent chapters, locating socio-economic mechanisms within the enterprise of ‘transitional justice’ could determine whether such issues gain momentum as part of an internationally backed, civil society driven push for the Government to engage in ‘transition.’ Below, I explore three key, closely related dimensions of socioeconomic embedded justice in Northern Uganda: broad recovery and socioeconomic development, land issues, and finally, reparations. I contend that the notion of reparations certainly holds special significance for many Northern Ugandans, but should nevertheless be part of a broader push for socio-economic justice.

Social and Economic Recovery and Development

It is first vital to note that while economic reforms since 1980 have brought marked improvements in national social welfare, inequality between northern regions and the rest of the country has grown.⁴³⁸ Largely due to insecurity and disruption during the years of conflict, the north has lagged behind advances in other regions of Uganda in healthcare, food security and education. Poorly planned relocation away from IDP camps since 2007 has led to widespread lack of access to water, and heightened food

⁴³⁸ African Peer Review Mechanism, ‘Republic of Uganda 2009,’ Country Report No.7 (African Peer Review Mechanism, January 2009), p.36
http://aprm.krazyboyz.co.za/index.php?option=com_aprm_documents&Itemid=32&page=documents-category&cid=25&id=21 [Accessed 12 August 2011]

security issues.⁴³⁹ Pham et al's 2010 survey suggests that the literacy rate in Northern Uganda (15% of respondents aged 18 or above) is significantly lower than the national average (67% of the population aged 15 or above).⁴⁴⁰ Seventy five % of the surveyed respondents had not completed primary school.⁴⁴¹ School attendance and education quality is significantly lower in Northern Uganda.⁴⁴² Access to healthcare in the northern regions is similarly lower than the national average.

My own qualitative research in 2010 led me to conclude that many people in the Acholi region are first and foremost concerned with pressing economic and social needs (embedded justice), rather than 'indirect' justice. While I was initially keen to focus my interviews with individuals in rural communities on people's opinions regarding amnesty, criminal trials and traditional justice, I found that most people were much more engaged when discussing issues that concerned their immediate surroundings and livelihoods. Unsurprisingly, when I asked people broad questions about their greatest concerns and priorities following the war, almost all volunteered their pressing welfare struggles and hopes and fears for the future, rather than abstract notions of justice and accountability for wrongdoers. Whereas at first I naively expected answers about the need for perpetrators to face accountability, or alternatively engage in reconciliation rituals, I received answers about boreholes, schooling, and pig farming. I quickly learned to expand my own narrowly conceived notions of 'justice.'

A local councilor responded that for his community, the greatest challenge in the wake of the war was that:

There is no water bore hole. And health! From here to town there is no health unit! You have to take your child so far, it is hard, so we are appealing to the Government to construct a health unit close by.⁴⁴³

⁴³⁹ Anena, H, 'Life out of IDP Camps not any Better,' *Daily Monitor*, 26 June 2009

⁴⁴⁰ Pham, Phuong, and Patrick Vinck, *Transitioning to Peace: A Population-based Survey on Attitudes About Social Reconstruction and Justice in Northern Uganda* (University of California Berkley, 2010)

⁴⁴¹ *Ibid*, p.22

⁴⁴² Higgins, Kate, *Regional inequality and Primary Education in Northern Uganda*, Policy Brief 2, Prepared for the World Development Report 2009, (Overseas Development Institute, 2009) <http://www.odi.org.uk/resources/details.asp?id=2504&title=regional-inequality-primary-education-northern-uganda> [Accessed 13 August 2011]

⁴⁴³ Author's interview with a male Local Councilor 1(B) (Patiko sub county, Gulu District, July 2010)

Many community members, including community leaders expressed great concern about access to adequate education:

People have great poverty. We stayed in the IDP camps but now we are coming back home. We try to fight the poverty by digging together...but you find paying school fees is very difficult.⁴⁴⁴

An LC3 explained:

There is a lack of teachers deep in the villages after the war. Education is very poor. It comes as a result of the war- the school buildings and the houses for the teachers that used to be there were destroyed. Now our teachers have no houses at school and they have to come a long distance.⁴⁴⁵

Frequently, I found that when people discussed their immediate problems, they held the Government responsible, and made demands for Museveni's regime to take action. One formerly abducted young man I spoke with also held the Government responsible for his lost opportunity to receive an education:

The Government wasted my time. Some people who came back from the bush were given some support...like training to do some skill, but for me they didn't give me that chance, not even going to school. I feel bad about it.⁴⁴⁶

Similarly, another man I spoke with viewed that northern children should be "given priority in education" nationwide because of their lost opportunities in the Government's IDP camps.⁴⁴⁷

Three key surveys undertaken by research teams in 2005, 2007 and 2010 also demonstrate that northern populations identify security and socio-economic concerns as top priorities. The 2005 survey was undertaken during a time of great insecurity with the majority of the population living in squalid displacement camps. By 2007 however, numerous people had left the IDP camps and return to their land.⁴⁴⁸ In 2010, with the LRA withdrawn, most of the population had returned to the villages, leaving only 8% of the population remaining in IDP camps.⁴⁴⁹ Although people still face great challenges, security has been largely restored, and to a certain degree I found that people have been able to resume normal patterns of life.

⁴⁴⁴ Author's interview with a female local Councilor 1 (B) (Unyama sub county, Gulu District, July 2010)

⁴⁴⁵ Author's interview with the Local Councilor 3 (Paicho sub county, Gulu District, July 2010)

⁴⁴⁶ Author's interview with a formerly abducted young man (Patiko sub county, Gulu District, July 2010)

⁴⁴⁷ Author's interview with a male Local Councilor 1(A) (Patiko sub county, Gulu District, July 2010)

⁴⁴⁸ Human Rights Focus, p.3

⁴⁴⁹ Pham and Vinck, *Transitioning to Peace*, p.10

Despite the vast changes in life circumstances, people's responses remained fairly similar between the surveys. In one section of the survey, respondents were asked to identify their most immediate priorities. In 2005, the top concerns identified were food (34%) and peace (31%).⁴⁵⁰ Only 1% mentioned 'justice,' which was defined broadly as 'trials,' 'reconciliation' or 'truth and fairness.'⁴⁵¹ Similarly, in the 2007 survey, only a small proportion (3%) of respondents identified 'justice' as a top priority, while the majority placed "emphasis on resolving immediate needs for peace, food and health."⁴⁵² In 2007, 45% of respondents prioritized health, 45% peace, 31% education, 43% food and 37% land.⁴⁵³ Northerner's top priorities according to the 2010 survey were similar: food (28%), agriculture (19%), education (15%) and health services (13%). As the report itself notes, such findings do not indicate that issues of accountability and reconciliation are not vital to northerners, simply that such issues are of secondary importance to immediate social welfare issues.

In the 2007 and 2010 surveys, respondents were also asked what they thought the Government should prioritize. The most common responses in 2007 were that the Ugandan Government should focus on assisting the return home (33%), and maintaining security of the North (21%). In 2010 when relative peace was secured and most of the population had returned home, participants indicated that the Government should prioritize developing education programs (45%), and health services (44%).⁴⁵⁴ Providing access to water, resettlement assistance, and furthering economic development including money, employment and food was also frequently mentioned.

While these population-based surveys categorize 'justice' separately from socio-economic issues, it appears that this distinction was simply a tool to quickly identify local priorities. The survey clearly demonstrated that immediate social and economic

⁴⁵⁰ Pham, Phuong, and others, *Forgotten Voices: A Population-based Survey of Attitudes About Peace and Justice in Northern Uganda* (University of California Berkeley, 2005), p.25

⁴⁵¹ According to the different conceptions of respondents (see *ibid*)

⁴⁵² Pham, Phuong, and others, *When the War Ends: A Population-Based Survey on Attitudes about Peace, Justice, and Social Reconstruction in Northern Uganda* (International Center for Transitional Justice, Tulane University, and the University of California, Berkeley, 2007), p.22

⁴⁵³ *Ibid*

⁴⁵⁴ *Ibid*, p.19

concerns are more important to Northern people than trials and reconciliation processes. The authors themselves, however, appear to recognize that socio-economic concerns should be included in a broader scope of justice. Pham et al summarize in their 2007 survey that “any approach to peace and justice in Northern Uganda must take into account the strong desire on the part of the people to have their most basic needs met.”⁴⁵⁵ My own fieldwork supports the view that a concept of postwar justice that fails to encompass socioeconomic issues will appear very empty to communities affected by the war. Social and economic development is a core component of ‘embedded’ justice.

Land Conflict

Access to land is a critical embedded socio-economic issue in Northern Uganda that was adversely affected by the Government’s policy of displacement. Resettlement in the villages has been complicated not only by limited access to basic welfare facilities and the absence of key infrastructure, but also by conflicts over land.

As people return home, disputes have ignited within or between families, clans, or tribes over the forgotten borders of long-abandoned communal land. In the context of eroded or splintered family ties in the wake of war, some marginalized individuals have been excluded from previously shared land. Others have taken advantage of the confused situation to appropriate territory. During my time with Caritas, the community workers were frequently involved in mediation of land conflicts. At the first Caritas social services weekly planning meeting I observed, land conflict was identified as the most pressing issue facing local communities: wrangles widened rifts in families, and prevented people from cultivating land.⁴⁵⁶ One community worker reported that the previous day an intra-family dispute had broken into physical fighting, and three members had been hospitalized.⁴⁵⁷ One man I interviewed in Patiko exclaimed:

When you want to go back to your original place and they tell you, you no longer have land! This is what happened to me when I came back from the IDP camp. When this issue of land wrangles comes up, some people say for now no one should settle here, you should stop digging.⁴⁵⁸

⁴⁵⁵ Pham, Phuong, and others, *When the War Ends*, p.23

⁴⁵⁶ Observation of community work team meeting, Caritas office, Gulu Town, 12th August, 2010

⁴⁵⁷ Ibid

⁴⁵⁸ Author’s interview with a male Local Councilor 1(B) (Patiko sub county, Gulu District, July 2010)

While his dispute was being resolved, he was unable to farm his land.

The elderly, disabled, orphans and former abductees of the LRA are particularly vulnerable to land disputes.⁴⁵⁹ For example, during my time accompanying Caritas community workers on their excursions to the villages, we encountered an elderly woman who had been left blind and sustained extensive burns from an LRA attack. Perhaps considered an easy target, Jennifer had faced numerous struggles from non-immediate relatives who had attempted to lay claim to the land she had lived on with her immediate family before she had been displaced.⁴⁶⁰ Given her age and disabilities, the disputes proved particularly distressing and isolating. I found that for such individuals, the resolution of struggles over land was often a top priority. ‘Embedded’ justice is generally viewed as more pressing than wider, symbolic forms of justice.

Resolving land disputes is often a difficult task. Two key mechanisms exist for determining the outcome of land wrangles in Acholiland: traditional authority structures, and LC2 courts, which were given jurisdiction over customary land tenure in the 1998 Land Act. While both systems have significant shortcomings, and the relationship between the two is often unclear, I saw some evidence that the mechanisms could work in tandem to successfully resolve land disputes.⁴⁶¹ In Jennifer’s case, the matter was first taken to the police, who referred the dispute to an LC2 who worked in coordination with local traditional leaders who knew the original boundaries of the land. The dispute was arbitrated in Jennifer’s favor, and the other claimants respected the decision.

While in this instance the LC court and traditional authorities worked together, this is not always the case. Too often, the LC courts are ignorant of original land boundaries, and fail to take into account the customary land knowledge of local elders and traditional leaders.⁴⁶² Furthermore, local court officials are often accused of being

⁴⁵⁹ For discussion, see Human Rights Focus, p.36

⁴⁶⁰ Author’s trip to Patiko with a Caritas community worker in July 2010: The purpose of the trip was to distribute financial compensation to people who had helped construct huts for EVIs (especially vulnerable people). Jennifer (pseudonym) was the recipient of a newly constructed hut.

⁴⁶¹ For a more detailed discussion, see Human Rights Focus

⁴⁶² Ibid

subject to bribery.⁴⁶³ According to HURIFO, the traditional leaders are sometimes poorly equipped to deal with new land problems that have arisen such as “illicit sales, fraud and land grabbing.”⁴⁶⁴ Nevertheless, many people I spoke to were confident in the ability of elders and traditional leaders to justly determine land boundaries. One man emphasized, that it was only when “the elders and the traditional leaders have sat together and decided whose land this is” that disputed land can be resettled.⁴⁶⁵ During my time with Caritas, the community work team worked to intervene before conflicts over land became violent, and where necessary, facilitated the participation of traditional leaders in teams that arbitrated disputes.

The resolution of the land conflicts that have arisen as a result of the Government’s policy of encampment during the war and the inadequate facilitation of return is a key aspect of ‘embedded’ justice in Northern Uganda. Given the direct adverse socioeconomic impact of such disputes on people’s access to land and livelihood, development of the LC court and traditional systems to effectively mediate and arbitrate land disputes must be included in any transitional justice program.

Targeted Reparations: An Element of Socio-Economic Justice

An aspect of embedded socio-economic justice that appeals to local communities’ sense of justice is reparation and compensation. Over the course of the war, northerners suffered many losses, both material and immaterial: the lives of loved ones, property and livestock, land, the opportunity for education or training. As explored in the first chapter, both the LRA and the Government bear significant responsibility for such losses. It is evident from my own experience and the work of many other scholars that Northern communities value special material amends in acknowledgement of wrongs done to them. Pham et al’s 2010 survey revealed that an overwhelming 97% of respondents believed that victims affected by the war should receive some form of compensation.⁴⁶⁶ As I discuss further in the following chapter, it

⁴⁶³ Ibid, pp.37-38

⁴⁶⁴ Ibid

⁴⁶⁵ Author’s interview with a male Local Councilor 1(A) (Patiko sub county, Gulu District, July 2010)

⁴⁶⁶ Pham and Phuong, *Transitioning to Peace*, p.44

should be noted that many locals do not distinguish clearly between reparations and wider socioeconomic development.

For some locals however, the notion of reparation appears particularly tied to apology and recognition of the harm wrought by the Government during the war. As a local activist based in Gulu town emphasized, for instance:

It needs to come out – the Government needs to apologize and say we are sorry for what has happened in Acholiland, we should have protected you...with reparations it may be difficult to reward individuals for what is lost, but ...in a place where many people have lost life, like Pader district, in Atiak, you could give something that benefits people generally.⁴⁶⁷

An LC1 also connected the need for compensation to the failings of the Government: “The Government should at least compensate people- because they are the ones that killed.”⁴⁶⁸ Not infrequently, I found that Acholi furthermore believed that targeted reparations could help tangibly reassure them that the Government’s approach to the North had changed. For instance, a LC3 contended that the Government should provide special scholarships for northern children, to show that “we may also be a part of this country.”⁴⁶⁹

Many Acholi are particularly passionate about the provision of reparation for cattle lost during the war. This is particularly evident in Pham et al’s 2010 survey, which reveals that 74% of the population preferred that compensation given be in the form of cattle. Before the war, farming of cattle was a critical form of livelihood as well as cultural prestige.⁴⁷⁰ Hundreds of thousands of livestock were looted or eaten by the LRA and Government soldiers.⁴⁷¹ The LC3 of Paicho sub-county accordingly contended:

During this war our community lost their free resources in terms of cattle and sheep and so on. The Government should bring back these resources. We depended on keeping cattle and small small farming. The Government should compensate our cattle lost during the war.⁴⁷²

⁴⁶⁷ Author’s interview with a local human rights activist (Gulu, July 2010)

⁴⁶⁸ Author’s interview with a female Local Councilor 1 (A) (Unyama sub county, Gulu District, July 2010)

⁴⁶⁹ Author’s interview with the Local Councilor 3 (Paicho sub county, Gulu District, July 2010)

⁴⁷⁰ Doom and Vlassenroot, p.12 Vlassenroot

⁴⁷¹ Author’s interview with a former member of the executive of the Acholi War Debt Claimants (Gulu, August 2010)

⁴⁷² Author’s interview with the Local Councilor 3 (Paicho sub county, Gulu District, July 2010)

The desire of many Acholi for the Government to facilitate the return of livestock is reflected in relatively successful local efforts to lobby the Government, and the eventual formation of the Acholi War Debt Claimants (AWDC) in 2005. In response to vigorous local petitions, the Government established the ‘Compensation Committee’ to oversee Government repayment for stolen cattle. However, only 20% of claimants were partially reimbursed, and the process subsequently stalled.⁴⁷³ The AWDC since registered 6436 claimants who have collectively demanded UgSh1.4 trillion for 245,046 animals raided during the war in a Court case filed against the Government. As yet, the Government has only paid a small proportion of these claims.⁴⁷⁴

While widespread local demands suggest a reparations scheme should play a role in postwar justice, it is vital that it be carefully designed, and set in the context of wider socio-economic justice measures. As Miller contends, it is easy for the “question of who owes whom how much...[to] triumph over issues that might by contrast result in increased solidarity among a broader sector of the country’s economically repressed.” Inevitably it is difficult to define who is a victim, and who deserves particular restitution. Another danger associated with reparations is that the most active and vocal complainants, such as members of the AWDC, might receive copious compensation while others receive little. Furthermore, by nature, even substantial reparations schemes do not provide means to address the deep structural inequities and the need for long-term recovery and economic development.⁴⁷⁵ Nevertheless, local popular demand suggests that reparations could assist vulnerable individuals, and demonstrate to communities that the Government recognizes their suffering and has shifted its approach.⁴⁷⁶

Referring to the enduring poverty of northerners and vast economic inequalities with the rest of the country, one man I interviewed contended:

In some ways, the war has not yet ended. The type of peace we need is not there now. For real peace there needs to be change from the Government. If there is

⁴⁷³ Ibid

⁴⁷⁴ Ibid see Ocowun, Chris, ‘sh2b paid to War Victims in Acholiland, *New Vision*, 3 January 2010

⁴⁷⁵ Miller, pp.286-287

⁴⁷⁶ Author’s interview with the Director of Human Rights Focus (Gulu, August 2010)

no change, people will continue to suffer.⁴⁷⁷

The socioeconomic issues discussed above are clearly prioritized as critical issues of embedded justice by local communities. Justice policies on the development of key welfare services and infrastructure, livelihoods, land conflicts and also targeted reparations directly and tangibly address the most pressing daily concerns of those affected by war. It is finally important to emphasize that this form of ‘embedded’ justice inevitably demands the involvement of the state. Local groups and individuals will always engage in efforts to restore their livelihoods and land, but ultimately, Government action is required. The following section explores another aspect of embedded justice that is determined primarily at the local level: restoration of social relationships.

Local Cosmology and Social Restoration as ‘Embedded Justice’

A Point of Clarification

Throughout the remainder of this chapter, the controversial issue of traditional justice and its supposed archetype *Mato Oput* enters my discussion of local approaches to justice in two different ways. The distinction I draw reflects the varied ways that local people speak about traditional justice. Firstly, I found that people speak about traditional justice practices in relation to social and spiritual problems directly experienced by themselves or other people in their community. In this way, traditional practice is a form of ‘embedded justice.’ Secondly however, locals also refer to traditional justice (and specifically *Mato Oput*) in a broader, less personal capacity. Reflecting wider discussions about the controversial claims articulated by prominent Acholi leaders, locals offered varied views on the role that traditional justice should (or should not) play in reconciling figurehead LRA commanders with the Government or northern communities, and achieving final symbolic resolution of the LRA situation. Although there are inevitably points of overlap with ‘embedded justice, I contend that this second approach to traditional justice could usefully be conceived as ‘indirect justice.’ This section discusses traditional mechanisms as ‘embedded

⁴⁷⁷ Author’s interview with male villager (Unyama sub county, Gulu District, July 2010)

justice,’ while the following section explores diverse Acholi approaches to ‘indirect justice.’

The Reinvention of Traditional Justice: Power Interests and a Quest for Peace

Before exploring local approaches to social dislocation, it is necessary to explore the source of the contemporary focus on traditional justice, and consider the context in which ‘traditional’ structures were established. The surge of bold claims about *Mato Oput* arose from various interests of international, national and local actors in the reinvigoration of ‘traditional’ leadership in Northern Uganda.⁴⁷⁸ While the reinvention of traditional justice sprung from a desire to cultivate a culture and practice of reconciliation, it is crucial to recognize that it also reflected the self-interest of powerful elites.

The recent focus on traditional mechanisms ironically stems at least in part from international intervention. Allen traces the surge in prominence of the *Mato Oput* ritual to a report on local reconciliation processes written by the anthropologist Dennis Pain in 1997 that sought to identify mechanisms to assist the peaceful resolution of the conflict.⁴⁷⁹ In his report, Pain, a close friend of the Anglican Acholi community, advocated for a “radical law enabling traditional resolution” through such ceremonies as *Mato Oput* to be applied in “special circumstances of social breakdown.”⁴⁸⁰ The project of traditional justice gained increasing momentum as donors keen to support ‘traditional’ African culture provided funding to research and reinstate a system of traditional leadership to facilitate rituals.⁴⁸¹ As Dolan contends, for some international NGOs it appeared an easier undertaking to “strengthen traditional leadership than to challenge the modern leadership.”⁴⁸² For some time, support of traditional justice indeed reflected the attitude that the northern conflict was a ‘local affair.’⁴⁸³

⁴⁷⁸ Dolan, *Understanding War and its Continuation*, p.340

⁴⁷⁹ Discussed in Allen, *Bitter Roots*, p.245

⁴⁸⁰ Ibid

⁴⁸¹ Allen, *Bitter Roots*, pp.247-249

⁴⁸² Dolan, *Understanding War and its Continuation*, p.347

⁴⁸³ Ibid

The resurrection of traditional structures was also supported by national and local powers. The Ugandan Government also originally backed, and furthermore facilitated the establishment of ‘traditional’ structures. In 1995, Museveni’s regime officially reinstated traditional leadership through the institution KKA in Uganda’s new constitution. Contemporary observers perceived that the state hoped to co-opt the traditional leadership to bolster its own political standing.⁴⁸⁴ Furthermore, the movement inevitably became popular with local male elders and church officials, perceiving that a revival of ‘tradition’ would also boost their authority that had waned over the course of the war.⁴⁸⁵ It was against this backdrop that local religious and traditional leaders in the north lobbied for traditional justice to replace the ICC process.

The claims of such leaders about *Mato Oput* and the Acholi ‘culture of forgiveness,’ in response to the ICC’s intervention, however, are best understood as a concerted effort to reach a negotiated end to the war at any cost in the context of widespread, prolonged suffering. Certainly it is likely that some elders, *Rwodi Kweri* and church officials supported bold claims about traditional practices for reasons of self-interest and power. In contrast, other leaders’ promotion of traditional mechanisms to reconcile the LRA leadership with northern communities and the Government may have stemmed from personal conviction about the value of forgiveness and reconciliation. However, it is also clear that leaders used an exaggerated depiction of traditional justice *strategically* to challenge the approach of both the Government and the ICC to resolving the war. As evident in the previous chapter, KKA and the ARLPI were heavily involved in the civil society struggle against the Government’s long-favored a military approach. Elements of the traditional leadership developed resistance against state cooption.⁴⁸⁶ The claims of such leaders were reasonably representative of the wider Acholi community insofar as they offered a strategic avenue to end the war, but were overall misleading as a portrayal of Acholi perspectives on justice.

⁴⁸⁴ Dolan, *Understanding War and its Continuation*, p.347: Dolan quotes a Minister for Northern Uganda at a civil society meeting in 1999: “...as a Government we have lost several opportunities in this war...This should not be seen as a Government initiative, but the truth of the matter is that it [the initiative to revive the traditional leadership] came from us”

⁴⁸⁵ See Allen, *War and Justice in Northern Uganda*.

⁴⁸⁶ Cf. Dolan, *Understanding War and its Continuation*

The increasingly measured views of religious and cultural leaders after the failure of the Juba process and departure of the LRA strongly suggest that their earlier bold claims were tied to the quest for peaceful settlement. In his 2010 article ‘Bitter Roots,’ Allen refers to a recent interview with the Acholi Paramount Chief, in which the *Rwot* states that Kony and the other commanders should be prosecuted for what they did. As Allen paraphrases the Chief’s comments:

Traditional customs were something people could draw upon if it helped them, but they [are] not an adequate alternative to formal processes where the most serious crimes [have] been committed.⁴⁸⁷

My own informal discussions with Anglican Acholi leaders similarly suggest that their views have shifted considerably. In one conversation, a religious leader reflected that Acholi people no longer share a widespread culture of forgiveness: the war has eroded cultural structures, mob justice is common, and people are also more familiar with ‘modern’ retributive systems.⁴⁸⁸ In his personal view, it was critical to forgive others, but those who have done wrong must still be answerable to the law. Forgiveness, he contended, was a matter of the heart. Regarding ‘traditional’ systems, he acknowledged that while attempts have been made to reinstate cultural institutions, many people are losing respect for the elders who sometimes abuse their role.⁴⁸⁹

The phenomena of local ‘traditional’ justice and the recent exaggerated claims about its potential as a postwar justice mechanism resulted from actions at all levels. It is clear that while many local actors supported adopting traditional mechanisms as a strategy to achieve peace, others also have vested interests in the project for their own selfish reasons. As I explore below, the power dynamics embedded in the structures of traditional leadership inevitably have implications for the practice of ‘traditional’ approaches to social restoration.

Locally ‘Embedded’ Justice: Social Restoration

Throughout the course of the war, communities have been actively involved in locally ‘embedded’ ways to deal with the social repercussions of widespread violence and the

⁴⁸⁷ Allen, *Bitter Roots*, p.261

⁴⁸⁸ Author’s conversation with a high leader in the Anglican church, Gulu Town, July 2010

⁴⁸⁹ Ibid: Note that the NGO, ARLPI still advocates for a peaceful resolution with the LRA.

breakdown of relationships.⁴⁹⁰ Despite the exaggerated nature of claims about traditional justice described above, it is clear that notions of the spiritual realm and practices considered ‘traditional’ often shape local responses to the war. Like Harlacher et al, I adopt the approach that the terms ‘tradition’ or ‘traditional’ simply mean what local people believe them to mean: current, living practices and beliefs that are rooted in a collective memory (real or imagined) of a past way of doing things.⁴⁹¹ Traditional beliefs and practices, however, cannot be equated with ‘Acholi’ beliefs. As I discuss below, traditional approaches are not the only way that Acholi communities seek social restoration in the wake of war. Some Acholi furthermore may find no meaning at all in traditional practices.

In rural Acholiland, I found that many people strongly adhere to a spiritual worldview sometimes described as Acholi cosmology or religion. This worldview provides a framework for people to understand the deeper causes of misfortune, and to seek remedies.⁴⁹² As elders and traditional leaders narrate, when the social-fabric is torn, free *joggi* (bad spirits) send misfortune until appropriate action is taken and social and spiritual conciliation takes place.⁴⁹³ Most commonly, people I spoke with referred to a free *joggi* called *Cen*, the spirit of a person who died in bad circumstances, or was not given proper burial. People who kill, intentionally or otherwise, can become haunted and plagued by the vengeful spirit *Cen*. The ground where people died badly can also become infected. One woman I spoke to recalled that for many months after a killing, her local school was deemed uninhabitable due to lingering *Cen*.⁴⁹⁴ The widespread experience of violence during the war resulted in a proliferation of free *joggi*. It is particularly common for LRA returnees to experience *Cen* after returning from the bush to the community. Former LRA and community members I spoke to explained

⁴⁹⁰ For in-depth studies, see Finnstrom. Also See Baines, Erin, 'The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda', *International Journal of Transitional Justice*, 1.1 (2007)

⁴⁹¹ See Harlacher, Thomas, *Traditional Ways of Coping in Acholi: Cultural Provisions for Reconciliation and Healing from War* (Caritas Gulu Archdiocese, 2006), p.9

⁴⁹² Ibid: Baines, *Spirits and Social Reconstruction*

⁴⁹³ Author's interview with male elder (Paicho sub county, Gulu District, July 2010)

See also Harlacher, pp.53-54

⁴⁹⁴ Author's interview with a female tailor (outskirts of Gulu town, July 2010)

that *Cen* usually manifested itself in the form of nightmares, physical ailments, bad fortune or reproductive problems.⁴⁹⁵

Belief in spiritual forces does not always invoke an attitude of forgiveness and reconciliation within communities. Baines notes instances where people deliberately buried victims away from their ancestral burial grounds to encourage their dead spirits to seek revenge upon a perpetrator.⁴⁹⁶ I found that it is common for people to respond with fear and anger towards returnees showing signs of *Cen*. This is perhaps unsurprising, especially in instances where a former fighter returns to a village where they committed atrocities. One former abductee of the LRA recounted that when he first returned, community members ostracized him from village social life and called him names.⁴⁹⁷

However, ‘traditional’ beliefs and practices also provide local communities with a way to restore ruptures in the moral-spiritual and social order brought about through mass violence.⁴⁹⁸ Many people I encountered believed strongly in the need to appease and disperse the bad spirits unleashed by social-wrongs. Ritual responses to *Cen* or other bad spirits often appear both socially and psychologically beneficial. When a ceremonial cleansing was performed referred to as *moyo piny* at the site of the school ground referred to above, locals agreed that the space was purified and could be used again.⁴⁹⁹ In Harlacher’s in-depth fieldwork in 2006, he relates numerous instances in which individuals are relieved from the affliction of *Cen* through various spiritual interventions by elders, and reunited with their communities.⁵⁰⁰ Perhaps the most commonly practiced ritual is *nyono tonggweno*, ‘stepping on the egg.’ In recent years,

⁴⁹⁵ One formerly abducted man I interviewed recounted: “When I came back, I felt I had *Cen*, because at times I have experiences that give me a lot of fear. I feel that someone is beating me, or I am being forced to kill- that is in my mind. I also feel the impact in my body- I feel chest pain even up till now.” Author’s interview with a formerly abducted young man (Patiko sub county, Gulu District, July 2010)

⁴⁹⁶ Baines, *Spirits and Social Reconstruction*, p.422

⁴⁹⁷ Author’s interview with a formerly abducted young man (Patiko sub county, Gulu District, July 2010)

⁴⁹⁸ See also Baines, *Spirits and Social Reconstruction*

⁴⁹⁹ Author’s interview with a female tailor (outskirts of Gulu town, July 2010)

⁵⁰⁰ Harlacher, pp.101-102: In one case, a young man formerly abducted by the LRA who was feared by the community because of his aggressive outbursts and ‘flashbacks’ to horrific moments experienced “significant positive changes” after undergoing an elaborate ceremony referred to as *Kwero Merok*. After a time, his aggression and nightmares subsided, and the community proved increasingly willing to engage with him: social relationships were restored.

this ritual has been performed en masse at the palace of the Paramount Chief to welcome back LRA returnees and cleanse them from their time in the bush.⁵⁰¹ While some rurally based elders are skeptical about large-scale rituals performed in Gulu town rather than in the villages, the ceremonies nevertheless appeared helpful to many returnees, giving them a sense that the wider Acholi community was prepared to accept them back.⁵⁰²

The reconciliation practice *Mato Oput*, appears to be applied only rarely, while little evidence suggests that the process has ever occurred between former LRA and their victim's family.⁵⁰³ Interestingly, I found that most people considered *Mato Oput* to be completely compatible with formal justice procedures: the reconciliation process often followed the return of the perpetrator from a time of imprisonment. One LC1 who recently witnessed the concluding ceremony of *Mato Oput* contended, "The best thing" for murderers:

...is to take them straight to the police, from there they decide, they may put them in prison, fine! But when you come back...reconciliation must take place. The anger needs to be eased and cooled, so the families don't fight one another.⁵⁰⁴

A common reason given by traditional leaders for the infrequent practice of *Mato Oput* is high levels of poverty and lack of resources for compensation, a critical element of the process.⁵⁰⁵ Others cite that knowledge about *Mato Oput* has waned during the course of the war.⁵⁰⁶ As many other scholars have noted, traditional leaders explain that *Mato Oput* is not undertaken between former LRA and Acholi clans because the ritual is simply not suited to a situation in which there are a multitude of victims, and perpetrators and/or victims are not present or even known.⁵⁰⁷

⁵⁰¹ En mass performance of *nyono tonggweno* at the office of the Paramount chief is a 'neo traditional' practice designed to assist the reintegration of former abductees. See Refugee Law Project, *Peace First, Justice Later*, p.28

⁵⁰² For further discussion see *ibid*, p.29 cf. Harlacher, p.69.

⁵⁰³ I did not encounter anybody who was aware that the *Mato Oput* process had taken place involving former LRA and their victim's families. Numerous scholars reveal similar findings: Refugee Law Project, *Tradition in Transition*, p.27; Harlacher, p.90

⁵⁰⁴ Author's interview with a male Local Concilor 1(A) (Patiko subcounty, Gulu District, July 2010)

⁵⁰⁵ For example, one male traditional leader explained: "In these traditional ceremonies we need goats, sheep, cows, and these things are not there! To buy a goat ... where is that money? It is a very big challenge," Author's interview with a male traditional leader (Unyama sub county, Gulu District, July 2010) See also *Roco Wat I Acholi*, p.65

⁵⁰⁶ For in-depth discussion see *Roco Wat I Acholi*, pp.54-74

⁵⁰⁷ Numerous elders and traditional leaders I interviewed emphasized this point. One traditional leader, for example, stressed, "The victims are so many that some may be missed out." He accordingly

Nevertheless, it is evident that local communities draw upon traditional understandings and practices to mediate and restore relationships between clans who have become alienated through the atrocities of war. Baines provides a detailed example, for instance, of a case in which a woman (Florence) becomes haunted by the spirit of her son who was abducted and died in the bush.⁵⁰⁸ She blames Ojok, the son of her neighbor who was also abducted but returned alive because he revealed the whereabouts of her child to the LRA. In order for her son's spirit to leave her, she believes Ojok's family must provide compensation. A back and forth mediation process was accordingly initiated by the elders of the clan.⁵⁰⁹ Intervention of the spiritual realm clearly serves an important social role in bringing about reconciliation. As Baines puts it, in this case the spirit that haunted Florence effectively "forces the crime into public domain for discussion and demands a collective response" and resolution.⁵¹⁰ It is interesting to note that in this case, the process of reconciliation contained similar elements to *Mato Oput*: mediation, truth telling, and compensation.

Finally, it is important to note that in some cases, the local approach to dealing with the return of perpetrators of extreme violence is simply rejection and ostracism. While I was informed of specific instances in which the families of victims accepted the return of command-level LRA to their neighborhoods, this is not always the case. One woman I spoke with believed that reconciliation processes were good in principle, but that reunion was simply not possible between members of her village and another returned Gulu-based LRA commander:

People are still very bitter. In that family [points to nearby hut] four boys were killed...In reality...if you see these commanders you feel like the community should spear them. There was one commander who came to buy sorghum here from town. People were saying, last time you were killing people around here—we could even stone you right now.⁵¹¹

Frequently, I found that members of the home village of LRA high commander Brigadier Kenneth Banya who received amnesty in 2004 and returned to live in Gulu town were simply not ready to welcome him back or share in any traditional process.

suggested, "...reconciliation might have to be done in another way." Author's interview with a male traditional leader (Unyama sub county, Gulu District, July 2010)

⁵⁰⁸ Baines, *Spirits and Social Reconciliation*, pp.17-21

⁵⁰⁹ Ibid

⁵¹⁰ Ibid, p.20

⁵¹¹ Author's interview with a formerly abducted woman (Paicho sub county, Gulu District, July 2010)

One woman exclaimed derisively, “Banya is the responsibility of the Government, not the community now.”⁵¹² She said that even though he “stood on an egg with the paramount chief” he was not welcome back.⁵¹³ In some instances, the restoration of former relationships appears out of the question.

The Search for an Inclusive Approach to Local Reconciliation

While traditional approaches to local social healing are evidently important to many people, in practice, it is clear that ‘traditional’ structures are in crisis. In part, this stems from the local power dynamics involved in the re-establishment of traditional leadership structures described above. Weak and often corrupt leadership at the grassroots level threatens to undermine the role of traditional mechanisms as an effective form of local embedded justice. The rise of traditional leadership is to an extent associated with the male elders’ bid for increased authority.

The inactivity or abuse of power by some traditional leaders frequently appeared to leave individuals without spiritual or social conciliation. While many people in theory held respect for traditional leaders, I found that traditional leaders often proved unhelpful, or even exploitative. One formerly abducted youth that sought relief from *Cen* explained that his local *Rwot* did little to assist him. He explained: “when I returned there was no ceremony. They did slaughter a goat, but they didn’t tell me whether it was for me, or for another purpose.”⁵¹⁴ Like many others, while this man felt he needed to be cleansed of *Cen*, he was not sure what processes could help him, or how he should approach his elders.⁵¹⁵ Another woman I encountered sought several different methods to cleanse herself, including approaching a witchdoctor (*ajwaki*), but found that leaders demanded excessive payment.⁵¹⁶ Many Acholi are clearly

⁵¹² Ibid

⁵¹³ Author’s interview with female elder (Paicho sub county, Gulu District, July 2010)

⁵¹⁴ Author’s interview with a formerly abducted young man (Patiko sub county, Gulu District, July 2010)

⁵¹⁵ Ibid: while he found that over time, “staying with the community is easier...people’s attitudes have changed, I stay with them freely” he still experienced other manifestations of *Cen*, including nightmares.

⁵¹⁶ Author’s interview with a formerly abducted woman (Paicho Sub County, Gulu District, July 2010) she explained: “My mother said, let us seek healing. But it was very expensive to see the *ajwaki*- we needed to buy some goats, some chickens, but we could not afford! Leaders [local *rwot*] also refuse to

frustrated with the weakness of the traditional system, and lack opportunity to access assistance.

More broadly, the ‘crisis’ of the traditional system in the Acholi region reflects a general erosion of ‘traditional’ culture and the growing lack of knowledge of rituals and customs.⁵¹⁷ A project officer of an NGO involved in strengthening community reconciliation shared a widely held view: “the cultural leaders are no longer really as active and playing their role. In the past, they used to speak and people would listen, but these days they do not listen.”⁵¹⁸ This trend is often attributed to the social breakdown that occurred during the war, and the decline of the practice of *wang-oo*, a nightly sharing of traditional laws and wisdom around a fireplace, which suffered due to imposition of a curfew in the IDP camps.⁵¹⁹ While many locals genuinely subscribe to ‘Acholi cosmology,’ traditional structures are currently weak and ineffective.

It should also be noted that local embedded approaches to justice and social restoration are not restricted to traditional practices. Some people draw more strongly on Christianity than traditional beliefs, although the two are often mingled. In some instances, the process of reintegration and acceptance of former combatants that had perpetrated crimes against locals is assisted through mediation and counseling by local NGOs such as ARLPI, or through prayers.⁵²⁰ The Caritas community workers I accompanied had yet another approach. They regularly facilitated local dialogues and meetings in their own local villages, in which village members discuss and strategize remedies for ongoing local social problems such as alcohol abuse, domestic violence, or social ostracism.⁵²¹ The LC of one such village explained that such “dialogue and discussion in the community” helps to prevent people from “pointing fingers at one another,” and builds social cohesion.⁵²² The prevalence and social impact of such self-initiated community dialogues warrants further research.

help me without payment. This is causing me a lot of problems.” Note that Baines records similar stories: See Baines, *The Haunting of Alice*

⁵¹⁷ Many people I spoke to in Gulu Town shared this view

⁵¹⁸ Author’s interview with a local civil society representative (Gulu, August 2010)

⁵¹⁹ Baines, *The Haunting of Alice*, p.107

⁵²⁰ This was the experience of Caritas community workers that I spent time with, July 2010

⁵²¹ Ibid

⁵²² Author’s interview with a female Local Councilor 1 (A) (Unyama sub county, Gulu District, July 2010) Elders I spoke with also referred to formation of groups in our “small villages” to “mix together

As discussed above, scholars take a range of positions regarding the approach various actors should take to traditional justice practices. However, many of these approaches are problematic. National codification of traditional mechanisms risks imposing rigid structure on what is ultimately a highly flexible, locally embedded process of negotiation. To assume KKA as the exclusive actor responsible for the development of traditional practices also risks entrenching the often self-interested power of male elders. While in theory KKA aims to address gender imbalances in the traditional leadership, there is little evidence that suggests that this has been undertaken on a wide scale.⁵²³ Allen's work certainly highlights the troubling power dynamics entrenched in the structures of traditional justice. However, given the strong belief of many Acholi in the need for traditional approaches to social and spiritual reconciliation, the project should not be completely abandoned as he suggests.

Ultimately, the development of constructive, inclusive and flexible local mechanisms for social and spiritual renewal and a representative, engaged leadership must involve the active participation of a wide range of local actors. As Branch recognizes, this process is not simply a matter of refining the content and practice of particular rituals, and ensuring that they comply with particular standards.⁵²⁴ Rather, it must involve a local struggle over the very leadership structure and nature of the practice of traditional justice itself. Inevitably, international NGOs, donors, and domestic Ugandan civil society groups will continue to be involved in the development of approaches to traditional justice. As explored above, international actors were deeply involved in the resurrection of a traditional leadership structure itself. The involvement of such groups, however, must not simply be to support KKA, or to support the traditional practice through the provision of compensation as the IPSS study suggests. Rather, such groups must nurture the development of an inclusive approach to traditional justice, while remaining critically alert to local power dynamics. Examining the impact and approach of the many involved civil society

and come up with solutions" regarding problems such as alcohol abuse and domestic violence. Author's interview with male elder (Paicho sub county, Gulu District, July 2010)

⁵²³ As noted by Allen, *War and Peace in Northern Uganda*

⁵²⁴ Branch, Adam, *Ethnojustice: The Theory and Practice of Traditional Justice in Uganda*, Presented at American Political Science Association Annual Meeting, Massachusetts, August 2008, http://www.rohan.sdsu.edu/~abranh/Publications/index_pub.html [Accessed 12 August 2011]

groups in the search for an effective traditional justice system was beyond the scope of this thesis. Future research, however, should focus on critically assessing the contribution of civil society actors to this process, rather than simply documenting local perspectives on traditional justice and the practice of different rituals.

‘Embedded’ justice in Northern Uganda therefore involves actors at all levels, not simply local. For most Acholi communities, socioeconomic justice is a critical component of embedded justice. While local actors are certainly involved in seeking ways to collectively address their livelihood struggles after the war, socioeconomic justice ultimately requires a transformation of the national approach. The struggle for an inclusive, effective approach to social restoration furthermore, inevitably involves international and domestic civil society groups. In the following section, I turn to local perspectives on ‘indirect justice;’ broader issues of reconciliation, accountability with distant perpetrators, and the symbolic resolution of the northern conflict.

Indirect Justice: Wider Notions of Reconciliation and Accountability

As with societies anywhere, war affected communities in the Acholi region have diverse beliefs about how the perpetrators of serious crimes should be dealt with. Many internal and external voices influence local perspectives. Religious leaders, KKA, the Local Council system, the Amnesty Commission, the formal court system,⁵²⁵ and the ICC (which has been repeatedly featured in local radio programs) all offer different approaches to issues of reconciliation, accountability, and forgiveness. These influences may produce ideas that compete and contradict, but also overlap and complement. As is already evident, those who ground their perspective in Acholi cosmology may also believe in the necessity of formal criminal accountability. Views may vary enormously between different subsections of the population: Acholi spiritual beliefs are simply not relevant for most educated, town-based people, who also lived and suffered through the war.⁵²⁶ Furthermore, local perspectives inevitably change over time according to context. For instance, while there was evidently widespread support for blanket amnesty while conflict persisted, the return of security

⁵²⁵ Note: for a concise summary of these different structures and institutions, see ‘Roco Wat I Acholi’ Appendix

⁵²⁶ Author’s interview with a local civil society representative (Gulu, August 2010)

and relative peace has given rise to higher recognition of a role for criminal accountability.⁵²⁷

It is first vital to note that when I spoke to Northerners in mid-2010 about accountability for at large perpetrators and the symbolic resolution of the northern conflict, most people treated such questions as hypothetical concerns. There was a general sense that in the short term it was unlikely that Kony and other commanders would either be captured or reengage in peace talks, although a few people feared Kony's return. The debates that raged while a peace deal still seemed possible over whether the top leaders of the LRA and other high commanders should be subjected to the ICC, national criminal courts, or the *Mato Oput* process were now usually viewed as theoretical matters. Many people I talked to doubted that Kony and high-level LRA commanders would return alive. One Local Councilor I interviewed laughed and responded that no method to deal with Kony and his commanders could work now, because Kony cannot be caught:

The Government is saying some of these rebel offenders will be dealt with by the ICC, but when will they come back, when are they coming? The traditional justice like *Mato Oput* is not going to work either, because the LRA is still out there!⁵²⁸

Likewise, when I asked a traditional leader (*Rwot*) if *Mato Oput* could be adapted to the post war situation to deal with LRA leaders, his answer simply focused on the failure of the Juba Process, and the subsequent absence of Kony:

We traditional leaders were saying we should handle Kony through the traditional system, but the ICC provoked them [the LRA] so much... They may never come back now!⁵²⁹

In general however, people were willing to air their views on reconciliation and accountability.

In Favor of Reconciliation with the LRA

Many people I spoke with expressed a desire for all the LRA to return peacefully and reintegrate with the community, and even extended their welcome to top

⁵²⁷ See Pham and Phuong, *Transitioning to Peace*

⁵²⁸ Author's interview with a male Local Councilor 1(B) (Patiko sub county, Gulu District, July 2010)

⁵²⁹ Author's interview with a male traditional leader (Unyama sub county, Gulu District, July 2010)

commanders. Some simply referred to the amnesty, without mentioning traditional processes. One expressed: “I feel that for anyone who comes back from the bush, they should come to the community. They are used to the community. The legal aspect—maybe we should leave it pending.”⁵³⁰ Those who supported the general amnesty were not without criticism of the Government’s handling of returnees. A recurring theme was disillusionment with the Government’s habit of recruiting returning rank and file LRA for the UPDF. The same man (above), for example went on to exclaim, “Many are brought back to the UPDF instead of taking them back and giving them support in the community!”⁵³¹ Some people I spoke with were also dissatisfied that high commanders who had returned from the bush received high-class treatment by the Government, while their victims received no assistance.⁵³² Others who overall supported the amnesty also noted that returned LRA sometimes misperceived their certificate as a permanent waiver of all accountability.⁵³³

A few people appeared strongly convinced that, where possible, LRA, including higher commanders, should reconcile with their victims through traditional processes immediately upon their return. Those that strongly supported the use of traditional rituals to reconcile former high LRA with Acholi communities tended to hold a leadership position, whether traditional, Governmental or in an NGO. Most commonly, people referred to *Mato Oput* or *Nyono Tonggweno*. An LC3 I interviewed responded for instance,

We feel that if any court of this world arrests Kony it will not heal the loss of life in this community. But you know *Mato Oput*, you have to come and apologize before the community. It means apology. So we believe *Mato Oput* is the only solution for this problem here.⁵³⁴

One woman I spoke with contended, “I am appealing to the LRA leaders, if it is possible, come back home to stay with your people...so we eat together in harmony.”

In conclusion, she noted that “courts provoke people...and they can just want more revenge.”⁵³⁵ Such views reflected the idea that lasting peace would only be finally

⁵³⁰ Author’s interview with a male Local Councilor 1(A) (Patiko sub county, Gulu District, July 2010)

⁵³¹ Ibid

⁵³² Numerous interviews in Patiko and Paicho, July 2010

⁵³³ I heard of several cases in which LRA returnees waved their amnesty certificates at people who threatened to bring police/local authority to address a situation.

⁵³⁴ Author’s interview with the Local Councilor 3 (Paicho sub county, Gulu District, July 2010)

⁵³⁵ Author’s interview with a female local Councilor 1 (B) (Unyama sub county, Gulu District, July 2010)

secured when the LRA commanders returned and were reconciled with their communities.

Another common perspective was that while reconciliation with the LRA might be desirable to provide final resolution, in practice it was unlikely to work. Even those who professed to favor traditional reconciliation in theory recalled the communal tension with former commanders such as Brigadier Banya, and concluded that Kony and other leaders would never be truly accepted and forgiven in the Acholi district. Another woman also expressed the opinion that “The ICC, they do a lot of analysis, but with the *Mato Oput* it is direct. I feel that the ICC shouldn’t be there- what should be there is *Mato Oput*, reconciliation between the Government and the LRA.” But again, she recognized that this outcome was unlikely: “Dealing with Kony is not easy. During the dry season he may say let us reconcile. Then during the wet season when the grass is tall he will disappear.”

In favor of Criminal Accountability for the LRA

In contrast to those who favored reintegration, many people that I talked to were adamant that high LRA commanders should face criminal accountability. One male elder put it particularly bluntly:

They [the higher commanders] are the ones that destroyed Uganda, they killed and pillaged. They should be arrested and taken to court. Amnesty is a sign that people have forgiven what you have done. People like Kony should not get amnesty. We should accept back the lower LRA because they are our children. But people like Banya should be taken to prison! He did so much atrocity!⁵³⁶

Similarly, a young man formerly abducted who experienced *Cen* and sought personal spiritual conciliation, believed that for some members of the LRA, the formal court system was most appropriate:

Those people should be given punishment according to a court judgment, and if they find they have done wrong, they should be jailed. If Kony came back, people would not accept him easily. The Government should keep them in an isolated place.⁵³⁷

⁵³⁶ Author’s interview with male elder (Unyama sub county, Gulu District, July 2010)

⁵³⁷ Author’s interview with a formerly abducted young man (Patiko sub county, Gulu District, July 2010)

While it is difficult to determine conclusively how widespread such views were, as Allen found it certainly appears that a significant number of people believe that it is preferable for the higher commanding LRA to face a criminal trial. It is notable however, that numerous people believed reconciliation and formal retribution were not mutually exclusive. Several people specifically emphasized that Kony and other leaders could return to Northern Uganda and reconcile *after* facing trial in either Kampala or The Hague.

United Voices: Accountability for State Actors

Local opinion regarding appropriate measures for state actors (particularly UPDF) who perpetrated atrocity in the north appeared unified and adamant: state actors should be held accountable. In Pham et al's 2010 survey, when asked to name the group that they wanted most to see held accountable for violence during the conflict, 64% responded Government actors, 19% mentioned LRA leadership, and only 5% mentioned all of the LRA.⁵³⁸ Most people I spoke to drew attention to UPDF soldiers rather than non-military state actors, likely because direct, tangible violence was experienced at the hands of such soldiers. An LC3 emphasized:

Both the Government and LRA made that atrocity of killing people.... Many lives were lost to the UPDF, and many people were raped by the UPDF, but nothing has been done against these people. They should be punished.⁵³⁹

A young man similarly stated: "The people who should be punished are these big people in the UPDF. I was in Pader- and it was the UPDF that were hurting us." Overall, it appeared that the issue of accountability for UPDF and other state actors was much more straightforward than the question of how to deal with LRA.

I also found that many people in the Acholi district attributed much general responsibility for the sufferings of the war to Musveni's regime. In addition to the widespread calls for the Government to provide recognition and apology, many people I spoke to affirmed that a truth telling process could help to hold the Government accountable. However, I also found that many people were skeptical that

⁵³⁸ Pham and Phuong, *Transitioning to Peace*, p.47

⁵³⁹ Author's interview with the Local Councilor 3 (Paicho sub county, Gulu District, July 2010)

the Government would engage in a truth telling process with integrity. One woman affirmed that

It is very important, truth telling should be there...but I don't see whether the Government will accept this truth telling. If we are to form a truth telling commission...the president has said we are returning all your cattle, but even up to now there is nothing, not even that is done!⁵⁴⁰

It was also apparent that most people believed that truth telling only was not sufficient: many people were adamant that any truth telling process would lack meaning if tangible benefit did not follow. One local council leader emphasized for instance, "Truth telling alone, without follow up, that will cause us problems. If there is a follow up team then there would be compensation."⁵⁴¹ Indirect justice is only viewed as meaningful if it is accompanied by tangible social and economic change. Measures such as formal accountability, symbolic national reconciliation, and truth telling must ultimately lead to embedded justice.

Conclusion

This chapter explored the diverse approaches towards justice of northern Acholis in the wake of war. While much of the literature on local justice has framed the debate between traditional and international justice, restorative or retributive justice, I found that most locals were primarily concerned with 'embedded justice.' Overwhelmingly, people were focused on 'justice' that directly and tangibly affects their everyday lives.

First and foremost, people prioritize socio-economic issues such as the (re) development of key infrastructure and social services, restoration of livelihood and education opportunities, access to land, and targeted reparations. While many scholars excluded such issues from the scope of justice, I argued that socio-economic recovery is a critical justice issue. Not only is it prioritized by Acholi people; socioeconomic development is considered a key way in which the Government can be held accountable for its failings during the war, and actively demonstrate a transformed approach to the north. Unequivocally, if the concept of 'transitional justice' is to be meaningful to those affected by war, it must encompass the concept of socio-

⁵⁴⁰ Author's interview with female villager (Paicho sub county, Gulu District, July 2010)

⁵⁴¹ Author's interview with a male Local Councilor 1(B) (Patiko sub county, Gulu District, July 2010)

economic justice.

Another aspect of ‘embedded justice’ involves local approaches to dealing with the social and spiritual implications of abduction and violence. As I have shown, traditional beliefs and mechanisms often play an important role in the way that locals seek remedy for the traumas and social dislocation of war. However, traditional practices are hampered not only by a degree of cultural decline, but also neglect and abuse by traditional leaders. While many locals genuinely subscribe to ‘Acholi cosmology,’ the rise of traditional leadership is to an extent associated with male elders’ bid for increased authority. Ultimately, the struggle for constructive, inclusive and flexible local mechanisms for social and spiritual renewal and a representative, engaged leadership must take place at the local level. The inevitable involvement of local civil society groups, domestic research NGOs, international donors and national transitional justice policy makers however, should be geared towards nurturing this development while remaining alert to the risk of power abuse.

I have shown that for most war-affected communities, ‘indirect’ justice is a lower priority, although still important. While some believe that the leaders should return and be reconciled to both Northern Ugandans and the Government in order to secure lasting peace, others are adamant that commanders must face criminal trial. Still others prefer reconciliation in theory but believe it to be impossible, while others view that local reconciliation rituals could follow criminal trial and punishment. Regarding accountability for UPDF however, Acholi seem united in their desire for perpetrators to face trial and imprisonment. Many locals also view the Government as bearing wider responsibility for the afflictions and losses of the war, and affirmed that truth telling and apology was appropriate. However, if such measures are to be truly meaningful, they must lead to forms of embedded justice.

To a certain extent, therefore, the radical agreements made at Juba do address critical justice priorities of local communities. In the following chapter, I explore the development of national transitional justice mechanisms in Uganda. I assess the extent to which different actors involved in the struggle for transition represent local perspectives, and the degree to which the national approach reflects the priorities of northern communities.

Chapter 5: The Global Struggle for Transitional Justice in Uganda

Introduction

In Kampala, August 2010, in a spacious, well-air conditioned room within the International Crimes Division (ICD) a select group of leaders involved in the Justice Law and Order Sector (JLOS) Transitional Justice Working Group earnestly discussed the needs of the new court in preparation for the first trial of a former LRA commander, Thomas Kwoyelo.⁵⁴² The conversation moved rapidly, traversing numerous pressing topics:

We will require a library of relevant books, electronic subscriptions, and also materials from the ICC, the ICTY and ICTR to see how each statement has been interpreted....

What progress has been made regarding the drafting of the legal notice and rules of procedure? We cannot hear any trial until these are in place!

What is the status of the furniture? Is it true that JLOS gave us \$200 million [Ugandan Shillings]? We need recommendations on screens, benches...Filing cupboards were bought, but they were substandard. Her Lady Justice refused them!⁵⁴³

It is clear that while funding is a complex issue, donor support for the remaining preparations has been forthcoming. One actor present exclaimed that they were inundated with offers to assist the court.

As the meeting concluded, the donor coordinator for transitional justice emphasized that although there were many pressing issues, they needed to prioritize. My thoughts wandered to my conversations outside grass-thatched huts under blue skies in Paicho, Acholi region, only days ago. For most people, the most pressing issues after the war were education, healthcare, and access to land. Their priorities were compensation

⁵⁴² Author's observation of a JLOS Transitional Justice Working Group meeting, including the court registrar, a Judge of the WCC, a leader of the transitional justice working group, and a representative of international donors, 24th August 2010, Kampala

⁵⁴³ These anecdotes drawn from my notes, rather than precisely recorded quotes

*for stolen cattle, repair of neighborly relations, and assurance that the Government would fully integrate them into the political and economic life of Uganda.*⁵⁴⁴ *The sincere, diligent work of the JLOS transitional justice technocrats in Kampala to establish an internationally reputable ICD seemed largely beside the point.*

In mid 2008, JLOS established the Transitional Justice Working Group (TJWG) to “study, research, design,” and ultimately implement, the various processes and mechanisms outlined in the Juba Agreement on Accountability and Reconciliation (AAR).⁵⁴⁵ After the final collapse of the peace process in November 2008, the unsigned Juba agreements continued to provide the framework for a transitional justice program in Uganda. Two years later, however, when I conducted fieldwork in Kampala, JLOS Government actors had focused primarily on the development of the international crimes division that would exclusively try non-state perpetrators. As the staff of the ICD hurriedly prepared for the trial of Kwoyelo, the traditional justice, truth telling and reparations subcommittees of the transitional justice working groups were unable to make substantial progress. While the Peace Recovery and Development Program (PRDP) for Northern Uganda had been implemented, it was yet to make a significant impact.

This chapter maps the ‘political ecology’ of the development of a national approach to transitional justice in Uganda. I draw primarily on my own experience and observations from working with the local transitional justice group NUTJWG, as well as interviews with a range of actors involved in the transitional justice scene in Uganda. The development of transitional justice in Uganda is characterized by ongoing struggle involving actors at all levels. Power, however, is concentrated in the hands of the state. Despite the efforts of various actors, there is a high risk that Uganda’s transitional justice policy will constitute an empty performance of ‘victor’s justice’ that lacks meaning for war-affected communities and fails to address underlying socioeconomic dynamics of the war. Throughout my analysis, I emphasize that international, domestic and local actors play varying, sometimes contradictory roles in the struggle for transition. Different Government actors, civil society groups

⁵⁴⁴ See discussion in previous chapter

⁵⁴⁵ Presentation of the Principle Judge, Justice James Ogoola, in ‘Report on the Third National JLOS Forum,’ p.12

and international actors either critically challenge or inadvertently justify the Government's dominant narrative of the war and convenience-driven approach to transitional justice. I demonstrate that civil society actors use 'transitional justice' as a language of resistance, pressing the Government to engage in 'transition' in the absence of meaningful change after the war.

This chapter is divided into four sections. In the first, I demonstrate that the development of transitional justice policy reflects the political interests of Museveni's regime, and the predominance of state power. The second section examines the impact of international actors that directly shape the Government's approach to transitional justice. I argue that the ICC's intervention continues to lend international support to the Government's narrow, one-sided justice agenda, and has inadvertently provided incentive to prioritize formal justice. In addition, foreign donors have largely failed to maintain sufficient pressure to compel the Government to genuinely implement the radical agreements signed. In the third section, I explore the role of 'global' civil society actors involved in transitional justice in Uganda, highlighting that 'international' actors, ideas, and finance are inextricably embedded in the national and local civil society landscape. I argue that the efforts of groups to draw on transitional justice as a political language of resistance are often in tension with the actions and inactions of other civil society players. The last section examines the failure of actors at all levels to clearly include socioeconomic justice and development in the scope of the transitional justice. I contend that the omission of long-term socioeconomic development severely weakens the capacity of 'transitional justice' as a radical tool of resistance in Uganda.

Development of Transitional Justice: The Primacy of Sovereign Power

The Approach of the Ugandan Government to Transitional Justice

In contrast to many other cases around the world, the struggle for transitional justice in the wake of the northern conflict takes place in the absence of political transition. As a local Gulu-based transitional justice NGO worker put it, "it is the same Government in power that has been accused of so much atrocity over the years."⁵⁴⁶

⁵⁴⁶ Author's interview with member of the Northern Ugandan Transitional Justice Working Group Secretariat (Gulu, August 2010)

The landscape of transitional justice in Uganda is therefore characterized by a growing collection of actors at the local, national and international level who strive to engage a largely unwilling regime in the project of postwar justice.

As demonstrated in chapter three, plans for a national transitional justice program emerged during the Juba peace talks. In response to agreements signed in Juba, the JLOS TJWG was established, which comprises of four subcommittees to address formal justice, truth telling and national reconciliation, traditional justice, and integration and budgeting.⁵⁴⁷ In mid 2008 the key actors congregated at the 3rd National JLOS forum on Transitional Justice appeared determined to comprehensively implement the policies specified in the AAR.⁵⁴⁸ The outcome policy document affirmed that the Government would work towards “a legitimate system that is tailor made for the Ugandan context, which is diagnostic of the underlying causes of the conflict.”⁵⁴⁹ The TJWG ambitiously committed to “regularly consult with stakeholders,” and to complete a “report with concrete proposals on an integrated, coherent and robust transitional justice system for Uganda” within four months to be presented to a steering committee before being tabled in Cabinet.⁵⁵⁰ In the context of significant international pressure conclude the Juba peace process, JLOS actors appeared confident of the Government’s will to instigate even politically costly mechanisms such as truth telling and reparations processes.⁵⁵¹

Following the collapse of the Juba process however, while many technical JLOS actors remain committed, the political will of Musveni’s regime to engage in many aspects of transitional justice has increasingly dissolved. Certainly, the ‘Government’

⁵⁴⁷ See ‘Report of the Third National JLOS Forum’

⁵⁴⁸ Ibid the forum was designed to kick-start planning and preparation of a transitional justice framework. It involved 100 participants, including key Government and Judicial representatives, civil society stakeholders and donors.

⁵⁴⁹ Ibid

⁵⁵⁰ Government of Uganda, ‘Supplement for the Report on the Third National JLOS Forum, Developing and Managing an Effective Transitional Justice System,’ Justice Law and Order Sector, Kampala, 2008 www.jlos.go.ug/uploads/Supplement%20for%20the%203rd%20Forum.pdf [Accessed 12 August 2011], p.4

⁵⁵¹ A policy briefing that emerged following the forum noted: “The truth telling processes should include reparations in terms of compensation, restitution and rehabilitation for victims for it to be credible and effective.” See Government of Uganda, Policy Issues from the Third National JLOS Forum, ‘Developing and Managing an Effective Transitional Justice System,’ Justice Law and Order Sector, Kampala, 2008 www.jlos.go.ug/uploads/Policy%20Issues%20from%203rd%20Forum.pdf [Accessed 13 August 2011]

itself is not a unified actor. There are many individuals within the Government at the judicial and technical level that continue to sincerely pursue the development of transitional justice policy.⁵⁵² Some individuals, notably the Principle Judge of the High Court (also the head of the TJWG), have become prominent advocates for a national truth and reconciliation process.⁵⁵³ However, it is clear that in the absence of international pressure to reach a final peace agreement, senior actors in Government are largely disinterested in ‘transition,’ and are only willing to implement post war justice mechanisms in a manner that suits the regime’s political interests. Accordingly, sympathetic technical and judicial Government actors in Uganda must work within the political constraints of Museveni’s regime. JLOS actors I spoke to expressed skepticism that future policies they developed would be implemented without political interference, or even enacted at all.⁵⁵⁴

The Empty Performance Formal Criminal Justice

The trajectory of national transitional justice in Uganda therefore reflects the political interests of Museveni’s regime. In mid 2010 when I conducted my fieldwork, the Government continued to focus almost exclusively on the development of formal justice mechanisms. Numerous steps had been taken to prepare the new ICD of the High Court for trial. Modeled on international criminal tribunals, the ICD incorporates a panel of four judges and a registry, while special units for war crimes have also been created in the Department of Public Prosecutions (DPP), Police, Criminal Investigation Division (CID) and Prisons.⁵⁵⁵ Numerous special training sessions in international criminal legal practice and ‘study tours’ have been undertaken for involved actors, while regional consultations were conducted in 2009

⁵⁵² Personal observation and various interviews with involved civil society actors, Kampala, August 2010

⁵⁵³ Jaramogi, Patrick, ‘Ogoola Lobbies for Reconciliation Body,’ *New Vision*, 4 October 2010

⁵⁵⁴ Various interviews with JLOS actors, Kampala, June and August 2010

⁵⁵⁵ Author’s interview with senior Transitional Justice Working Group actor (A), Ministry of Justice and Constitutional Affairs (Kampala, June 2010) For a technical overview of the progress of these various institutions, see Witte, Eric, *Putting Complementarity into Practice: Domestic Jurisdiction for International Crimes in DRC, Uganda, and Kenya*, Open Society Justice Initiative Report (New York, Open Society Foundations, 2011)
http://www.soros.org/initiatives/justice/articles_publications/publications/complementarity-in-practice-20110119 [Accessed 12 August 2011]

to survey the views of civil society actors on various aspects of the ICD and legislation domesticating the Rome Statute.⁵⁵⁶ At the time of writing, the trial of the ICD's sole LRA suspect, former commander Thomas Kwoyelo, was scheduled to commence in July 2011.

Despite the apparent good will of involved technical and judicial actors, it is highly unlikely that the ICD will address the crimes of state actors during the northern conflict. While the new court has legal jurisdiction over state actors, and judicial staffs earnestly advocate impartiality,⁵⁵⁷ most JLOS and civil society actors I spoke to recognized that Museveni's regime was unlikely to allow investigation and trial of state actors.⁵⁵⁸ Given the heavy constraints of Museveni's regime, actors in the army, the police and DPP are unlikely to investigate state actors, simply because "have no incentive to enter into this highly politically arena without external pressure."⁵⁵⁹ As one JLOS actor confided, "There would be fear by...people in the DPP that they might be putting themselves out of a job" if they were to investigate state actors.⁵⁶⁰ In all likelihood cases against UPDF soldiers will be dealt with in the martial court away from public scrutiny, while non-military state actors will elude investigation of their actions during the war altogether.⁵⁶¹

The Government's focus on criminal justice is evidently driven by political convenience. Initially, as discussed in chapter three, JLOS's propulsion of formal justice ahead of other mechanisms stemmed from the need to rapidly create a domestic alternative to the ICC in order to secure a peace deal. Since the collapse of

⁵⁵⁶ Author's interview with Transitional Justice Working Group actor (C), Law Reform Commission (Kampala, June 2010) Note: years after its initial drafting and numerous redrafts, the ICC Act which criminalizes offenses of the Rome Statute was finally signed in March 2010. The Act is available online at http://www.beyondjuba.org/policy_documents/ICC_Act.pdf [Accessed 12 August 2011]

⁵⁵⁷ Author's interview with senior actor in the War Crimes Unit of the Department of Public Prosecutions (A) (Kampala, June 2010); Author's interview with senior Judge of the International Crimes Division (Kampala, June 2010)

⁵⁵⁸ Author's interview with Transitional Justice Working Group actor (C), Law Reform Commission (Kampala, June 2010): A Senior member of the DPP War Crimes Unit also noted that while Uganda has recently taken positive steps towards curtailing state immunity by establishing a corruption unit, it is highly unlikely that this trend will extend to holding state actors publicly accountable for war crimes. Author's interview with senior actor in the War Crimes Unit of the Department of Public Prosecutions (B) (Kampala, August 2010)

⁵⁵⁹ Nouwen, *The ICC and Complementarity*

⁵⁶⁰ Author's interview with Transitional Justice Working Group actor (C), Law Reform Commission (Kampala, June 2010)

⁵⁶¹ Ibid

the Juba peace talks however, it has grown improbable that Kony will reengage in negotiations. Most JLOS actors contend that it is unlikely Uganda will challenge the ICC's admissibility, and that the ICD will instead focus on trying LRA commanders other than those indicted by the international Court.⁵⁶² Uganda's continued exclusive focus on the development of the ICD to try LRA simply reflects a politically expedient strategy for the Government to demonstrate to onlookers that effort is being made to bring about 'justice' for the northern conflict.⁵⁶³ While mechanisms such as truth telling and reparations put the Government at risk of public scrutiny, preparation for the criminal trial of Kwoyelo serves the Government's interest in focusing international attention exclusively on the crimes of the LRA.

It is uncertain however, that the ICD will effectively and efficiently achieve criminal accountability for the LRA. In mid 2010, many JLOS actors felt that progress towards postwar criminal justice was plagued by ongoing contradictions between the ICD and the Amnesty Act, and the sheer inaccessibility of the LRA. Despite the amendment of the Amnesty act in 2006, the Amnesty effectively remains blanket, extending to all former rebels that denounce rebellion.⁵⁶⁴ From the point of view of many ICD actors, the Amnesty threatens to undermine their work. As the head of the war crimes unit of the DPP succinctly put it, "the issue is, we don't have the suspects...some are still in Garamba or elsewhere, some have received Amnesty, and some will still get Amnesty while we are investigating."⁵⁶⁵ She went on to contend with frustration that in 2010, several high ranking LRA received Amnesty that the DPP believed should have faced

⁵⁶² Interviews with various JLOS actors, Kampala, June and August 2010: A few actors in the Law Reform Commission however remained adamant that ideally, the LRA commanders indicted by the ICC should be tried in the ICD. Author's interview with a senior actor in the Ugandan Law Reform Commission (Kampala, August 2010)

⁵⁶³ A donor representative carefully explained, "From the Government perspective it [formal criminal justice] is not as politically sensitive as other issues." Accordingly, formal justice "was where the priority lay." Author's interview with a senior donor representative in the Justice Law and Order Sector (Kampala, August 2010)

⁵⁶⁴ Author's interview with senior Transitional Justice Working Group actor (A), Ministry of Justice and Constitutional Affairs (Kampala, June 2010): Since its conception, the Minister of Internal Affairs has repeatedly renewed the Amnesty Act, most recently in May 2010 for another two years. In an effort to prevent the blanket Amnesty from directly contradicting the ICC's arrest warrants, an amendment Act was passed in 2006 allowing the Ministry of Internal Affairs to produce a list of individuals to be barred from receiving amnesty. While such a list was eventually presented to parliament, it was not approved, possibly due to fear of its interference with peace processes. Accordingly, "as it stands now there are no exceptions; the amnesty remains completely blanket, even for Kony." (ibid)

⁵⁶⁵ Author's interview with senior actor in the War Crimes Unit of the Department of Public Prosecutions (B) (Kampala, August 2010)

the ICD.⁵⁶⁶ In 2010, the DPP certainly anticipated that the Amnesty Act would not hinder the prosecution of Kwoyelo under the Geneva conventions, as “international criminal law does not recognize domestic Amnesty.”⁵⁶⁷ However, as actors in the Amnesty Commission are quick to point out, Kwoyelo’s exclusion from Amnesty appears to be an arbitrary exception to current domestic law.⁵⁶⁸

Ironically, failure to resolve the blatant legal contradictions between the ICD, the newly passed ICC act, and the Amnesty Act reflects the continued vested political interests of various state actors. The UPDF, for instance, have integrated returned LRA into their ranks and to use the insiders’ knowledge to locate LRA “hiding places.”⁵⁶⁹ It appears that political Government actors also maintain interest in allowing LRA commanders to receive Amnesty. In the past, returned LRA have acted as witnesses against opposition MPs from the Acholi region, implicating them in LRA operations.⁵⁷⁰ As a northern-based lawyer commented, even while the Government needs to justify the establishment of the ICD by holding trials, it is also highly convenient to induce returning commanders who have received Amnesty to implicate key political opponents.⁵⁷¹

Overall, the development of criminal justice processes in Uganda amounts to an expensive and largely empty performance of justice. Given that the ICD is no longer pivotal to prop up the failed Juba peace negotiations, the utility of the new court is questionable. The ongoing conflict between the Amnesty Act and the ICD, and the absence of many LRA from Uganda renders it unlikely that the ICD will hold many trials related to the northern conflict. Several JLOS actors I spoke to questioned whether such heavy investment in the new division and investigation of LRA is a waste of scarce resources.⁵⁷²

⁵⁶⁶ Ibid

⁵⁶⁷ Ibid

⁵⁶⁸ Author’s interview with a senior actor in the Amnesty Commission (Kampala, August 2010):

Author’s interview with a legal officer of the Amnesty Commission (Kampala, June 2010)

⁵⁶⁹ A DPP actor recounted that the UPDF has refused to hand over several LRA for investigation, instead escorting them straight to the amnesty commission: Author’s interview with senior actor in the War Crimes Unit of the Department of Public Prosecutions (A) (Kampala, June 2010):

⁵⁷⁰ Author’s interview with local lawyer (A) (Gulu, August 2010)

⁵⁷¹ Ibid

⁵⁷² Author’s interview with senior actor in the War Crimes Unit of the Department of Public Prosecutions (A) (Kampala, June 2010), who commented: “We are wondering if we should continue [to investigate]...and spend resources on cases which may not end up in court.”

Government Resistance to Non-formal Transitional Justice Mechanisms

In mid 2010, while the staff of the ICD selected furniture and recording equipment in preparation for their first trial, members of the TJWG truth telling and reparations and traditional justice subcommittees continued with their regular jobs, awaiting the opportunity to conduct regional consultations to inform their preliminary policy making.⁵⁷³ While the long-delayed consultations were eventually conducted in June 2010, it remains uncertain whether Museveni's regime will allow any policies subsequently developed to be implemented without political interference.⁵⁷⁴

Certainly, lack of progress in development of a national approach to traditional justice does not appear to stem from resistance from Government officials. Rather, the delay of traditional justice consultations reflects the sheer complexity of the issue, and disagreements between donors and state actors. Generally, I found that Government officials were quick to refer to traditional justice mechanisms as an appropriate way to deal with the aftermath of war. When I asked one official about the possibility of the establishment of a reparations program, he repudiated the guilt of the Government and declared defensively (and somewhat inexplicably) that "reconciliation through *Mato Oput* is an agreed upon method!"⁵⁷⁵ As stated in the previous chapter, the notion of local reconciliation through traditional mechanisms complements the Government's portrayal of the northern war as a local affair.

In mid-2010, JLOS actors had drawn extensively on existing research to inform their preliminary analysis of the possible role that traditional justice might play in a national transitional justice scheme. While I encountered numerous varied views,

⁵⁷³ Note that the issue of reparations is supposedly dealt with under the truth telling and reconciliation subcommittee.

⁵⁷⁴ Author's interview with senior Transitional Justice Working Group actor (C), Law Reform Commission (Kampala, June 2010): Author's interview with senior Transitional Justice Working Group actor (B), Law Reform Commission (Kampala, June 2010): Members of the Truth telling and Reparations and Traditional justice subcommittees informed me that they had been ready to conduct the consultations two years ago, but had been prevented for unknown reasons. The consultations were finally undertaken in early 2011.

⁵⁷⁵ Author's interview with the Ugandan President's Press Secretary, Okello House (Kampala, August 2010)

JLOS actors appeared generally convinced that traditional practices could lose their meaning and usefulness if they are forced into a rigid national straight jacket and imposed from above.⁵⁷⁶ JLOS policy makers were also conscious of the criticisms and debates surrounding the possible ‘uses’ of traditional justice, the need to ensure traditional practices did not breach human rights, the possible pitfalls of codification and the need for local ownership.⁵⁷⁷ A policy decision however, awaited further analysis of regional consultations.

It became clear during my fieldwork in Kampala in 2010, however, that senior Government actors were either disinterested or hostile towards the application of truth telling and reparations. In interviews, such actors openly denied the need for such transitional justice polices.⁵⁷⁸ As one senior JLOS actor contended regarding a truth telling process:

Many people have been discussing it, but it seems some people do not yet agree to the idea of truth telling- people higher up. Once you go into truth telling it opens a lot of other things you may not want brought out into the open.⁵⁷⁹

Although the Government has undertaken a number of ad hoc compensation ‘initiatives’ for northern victims, such measures do not amount to an adequate reparations scheme.⁵⁸⁰ Rather, such piecemeal acts largely reflect politically driven attempts to pacify communities in the build-up to national elections.⁵⁸¹ While many technical JLOS staff affirmed the need for a comprehensively planned reparation program that included acknowledgement, Government actors clearly resist the idea.⁵⁸² An official at Okello house stated that reparations with apology were inappropriate

⁵⁷⁶ Author’s interview with senior Transitional Justice Working Group actor (A), Ministry of Justice and Constitutional Affairs (Kampala, June 2010), who emphasized, “it really has to be based on what people want, so we are not really looking at qualifying it or having law...we shouldn’t have a fixed law that *Mato Oput* should be done in this way... if you try to get too involved it stops being a traditional justice system. We don’t want to create another hierarchy of courts.”

⁵⁷⁷ Ibid

⁵⁷⁸ Author’s interview with the Ugandan President’s Press Secretary, Okello House (Kampala, August 2010)

⁵⁷⁹ Author’s interview with a senior actor in the Amnesty Commission (Kampala, August 2010) Another JLOS actor exclaimed, “At the end of the day it would be a mockery if we were to bring the civilians to book to speak the truth, if the militia men who are supposed to be at the forefront of this conflict go away without facing any of these processes. How do we go about it though, do we force their hand, will it be mandatory that you come and testify?” Author’s interview with senior Transitional Justice Working Group actor (B), Law Reform Commission (Kampala, June 2010)

⁵⁸⁰ Author’s interview with representative of the Office of the United Nations High Commissioner for Human Rights (Gulu, August 2010): Author’s interview with local lawyer (B) (Gulu, August 2010): Author’s interview with local lawyer (C) (Gulu, August 2010).

⁵⁸¹ Ibid

⁵⁸² Numerous interviews with JLOS actors and Government Officials, Kampala, June and August 2010

because they “indicate some kind of guilt...[when] the war was imposed upon the Ugandan Government by the rebels!”⁵⁸³ While JLOS consultations and policy development slowly progress, it is uncertain and furthermore unlikely in the current political climate that proposed mechanisms will be implemented with genuine good will from the Government.

As yet, the development of transitional justice in Uganda simply reflects the political interests of Museveni’s regime. While policy is still unfolding, there is clearly a high risk that transitional justice in Uganda will constitute an empty performance of ‘victor’s justice’ exclusively focused on the trial of the LRA. Certainly, the Government is not a homogenous unit. Public servants and policy analysts from within Government support policies that would challenge the Government’s narrative of the northern war. However, given the political resistance of Museveni’s regime, the capacity of such actors to push for change is limited.

The Diverse Impact of International Actors

Just as international actors were deeply involved in the northern conflict and Uganda’s fraught emergence from war, a diverse range of international players continue to influence the struggle for transitional justice in Uganda. In addition to the ICC, a plethora of international actors shape the postwar terrain, including international NGOs and agencies, the Government’s ‘development partners,’ and the foreign donors of domestic NGOs (whether private or state). This section examines the more direct impact of the ICC and the state’s development partners on the trajectory of transitional justice. The following section goes on to explore the role that international actors and institutions play within Uganda’s ‘global’ civil society landscape.

⁵⁸³ Author’s interview with the Ugandan President’s Press Secretary, Okello House (Kampala, August 2010)

The Ongoing Impact of the ICC Intervention

Firstly, the ICC's intervention continues to provide a cloak of legitimacy for the Government's narrative of the war and the regime's lack of genuine engagement with transitional justice beyond the criminal trial of the LRA. As discussed at length in Chapter Three, the ICC's intervention facilitated the narrowing of violence discourse in Uganda to physical violence, rather than structural, systemic injustice. In the absence of ICC proceedings against any state actors, no pressure emerged for Uganda to investigate the role of UPDF or other state actors in the northern war and hold them accountable. The ongoing role of the ICC is evident in the rhetoric of Museveni's regime. Ugandan political actors continue to emphasize that the ICC has 'cleared' high-ranking UPDF and other state figures, vindicating them from domestic criminal accountability. Recently for instance, the army drew on the absence of ICC proceedings against state actors to quash accusations levied at the UPDF's conduct during the war.⁵⁸⁴ A Government official I spoke to similarly declared:

At the [ICC] Review Conference, [political opponent] Otunno insinuated that Government was guilty during the war. But it was Kony who was indicted by the ICC for crimes against humanity, not people from the Government, not the UPDF. Not always being able to protect civilians in context of war is not a crime against humanity."⁵⁸⁵

By effectively validating the Government's narrative of the war, the ICC also acts to justify Uganda's disengagement with the concept of 'transition.'

In a broader sense, the ICC continues to provide incentive for Uganda to focus on the development of criminal justice mechanisms. As explored in Chapter Three, the impact of the ICC on the Juba Peace process was to propel the trajectory of transitional justice towards rapid establishment of the ICD, in order to encourage the LRA to sign the FPA. Even after the conclusive collapse of negotiations, the ICC continues to inadvertently spur Uganda to prioritize formal justice. No doubt aware of the potential to gain international prestige, Uganda successfully bid to host the first Review Conference of the ICC in May 2010.⁵⁸⁶ In order to host the Review

⁵⁸⁴ See Bekunda, Catherine, 'DP wants ICC to probe local massacres,' *New Vision*, 1 June 2010

⁵⁸⁵ Author's interview with the Ugandan President's Press Secretary, Okello House (Kampala, August 2010)

⁵⁸⁶ See Otim, Michael, and Marieke Wierda, *Uganda: Impact of the Rome Statute and the International Criminal Court*, International Center for Transitional Justice Briefing paper, (Kampala, International

Conference, the Ugandan Government was obliged to accelerate the passing of legislation that domesticated the Rome Statute in national law.⁵⁸⁷ For many years, various versions of the ‘ICC Bill’ had stalled in Parliament, partly due to fear that enacting the bill into law would further interfere with peace processes. However, as a JLOS actor commented, “the commitment to have the bill passed before they hosted the Review” proved a driving force.⁵⁸⁸ In 2010 the Act was intensively revised by the Legal and Parliamentary council and rapidly passed into law with the President’s signature in the months immediately preceding the conference.⁵⁸⁹ The ICC’s intervention remains a strong influence shaping Uganda’s priorities.

Uganda’s continued focus on establishing the ICD evidently reflects a bid to boost international support. This was particularly evident at the ICC Review Conference itself, where Uganda showcased its development of the ICD before an international audience. In the plenary hall of the Review Conference, the head judge of the ICD, Akiki Kizza, proclaimed that the new Ugandan court would extend the reach of international justice in Uganda and complement the ICC, trying actors other than those already indicted by the international Court.⁵⁹⁰ At a well-attended ‘side event,’ the staff of Uganda’s new ICD performed a mock international trial, exemplifying Uganda’s awareness of the standards of international criminal law and ability to replicate the procedures of the ICC.⁵⁹¹ Uganda’s establishment of the ICD was celebrated at the Review Conference as a successful example of positive complementarity, and an exemplar of a state party joining the global ‘fight against impunity.’⁵⁹² The Review Conference, awash with potential international funders wishing to support the work of the ICC, is likely to have been considered a ripe arena in which to capitalize on the development of formal justice processes in Uganda.

Center for Transitional Justice, 2010) <http://ictj.org/publication/uganda-impact-rome-statute-and-international-criminal-court> [Accessed 12 August 2011], p.6

⁵⁸⁷ See Witte

⁵⁸⁸ Author’s interview with Transitional Justice Working Group actor (C), Law Reform Commission (Kampala, June 2010)

⁵⁸⁹ Author’s interview with actor in the directorate of first Parliamentary Counsel, Ministry of Justice and Constitutional Affairs (Kampala, August 2010)

⁵⁹⁰ Author’s observation at the Review Conference of the International Criminal Court, Kampala, June 2010

⁵⁹¹ Ibid

⁵⁹² Ibid

Finally, the ICC's mark on the postwar landscape in Uganda has been to continually drive Uganda to imitate the standards of international criminal justice.⁵⁹³ Beyond the escalating financial costs involved in establishing a new division of the High Court, ironically, the pursuit of international justice may unnecessarily complicate the trials performed in the ICD. In particular, the decision of JLOS actors to apply international rather than domestic law may create legal hurdles for the Prosecution. While it was initially proposed that the ICD apply the Ugandan Penal code, JLOS actors discarded this option because they deemed it necessary to charge suspects in terms that reflect the severity of the crimes specified in the Rome Statute.⁵⁹⁴ After great deliberation, JLOS actors decided that the ICD would apply the Geneva conventions.⁵⁹⁵ A major problem that could complicate the trial of Kwoyelo is that the Geneva Conventions are only applicable to crimes committed in the context of an international armed conflict. JLOS actors I spoke to were not confident that the northern war could be successfully categorized as an international conflict in court.⁵⁹⁶ Ironically then, the ambitions of JLOS actors to replicate international standards could inhibit the successful prosecution of LRA.

The Role of Uganda's International Development Partners

The international donor partners of the Ugandan Government also play an important role in shaping the trajectory of national transitional justice processes. Transitional justice policy in Uganda is determined through a process of negotiation between donors ('development partners'), JLOS TJWG actors, and the higher political actors in Government.⁵⁹⁷ The funding for the development of transitional justice is primarily external, drawing on the contributions of range of development partners, including Denmark (DANIDA), the United States (USAID), Sweden, Finland, Ireland and the

⁵⁹³ See also discussion Chapter Three

⁵⁹⁴ Author's interview with Transitional Justice Working Group actor (C), Law Reform Commission (Kampala, June 2010)

⁵⁹⁵ Ibid while many actors would have preferred to apply the newly passed ICC Act, it was determined that Uganda's prohibition against retroactivity prevented the application of the Act for crimes committed before March 2010. Consequently, the ICD will apply the Geneva Conventions, while the ICC Act can only be used if suspects "commit more acts today or tomorrow."

⁵⁹⁶ Authors interview with Transitional Justice Working Group actor (A), Law Reform Commission (Kampala, June 2010), who noted: "I don't know if we can prove that that [the LRA war] was an international conflict. For me that is the biggest challenge I see."

⁵⁹⁷ Author's interview with a senior donor representative in the Justice Law and Order Sector (Kampala, August 2010)

Netherlands.⁵⁹⁸ While a project rejected by the political ranks of the Ugandan Government is unlikely to go ahead, donor partners maintain significant influence and retain the power to exert significant sway in decision-making processes.

The relationship between the Ugandan Government and its donor's partners is inevitably shaped by wider trends in international community. While the critical international attention on Northern Uganda that surfaced in 2003 has certainly not evaporated, it is clear that following the return of relative peace and stability, many international players have become increasingly complacent regarding the Government's approach to the north. For the most part, the flurry of critical outcries and international reports on Northern Uganda that reached a climax in 2005 have since subsided.⁵⁹⁹ The U.S, a long-time major donor to the Ugandan Government emphasizes on its current State Department 'Uganda profile,' for instance, that the "vast majority" of former IDP's have returned home, and that the PRDP "has helped communities in Northern Uganda rebuild and recover from the 20-year humanitarian catastrophe caused by the LRA."⁶⁰⁰ Somewhat understandably, given the marked security improvements in the North, critical international pressure on the Ugandan Government has waned.

Against this backdrop, donors involved in the development of national transitional justice have so far failed to apply sufficient pressure on the Ugandan Government to stay true to the spirit of the Juba agreements. From a very early stage, a host of donor partners offered to fund the development of postwar criminal justice.⁶⁰¹ Unlike other justice processes, criminal justice provides donors with a straightforward project to support: the requirements of the ICD are relatively clear, and political resistance has

⁵⁹⁸ Ibid

⁵⁹⁹ For instance, Human Rights Watch, which contributed to raising critical awareness about the Northern Ugandan situation in 2005, has since drawn less attention to ongoing postwar recovery and reconciliation issues. For various reports, see <http://www.hrw.org/africa/uganda> [Accessed 12 August 2011]. Amnesty International's most recent report on Uganda, furthermore, includes no reference to the socio-economic plight of Northern Uganda or lack of meaningful engagement in transition, rather focusing exclusively on issues such as discrimination against homosexuals and election malpractice. See Amnesty International, *Annual Report: Uganda 2011* (Amnesty International, 2011) <http://www.amnestyusa.org/research/reports/annual-report-uganda-2011> [Accessed 13 August 2011]

⁶⁰⁰ U.S Department of State, 'Uganda Profile' <http://www.state.gov/r/pa/ei/bgn/2963.htm> [Accessed 12 August]

⁶⁰¹ Author's interview with a senior donor representative in the Justice Law and Order Sector (Kampala, August 2010): The United State, for instance, offered to support the process of developing the ICC act and various aspects of the establishment of the ICD, while DUNEDA supported fact-finding missions to The Hague

not proven to be a major obstacle.⁶⁰² For the U.S, funding the development of the ICD was possibly viewed as an attractive way to support the idea of domestic jurisdiction as a viable alternative to the ICC. It is certainly important to note that different donor agencies have diverse views and agendas, and pursue varied approaches.⁶⁰³ As yet however, foreign donors that provide support to the Ugandan Government's transitional justice process have proven insufficiently critical. In 2010, numerous donors continued to provide extensive support to the ICD without requiring that the court also investigate and prosecute state actors. While certainly aware that one-sided criminal accountability could be detrimental to national reconciliation, Uganda's donor partners have mostly adopted the approach that "it is better to support partial justice for atrocity...than no justice at all."⁶⁰⁴ Effectively, the donor community has facilitated Uganda's enactment of victor's justice through the ICD.

Donor's interface with JLOS actors on the development of other transitional justice processes has been more critical. In fact, progress on the development of truth telling, reparations and traditional justice mechanisms initially stagnated due to disagreements between the Government and donor partners. Accordingly, regional consultations on non-formal mechanisms that were initially scheduled to take place in 2008 did not take place until June 2011. Essentially, donors lacked confidence that the Government would undertake consultations on truth telling and reparations inclusively and with impartiality. As a senior donor agent emphasized, "...truth telling and reparations issues are politically sensitive." While the "Government wanted control over the process," donors were concerned "about making sure the consultations are really broad and transparent."⁶⁰⁵ Regarding traditional justice, the delay of consultations reflected difference in preferred research approach between donors and JLOS actors. While JLOS actors initially sought to 'study' and document the practice of various traditional justice mechanisms, donors favored an approach that allowed locals to express their own views about how traditional practices should

⁶⁰² Ibid

⁶⁰³ Ibid

⁶⁰⁴ Witte, p.81 As evident from my own interviews, donors struggle to find a balance between supporting Government ownership and autonomy of national programs, and placing critical conditions on assistance

⁶⁰⁵ Author's interview with a senior donor representative in the Justice Law and Order Sector (Kampala, August 2010)

best be used.⁶⁰⁶ Despite such critical input, donor's support to Uganda's criminal justice process has continued in spite of the Government's reluctance to engage with the politically sensitive aspects of transitional justice.

Overall then, the Government's development partners and the ICC have largely failed to challenge the Ugandan Government's narrative of the war, despite the critical input of particular donor groupings. To differing extents, such international actors have facilitated the Government's pursuit of narrow, 'victor's justice.' Below however, I illustrate that international actors play a more varied role through active participation in the 'global' civil society scene engaged in transitional justice in Uganda. Often, the same donors that fund the Government also fund critical civil society groups.

Global Civil Society: The Struggle for Transitional Justice

Since 2004 a small number of critical international and domestic civil society organizations and networks based in both Kampala and Northern Uganda have emerged that champion the project of transitional justice in Uganda. Besides from groups that specifically advocate for transitional justice, however, a number of other Kampala-based groups have been more narrowly involved in supporting the development of postwar international criminal justice. As I explore below, while groups that specifically advocate for transitional justice take diverse approaches, they share a critical common characteristic. Unlike many 'civil society' organizations in Uganda, transitional justice groups are critically engaged in national policy, and aim to affect political change. Transitional justice is used as a language of resistance to challenge dominant narratives of the war, and make demands from the Government in the absence of change.

As increasingly recognized in scholarly literature, the civil society landscape often transcends the categories of local, national, and even international.⁶⁰⁷ In Uganda, while most organizations can at least be defined as either 'international' or domestic,

⁶⁰⁶Ibid

⁶⁰⁷Scholte, Jan Aart, 'Civil Society and Democracy in Global Governance', *Global Governance*, 8 (2002), p.285: See also Dunn, Elizabeth, and Chris Hann eds. *Civil Society: Challenging Western Models* (London, Routledge, 1996); Keck, Margaret, and Katherine Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998)

in reality, many projects draw on the collaboration of actors at all levels. For instance, the Gulu-based Justice and Reconciliation Project (JRP) was originally founded by individuals from the Canadian Liu Institute for Global Studies and the local Gulu District NGO Forum, and currently receives its funding from the Norwegian Embassy.⁶⁰⁸ While mostly comprised of ‘local’ staff from Gulu, JRP has recently been granted a nationwide mandate by Uganda’s National NGO board.⁶⁰⁹ Another example is the International Center for Transitional Justice (ICTJ) in Kampala. Currently headed by Michael Otim, a Northern Ugandan who also co-founded JRP, the ICTJ engages at both the national and local level. During my time working with the NUTJWG, for example, Michael Otim was actively involved in co-facilitating community transitional justice workshops across the north. Given the degree of overlap and collaboration between key actors and organizations involved at different levels, it is often impractical to tease out the distinct impacts of local, national and international civil society. In fact, some involved individuals may locate their identity in all three levels. A domestic civil society worker may for instance identify as Acholi, Ugandan, and also as a representative of a part of a broader global movement.⁶¹⁰ Equally, I also found that individuals of international origin have come to identify themselves as part of the ‘local’ civil society scene.⁶¹¹ Both personally and institutionally, civil society in Uganda is often best understood as ‘global.’⁶¹²

Kampala-based Civil Society

Undoubtedly, Kampala-based groups involved in transitional justice have so far proven most successful in cultivating direct working relationships with JLOS. As JLOS actors widely recognize, RLP, and its offshoot the Beyond Juba Project (BJP) have proven particularly influential.⁶¹³ While RLP has maintained a constructive relationship with the TJWG, for instance providing numerous training operations, ‘study tours’ and workshops for technical JLOS actors and parliamentarians on

⁶⁰⁸ Justice and Reconciliation Project, *JRP Annual Report* (Gulu, Justice and Reconciliation Project, 2010) <http://justiceandreconciliation.com/#/publications/4540226079> [Accessed 12 August 2011], p.7

⁶⁰⁹ Ibid

⁶¹⁰ This was the case with several people I came to know in Gulu Town

⁶¹¹ There are many ‘foreign’ actors in Gulu who also lived through parts of the war and work closely with local communities.

⁶¹² See also Scholte, p.285

⁶¹³ Evident from numerous interviews with civil society groups and JLOS actors

transitional justice, it has also consistently pursued a highly critical approach.⁶¹⁴ The research reports, policy briefings and press releases produced by RLP/BJP not only challenge the actions of state actors during the war, but also the trajectory of transitional justice in Uganda. In a 2009 press release, for instance, RLP strongly condemned Uganda's apparent exclusive focus on formal criminal justice: "Can Uganda really afford to pass over all its victims, and their need to see past wrongs righted, in the interests of replicating the ICC model of prosecutorial justice?"⁶¹⁵ Another press release disparaged the 'partial' justice of the ICC, and provocatively queried what "the Rome Statute [has] to say about punishments for those responsible for forcible displacement?"⁶¹⁶ In addition to calling for a reparations scheme and accountability for state actors, the work of RLP and BJP has provided critical, in-depth research on many relevant topics, including traditional justice, perspectives of urban IDPs, and gender issues.⁶¹⁷

The most tangible contribution of Kampala-based civil society to the development of transitional justice is the BJP's work in building momentum for the adoption of the draft National Reconciliation (NR) Bill.⁶¹⁸ A 'working draft' of the NR Bill was originally produced through the Coalition of Organizations for Reconciliation in Uganda (CORU), a short-lived umbrella group of civil society organizations committed to peace building.⁶¹⁹ After CORU collapsed, the BJP continued to champion the project, and has successfully kept the draft under discussion within

⁶¹⁴ Author's interview with Director of Refugee Law Project (Kampala, June 2010): See also Budesta Batanda, Jackee, *The Role of Civil Society in Advocating for Transitional Justice in Uganda*, (South Africa Institute for Justice and Reconciliation, 2009) http://www.ijr.org.za/publications/pdfs/IJR%20APFellowsProgrammeOP1_%20Civil%20Society%20and%20TJ%20in%20Uganda_%20J%20Batanda%20Budesta.pdf [Accessed 12 August 2011], pp.5-9

⁶¹⁵ Beyond Juba Project, 'Prosecuting Crimes or Righting Wrongs: Where is Uganda heading to?' Press Release, Kampala, 2009 http://www.beyondjuba.org/press_releases/Prosecuting_Crimes_or_Righting_Wrongs_Where_is_Uganda_heading_to.pdf [Accessed 13 August 2011]

⁶¹⁶ Dolan, Christopher, 'Whatever Happened to Comprehensive Justice?', Press Release, Kampala, Refugee Law Project, 17 June 2007 http://www.refugeelawproject.org/press_releases/WhateverHappenedtoTrueJustice.pdf [Accessed 12 August 2011]

⁶¹⁷ See Refugee Law Project website <http://www.refugeelawproject.org/> [Accessed 13 August 2011] and Beyond Juba Project website www.beyondjuba.org [Accessed 13 August 2011]

⁶¹⁸ Refugee Law Project, Draft National Reconciliation Bill 2009, Kampala, [On file with Author] *This is not a publicly available document yet

⁶¹⁹ See Oola, Stephen, *The Coalition for Reconciliation in Uganda: Important Lessons for Proactive Civil Society Engagement in Catalysing Transitional Justice Discourse*, Paper presented at the Workshop, 'Advocating Justice: Civil Society and Transitional Justice in Africa,' Johannesburg, South Africa, August 2010, Organized by the African Transitional Justice Research Network http://www.transitionaljustice.org.za/docs/2010workshop/4_Oola.pdf [Accessed 12 August 2011]

JLOS.⁶²⁰ The draft NR Bill outlines the establishment of a National Reconciliation Forum (NRF) that provides a broad, integrated framework to address various reconciliation issues after the war. The proposed NRF is mandated to:

Examine the causes, nature and extent of the legacy of violence underlying present day conflict; investigate and document human rights violations and abuses beginning in 1962; provide an opportunity for victims, perpetrators and witnesses to share their perspectives; facilitate reconciliation with assistance from existing institutions, including Amnesty commission, UHRC [Ugandan Human Rights Commission], Equal Opportunities Commission, alternative and traditional justice mechanisms, and ensure accountability for past violations.⁶²¹

Integrating these existing institutions, the proposed forum has the power to hold hearings, take statements and grant or deny amnesty dependent on a truthful disclosure of relevant facts. The forum could also recommend to the Government appropriate methods of implementing reparation and rehabilitation schemes.

While the draft NR Bill still lacks clarity on a number of points, it continues to play a vital role in the development of a national transitional Justice program. As a recent appraisal of the proposed Bill by the Uganda Victims Foundation (UVF) points out, it is currently unclear that the forum would have power to “follow up on recommendations for prosecution,” or ensure that other reforms proposed are actually implemented.⁶²² Current weaknesses aside, the NR bill provides an alternative vision of transitional justice in Uganda. As Oola points out, given the “nature of the state in Uganda” the Government would be very unlikely to draft a bill that would act against its own interests.⁶²³ CORU/RLP’s initiative in drafting the NR Bill has provided a platform for JLOS actors to continue discussion of an independent truth telling process. Furthermore, it is clear that the NR Bill has helped to clarify particular technical issues for JLOS actors and has built significant support for a national reconciliation process from within Government.⁶²⁴ At the national level, therefore,

⁶²⁰Ibid: Author’s interview with Director of Refugee Law Project (Kampala, June 2010) in 2008 The Bill was officially handed over to the JLOS subcommittee on truth telling for further consideration

⁶²¹ ‘Report on the Third National JLOS forum,’ pp.20-21

⁶²² See Uganda Victims Foundation, ‘Statement on the National Reconciliation Bill of 2009,’ 4th November 2009,

<http://www.vrwg.org/downloads/publications/02/UVF%20Position%20Paper%20National%20Reconciliation%20Bill%20of%202009.pdf> [Accessed 12 August 2011]

⁶²³ See Oola, p.9

⁶²⁴ Author’s interview with senior Transitional Justice Working Group actor (A), Ministry of Justice and Constitutional Affairs (Kampala, June 2010): Author’s interview with a senior actor in the Ugandan Law Reform Commission (Kampala, August 2010)

the RLP and BJP in particular continue to strive to carve out critical space for counter narratives of the war to surface. Such groups demonstrate the capacity of civil society to challenge Government policy.⁶²⁵

Not all Kampala-based civil society groups that engage in postwar justice however, provide a rigorous challenge to the Government's approach. A number of organizations, both national and international, focus their post-war justice advocacy almost exclusively on the development of international criminal justice. Groups such as the Ugandan Coalition for the International Criminal Court (UCICC), Human Rights Network Uganda (Hurinet-U) and No Peace Without Justice (NPWJ) for instance, have campaigned for domestication of the Rome Statute, and worked to widen understanding about the ICC through local outreaches and build the capacity of the ICD through the provision of training opportunities.⁶²⁶ Certainly, such groups are not without critical input. UCICC and Hurinet actors for instance, emphasize that they have raised the issue of the ICC's lack of investigation of UPDF soldiers.⁶²⁷ However, such groups are principally concerned with improving the performance of international criminal justice in Uganda, such as the advancement of witness protection, rather than critically questioning and challenging the broader trajectory of post war 'justice.'⁶²⁸ Such efforts are ultimately orientated around the cause of international justice, rather than the justice priorities of local northerners. This reflects a wider tendency identified in the critical literature for 'southern' based NGOs to share "stronger cultural affinities with global managers than with local communities."⁶²⁹ In Uganda, the narrow focus of such groups can affirm the approach that 'partial justice is better than no justice,' and ultimately fails to provide sufficient challenge to the Government's narrative of the war.

⁶²⁵For related scholarly discussion on the varying roles of civil society, Lewis, David, 'Civil Society in African Contexts: Reflections on the Usefulness of a Concept', *Development and Change*, 33.4 (2002), p.582

⁶²⁶Author's interview with representative of Human Rights Network Uganda (Kampala, June 2010): Author's interview with a representative of the Uganda Coalition for the International Criminal Court (Kampala, June 2010)

⁶²⁷ Ibid

⁶²⁸ Observation of such group's approach at the Review Conference of the International Criminal Court, Kampala, June 2010

⁶²⁹ Scholte, p.297

The exclusive focus of these organizations on international justice contradicts the agenda of groups that advocate broadly for transitional justice. On one hand the RLP has lobbied against the enactment of ‘partial’ justice and the Ugandan Government’s apparently exclusive focus on the trial of LRA in the ICD. Meanwhile groups such as the UICC narrowly concentrate their efforts on Uganda’s domestication of international criminal justice. During my time in Kampala, I detected understandable tension between such groups. A member of one international-justice focused NGO contended, “For a long time we have had our differences with Refugee Law Project... it is well known that they are anti Court...they criticize everything.”⁶³⁰ Kampala-based civil society is by no means united in approach to postwar justice. The struggle to engage the Ugandan Government clearly takes place within ‘civil society.’⁶³¹ As I explore below, civil society groups based in Gulu also take diverse approaches to postwar justice and development.

‘Local’ Gulu-based Civil Society

Amongst a plethora of human rights, peace-building and development organizations, two key groups based in the Acholi region specifically define their key objectives in terms of transitional justice: the Justice and Reconciliation Project (JRP) and the Northern Ugandan Transitional Justice Working Group (NUTJWG).⁶³² JRP seek to directly engage local grassroots communities through a range of mechanisms including dialogues, research processes and community mobilization. In addition to performing local work, JRP lobbies the Government to implement transitional justice processes.⁶³³ NUTJWG operates as a loose coalition of over sixty northern civil society groups (both NGOs and CBOs) involved in postwar justice, recovery and reconciliation work, driven by a Gulu-based secretariat.⁶³⁴ In this section, I focus on the efforts of these two particular groups to build momentum for Uganda to engage in transitional justice, in the wider context of the local civil society landscape. As I

⁶³⁰ Author’s interview with representative of the Uganda Coalition for the International Criminal Court (Kampala, June 2010)

⁶³¹ For overview of related scholarly discussion, see Pearce, Jenny, ‘Development, NGOs, and Civil Society: the Debate and its Future,’ in *Development, NGOs, and Civil Society*, ed. by Jenny Pearce (Oxford, Oxfam Publishing, 2000): See also Lewis, p.584

⁶³² Both groups emerged from the Gulu District NGO Forum.

⁶³³ For an overview of their work, see Justice and Reconciliation Project, *JRP Annual Report 2010*

⁶³⁴ See NUTJWG’s website: <http://www.nutjwg.org/> [Accessed 13 August 2011]

explore below, it is often hard to untangle ‘international’ influences from local. International actors also play a significant role in shaping the local NGO ‘scene.’ Many of the organizations operating in Gulu town are local branches of international NGOs, which employ local management and staff (such as CARE, Caritas, Save the Children, and World Vision), while foreign donors also provide the funding for a multitude of domestic NGOs and CBOs.

Local civil society actors in Northern Uganda undoubtedly utilize the concept of transitional justice as a political discourse of resistance.⁶³⁵ While NUTJWG and JRP staffs are set apart from the grassroots communities they seek to work with by their advanced education and employment status, for the most part they are local northerners who also lived and suffered through the war. They strategically draw on the framework of transitional justice to shape to their understandings of the local communities’ postwar justice needs. During an early conversation with Charles, the coordinator of NUTJWG’s secretariat, I skeptically pondered whether the concept of transitional justice restricted our thinking about postwar recovery. Charles laughed, and responded that the transitional justice framework was simply a tool to be wielded as desired. He likened civil society to a swarm of ants, and the Government to an impenetrable elephant: the ants must coordinate strategically to make any impact. “It’s a political game we are playing and the protagonist is the state. What is needed is a clear message. It’s important to rally around common ground.”⁶³⁶ Transitional justice, he insisted, provides a powerful discourse that is recognized nationally and internationally which could hold the Government accountable, and change their approach to the north. It allows local demands to be ‘translated’ into the language of national policy.⁶³⁷ Transitional justice is utilized as a strategic, political language.

While it is difficult to quantify, it is clear that over the years NUTJWG and to a greater extent JRP, have played an important role in building momentum for transitional justice processes in Uganda. In 2009, NUTJWG (in collaboration with

⁶³⁵ Note that various scholars have pointed to the way in which local civil society groups draw on “global laws and instruments” in order to further local causes. See for example, Scholte, p.295.

⁶³⁶ Author’s interview with Coordinator of the Northern Ugandan Transitional Justice Working Group (Gulu, July 2010)

⁶³⁷ Ibid

ICTJ) hosted several high profile multi-day conferences on truth telling⁶³⁸ and reparations⁶³⁹ that drew together civil society workers from across northern regions. These conferences certainly generated wider civil society support for the development of these particular processes. Despite poor attendance from invited Government actors, the conference reports provide a rich resource that highlight areas of controversy (such as the relationship between truth-telling and formal justice), as well as key points of consensus amongst participants.⁶⁴⁰ Since the Juba peace talks, JRP has played a particularly active role in engaging the Government in transitional justice. In 2010, JRP ran a campaign to “to put Transitional Justice on the Election Agenda,” and directly engaged with JLOS officials following a series of community consultations across the north.⁶⁴¹ JRP has also received increasing media coverage that has drawn national attention to local demands for transitional justice, particularly for reparations.⁶⁴² Perhaps most significantly, JRP has steadily produced a wealth of local research, documentation, and policy statements on local communities’ experiences of the war and their perspectives on justice issues.⁶⁴³ In this way, along with Kampala based groups such as RLP, local-based civil society groups have actively challenged the Government’s narrative of the war, and demanded a response. It should be noted that international donors undoubtedly contribute to this process through financial support.⁶⁴⁴

However, it is vital to recognize that the broader civil society scene operating in the local north can directly and indirectly work against the political efforts of such transitional justice groups. Essentially, the internationally sponsored ‘civil society’

⁶³⁸ Northern Uganda Transitional Justice Working Group in collaboration with International Center for Transitional Justice, ‘Confronting the Truth,’ Report of a Workshop held at Lilian Towers Hotel, Lira, June 2009 http://www.nutjwg.org/wp-content/uploads/2010/08/NUTJWG_Confronting-the-truth.pdf [Accessed 12 August 2011]

⁶³⁹ Northern Ugandan Transitional Justice Working Group in collaboration with International Center for Transitional Justice ‘Repairing the Past: Compensating Victims in Uganda,’ Report of a Workshop held at Gusco Peace Center, Gulu, October 2009 [On File with Author]

⁶⁴⁰ Ibid

⁶⁴¹ Justice and Reconciliation Project, ‘Casting Election Ballots to Address Victimhood,’ Press Release, 16 November 2010, Gulu <http://justiceandreconciliation.com/#/putting-tj-on-the-election/4544520793> [Accessed 13 August 2011] The campaign called for accountability for past abuses, national reconciliation through truth telling, reparations for war victims, memorialization, gender justice, and structural reforms of state institutions including the military, police, and judiciary.

⁶⁴² See Justice and Reconciliation Project, *JRP Annual Report 2010*, pp.13-14

⁶⁴³ See Justice and Reconciliation Project website: <http://justiceandreconciliation.com/> [Accessed 13 August 2011]

⁶⁴⁴ JRP is supported by the Norwegian embassy, while NUTJWG receives assistance from the Irish Embassy

scene in the Acholi region is overwhelmingly apolitical. This reflects much broader trends in the nature of civil society organizations in developing countries worldwide, as increasingly recognized in the critical literature.⁶⁴⁵ As Branch describes, the plethora of internationally-funded NGOs in Gulu town typically conform to the ‘new humanitarianism’ mode of development that emerged in response to the failures of ‘traditional humanitarianism.’⁶⁴⁶ Instead of simply focusing on provision of immediate relief and food aid, the ‘new humanitarianism’ model adopts a ‘rights based’ approach that engages in longer-term ‘peace building’ activities such as ‘community reconciliation and development,’ ‘human rights promotion’ and ‘psycho-social support.’⁶⁴⁷ To a certain extent, this movement has become co-opted by the World Bank’s agenda to absorb the negative effects of neo-liberal structural adjustment policies on poorer communities by promoting “grassroots development” mediated by NGOs.⁶⁴⁸ Essentially, this approach focuses exclusively on community level development and peace building, rather than striving for radical social reforms at the national level.⁶⁴⁹

With some notable exceptions, civil society in Gulu town appears overwhelmingly shaped by this apolitical model of humanitarianism.⁶⁵⁰ The majority of NGOs in Gulu are occupied with engineering community-level development and meeting donor requirements rather than affecting political change or representing the demands of local communities at the national level.⁶⁵¹ It appears that the majority of international aid money flows to apolitical community-focused local projects. International support for politically engaged projects is less forthcoming: groups like JRP are a minority, while NUTJWG has struggled to sustain sufficient funding since it was established in

⁶⁴⁵ For a critical overview, see Pearce.

⁶⁴⁶ Branch, *The Political Dilemmas of Global Justice* pp.357-360

⁶⁴⁷ Ibid

⁶⁴⁸ For further discussion see Pearce, p.2; Lewis, p.571; Kamat, Sangetta, ‘The Privatization of Public Interest: Theorizing NGO Discourse in a Neoliberal Era,’ *Review of International Political Economy* 11.1 (2004)

⁶⁴⁹ For further theoretical discussion on the divergent approaches of civil society actors, see Lewis, pp.571-2

⁶⁵⁰ Branch, *The Political Dilemmas of Global Justice*, p.432

⁶⁵¹ Author’s interview with head of a local NGO (A) (Gulu, July 2010); Author’s interview with member of the Northern Ugandan Transitional Justice Working Group Secretariat (Gulu, August 2010) Note: this reflects wider trends in civil society groups operating in developing nations, see Pearce, pp.25-26

2008.⁶⁵² Interestingly, groups such as ARLPI that played a prominent role in activating and facilitating peace processes including the Juba talks are now much less politically engaged with Government policy.⁶⁵³

As many civil society actors are well aware, the NGO economy in Gulu is an increasingly self-sustaining enterprise that threatens to stifle the possibility of long-term radical change. It does not take long in Gulu town to discover that the local educated elite classes are primarily employed in internationally funded humanitarian work.⁶⁵⁴ Moreover, the ambition of most young English-speaking Acholi I spent time with in Gulu town was to become employed by NGOs. Essentially, the abundant presence of NGOs allows the Government to disengage from economic development and social service provision. As a local Acholi NGO director openly noted, “Our presence as NGOs gives the Government the opportunity to relax. People don’t even know necessarily that the Government has a responsibility to provide and assist. People think NGOs do that.”⁶⁵⁵ Rather than challenging the Government, many NGOs simply take its place, while lacking formal accountability to their ‘constituencies.’

In this context, the efforts of a small handful of groups that strive to critically influence Government policy are working against the tide of apolitical ‘civil society’ in the North. While I worked with NUTJWG, it became evident that the reluctance of many NGOs to engage politically risks undermining NUTJWG’s core goals. NUTJWG aims not only to lobby the Government, but also to spur Northern civil society groups to engage their grassroots constituents in direct political action. The difficulty of this task was evident at a ‘high segment meeting’ entitled ‘Rethinking the Future’ hosted by NUTJWG with assistance from JRP in August 2010, which drew together the most prominent civil society leaders in Gulu.⁶⁵⁶ Participants recognized

⁶⁵² Author’s interview with member of the Northern Ugandan Transitional Justice Working Group Secretariat (Gulu, August 2010)

⁶⁵³ This would be an interesting topic of future research

⁶⁵⁴ Personal Observation, Gulu Town, 2010 See also Branch, *The Political Dilemmas of Global Justice*, p.434 Branch refers to this class ‘the new local elite’

⁶⁵⁵ Author’s interview with head of a local NGO (A) (Gulu, July 2010)

⁶⁵⁶ Participant Observation of meeting held in Gulu Town, Monday 2nd August. Participants included representatives from Invisible Children, JRP, Norwegian Refugee Council, ARLPI, Gulu NGO forum, Caritas, Office of the UNHRC, HURIFO, Save the Children, Ker Kwaro Acholi, Danish Demining group, Empowering hands, USAID, the registrar for the ministry of justice, Gulu, Gulu District Farmers association, Ugandan Law Society, Legal Aid Project, and World Vision, as well as several local MPs.

the need for ‘civil society’ to influence national policy on transitional justice, and push the Government to make recovery of the north a top priority. However, most participants directed their ideas solely towards the secretariat. The widespread expectation (with a few notable exceptions) appeared to be that the task of influencing national policy should fall squarely on the small NUTJWG secretariat.⁶⁵⁷

NUTJWG’s goal to ignite the participation of civil society in political advocacy was also constricted by conformity to the norms and expectations of the predominant NGO culture. Like most NGOs, the ‘activities’ of NUTJWG secretariat are shaped by their perception of donor requirements and performance evaluation criteria.⁶⁵⁸ This was perhaps particularly evident during a series of ‘workshops’ facilitated by NUTJWG across the north, which aimed to identify the advocacy priorities of its membership, and build momentum for wider political engagement in transitional justice.⁶⁵⁹ NUTJWG’s workshop in Lira for instance, was held in a hotel conference room complete with complementary note-pads, pens, lunch and refreshments. The participants were also paid a not-insubstantial ‘sitting allowance’ to attend.⁶⁶⁰ While broadly helpful in building connections between the Secretariat and local Langi groups, interaction with participants was clearly limited. As the Secretariat critically reflected, the event involved far too much ‘expert’ presentation of transitional justice history and theory by guest speakers from ICTJ, leaving minimal time for participants to discuss and define their own priorities.⁶⁶¹ Perhaps reflecting the paid attendance, hotel setting and formality of the workshop, the atmosphere was restrained, lacking urgency and a drive for activism.⁶⁶² This ‘workshop consultation’ model adopted by NUTJWG reflects the wider norms of NGO practice in Northern Uganda. While this model is convenient and complies with donor expectations, it does not inspire a sense of community activism.

⁶⁵⁷ Notable exceptions included JRP and HURIFO. Interestingly, in contrast, I observed that NUTJWG had more success involving non-NGO ‘professionals’ in transitional justice activism. On several occasions, local lawyers and even prominent actors on the brink of retirement from local Government positions provided voluntary assistance and advice.

⁶⁵⁸ Participant observation. I am unable to verify whether NUTJWG’s actions reflected actual donor requirements, or rather their perception of donor requirements.

⁶⁵⁹ Participant observation of NUTJWG workshop series, July-August 2010

⁶⁶⁰ NGOs in Gulu often pay sitting allowances for locals to attend their workshops and other events, largely because donors look favorably on high attendance rates

⁶⁶¹ Author’s conversation with NUTJWG Secretariat members after the Lira Workshop, August 2010

⁶⁶² Participant observation

Aside from the entrapments and expectations of predominant NGO culture, there are other reasons why national change is difficult to instigate from a local standpoint. Developing effective strategy is challenging, particularly for groups such as NUTJWG that operate with minimal staff and low funding. A member of the Secretariat ambitiously contended that “where the Government is silent, or not prioritizing aspects of the Juba peace agreement, NUTJWG aims “to wake them up.”⁶⁶³ However, in mid 2010, it seemed unlikely that many NUTJWG activities would have much impact at the national level.⁶⁶⁴ Not infrequently, opportunities were missed to capitalize on the advocacy opportunities generated from NUTJWG’s research and events. On one occasion for example, several days were spent investigating the local Government’s politically motivated interference in the election of the Acholi War Debt Claimants (AWDC) leaders. While intending to highlight this local scandal to draw attention to the wider need for comprehensive post-war reparations, the deadline for a press briefing was missed. As was often the case, results suffered from tight timing and inadequate strategizing.

Ultimately, given the reality of a reluctant Government, it is simply very difficult for advocacy groups to impact state policy. The JLOS TJWG works in the shadow of Museveni’s regime, and lacks the authority and funding to progress with many meaningful aspects of transitional justice. A staff member at JRP put it this way:

The biggest challenge is making an impact at all...we might do the research, [give] the recommendations, take Government officials to a workshop, disseminate the findings...but do they actually take it up?⁶⁶⁵

Civil society groups, incorporating actors at all levels, draw on transitional justice discourse to press the Government to transform its approach to Northern Uganda and engage in politically sensitive justice issues. Through their research, consultation and advocacy work, organizations based in both Gulu and Kampala actively challenge the Government’s narrative of the war. However, it is also evident that the efforts of such groups are directly and indirectly in tension with elements of the broader civil society landscape. As scholars increasingly recognize, ‘global’ civil society space is diverse: NGOs often play contradictory roles, pursue different agendas, and base their goals

⁶⁶³ Author’s interview with member of the Northern Ugandan Transitional Justice Working Group Secretariat (Gulu, August 2010)

⁶⁶⁴ Note that at this time, NUTJWG was struggling to re-establish itself after a lapse in funding

⁶⁶⁵ Author’s interview with staff member of Justice and Reconciliation Project (A) (Gulu, June 2010)

on diverging theoretical assumptions.⁶⁶⁶ As Scholte points out, while civil society actors can “open political space” and “give voice to stakeholders,” they may equally serve to “constrain discussion and suppress dissent.”⁶⁶⁷

The Socioeconomic Justice ‘Void’ of Transitional Justice in Uganda

Although civil society groups, opposition politicians and to a lesser extent, technical JLOS actors and parliamentarians draw on transitional justice discourse as a language of resistance, such actors tend to express demands for postwar social and economic recovery solely in terms of reparations. For the most part, such actors fail to strongly and clearly include the broader project of socio-economic justice in the scope of transitional justice. As I explore below, this omission threatens to substantially weaken the capacity of transitional justice discourse as a tool to bring about meaningful transition from war. After outlining the failings of the Government’s approach to postwar recovery through the PRDP and the detachment of the PRDP from justice discourse, I focus on exclusion of socioeconomic justice from the rhetoric of civil society actors.

The Divorce of Transitional Justice and the PRDP

Currently, the national framework of transitional justice policy excludes widespread socioeconomic recovery and rehabilitation beyond reparations. The JLOS TJWG did not establish a committee on socioeconomic justice, while discussion of a reparations scheme is relegated to the truth telling committee. As discussed in Chapter Three, socioeconomic justice was outlined in the Agreement on Comprehensive Solutions (ACS) in Juba as a critical component of postwar transition. The Implementation Protocol to the ACS states that the Government must implement the Northern Ugandan Peace Recovery and Development Plan (PRDP) “expeditiously” and ensure that the Plan encompasses the “principles and commitments” of the agreement, which includes the remedying of disparity between north and the rest of the country, and

⁶⁶⁶ See Pearce, pp.38-40; Lewis, p.584

⁶⁶⁷ Scholte, pp.293, 298

numerous specific measures such as the provision of special tertiary scholarships.⁶⁶⁸ However, the PRDP is currently implemented through the Office of the Prime Minister (OPM) without reference to the principles and specific commitments of the ACS.⁶⁶⁹ Rather than constituting an aspect of postwar ‘justice,’ the PRDP largely functions as merely another recovery and development program for the North.⁶⁷⁰

The disconnect between the project of transitional justice and the PRDP weakens the potential of the program to radically break from the past. As civil society actors believe, the idea of transitional justice can be used as a catalyst for political change.⁶⁷¹ Museveni’s regime is resistant to proposals for a truth telling and reparations for this very reason: such programs could require the Government to acknowledge and actively rectify its past wrongs. Separating the PRDP from the idea of ‘justice’ has allowed it to become one of a series of poorly performing ‘recovery and development’ schemes implemented since 1992. Previous plans such as the Northern Uganda Reconstruction Program (NURP-1), and NURP-II, for instance, received harsh criticism for their top down imposition, severely curtailed expenditures, and endemic siphoning of funds through corruption at all levels.⁶⁷² Rather than marking a ‘transition,’ in many ways the PRDP appears continuous with previous ineffective programs.⁶⁷³

The broad mandate of the PRDP is to address the socio-economic inequalities between Northern Uganda and the rest of the country. Rather than constituting an independently financed program, the PRDP policy framework aims to allocate

⁶⁶⁸ Government of Uganda, *Implementation Protocol to the Agreement on Comprehensive Solutions*, point 18

⁶⁶⁹ Author’s Interview with actor involved in monitoring of the Peace Recovery and Development Plan, Office of the Prime Minister (Kampala, August 2010)

⁶⁷⁰ It should be noted, however, that Government officials have been known to portray the PRDP as a reparations program. See Refugee Law Project, ‘Training on Transitional Justice for Parliamentarians of the Greater North Parliamentary Forum,’ Final Report of workshop held at Imperial Botanical Beach Hotel, Entebbe, November 2009 http://www.beyondjuba.org/conferences_seminars.php [Accessed 12 August 2011], p.24

⁶⁷¹ Numerous conversations with members of NUTJWG’s Secretariat, Gulu Town, July-August 2010

⁶⁷² See Marino, Jonathon, *Is the PRDP Politics as Usual? Update on the Implementation of Uganda’s Peace, Recovery and Development Plan,*” Refugee Law Project Briefing Note No.2, (Kampala, Refugee Law Project, 2008)

http://www.refugeelawproject.org/briefing_papers/RLP.BP0802.pdf [Accessed 12 August 2011]

⁶⁷³ Author’s interview with head of a local NGO (A) (Gulu, July 2010)

additional funding to war affected districts in Northern Uganda.⁶⁷⁴ The program's weak funding scheme, however, casts considerable doubt upon the Government's commitment to the recovery and development of northern war affected regions. When the plan was finalized in September 2007, the PRDP budget for the entire three-year period amounted to UgSh 1, 091.7 billion (USD606.5 million).⁶⁷⁵ Even in 2008, donors and public servants recognized that the budget "grossly underestimated the actual need for additional resources."⁶⁷⁶ In addition, it also became clear that the Government's financial contribution to Northern districts would be much less than originally projected. Initially, the Government indicated that it would provide 86 % of the funding.⁶⁷⁷ In the final budget however, the Government contribution was a meager 30 %, leaving 70 percent to be provided by donors.⁶⁷⁸ It appears that the Government reneged on their original financial commitment, reflecting a wider lack of commitment to socioeconomic justice.

It is furthermore doubtful that the 70 percent of the budget supposedly provided by donors in fact supplies *additional* resources to PRDP districts. Evidence suggests the Government subsumed pre-existing donor funded NGO projects and budget support into the PRDP in order to account for the remaining 70 %. In mid 2010, the director of a prominent NGO in Gulu, informed me:

You know the way PRDP is designed is that the Government would contribute 30 % while the donors contribute 70 %. That proved too ambitious...the moment they began tapping the money which is already in the country, already in the district, that is already doing work, then I knew that the 70 % is not forthcoming. This program that we run...would be there whether PRDP or no PRDP.⁶⁷⁹

As the Norwegian Agency for Development Cooperation (NADC) anticipated in 2008, additional donor funds "over and above current direct budget support, sector

⁶⁷⁴ For a detailed, critical assessment of the PRPD, see Claussen, Jens, et al, *Appraisal of the Peace, Recovery and Development Plan for Northern Uganda*, Final Report (Norwegian Agency for Development Cooperation, November 2008)

<http://www.norad.no/en/Tools+and+publications/Publications/Publication+Page?key=109839>
[Accessed 13 August 2011]

⁶⁷⁵ Marino, p.4

⁶⁷⁶ Claussen, Jens, et al, p.37

⁶⁷⁷ Ibid

⁶⁷⁸ In the third year of PRDP implementation (2010/11), for example the Government provided only a third of the total PRDP budget, committing 124 billion of the total budget of UgSh 426 billion. See Government of Uganda, 'Budget Speech Financial Year 2010/11' (Kampala, The Ministry of Finance, Planning and Economic Development, 2010) [Viewed by Author, August 2010]

⁶⁷⁹ Author's interview with the Director of Human Rights Focus (Gulu, August 2010)

program funding, and project tied aid” were not forthcoming.⁶⁸⁰ This is perhaps unsurprising given that donors are significantly scaling down their assistance as the transition from war-time humanitarian intervention to conventional development support takes place. NADC noted that in 2008, Government officials acknowledged that PRDP could provide an opportunity to shift “off budget” humanitarian donor funds onto the national budget.⁶⁸¹ Evidently, the Government has simply padded the PRDP with existing donor resources.

Overall, the PRDP has failed to provide adequate redistribution of resources to war affected northern districts. Local Government, an essential actor in post war development, has been insufficiently funded.⁶⁸² While the average poverty level rating of PRDP Northern districts is 30 % higher than non-PRDP districts, in 2008/09, the overall national budget allocation to PRDP districts actually decreased slightly by 0.4 %.⁶⁸³ As NADC concluded, “considering the central role of local Government sector as implementers of the PRDP, the decrease in the share of budget allocations to PRDP districts is not consistent with ambitions to reach the overall goals of the PRDP.”⁶⁸⁴ The Government’s poor commitment to local Government in Northern Uganda further demonstrates a lack of political will to pursue socioeconomic justice in the wake of war.

Unsurprisingly then, it is difficult to discern any tangible impact of the PRDP at the district and village levels. During the first year of implementation, district officials expected funding over and above budget allocation.⁶⁸⁵ It was not communicated that PRDP funds would merely be allocated through existing budget processes which exacerbated mistrust of the central Government.⁶⁸⁶ There is little awareness of the PRDP at grass roots levels in the sub-county and parish levels. In 2008, research by RLP found that most people were either confused about PRDP, or had never heard of it. In mid 2010, the presidential advisor to Northern Uganda responsible for

⁶⁸⁰ Claussen et al, p.46

⁶⁸¹ Ibid, p.47 Note: “Off budget” refers to donor activity not recorded on the Government budget (such as NGO funding)

⁶⁸² For further discussion see Claussen et al, pp.30-39

⁶⁸³ Ibid

⁶⁸⁴ Ibid, p.39

⁶⁸⁵ Claussen et al, pp.34, 62

⁶⁸⁶ Ibid

monitoring PRDP progress acknowledged to me that the plan is still “not widely known by the people.”⁶⁸⁷

Finally, the PRDP replicates key failings of previous northern recovery programs. Firstly, it appears that initial consultation with stakeholders was poor. While a range of stakeholders were supposedly given the opportunity to review drafts of the PRDP, consultations “stopped at the district level, severely limiting the process.”⁶⁸⁸ Poor consultation processes result in poor community involvement and identification of project priorities. Secondly, the PRDP mirrors previous programs with apparent corruption and political exploitation. Funds have been allocated to dubious projects in areas relatively unaffected by conflict. In 2008, UgSh 621 million of the PRDP budget was spent on the construction of a 25km road in a district between Mbale and Bududa (not in Northern Uganda).⁶⁸⁹ While the Government failed to offer explanation for this project, a district official indicated that the Mbale road had been prioritized because it “will serve the home area of a central Government official”⁶⁹⁰. With only one year of implementation remaining (financial year 2011/2012), there is little to suggest that the PRDP will significantly impact those it was intended to assist. While the situation in Northern Uganda is undoubtedly improving due to the return of many people to their land and agriculture and relative peace and security, the commitment of the Government to socioeconomic transformation of the north appears weak.

The failure of involved actors to hold the Government accountable to PRDP implementation according to ACS benchmarks has allowed the program to subside into the background with limited critical attention. Foreign donors that support the PRDP have largely failed to significantly challenge the Government’s poor efforts to

⁶⁸⁷ Author’s interview with the Presidential Advisor for Northern Uganda (Gulu, August 2010) An NGO director in Gulu town further emphasized, “For my age bracket I am one of the most exposed and most elite in this town. I have traveled, I am educated, I am pursuing an MA in transformation studies, but I still don’t understand the PRDP. So who exactly understands the PRDP? Where does all the money go?” Author’s interview with head of a local NGO (A) (Gulu, July 2010)

⁶⁸⁸ Claussen et al, p.62 reports that in late 2008, sub county leaders were only “vaguely aware of the PRDP” and had not even received copies

⁶⁸⁹ Marino, p.7

⁶⁹⁰ Ibid

redistribute resources to the north in order to target inequality.⁶⁹¹ As I explore below, with a few exceptions, transitional justice civil society actors have also failed to include socioeconomic justice in their demands to the state for postwar justice.

Civil Society: Socio-Economic Justice at the Margins

For the most part, Kampala-based groups that champion the project of transitional justice do not include socioeconomic justice in the core focus of their work. Although their conception of justice may include socio-economic concerns, disproportionate attention is paid to these issues in their practical work. For example the prominent groups BJP/RLP have adopted an expansive, holistic view of transitional justice that encompasses socioeconomic issues. The ‘Beyond Juba’ research mandate on transitional justice highlights a myriad of such ‘justice’ issues, such as poverty, HIV/Aids, landlessness, and family breakdown.⁶⁹² RLP has also intermittently engaged in critique of the PRPD.⁶⁹³ Despite these efforts, RLP has not concentrated on pushing the Government to fulfill its commitments in the ACS as an urgent matter of justice. The majority of RLP/BJP’s active engagement with the Ugandan Government is framed in terms of the more conventional aspects of transitional justice, such as truth telling and reparations. As I argue below, reparations are an important, but are ultimately an insufficient form of socioeconomic justice.

Despite its expansive theoretical perspective, there appears to be a tendency for RLP to exclude socioeconomic and development justice from the scope of transitional justice in its advocacy work. In a 2009 three-day Parliament training program on transitional justice, for instance, RLP structured discussion around three key areas: truth telling, reparations and traditional justice. Rather than directly embracing

⁶⁹¹Note that the Norwegian Agency for Development Cooperation’s critical appraisal of the PRDP is an exception.

⁶⁹²Beyond Juba Project, ‘Research abstract on transitional justice,’ http://www.beyondjuba.org/transitional_justice.php [Accessed 13 August 2011]

⁶⁹³For example, Marino: Also note Dolan, Christopher, Is the PRDP a Three-Legged Table? Challenges for NGOS in Moving from Humanitarian and Short Term Interventions in Light of the PRDP and Conflict Setting, Keynote speech given at NGO seminar for Scandinavian based International NGOs working in Northern Uganda, Kampala, 10 April, 2008

http://www.beyondjuba.org/Conference_presentations/Is_the_PRDP_a_three_legged_table.pdf [Accessed 11 August 2010] In January 2009, RLP also hosted a public seminar on the PRDP, which also drew attention to shortcomings of the plan. See http://www.beyondjuba.org/conferences_seminars.php [Accessed 13 August 2011]

socioeconomic issues as core element of transitional justice, speakers distinguished between development and reparations programs.⁶⁹⁴ In its critical media releases demanding for victims-focused postwar justice, RLP also emphasizes the need for a reparations program, rather than pointing to broader socioeconomic justice issues and the PRDP.⁶⁹⁵ As discussed above, RLP's pivotal contribution to transitional justice has been to build momentum for the establishment of a national truth telling and reconciliation forum through the NR Bill. Certainly, such a forum has the potential to generate recommendations on socioeconomic justice issues, reparations schemes and furthermore spur the establishment of an Equal Opportunities Commission. However, such an approach also risks backtracking on the radical obligations of the Government regarding socioeconomic equity of the north already agreed upon in the Juba. While efforts to engage critically on the PRPD are commendable, ultimately Kampala based groups involved in transitional justice are yet to significantly challenge the Government's failure to address socioeconomic inequality of the north as a critical 'justice' issue.

Northern-based Civil Society

Similarly, although some Gulu-based transitional justice civil society actors *aim* to directly address socioeconomic injustice, often this manifests only in demands for reparations. In 2010, members of the NUTJWG secretariat were, at least in theory, keen to frame what they perceived as the most pressing needs of Northern Uganda in terms of socioeconomic justice.⁶⁹⁶ We discussed various strategies, including working in connection with Gulu business actors and farmers associations. For a few local actors, socioeconomic development concerns are not conceptually distinct from transitional justice.

However, local groups have a strong tendency in practice to translate demands for socioeconomic justice into demands for reparations. Arguably, this trend reflects the fact that the inclusion of socioeconomic justice and 'development' issues within the

⁶⁹⁴ Refugee Law Project, *Training on Transitional Justice for Parliamentarians*, pp.22-24

⁶⁹⁵ For instance, Beyond Juba Project, *Prosecuting Crimes or Righting Wrongs*

⁶⁹⁶ Author's interview with Coordinator of the Northern Ugandan Transitional Justice Working Group (Gulu, July 2010)

transitional justice framework has not yet gained widespread acceptance. This was evident, for instance, at NUTJWG's consultation workshops across the north in mid 2010. Participants at the Lira workshop raised many issues they felt their communities were concerned about after the war, including broad socioeconomic concerns such as access to health, education, and infrastructure redevelopment. However, an ICTJ facilitator of the workshop emphasized in response that it is essential to consider how such priorities can be "fitted in" to the transitional justice model, and suggested such demands could be framed as reparations or compensation. He concluded, "There is a need to distinguish such mechanisms from ordinary development."⁶⁹⁷ This approach was also evident during a high-profile civil society conference on reparations held in October 2009 at which socioeconomic issues were framed exclusively in terms of reparations.⁶⁹⁸

Accordingly, in 2010 it did not appear that Gulu-based transitional justice organizations had included socioeconomic justice beyond reparations in their advocacy work. JRP (and as yet, NUTJWG) media coverage focuses on reparations and other transitional justice mechanisms, rather than wider economic reforms or the PRDP.⁶⁹⁹ Furthermore, socioeconomic justice was not included in JRP's 2010 election campaign or highlighted in the recommendations of their 2010 'Gender Justice Statement.'⁷⁰⁰

As discussed in Chapter four, it is clear that at the grassroots level, communities demand socioeconomic justice beyond reparations. At NUTJWG's 2009 conference on reparations, a JRP member even reflected that when asked what they want as 'reparations,' most victims mention things such as bridges, health centers, roads and schools." He accordingly noted that victims often "fail to clearly distinguish between normal Government programs and reparations."⁷⁰¹ While this comment suggests that

⁶⁹⁷ Author's records from NUTJWG's Lira Workshop, August 2010

⁶⁹⁸ See NUTJWG, *Repairing the Past*, p.6

⁶⁹⁹ See list of media releases in Justice and Reconciliation Project, *JRP Annual Report 2010*

⁷⁰⁰ Justice and Reconciliation Project, 'Casting Election Ballots to Address Victimhood,' Press Release, 16 November 2010, Gulu <http://justiceandreconciliation.com/#/putting-tj-on-the-election/4544520793> [Accessed 13 August 2011]; Justice and Reconciliation Project, 'Pursuing Justice for Women and Children in Northern Uganda,' Statement presented at JRP's Launch, Gulu July 2010, <http://justiceandreconciliation.com/#/womens-justice-statement/4542665527> [Accessed 12 August 2011]

⁷⁰¹ NUTJWG, *Repairing the Past*, p.9

communities may need better education about the difference between simple material reparations and wider development, the more important point is that the scope of transitional justice must be expanded to encompass local's expectations of justice. Despite this, even local NGOs tend to package the social and economic 'justice' demands of local communities exclusively as demands for reparations.

Essentially, even a comprehensive reparations scheme would prove grossly insufficient to achieve a measure of 'justice.' Certainly, reparation in the form of individual payments or returned cattle would ease the suffering of northern communities, while formal recognition and apology could assist in the process of national reconciliation. However, a one off payment and apology, however symbolic, cannot in itself dramatically alter the vast inequity and socioeconomic disadvantage that both kindled and resulted from the northern conflict. Moreover, without genuine Government engagement in long term redistribution and socioeconomic transformation, the 'symbolism' and apology carried with a reparation measure is essentially meaningless. Rather than marking a break with the past, reparations can provide an excuse for the state to relinquish further action. A broader project of socioeconomic justice is required to set in motion the long-term transformation of Northern Uganda. In its current local form, the capacity of transitional justice discourse to give expression to the needs and demands of grassroots communities is therefore limited. In practice, dominant global conceptions of transitional justice constrict local action.

Conclusion

Overwhelmingly, the power to shape the postwar project of 'justice' in Uganda is concentrated in the hands of the state. As with its role in the northern conflict, the Government's approach to postwar 'justice' is clearly shaped by political convenience. The Government is very resistant to any mechanisms that could expose its own negligence and complicity in the war and require the regime to assume responsibility and implement radical structural reforms. Accordingly, the Government has focused almost exclusively on the development of mechanisms to try LRA commanders. While JLOS actors continue to work on developing an approach to traditional justice, truth telling, and reparations schemes, it appears that the regime

will not allow these mechanisms to be implemented without significant political interference. As demonstrated, the PRDP appears grossly inadequate to fulfill its mandate to address the gaping inequality between the north and the rest of the country. Rather than marking a 'transition' in terms of the Government's approach to the north, the PRDP replicates many inadequacies of previous northern 'development' programs, ultimately failing to significantly redistribute resources. Moreover framing the PRDP as a Government development program rather than a matter of justice reaffirms the Government's narrow focus on the physical violence of the LRA. This again shifts the focus from structural, socioeconomic violence perpetrated by the state. There is evidently a very high risk that transitional justice in Uganda will constitute an empty performance of 'victor's justice' that fails to address underlying socioeconomic dynamics of the war.

In this highly politically-charged context, a complex web of domestic and international actors partake in a struggle to influence national policy and press the Government to engage in 'transition.' As illustrated, it is not possible to broadly generalize about the impact of 'international,' 'national' or even 'local' actors and organizations on the development of transitional justice in Uganda. Different actors at all levels play diverse roles in the struggle for national change, while in some ways, civil society organizations transcend such categories. While some actors critically challenge the Government's narrative of the war and the enactment of victor's justice, the actions and inactions of other local, national or international actors can undermine such efforts.

At the international level, the ICC continues to lend a cloak of legitimacy to the Government's narrative of the war. Furthermore, the ICC provides ongoing incentive for senior political and technical Government actors to concentrate their efforts on developing formal criminal justice mechanisms. In the wider context of waning critical international attention on the 'northern situation,' foreign donors engaged in transitional justice have also largely facilitated Uganda's pursuit of victor's justice. While such actors may genuinely believe that for the time being, 'partial justice is better than no justice,' this approach fails to exert any political pressure on the Government to genuinely address ongoing inequality, and merely bolsters the

dangerous narrative that the Government bears no responsibility for the suffering of northern communities.

Organizations based in both Kampala and Gulu such as RLP, JRP and NUTJWG have adopted transitional justice discourse as a language to challenge the Government's narrative of the war, push for meaningful transition, and give political expression to local demands. Their collective efforts to push the Government to adopt the NR Bill, implement a comprehensive reparations program, investigate state actors and critically consider a wealth of postwar justice issues including the role of traditional justice have certainly not been without impact at the national level. However, engaging a reluctant Government in such issues is an uphill struggle. Their efforts are also weakened by the contradictory approaches of other civil society actors. Kampala based groups that seek a comprehensive approach to postwar justice work in tension with civil society groups that primarily champion the project of international justice. At the local level, the efforts of transitional justice advocacy groups risks being undermined or stifled by the predominantly apolitical 'professionalized' culture of the local civil society scene, and the reluctance of many NGOs to directly confront Government policy. International actors contribute to the political struggle for transition when agencies or donors financially support or directly engage in this project. However, international actors also counteract such efforts by perpetuating a largely apolitical civil society landscape that often takes the place of Government.

The capacity of transitional justice discourse to challenge the Government's narrative of the war and give political voice to locals' postwar priorities is severely limited by the failure of most actors to unequivocally encompass socioeconomic justice within their advocacy framework. Civil society actors tend to translate and constrict local demands for development and social services into demands for reparations. This trend is likely to reflect the marginal status of socioeconomic justice within the wider field of transitional justice scholarship and practice. Socioeconomic justice is yet to gain strong 'normative' global traction. While reparations are important, they are inadequate to remedy the deep social and economic injustices that underpinned and resulted from the war. To give political expression to local justice priorities, civil society actors must expand the scope of transitional justice discourse to uncompromisingly include socioeconomic justice and development.

Chapter Six: Conclusion

Introduction

Twelve years after the Rome Statute was adopted, the ICC held its first ‘Review Conference,’ in Kampala’s luxurious lakeside Munyonyo Commonwealth Resort. The Conference brought together the representatives of the ICC’s state parties and a vast array of other actors, including Court officials, intergovernmental organizations, a multitude of international, national and local NGOs, scholars, activists, and even a few ‘victims.’ The unprecedented participation of diverse actors in the Conference reflects the pivotal role played by civil society in the birth of the ICC.⁷⁰² While the first week of the Conference focused on review of the Rome Statute, the second week was devoted to the ‘stocktaking of international criminal justice.’⁷⁰³ Stocktaking of the Court’s affect on its situation countries included four key areas: the impact of the ICC upon victims and affected communities, peace and justice, complementarity, and cooperation. The primary purpose of the Conference was clear from its outset. Leading up to the Conference, HRW emphasized the need for the “world community” to advance the progress of the ICC as “the keystone of an emerging system of international justice,” and “reengage the fight against impunity.”⁷⁰⁴ Essentially, the Conference aimed to consolidate and expand state support for a particular form of justice: international prosecution.

Perhaps reflecting the Conference’s Kampala setting, the Ugandan case received widespread attention throughout the two-week review. Northern Uganda and the LRA featured frequently in high-profile speeches, discussion panels on stocktaking in the plenary hall, and numerous side-events. The booths of the civil society ‘People’s Space’ were almost exclusively filled with Ugandan national and local NGOs. The Conference accordingly brought together the pivotal international and domestic players involved in transitional justice in Uganda: the ICC itself, international NGOs,

⁷⁰² See Glasius, Marlies, *The International Criminal Court, A Global Civil Society Achievement* (London, Routledge, 2005)

⁷⁰³ See Review Conference of the Rome Statute website, <http://www.icc-cpi.int/Menus/ASP/ReviewConference/> [Accessed 13 August 2011]

⁷⁰⁴ Human Rights Watch, *Making Kampala Count: Advancing the Global Fight against Impunity at the ICC Review Conference* (Human Rights Watch, May 2010) <http://www.hrw.org/en/node/90282/section/2> [Accessed 12 August 2011], pp.1, 6

JLOS actors, donors and national and local civil society actors.⁷⁰⁵ The key tensions and power dynamics of the struggle for postwar justice in Uganda were displayed on an international stage at Munyonyo, where the influence of the dominant international model of ‘justice’ was palpably evident. Interestingly, on the few occasions when criticisms were leveled against the ICC, actors that defended international justice often also defended the Government’s narrative of the northern conflict.

This chapter accordingly draws on the ICC Review Conference to frame the conclusion of this thesis. I divide this chapter into two sections, the first of which has three key parts. The first part explores the construction of international criminal law as the dominant mode of global justice, and the inadequate platform the Review Conference provided for meaningful critique. The second and third parts explore the parallel struggle over the concept of ‘justice’ and divergent narratives of the Ugandan conflict that took place on the fringes of the Review Conference. The second specifically explores the unequivocal defense of international criminal justice by global civil society actors. In contrast, the third section highlights the efforts of a small minority of international, national and local actors to challenge this dominant discourse of justice. The five-part second section of this chapter further explores the theoretical implications of the case of northern Uganda for the wider field of transitional justice. Before providing a final conclusion, I outline critical implications for the field that emerged from my analysis.

The ICC Review Conference

Constructing the Hegemony of Global Justice

The ICC is founded upon the ambitious, cosmopolitan aspiration of the realization of ‘global justice.’ The vision that drives the Court’s many advocates is that someday, international criminal justice will become embedded within all nation states through the rule of law, and that non state actors and state actors alike will face accountability for ‘the gravest crimes.’ The Court’s supporters believe it is possible for the Rome Statute to triumph over political power. In his opening statement to the Review Conference, the ICC’s prosecutor affirmed that the Court “will force political actors

⁷⁰⁵ Including RLP, JRP, ICTJ, NUTJWG, UCICC and Hurinet-U, among many others

to adjust to new legal limits.”⁷⁰⁶ The promises of international justice extend beyond the provision of ‘justice’ for victims, to assurances of future peace and security. Throughout his statement, the prosecutor emphasized that the consequence of impunity is the proliferation of global insecurity and violence. He concluded by affirming that “certainty that these crimes will be investigated and prosecuted, will modify the calculus of the criminals, will deter the crimes, will protect the victims.”⁷⁰⁷ It was evident at the Review Conference that many advocates of the ICC are already celebrating the early successes of the ‘global fight against impunity.’ In his opening remarks, the President of the ICC emphasized that in very little time, the Court’s “effects are beginning [to] be seen around the world... a culture of impunity is slowly being replaced by a discourse of accountability.”⁷⁰⁸

The overriding purpose of the 2010 Review Conference was to build global support for international criminal law. As advocates of the Court recognize, their hopes can only be realized if states subscribe to the project of international criminal justice. Political leaders must somehow be persuaded to subject their power to the framework of global law. The Conference itself was an exercise in cultivating a sense of cosmopolitanism and building adherence to the norm of criminal accountability. Through appeals to a common humanity and the constant repetition of mantras such as ‘join the fight against impunity’ and ‘no peace without justice,’ Conference participants aimed to influence the hearts and minds of the international community. This overriding objective left little room for serious critique of the Court’s impact to date. Throughout the Conference, a widespread expectation prevailed that attendees unequivocally support the expansion of this form of international justice. Expressions of cynicism were often viewed as ultimately threatening to the key objective of advancing support for the Court.⁷⁰⁹ As one state delegate put it, the construction of international criminal law is like Tinkerbelle: if enough people declare their disbelief, no amount of clapping can revive it.⁷¹⁰

⁷⁰⁶ Moreno-Ocampo, Luis, Opening remarks at the Review Conference of the International Criminal Court, 31st May 2010, http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/Statements/ICC-RC-statements-LuisMorenoOcampo-ENG.pdf [Accessed 12 August 2011]

⁷⁰⁷ Ibid

⁷⁰⁸ Song, Sang-Hyun, Opening remarks at the Review Conference of the International Criminal Court, 31st May 2010, http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/Statements/ICC-RC-statements-JudgeSong-ENG.pdf [Accessed 12 August 2011]

⁷⁰⁹ Author’s observations during the ICC Review Conference, Kampala, June 2010

⁷¹⁰ Author’s conversation with a state representative of New Zealand at the Review Conference

Civil society actors continue to play a major role in consolidating international criminal law as the dominant mode of global justice. As discussed throughout this thesis, the concept of ‘justice’ advocated and practiced by the ICC is narrow, focusing on individual criminal accountability for extreme physical crimes to the exclusion of structural violence, inequality and socioeconomic deprivation. Yet the very existence of the ICC as the sole arbitrator of global justice is due to the efforts of a worldwide constellation of civil society actors.⁷¹¹ The Court was only brought about through the slow convergence of ideas of many academics, activists, lawyers, international and national NGOs, and their long labors to construct legal consensus among states and press leaders to ratify the Rome Statute.⁷¹² Throughout the Conference, the pivotal task of advancing state support for international criminal justice was led by a host of civil society actors, the most dominant of which was the Coalition for the International Criminal Court (CICC). Frequently, civil society organizations equated the term ‘justice’ with international criminal law, or even more narrowly still with the ICC itself.⁷¹³ As Nouwen points out, this tendency is immediately evident in the mantra of the CICC: “Together for Justice: Civil society...advocating for a fair, effective, and independent ICC.”⁷¹⁴ The ICC monopolizes the global discourse of justice only with a vast array of global support.⁷¹⁵

The fundamental goal of the Review Conference’s ‘Stocktaking’ exercise was accordingly to gather momentum for the project of international justice via affirmation of the Court’s principles and achievements. The President of the ICC declared at the outset of the Conference, “We have come along way since Rome in a very short time. Now is the time to trumpet success.”⁷¹⁶ Despite the critical input of a few speakers, the official record of ‘Stocktaking’ discussions in the Conference plenary hall lacked realistic assessment of the ICC’s impact. Ample attention was

⁷¹¹ Branch, Adam, *No Peace without Justice?* Keynote Address Delivered at ‘The politics of Peace and Justice’ Panel Discussion, ICC Review Conference, Kampala, June 2010 http://www-rohan.sdsu.edu/~abranche/Publications/index_pub.html [Accessed 12 August 2011]

⁷¹² See Glasius. See also Thomas, Andrea, Non-Governmental Organizations and the International Criminal Court: implications of Hobbes’ theories of Human Nature and the Development of Social Institutions for their Evolving Relationship, *International Law Review* 28 (2006), p.437

⁷¹³ Nouwen, Sarah, ‘Justifying Justice’ in James Crawford and Martti Koskeniemi eds. *The Cambridge Companion to International Law*, (Cambridge, Cambridge University Press, 2011) [Forthcoming]

⁷¹⁴ Ibid

⁷¹⁵ Branch, *No Peace without Justice?*

⁷¹⁶ Song, *Opening Remarks*

paid to the Court's first case, Uganda. However as I demonstrate, the exercise essentially failed to take 'stock' of the highly disturbing impacts of the Court's intervention in Uganda discussed in this thesis. Assessment of the Court's 'impact on victims,' for instance, could have grappled with Northern communities' dismay at the failure of the ICC to address the complicity of the Ugandan state in the conflict, or victims' primary interest in embedded socioeconomic justice over the criminal trial of indirect perpetrators.⁷¹⁷ Stocktaking of 'peace and justice' could have fully acknowledged that the ICC's untimely interventions not only obstructed peace processes in Uganda, but also eventually undermined the possibility that the Ugandan Government would implement the radical, holistic justice processes outlined in the Juba peace Agreement.⁷¹⁸ Ironically, such key critiques were noted in the ICC's research publication "Turning the Lens: Victims and Affected Communities on the Court and the Rome Statute System," but nevertheless failed to receive official recognition during the conference.⁷¹⁹ As Nouwen puts it, the Review "took stock of success only."⁷²⁰

The 'resolutions' drafted regarding the Court's 'impact on victims' were overwhelmingly uncritical. Certainly, participants recognized the need for 'the rights of victims' to take center stage in the Court's proceedings, and the need to strengthen the reparative aspects of the ICC's work.⁷²¹ Several panelists emphasized that the ICC provides a reparative effect to complement its 'punitive function' through the Victim's Trust Fund (VTF).⁷²² The limited "visibility and resources" of the VTF were noted, and various actors called for member states to make further contributions to the fund.⁷²³ Simultaneously however, it was stressed that the 'unrealistic expectations' of victims for reparations, material assistance or even rapid arrest of perpetrators must be

⁷¹⁷ See Chapters three and four

⁷¹⁸ See Chapters three and five

⁷¹⁹ International Criminal Court, 'Turning the Lens: Victims and Affected Communities on the Court and the Rome Statute System,' Report commissioned by the International Criminal Court for the ICC Review Conference, RC/ST/V?IN.2, May 2010, http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/Stocktaking/RC-ST-V-INF.2-ENG.pdf [Accessed 12 August 2011]

⁷²⁰ Nouwen, *Justifying Justice*

⁷²¹ International Criminal Court, 'Stocktaking of International Criminal Justice: the Impact of the Rome Statute System on Victims and Affected Communities,' Final report by the focal points, Chile and Finland, RC/11, annex V(a), Review Conference of the International Criminal Court, http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/RC-11-Annex.V.a-ENG.pdf [Accessed 12 August 2011]

⁷²² Ibid, p.82

⁷²³ Ibid, p.80

managed through better communication and outreach.⁷²⁴ As evident from my fieldwork in Northern Uganda, the VTF contributes only a ‘drop in the bucket’ to the existing international aid work in situation countries such as Uganda.⁷²⁵ The idea that ‘justice’ could include the need to hold the Government of Uganda accountable to actively address the socioeconomic devastation of the north was far beyond the scope of discussion.

The official record of Stocktaking on peace and justice similarly validated the Court’s preexisting assumptions.⁷²⁶ Throughout the Conference, the mantra was constantly repeated that without ‘justice’ true peace is impossible. While it was recognized that granting amnesty or postponing criminal investigations to secure a peace deal might appear attractive, such ‘peace’ is ‘false,’ unlikely to last, and ultimately unacceptable without ‘justice.’ ‘Justice,’ is again equated with criminal prosecution. Interestingly, a number of experienced guest panelists in the stocktaking exercise presented views that contradicted this claim.⁷²⁷ The legal analyst of the Juba peace talks Barney Afako, highlighted the “undeniable dilemma between peace and justice” noting that the ICC’s arrest warrants contributed strongly to the collapse of the promising Juba process.⁷²⁸ “The Ugandan people” he stressed, “would live with the consequences of the actions of the international community.”⁷²⁹ Nevertheless, the stocktaking moderator reiterated in his summary of the discussion that establishment of the Court brought about a “paradigm shift:” justice and peace are accepted as mutually reinforcing.⁷³⁰ He emphasized that given that victim’s priorities shift over time, it is vital to consider how to “educate victims about the option of pursuing justice, without unduly raising their expectations.”⁷³¹ The ‘Kampala Declaration’ drafted in summary of the stocktaking exercise simply “*emphasize[s]* that justice is a fundamental building block of sustainable peace” and “*Reiterate[s]*...determination to put an end

⁷²⁴ Ibid

⁷²⁵ Author’s interview with a NGO worker employed by the ICC Victims Trust Fund (Gulu, August 2010)

⁷²⁶ Also discussed at length in Nouwen, *Justifying Justice*

⁷²⁷ See International Criminal Court, ‘Stocktaking of International Criminal Justice: Peace and Justice, Moderator’s Summary’ RC/ST/PJ/1 Annex V(b), Review Conference of the International Criminal Court, http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/RC-11-Annex.V.b-ENG.pdf [Accessed 12 August 2011]

⁷²⁸ Ibid

⁷²⁹ Ibid, p.3

⁷³⁰ Ibid

⁷³¹ Ibid

to impunity...and thus *contribute* to the prevention of such crimes that threaten the peace, security and wellbeing of the world.”⁷³²

The official stocktaking sessions, served little critical function. Supported by a strong alliance of international and domestic civil society actors of all ‘levels,’ the Review Conference provided a global forum to advance state support for international criminal justice, rather than truly reassess the Court’s impact.

Civil Society: the Defense of International Criminal Justice

Reflecting the wider tensions between actors involved in postwar justice in Uganda, a subtle struggle took place between civil society actors in the background of the conference. Besides from the official plenary sessions, the Review Conference comprised of numerous ‘side events,’ which were organized by various civil society groups and held onsite at Munyonyo. These events varied greatly, including book launches, mock court proceedings, and film screenings as well as many ‘discussion panels’ and interactive dialogues. The content and tone of each event reflected the agendas of its civil society organizers. In addition to the many opportunities for more informal mingling, these events provided spaces of discussion between various civil society actors and state delegates. While there were many side events, I chose to attend the most prominent events, and also those that related to the Ugandan case.

At such side events, informal spaces, and in the official plenary meetings themselves, many civil society organizations simply refrained from criticism, or defended the actions and inactions of the Court.⁷³³ Defense of the ICC was often coupled with defense of dominant narratives of the Ugandan conflict that focus exclusively on the physical violence of the LRA. A few groups, however, offered serious challenges to the regime of international justice. This struggle did not simply take place between international groups that defend ‘international justice’ and local groups that defend ‘local perspectives.’ Rather, civil society actors at all levels took differing approaches.

⁷³² International Criminal Court, ‘Kampala Declaration,’ RC-4-ENG-04062010, The Review Conference of the International Criminal Court, <http://212.159.242.181/NR/rdonlyres/C35392FF-E272-4761-94D0-3878A911E9BC/0/RC4ENG.pdf> [Accessed 12 August 2011]

⁷³³ Author’s observation and numerous conversations with various CICC organizers and interns at the ICC Review Conference, Kampala, June 2010

Before noting the efforts of a minority of civil society actors to allow space for critical voices regarding the impact of the Court in Uganda, I explore the tendency of most groups to either deny or discretely ignore the failings of the ICC.

It is understandable that the project of international criminal justice has attracted such a broad and passionate spectrum of advocates. The idea of the Court is highly seductive.⁷³⁴ In a world in which power prevails and complex structures of violence and inequity persist, the promises of international criminal justice are inspiring, hopeful, and deceptively simple; lock up the prime perpetrators, deter future crime.⁷³⁵ Participation in the project of international justice affirms the advocate's sense of self as an individual who actively responds to human suffering.⁷³⁶ As Nouwen reflects, when the pursuit of international criminal law produces troubling outcomes, its unrelenting supporters must construct validations to dissipate any feelings of dissonance, to feel at ease with their own complicity.⁷³⁷ Accordingly, advocates often zealously defend the project of international justice with a rather 'mixed bag' of arguments that appear to stem purely from their unwavering faith in the ultimate morality of their cause. In the relatively few instances in which critical views were raised at the conference, this tendency was thrown into sharp relief.

In response to charges that the ICC impacted negatively upon the Ugandan peace process, ardent advocates of the Court offered a number of justifications. At the Conference, these justifications were aired in numerous side events, conversations, and even promotional videos. A particularly common approach was to simply assert that the collapse of peace talks resulted from factors other than the ICC.⁷³⁸ Mirroring statements made by the ICC's Prosecutor himself, the CICC's Convener informed me that ICC was not the 'determinant factor' in the failure of the talks, and rather emphasized that Kony would have refused to sign the agreement regardless of the arrest warrants.⁷³⁹ More subtly, other advocates appealed to the complexity of

⁷³⁴ Nouwen, *Justifying Justice*: Koskenniemi, Martti, 'International Law and Hegemony: A Reconfiguration,' *Cambridge Review of International Affairs* 17 (2004) 197-218

⁷³⁵ Nouwen, *Justifying Justice*

⁷³⁶ *Ibid*

⁷³⁷ *Ibid*

⁷³⁸ *Ibid*

⁷³⁹ Author's interview with the Convener of the Coalition for the International Criminal Court, Review Conference of the ICC, Munyonyo (Kampala, June 2010)

causality: is it really possible to say that the ICC was a major factor?⁷⁴⁰ A second approach is to simply contend that the ICC's interference in the Ugandan peace process was desirable because it 'prevented impunity.' As noted above, peace without international criminal accountability is ultimately viewed as unstable and insufficient.⁷⁴¹

A third 'fallback' justification is to contend that the ICC is responsible solely for implementing the Rome Statute. Nouwen terms this approach "the institutional defense."⁷⁴² Proponents of this approach emphasize that ICC has a 'specific mandate' to carry out its legal functions, and accordingly bares no liability for the wider repercussions of its actions. When I raised the question of the ICC's impact on the Juba process with one international NGO leader, she blankly posited that the ICC's role was to 'implement the law' and perform its functions as a court, regardless of its potential impact on 'political processes' such as peace negotiations.⁷⁴³ It is accordingly the responsibility of other actors to adjust to the 'incontestable' borders of international justice.⁷⁴⁴ According to this view, the ICC simply need not be concerned with the wider implications of its intervention in Uganda discussed throughout this thesis.

Civil society actors also evoked the 'institutional defense' in response to wider criticisms of the Court. In particular, this defense supplied a simple way to dismiss critique of the limited scope of the ICC's justice. For instance, a short film was screened at the conference documenting the brief visit of state delegates to Northern Uganda produced by UCICC, NPWJ and Hurinet-U. Footage captured local northerners who passionately emphasized that suffering continued even after the war ended, and that they were yet to see the impact of the Courts 'Trust Fund for

⁷⁴⁰ Author's interview with a legal analyst for the Coalition for the International Criminal Court, Review Conference of the ICC, Munyonyo (Kampala, June 2010), who noted, "It is also a problematic claim that the ICC had a negative impact on the peace process in northern Uganda...other factors appear to have been involved."

⁷⁴¹ Author's conversations with various representatives of 'No Peace Without Justice' at the ICC Review Conference, Kampala, June 2010

⁷⁴² Nouwen, *Justifying Justice*

⁷⁴³ Author's conversation with a senior member of a prominent international NGO at the ICC Review Conference, Kampala June 2010

⁷⁴⁴ Ibid

Victims.⁷⁴⁵ The film cut to a NPWJ representative who explained that certainly, the Trust Funds scope was limited, but emphasized that the real, long term “impact of the ICC is the removal from the situation of the people who did the harm in the first place.”⁷⁴⁶ Such statements reiterated that the ICC simply performs “ICC style justice,” and cannot be expected to engage deeply with the wider situations it operates in.⁷⁴⁷

The controversial questions surrounding the absence of ICC indictments of Ugandan state actors unsurprisingly provoked particularly defensive responses from civil society advocates of the Court. For many groups, open acknowledgement of the ICC’s reliance on the Ugandan state and its accordingly partial approach to investigating their alleged crimes would infer the illegitimacy of the Court. Accordingly, many NGOs avoided the issue, downplayed the culpability of Ugandan state actors, or parroted the ICC’s own legal justifications for its initial focus on the LRA.⁷⁴⁸ Conveniently unfettered by a lack of institutional mandate to assume a ‘position’ on particular ICC cases, the CICC Secretariat could comfortably refrain from passing judgment on the ICC’s partiality towards the Ugandan Government. When I raised the topic in conversation however, individual leaders of the CICC simply explained the ICC’s failure to investigate Ugandan state actors with reference to the Court’s temporal jurisdiction and the gravity criteria. The CICC’s Convener and coordinator furthermore emphasized that the Ugandan Government need not be held accountable for internal displacement in Uganda, stressing that creating camps for civilian protection is not a crime.⁷⁴⁹ While some NGO actors acknowledged that investigation of UPDF crimes would be preferable, the notion of wider responsibility of the Ugandan state was rarely considered. Defense of the ICC often corresponded with denial of the complicity of Museveni’s regime in the northern conflict.

Ultimately, the defenses of the ICC’s actions and inactions in Uganda offered by many civil society actors are highly problematic. The claim that the ICC did not

⁷⁴⁵No Peace Without Justice, Human Rights Network Uganda, Uganda Coalition for the International Criminal Court, *Searching for Justice for War Victims*, (Kampala, Rwenaori Media Link, 2010) [on File with Author]

⁷⁴⁶Ibid

⁷⁴⁷Nouwen uses the phrase “ICC-style justice” in *Justifying Justice*

⁷⁴⁸Author’s observations during the ICC Review Conference, Kampala, June 2010

⁷⁴⁹Author’s interview with the Convener of the Coalition for the International Criminal Court, Review Conference of the ICC, Munyonyo (Kampala, June 2010)

intrude on the Juba peace process simply does not tally with closer analysis and the accounts of those involved in the negotiations, as demonstrated in Chapter three. The response that the ICC's intervention in the Juba process was warranted because there is 'no peace without justice' simply raises the question, what kind of justice? As explored throughout this thesis, the Juba peace Agreements reflect the justice priorities of local war affected communities in Northern Uganda infinitely more than the narrow, partial approach to 'justice' demonstrated by the ICC. The 'institutional defense,' as Nouwen points out, is insufficient given the current international order.⁷⁵⁰ This defense is based on a flawed comparison with a perfectly functioning domestic system.⁷⁵¹ Unlike a domestic context in which a range of other institutions mediate the court system and laws and legal processes are frequently adjusted by democratic processes, the international arena lacks equivalent structures. As evident throughout the Juba process, even the UN was unable to act as a check and balance to effectively mitigate the ICC's impact on the Juba process.⁷⁵² As discussed in Chapter three, drawing on the 'gravity criteria' to defend the ICC's failure to indict state actors is legally unsound according to experts of international law such as Schabas.⁷⁵³ Moreover, the structural complicity of the Ugandan state in the enduring suffering of Northern Ugandans simply eludes the narrow scope of the ICC's justice mandate.

It should be emphasized, however, that many NGOs at the conference opted for strategic discretion regarding the Court's apparent failings rather than outright defense. Human Rights Watch (HRW) provides a good example. Certainly, HRW has not shied away from bringing attention to the ICC's failure to address the crimes of state actors in Uganda in various publications over the years.⁷⁵⁴ However, in the context of the Review Conference HRW refrained from heavy criticism of the Court or the scope of international justice. A representative carefully explained, "The focus of stocktaking was really on how states can increase their support to the global fight

⁷⁵⁰Nouwen, *Justifying Justice*

⁷⁵¹ Nouwen, *Justifying Justice*, p.15

⁷⁵² See Chapter three

⁷⁵³ See Schabas, p.191

⁷⁵⁴ For example HRW's 2005 report, Human Rights Watch, *Uprooted and Forgotten: Human Rights Watch, Courting History: the Landmark International Criminal Court's First Years*, (Human Rights Watch, 2008) <http://www.hrw.org/en/reports/2008/07/10/courting-history-0> [Accessed 12 August 2011]

against impunity” and “strengthening the ICC.”⁷⁵⁵ She added, “It is important to judge the best timing and context to make [critical] comments.”⁷⁵⁶ As a former Amnesty International actor explained more candidly, public focus on the Court’s failings at the Review Conference could lead state parties to cut funding or withdraw cooperation, potentially further undermining the whole project.⁷⁵⁷ In the interests of building state support, many NGOs withheld public censure of the ICC’s partial justice. Ultimately, this approach contributed to the international community’s failure to acknowledge the troubling impact of the ICC. As critical scholars such as Scholte highlight, “even contrary to their intentions and self-perceptions,” civil activists can “become co-opted, compromising their potential to...provide space for dissent.”⁷⁵⁸

Critical Spaces of Resistance

In contrast to the majority of civil society organizations, however, a few domestic and international NGOs created spaces of resistance. A handful of groups such as RLP, the (international) Women’s Initiative for Gender Justice (WIGJ), and the Ugandan Victims Foundation (UVF) provided platforms for critical voices to surface regarding the impact of the Court. The WIGJ for instance, hosted a well-attended ‘Women’s Court,’ which opened the floor to female activists from the DRC, Uganda and Kenya. Among a range of concerns, Ugandan women from the north passionately drew attention to the highly troubling one-sided approach of the ICC to the northern conflict, and noted that Uganda’s ICD is likely to replicate the ICC’s biased justice.⁷⁵⁹ One woman emphasized that northern communities affected by the war have wide-ranging ‘justice’ needs, including economic opportunities and truth telling, and noted that the ICC had brought about little positive change to date.

⁷⁵⁵ Author’s interview with a representative of Human Rights Watch, Review Conference of the ICC, Munityonyo (Kampala, June 2010)

⁷⁵⁶ Ibid: She also emphasized, “there is no tension between constructive criticism of the courts practice and support for the court”

⁷⁵⁷ Author’s interview with a former representative of Amnesty International, Review Conference of the ICC, Munityonyo (Kampala, June 2010)

⁷⁵⁸ Scholte, p.297

⁷⁵⁹ Author’s observation of the ‘Women’s Court’ side event organized by the Women’s Initiative for Gender Justice at the ICC Review Conference, Kampala, June 2010. Note that interestingly, WIGJ is a member of the CICC steering committee. The group also gives activists and various CBO groups from different countries a direct platform to express their views.

Various side events at the Conference initiated by, or involving RLP actors provided rare spaces of raw, rigorous debate. In particular, an event organized by RLP entitled ‘The Politics of Peace and Justice’ provided a platform for Conference attendees to critically address the reality of the power-driven landscape in which the ICC maneuvers and the limited scope of the ICC’s narrow conception of ‘justice.’ In the discussion panel, for example, Adam Branch emphasized, “The ICC...faces the impossible task of acting morally in a political world rent by power inequalities.”⁷⁶⁰ Accordingly, “in its quest for efficacy, the ICC must often *accommodate* itself to political power.” In the case of Uganda, “the ICC has granted the Ugandan Government impunity for its violence.”⁷⁶¹ He furthermore drew attention to the way in which the ICC has ‘monopolized’ the discourse of justice in Uganda, ignoring the vast economic injustices wrought through the war. In an event titled “NGOs and the International Criminal Court: the State of the Union?” RLP emphasized the ways that the ICC obstructed peace processes that local civil society actors in Uganda had strived to cultivate.

On the few such occasions when deeper criticisms were voiced, tensions between different civil society groups surfaced abruptly. While critical groups (most prominently RLP) tended to perceive many NGOs and the CICC as ‘cheer leaders’ of the Court, some NGOs conversely viewed RLP as ultimately destructive of the project of justice.⁷⁶² At RLP’s “Politics of Peace and Justice” event, for instance, a guest scholar made a passing critique of the ‘World Victims Day’ soccer match at which victims briefly kicked a ball with President Museveni in front of thousands of ICC Conference attendees. He noted that the soccer match, like the Review Conference, was “further testament” to the ICC’s allegiance with the Ugandan Government which itself bore a degree of responsibility for the conflict.⁷⁶³ The match itself was initiated by UCICC, Hurinet-U and NPWJ, who apparently perceived no irony in the event. In response, numerous actors including the organizers of the event accused the speaker of unnecessarily disparaging a positive occasion. In a later interview, a UCICC actor declared that RLP is “not only anti-Court but anti-victims,” emphasizing that the

⁷⁶⁰ Branch, *No Peace Without Justice?*

⁷⁶¹ Ibid

⁷⁶² Author’s observations and conversations with civil society actors at the ICC Review Conference, Kampala, June 2010

⁷⁶³ See Branch, *No Peace Without Justice?*

football match simply gave victims “some joy in their hearts.”⁷⁶⁴ Rather than addressing the real issues at hand, supporters of international justice frequently turn to moralistic defenses.

It should be finally noted that smaller local NGOs were marginalized at the Review Conference. Groups that might have played a highly critical role in assessing the impact of the ICC (for instance NUTJWG and JRP) were physically confined to the obscurely located ‘People’s Space,’ which was rarely frequented by state delegates. Limited seating in the plenary hall prevented many representatives of such groups from attending official events. According to civil society participants at the Review, securing a ‘slot’ to run a side event could also prove difficult for smaller, less well-known groups.⁷⁶⁵ The Conference therefore exemplified the imbalanced power dynamics at play within global civil society.

Civil society involvement in the ‘governance of global spaces’ is diverse. While the majority of civil society actors participating at the Conference uncritically affirmed the ICC as the pinnacle of global justice, only a few groups challenged this discourse, contesting the ICC’s monopoly on the notion of ‘justice’ and dominant narratives of the war in Uganda. The following section further explores the implications of this thesis for the field of transitional justice.

Critical Implications for the Field of Transitional Justice

As originally conceived, ‘transitional justice’ was an internationally driven project that focused upon instituting legal measures to address violations of political and civil rights after a period of repressive authoritarian rule or civil war. As identified in Chapter One, a rigorous debate has emerged over the scope, direction and goals of the field of transitional justice. A new wave of critiques has questioned the top down, deceptively depoliticized, and narrow nature of transitional justice, leading some authors to cast doubt upon the future of the field. Drawing on the case study of Uganda, this thesis engaged with three critical overlapping areas of current debate that

⁷⁶⁴ Author’s interview with representative of the Uganda Coalition for the International Criminal Court (Kampala, June 2010)

⁷⁶⁵ Author’s conversations with numerous civil society actors attending the ICC Review Conference, Kampala, June 2010

have emerged: the exclusion of socioeconomic justice, the relationship between international, national and local actors, and the role and impact of transitional justice discourse.

Socioeconomic Justice as Transitional Justice

Throughout this thesis I have contended that transitional justice must embrace the concept of socioeconomic justice. Without a concept of socioeconomic justice, transitional justice may fail to address the underlying dynamics of conflict as well as the priorities of survivors, and fall short of activating long-term transformation. Exclusion of socioeconomic issues from the scope of justice simply serves to bolster Government driven narratives of the northern conflict.

As discussed in Chapter Two, social and economic issues clearly factored heavily in the northern conflict. In many ways the war both stemmed from, and resulted in socioeconomic deprivation and inequality. While dominant narratives cast the LRA as an irrational terrorist group, the LRA movement emerged in response to historical patterns of economic and political exclusion. The intertwined economic and strategic interests of international and national actors furthermore created a system that perpetuated the war and the economically destructive practice of displacement. As contended in Chapter four, issues of ‘embedded’ socioeconomic justice are accordingly a top priority for communities affected by the war in Northern Uganda. While scholars and NGOs often distinguish socioeconomic recovery and development from matters of ‘justice,’ this distinction does not reflect the perspective of many communities. Given that the current livelihood struggles of Northern Ugandans stemmed directly from a war in which the state bears significant responsibility, it is arbitrary and misleading to exclude socioeconomic development from the scope of justice.

Chapter five demonstrated that the socioeconomic ‘void’ in transitional justice discourse ultimately threatens to undermine postwar transformation. Rather than marking the beginning of ‘transition,’ the PRDP replicates the inadequacies of previous northern rehabilitation programs, and ultimately fails to address the disparity

between the North and the rest of the country. Framing socioeconomic issues as a matter of transitional justice could help create pressure for the PRDP to mark a radical break with the past. Casting socioeconomic justice as an aspect of transitional justice, furthermore, could provide a critical, transformative edge to postwar development. As discussed, many civil society actors in Northern Uganda often fail to politically challenge the Government's poor response to the vast socioeconomic needs of northern communities or the corrupt siphoning of funds. The thriving Gulu NGO industry risks becoming a substitute for the very economy it supposedly aims to develop. Framing postwar development as a 'justice' issue however, casts attention on the responsibility of the state, and explicitly reclaims development as a deeply political issue. If socioeconomic wellbeing is understood as a pressing transitional justice concern, civil society groups might increasingly press the Government to become both capable and politically willing to invest in re-envisioning a postwar economy and social infrastructure for Uganda.

Global Dimensions of Transitional Justice

At the heart of the debate over the role of international, national and local actors in transitional justice lie critical questions that about international governance and the boundaries of state sovereignty. What role, if any, should international intervention play within the internal workings of the state? Who defines the goals, standards and parameters of transitional justice? Scholars have increasingly critiqued the top down, legalistic, international-driven nature of transitional justice, and have drawn attention to local-level 'bottom-up' approaches. Much transitional justice scholarship has concentrated somewhat narrowly upon appraising the impact of mechanisms implemented by different 'levels,' whether internationally imposed, or performed locally. This thesis expanded such critiques by focusing on the varied ways in which different international, national and local actors influence one another, and narrate different stories of conflict and its remedy. Throughout my analysis of the Ugandan case, I have demonstrated that actors at all levels have significant capacity to cultivate or restrict the opening of critical political space in which dominant discourses of the war and the nature of 'transition' can be challenged.

As discussed in Chapter two, the war itself resulted from a complex interplay of local, national, and international factors. Northern communities became enmeshed between the structural violence of the Ugandan Government and the atrocities of the (local) LRA, facilitated by various international actors and systems. As demonstrated in Chapter four, while scholars often juxtapose local traditional justice against international retributive justice, a better distinction can be made between embedded and indirect justice. These categories evade strict definition as national, local or international. Most northerners appear primarily concerned with ‘embedded’ justice, encompassing socioeconomic justice and local approaches to dealing with the social and spiritual dislocation of war. ‘Indirect’ justice is less of a priority, but still vital. Although Acholi people hold divergent beliefs regarding the most suitable fate of the LRA leadership, many believe they must face criminal trial. Locals appear united in their desire for state actors to be held accountable. The role of international actors and domestic civil society groups must be to cultivate the development of processes that reflect local priorities and challenge self-interested power, whether at the local, national or international level.

Chapter three demonstrated the starkly divergent roles that can be played by international actors in the search for justice. The ICC’s intervention served to bolster the Government’s narrative of the war and narrow the scope of ‘justice’ to those who commit extreme physical violation. In contrast, a variety of international and local actors were instrumental in generating a highly critical political space in the Juba. Dominant narratives of the war were challenged, and the scope of justice was expanded to address socioeconomic inequality, structural injustice and the restoration of relationships. As discussed in Chapter five, the development of national transitional justice policy in Uganda continues to be characterized by ongoing struggle between actors at all levels. The power to define and perform postwar ‘justice is concentrated in the hands of the state. A high risk persists that Uganda’s transitional justice policy will prove an empty performance of ‘victors justice’ focusing narrowly on the criminal trial of a few LRA. International and domestic actors alike have often shaped, facilitated and justified the Government’s self-interested approach. In various ways, the ICC, international development partners, NGO donors and domestic civil society actors have failed to provide sufficient challenge to State power, and contributed to the narrowing of the scope of Justice in Uganda. Conversely,

international, national and local actors have also challenged the State's approach to justice. Critical voices have stemmed from a deeper engagement with the people of Northern Uganda, their story and diverse views, rather than the zealous pursuit of the *idea* of international criminal justice.

Actors at all 'levels' are furthermore involved in constructing the dominant global discourse of justice. As highlighted by the discussion of the Review Conference above, the dominance of international criminal law, institutionalized in the ICC, was only brought about through the efforts of a vast array of worldwide civil society actors. As CICC actors proudly agree, the Court exists because a global collaboration of NGOs and activists fought, and continue to fight for it. In their eagerness to buttress the project of international criminal justice, many civil society actors have become blind to the narrow scope and disturbing consequences of its application. On the fringes of the 2010 Review Conference of the ICC, however, a small number of civil society actors also contested both the ICC's monopoly on the notion of 'justice' and dominant narratives of the war in Uganda. Their efforts at the Conference mirrored the engagement of civil society actors in the struggle for transition in Uganda. In many ways, the struggle for a meaningful approach to postwar justice is global.

Transitional Justice Discourse

As discussed in Chapter One, scholars have increasingly debated the role and impact of transitional justice discourse, and the extent to which it is tainted by its liberal, imperialist, legalistic origins. This thesis demonstrated that actors in Uganda certainly draw upon 'transitional justice' as a language of resistance. As explored in Chapter Three, the radical Agreements wrought at Juba drew strongly on the language and concepts of transitional justice. Chapter Five, moreover, demonstrated that in the Ugandan context transitional justice discourse has not provided a façade for ongoing injustice. Rather, civil society actors strategically utilize the language of transitional justice to politically challenge and confront the Ugandan Government's portrayal of the war and lack of engagement in 'transition' after the war. Such actors use the framework of transitional justice as a globally recognized language to engage a reluctant state in the absence of meaningful change.

However, it is also evident that the radical capacity of transitional justice discourse is constrained by the globally constructed boundaries of the field. As discussed in Chapter Five, civil society actors believe that ‘transitional justice’ is a flexible tool to be ‘wielded as desired,’ and sometimes aim to embrace the broader concept of socioeconomic justice in their work. However, in practice it appears that civil society actors often constrict and translate local justice needs into the ‘conventional’ globally accepted transitional justice framework. This trend reflects the marginalized status of socioeconomic justice in the wider field of transitional justice scholarship and practice. The capacity of the discourse to give political expression to the priorities of local communities is therefore restricted. I have argued that if the discourse of transitional justice is to become a truly radical tool of resistance in particular contexts, it must unequivocally address socioeconomic issues and structural violence.

Discussion: Critical Implications for the Future of the Field

The expansion of critique has brought about a growing sense of ‘unease’ amongst critical scholars about the future direction of the field of transitional justice.⁷⁶⁶ Some critical scholars have suggested that those seeking meaningful transformation in the wake of war should abandon the concept entirely.⁷⁶⁷ Other scholars have expressed concern that if the notion of transitional justice is expanded to encompass structural violence and social and economic inequality, it may lose its normative power.⁷⁶⁸ Scholars furthermore query whether anything distinctive remains about ‘transitional justice’ as opposed to ‘justice.’⁷⁶⁹

Given the current contours of the transitional justice framework, it is unsurprising that scholars have expressed doubt that the field could maintain its ‘normative influence’ if such an expansion is attempted.⁷⁷⁰ However, this approach risks becoming a self-fulfilling prophesy. The revelation that transitional justice has become a ‘global discourse’ is sobering, but also offers radical prospects. Potential exists for global

⁷⁶⁶ Bell, p.6

⁷⁶⁷ Bell: Arthur

⁷⁶⁸ Ibid

⁷⁶⁹ Nagy, *Transitional Justice From Below*, p.709

⁷⁷⁰ Ibid

civil society actors to challenge the current confines of the transitional justice framework and reconstruct a new, critical approach. This potential is evident in the clear sense of local ownership transitional justice evident in Uganda, and the ambition of civil society groups to encompass socioeconomic justice to express local demands for justice. In effect, to reshape the scope and nature of global justice discourse, local, national and international civil society actors, policy makers and researchers must increasingly engage in critique of the current limited scope of ‘justice,’ and articulate demands for socioeconomic justice within the transitional justice framework.

Certainly, the inclusion of socioeconomic justice within the scope of transitional justice could deeply alter the nature of the entire enterprise. In any society, the search for social and economic justice and equality is an endless pursuit that extends far beyond the limited time span of most ‘transitions’ from periods of conflict or unjust rule. While South Africa’s TRC helped to ease political transition, inequality and self-enforced, bitter racial segregation persists. Over 150 years after British colonization, New Zealand still grapples with widespread socioeconomic disparity between Maori and Pakeha and various land rights issues, while the gap between lower and upper classes amongst the general population continues to wax and wane. ‘Justice’ is not something that can be decisively achieved or conclusively implemented through a particular policy, a specific reparations program, the imprisonment of key perpetrators, or even acts of institutional reform. As Derrida recognized, the divide between the pure, unconditional concept of ‘justice’ and conditional realm of political realities and particular laws and policies is vast.⁷⁷¹ A just societal relationship is something that can only be continually approximated through political struggle, and endlessly cultivated through constant critical questioning of particular approaches and hegemonic assumptions.⁷⁷² In Derridean terms, ‘justice’ opens out to the future, and is always “to come.”⁷⁷³ Embracing the concept of socioeconomic justice could ultimately help to re-envision transitional justice as a radical process of social and economic transformation.

⁷⁷¹Derrida, Jacques, *The Politics of Friendship*, translated by George Collins, (London; New York, Verso, 1997)

⁷⁷² Ibid, p.129

⁷⁷³ Ibid

The question posed by Nagy of what is distinctive about *transitional* justice as opposed to ‘justice’ if the notion “reaches out to rectify social inequality and structural violence” is certainly valid.⁷⁷⁴ As the Ugandan case suggests however, the idea of ‘transition’ provides a particular impetus and momentum to the concept of justice. The depth of economic devastation, inequity, social dislocation and broken relationships that abounds in the wake of war necessitates extraordinary and specialized response. In such circumstances, the idea of ‘transitional justice’ can be powerful. As civil society actors in Uganda at all levels have demonstrated, the concept of *transitional* justice can provide a mobilizing rhetoric that can spur transformation in the absence of meaningful change. Special ‘transitional justice’ measures, whether trials, socioeconomic reconstruction or reparations, certainly have the potential to initiate a process of social restoration. While certainly at some point, the pursuit of transitional justice may seamlessly merge into the endless search for a just society, the concept of ‘transition’ provides a critical edge, and initial momentum.

This thesis suggests a number of future research possibilities for the field of transitional justice. Firstly, while this thesis has drawn on the Ugandan case to demonstrate that socioeconomic development must be incorporated into the concept of transitional justice, a vast array of questions remain as to what this might involve. If transitional justice is expanded to encompass socioeconomic justice, the field must become equipped to grapple with the complex, controversial issues of economic recovery and development. Beyond the reconstruction of basic infrastructure, health, and education services, complex issues such as land repatriation, Government taxation and fiscal policy, privatization, (de)centralization, and state regulation will become increasingly relevant.

Secondly, this thesis highlighted the influential role that can be played by international ‘development partners’ in the field of transitional justice. Future transitional justice research must further explore the nature of the relationship between developing nations and their donors, examining how such actors can best cultivate the genuine engagement of the state, and when and how critical pressure should be applied. Thirdly, this thesis has illustrated the difficulties civil society groups face in representing, engaging and mobilizing local communities in

⁷⁷⁴ Nagy, *Transitional Justice From Below*, p.709

‘transitional justice’ advocacy and bringing about change in the context of a reluctant state. Future research could accordingly address this challenge by drawing the field of transitional justice into dialogue with theories of civil society activism, social change in developing nations, and donor-NGO relationships.

The struggle for a meaningful approach to transitional justice in Uganda that truly addresses the underlying dynamics of conflict has global dimensions. While the pursuit of international criminal law has monopolized the development for postwar justice in Uganda, the growth of a global ‘countermovement’ is possible. The field of transitional justice, I have argued, must be expanded to embrace the idea of socioeconomic justice. Without a concept of socioeconomic justice, transitional justice will ultimately fall short of activating long-term social transformation, and the unending pursuit of a just society. In the current world order, international actors are often deeply embedded within the structures of the sovereign state and civil society. The emergence of critical, expansive approach to transitional justice is only possible therefore through the collective efforts of actors at all levels.

Appendix: List of Interviews

Interviews in Villages in Gulu District

- Author's interview with a female Local Councilor 1 (B) (Unyama sub county, Gulu District, July 2010)
- Author's interview with a female Local Councilor 1 (A) (Unyama Sub County, Gulu District, July 2010)
- Author's interview with a female villager (Unyama Sub County, Gulu District, July 2010)
- Author's interview with a male traditional leader (Unyama Sub County, Gulu District, July 2010)
- Author's interview with a male traditional leader (Unyama Sub County, Gulu District, July 2010)
- Author's interview with male elder (Unyama sub county, Gulu District, July 2010)
- Author's interview with male villager (Unyama Sub County, Gulu District, July 2010)
- Author's interview with a formerly abducted woman (Paicho Sub County, Gulu District, July 2010)
- Author's interview with female elder (Paicho sub county, Gulu District, July 2010)
- Author's interview with female villager (Paicho Sub County, Gulu District, July 2010)
- Author's interview with male elder (Paicho sub county, Gulu District, July 2010)
- Author's interview with the Local Councilor 3 (Paicho Sub County, Gulu District, July 2010)
- Author's interview with a formerly abducted young man (Patiko Sub County, Gulu District, July 2010)
- Author's interview with a male Local Councilor 1(A) (Patiko Sub County, Gulu District, July 2010)
- Author's interview with a male Local Councilor 1(B) (Patiko Sub County, Gulu District, July 2010)
- Author's interview with a female tailor (outskirts of Gulu town, July 2010)

Gulu Town Civil Society Actors

Author's interview with a former member of the executive of the Acholi War Debt Claimants (Gulu, August 2010)

Author's interview with a local civil society representative (Gulu, August 2010)

Author's interview with a local human rights activist (Gulu, July 2010)

Author's interview with the director of a local NGO (Gulu, July 2010)

Author's interview with a NGO worker employed by the ICC Victims Trust Fund (Gulu, August 2010)

Author's interview with a staff member of Caritas Gulu (Gulu, July 2010)

Author's interview with representative of Ker Kwaro Acholi (Gulu, August 2010)

Author's interview with representative of the Office of the United Nations High Commissioner for Human Rights (Gulu, August 2010)

Author's interview with the Director of Human Rights Focus (Gulu, August 2010)

Author's interview with Chairperson of the Northern Ugandan Transitional Justice Working Group (Gulu, August 2010)

Author's interview with Coordinator of the Northern Ugandan Transitional Justice Working Group (Gulu, July 2010)

Author's interview with member of the Northern Ugandan Transitional Justice Working Group Secretariat (Gulu, August 2010)

Author's interview with representative of the Teso sub region, Northern Ugandan Transitional Justice Working Group (Gulu, August 2010)

Author's interview with local lawyer (A) (Gulu, August 2010)

Author's interview with local lawyer (B) (Gulu, August 2010)

Author's interview with local lawyer (C) (Gulu, August 2010)

Author's interview with staff member of Justice and Reconciliation Project (A) (Gulu, June 2010)

Author's interview with staff member of Justice and Reconciliation Project (B) (Gulu, June 2010)

Author's interview with staff member of Justice and Reconciliation Project (C) (Gulu, June 2010)

Author's interview with staff member of Justice and Reconciliation Project (D) (Gulu, June 2010)

Local Government Actors

Author's interview with a representative of the Uganda Human Rights Commission, Gulu Regional Office (Gulu, August 2010)

Author's interview with a staff member of the Amnesty Commission, Gulu Regional Office (Gulu, July 2010)

Author's interview with senior actor in the Gulu regional office, Ministry of Justice and Constitutional Affairs (Gulu, June 2010)

Author's interview with the Assistant to the Presidential Advisor for Northern Uganda (Gulu, August 2010)

Author's interview with the Presidential Advisor for Northern Uganda (Gulu, August 2010)

Author's interview with the Resident District Commissioner (Gulu, August 2010)

Kampala Civil Society Actors

Author's email correspondence with a legal analyst involved in the Juba Peace Process mediation team, (February 2011)

Author's interview with a justice activist and member of the Women's Initiative for Gender Justice (Kampala, June 2010)

Author's interview with board member of Human Rights Network Uganda (Kampala, June 2010)

Author's interview with Director of Refugee Law Project (Kampala, June 2010)

Author's interview with representative of Human Rights Network Uganda (Kampala, June 2010)

Author's Interview with representative of the International Center for Transitional Justice Uganda (Kampala, June 2010)

Author's interview with representative of the Uganda Coalition for the International Criminal Court (Kampala, June 2010)

Author's interview with senior legal associate involved in the case of the Acholi War Debt Claimants (Kampala, August 2010)

National Level Government Actors

Author's interview with a legal officer of the Amnesty Commission (Kampala, June 2010)

Author's interview with a senior actor in the Amnesty Commission (Kampala, August 2010)

Author's interview with a senior actor in the Ugandan Law Reform Commission (Kampala, August 2010)

Author's interview with a senior donor representative in the Justice Law and Order Sector (Kampala, August 2010)

Author's interview with actor in the directorate of first Parliamentary Counsel, Ministry of Justice and Constitutional Affairs (Kampala, August 2010)

Author's interview with Government Official, Ministry of Justice and Constitutional Affairs (Kampala, August 2010)

Author's interview with senior Transitional Justice Working Group actor (A), Ministry of Justice and Constitutional Affairs (Kampala, June 2010)

Author's interview with senior Transitional Justice Working Group actor (B), Law Reform Commission (Kampala, June 2010)

Author's interview with senior Transitional Justice Working Group actor (C), Law Reform Commission (Kampala, June 2010)

Author's interview with actor in the International Crimes Division (Kampala, August 2010)

Author's Interview with actor involved in monitoring of the Peace Recovery and Development Plan, Office of the Prime Minister (Kampala, August 2010)

Author's interview with senior actor in the War Crimes Unit of the Department of Public Prosecutions (A) (Kampala, June 2010)

Author's interview with senior actor in the War Crimes Unit of the Department of Public Prosecutions (B) (Kampala, August 2010)

Author's interview with senior Judge of the International Crimes Division (Kampala, June 2010)

Author's interview with the Ugandan President's Press Secretary, Okello House (Kampala, August 2010)

Author's interview with Transitional Justice Working Group actor (C), Law Reform Commission (Kampala, June 2010)

ICC Review Conference Interviews

Author's interview with the Africa analyst for the Coalition for the International Criminal Court, Review Conference of the ICC, Munyonyo (Kampala, June 2010)

Author's interview with the Convener of the Coalition for the International Criminal Court, Review Conference of the ICC, Munyonyo (Kampala, June 2010)

Author's interview with a legal analyst for the Coalition for the International Criminal Court, Review Conference of the ICC, Munyonyo (Kampala, June 2010)

Author's interview with a former representative of Amnesty International, Review Conference of the ICC, Munyonyo (Kampala, June 2010)

Author's interview with a representative of Human Rights Watch, Review Conference of the ICC, Munyonyo (Kampala, June 2010)

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