

Chapter One

Introduction

1.1 Introduction

From the late 1980s, the Lord's Resistance Army (LRA), a rebel group led by Joseph Kony, staged a rebellion against the Ugandan government. The rebels had waged a brutal battle against the government of Uganda for over twenty years by directing acts of torture, mutilation, murder, abduction and sex slavery at the civilians residing in northern Uganda. The Ugandan government under President Yoweri Museveni had made several unsuccessful attempts to bring an end to the conflict. These attempts included military strategies and non-violent options such as amnesty. In December 2003, Yoweri Museveni took an initiative to refer the situation to the International Criminal Court (ICC) as an option for bringing an end to the conflict. This was the first situation to be referred to the ICC. In response to the referral, the court intervened to investigate and prosecute individuals occupying topmost echelon of the LRA, led by Joseph Kony, for war crimes and crimes against humanity committed by the rebels since 1986. But the Court was immediately faced with critical challenges regarding the appropriateness of its role in a situation of ongoing conflict. A section of the local population, especially traditional leaders and the broader civil society, proposed alternative models of justice to that of the ICC, as being more suitable to the northern Ugandan context. This was in contrast to the enthusiasm with which the ICC was met on its establishment in 1998 when it was described as a paradigm shift in relation to earlier developments in the area of international accountability (Ernesto, 2004: 329-330; Bassiouni, 2006: 421; Conso, 1999: 572).

In retrospect, the stage for international accountability had already been set by the International Military Tribunal (IMT) established in Nuremberg by the Allied powers – France, Great Britain, USSR and USA – to try individual senior German and Japanese officials in the aftermath of World War II (Greenawalt, 2007: 590; Schabas, 2004: 5). Article 6 of the IMT Charter mandated the Tribunal ‘to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organisations’ committed crimes against peace, war crimes, or crimes against humanity (Schwelb, 1949: 181), especially the German war criminals (Morris and Scharf, 1998: 3). The Nuremberg trials initiated the move

towards the deconstruction of absolute sovereign power. Prior to 1945, the state was sovereign in an almost absolute sense, exercising supreme legal authority within its jurisdiction (Forsythe, 2006: 21). Events within a state were almost entirely outside the jurisdiction of international law, and criminal law was dominated by principles of territoriality and nationality (Tomuschat, 2006: 837). Accordingly, the way a government treated its citizens was considered to be a domestic affair. With the Nuremberg Tribunal, the international community came to understand that a government's treatment of its citizens, even in peace time, needed to be a matter of international concern (Ranter and Abrams, 2001). Slowly the protective umbrella of state sovereignty began to be questioned (Gowlland-Debbas, 2000: 312). The Nuremberg Tribunal represents a benchmark in the development of international criminal justice (Schabas, 2004: 1-2; Ratner and Abrams, 2001: 6).

However, critical voices among Germans argued that the IMT had violated the principle of legality according to which nobody should be prosecuted in respect of conduct of which he was not aware and which he could not be expected to have been aware of at the time of committing the offence. The Tribunal was formed after the crimes had been committed, and its laws were written in retrospect. Until that time no leading statesman had ever been held accountable for launching a war (Tomuschat, 2006: 832). According to some of these German critics, there were also questions about IMT's impartiality. The fact that justice was being dispensed by prosecutors and judges from the four main victorious powers, with no single judge from a neutral country or from Germany, made the prosecutions a form of 'victor's justice' where the victorious punished the vanquished (Chaney, 1996; Tomuschat, 2006: 832). Given the political nature of the world wars, vengeance on the side of the Allied powers could not be ruled out, and this was bound to influence German perceptions vis-à-vis the tribunals and to undermine the legitimacy of the tribunal. Moreover, the tribunal did not bring within its jurisdiction the crimes committed by the Allied powers (Tomuschat, 2006: 833). The atomic bombings of Japanese civilians at Hiroshima and Nagasaki, which constituted violations of the laws of armed conflict, were ignored (Tomuschat, 2006: 833). These limitations notwithstanding, the IMT remains a milestone in the development of international criminal justice.

The ensuing Cold War frustrated the achievements that had been achieved in the field of human rights protection. Ruti Teitel (2005: 837) observes that the post-World War II trials which set such an important precedence in international criminal adjudication found no further parallels. The period was characterised by polarised international relations, suspicion, distrust and lack of friendly relations, none of which was conducive to nurturing the protection of human rights. While the USA and the Soviet Union remained suspicious of each other, each side supported allied developing countries to maintain, according to Teitel (2003b: 70), ‘...a stable bipolar balance of power.’ This involved supporting dictatorial leaders in a clientele relationship in an endeavour to undermine each other.

However, the end of the Cold War in the late 1989 dramatically changed the matrix of international relations. The demise of the Cold War and the collapse of the Soviet Union led to the collapse of authoritarian and totalitarian states in the former USSR and Eastern Europe (Shatzmiller, 2005). It also meant that dictatorial leaders in Africa who were sustained by their usefulness in balancing the cold war equation became dispensable as they were no longer useful. As a consequence, many domestic, regional and international orders were suddenly open to challenge (Shatzmiller, 2005). Cassese (2006: 724) observes that the collapse of the model of international relations that had characterised the Cold War brought about the fragmentation of the international community, leading to disorder. Far-reaching ethnic tensions and new forms of nationalism occurred, particularly in Central Europe, Eastern Europe and Africa. These tensions resulted in serious violations of human rights such as the ethnic cleansing in Bosnia from 1992 to 1995 and the genocide in Rwanda in 1994.

These developments led to an urgent need for the further development of international criminal justice and establishment of a permanent international criminal court. The bloodshed characterising the post-Cold War periods pointed to the urgent need for an international human rights instrument and a united international response to such crimes (Philippe, 2003: 334; Cassese, 2006: 723). Moreover, while serious crimes increased, the atmosphere that characterised the post-Cold War era in the 1990s created conditions that were conducive to the development of international criminal law to act against such crimes. The end of Cold War meant a reduction of the animosity and mutual suspicion that had dominated international relations (Cassese,

2006: 724). The formation of the International Criminal Tribunal for Yugoslavia ICTY, the International Criminal Tribunal for Rwanda, ICTR and the ICC are to be understood in this light.

The horrific atrocities committed in the former Yugoslavia and Rwanda in the early and mid-1990s motivated many governments, prompted in particular by the United States, to seek criminal accountability through the creation of two international tribunals (Ratner and Abrams, 2001: 6). The ICTY constituted a significant advance on its predecessor, the Nuremberg Tribunal. In contrast to Nuremberg, it was created neither by the victors nor parties to the conflict, but by the United Nations (UN) representing the international community of states. Whereas the Nuremberg Tribunal judges were appointed by the victors, the ICTY judges came from across the world to ensure the international character of the ICTY (Morris and Scharf, 1998: 38; Chaney, 1995: 57, 60). The Yugoslavian Tribunal Statute would in turn influence the Rwanda Tribunal because both were driven by the spirit of international humanitarian law.

On November 8, 1995 it was envisaged that prosecuting persons responsible for the 1994 genocide in Rwanda would contribute to the process of national reconciliation and to the restoration and maintenance of peace (UN, 1994). One of the significant contributions of ICTR was the legal innovation of extending international humanitarian law to an internal conflict (Mose, 2005). According to customary international law, war was defined as a state of armed conflict between two or more States, but the 1994 Rwandan genocide constituted an internal armed conflict. The inclusion of article 3 of the 1949 Geneva Convention regulating armed conflicts which are not of international nature and of the Nuremberg concept of crimes against humanity, made the ICTR Statute to transcend customary international law (Mose, 2005). In doing so the Rwandan Tribunal represented an important extension of international humanitarian law to internal conflicts.

Further, the ICTR enjoyed supremacy over national courts and territories regarding crimes committed in Rwanda during the 1994 genocide and had the prerogative to request that any neighbouring State's court defer certain cases of indicted genocide criminal to its jurisdiction (ICTR Statute, Article 8(2)). This request carried with it the threat of a penalty for non-compliance given that the Security Council would consider

sanctions against any state for such non-compliance. This provision was crucial because states had offered safe sanctuaries to perpetrators of serious atrocities. In addition, the ICTR provided an opportunity for evaluating the political impact of international criminal justice on post-conflict peace-building. The charging of individual leaders suspected of criminal liability played a significant role in discrediting, neutralising and destabilising the genocidal forces and delegitimising their role in political arena (Obote-Odora, 1999). Moreover, focusing on individuals, including high-powered state agents, lifted the burden of guilt that would rest on the Hutus as a group and had the effect of neutralising collective guilt.

Regardless of their achievements, both the ICTR and ICTY encountered operational and institutional limitations which undermined their effectiveness (Mose, 2005). These limitations were associated with the absence of an established institutional model as the tribunals were *ad hoc*. Investigators, lawyers, judges, and prosecutors came from varying legal and linguistic backgrounds. It became difficult to reconcile various legal traditions, making the process both time-consuming and costly. In addition, the costs of the tribunals were extremely high and they lacked sufficient resources for investigation and the employment of sufficient judicial personnel. These led to trial and prosecution delays (Human Rights Watch, 1999). Inadequate compensation, the overwhelming nature and scale of the work, and the risks involved in prosecuting war criminals caused the judicial personnel to fail to perform at maximum efficiency. These institutional limitations became some of the motivating factors for expediting the establishment of the ICC. The international community understood that a permanent international court would mitigate the above institutional challenges which had dogged the *ad hoc* tribunals.

The ICC was established following a UN diplomatic conference held between 15 June and 17 July 1998 in Rome, Italy where a statute was developed (Ratner and Abrams, 2001:9). At this conference, governments overwhelmingly approved the Statute to establish a permanent International Criminal Court. 120 nations voted in favour, 7 against it and 21 abstained. On 1 April 2002 the Rome Statute received more than the required 60 ratifications and entered into force on 1 July 2002 (Philippe, 2003: 331). The Rome Statute, article 1(3) provides for the establishment of an International Criminal Court sitting in The Hague, The Netherlands and charged it with 'exercising

its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute.’ (UN, 1998)

The court has two important features. First, the court grounds its mandate upon the principle of universal jurisdiction which overrides sovereignty in situations where gross human rights violations have been committed (Aukerman, 2002). This principle makes international intervention possible in situations where leaders violate the rights of their own citizens (Nardin, 2000). It must however be acknowledged that the principle of universal jurisdiction is quite controversial as discussed in chapter six of this work. Second, the courts focus on individual responsibility in the case of gross human rights violations. This is important because it pursues peace, not by focusing on groups that engage in mass murder, but by criminalising acts committed by individuals. This approach has the capacity to contribute to future peace by neutralising tensions between groups. It makes atrocities appear to be less ethnic, racial or religious, thus assisting the entire population to realise peace in their political community. The Court also has jurisdiction over violations of international humanitarian law, and in the future, over crime of aggression.

Upon the ratification of the Rome Statute on April 11, 2002, many world leaders heralded the maturation of international criminal law enforcement (Burke-White, 2003: 5). The establishment of the ICC epitomised the development of international criminal law, raised international justice to a higher level and represented a magnificent leap forward in the struggle against impunity, surpassing the benchmark set by its predecessors (Ernesto, 2004: 329-330). The former Director of the Codification Division of the UN Office of Legal Affairs, Roy Lee, (1999) remarked that the ICC statute was a tremendous historical success. Giovanni Conso (1999: 572), the President of the Rome Conference that formulated the ICC Statute, observed that the ICC was a success story because the Statute was adapted in a record time during the course of the Rome conference as compared to the long and arduous codification process as a whole which lasted from 1948 to 1998. On 11 April 2002, when 60 states signed their membership of the Rome Statute, the then UN Secretary General Kofi Annan is reported to have remarked that impunity had ‘been dealt a decisive blow’ (Manjunath, Sharma and Surabhi, 2005: 3). Bassiouni (2006: 421) described the ICC

as an institution that befitted the nature of international relations characterised by competing interests.

Against the background of this optimistic view of the ICC, certain questions could be raised. To what extent would the ICC be able to operate without being conditioned by the social world around it? Would the court be able to overcome the political and institutional hurdles that were encountered by the previous judicial endeavours? These questions were to come up strongly when the ICC Statute had its first opportunity to adapt to the real world of competing interests. One of these opportunities was the situation of northern Uganda.

The grave crimes that had been committed by the LRA against the civilian population in northern Uganda for over twenty years gave the court a practical test case. The conflict in northern Uganda had called for intervention for some time. From 1986, as mentioned earlier, the LRA committed serious civilian atrocities against the Acholi and the neighbouring populations living in the northern part of Uganda. These, as indicated earlier in this introduction, included forcible conscription of child soldiers and sex slaves, murder, enslavement, imprisonment, torture and rape. The crimes were committed as part of a systematic attack against the local populations (Akhavan, 2005: 405). As an attempt to protect the people from such attacks, the Government moved virtually the entire population into protected camps, an undertaking which condemned people to live in squalid conditions not worthy of human existence.

For over two decades the conflict remained largely ignored save for occasional media reports about strange cults, healing rituals, abducted children, night-commuting children and women mutilated by the LRA (Allen, 2006: xiii). The international community had not, during these years, seriously grappled with the question of how to bring lasting peace and stability to the region. It was only when Jan Egeland, the United Nations Under-Secretary General for Humanitarian Affairs and Emergency Relief Coordinator, was appalled by the humanitarian conditions in northern Uganda upon visiting the region in November 2003 that the issue came to into the international limelight. Egeland, after visiting northern Uganda, declared that 'the situation is intolerable and 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' (*The Monitor*, 2003).

Following this revelation, the President of Uganda, Yoweri Museveni referred the matter to the ICC in 2003 (ICC, 2004). This referral was based on the allegation that the LRA had committed gross human rights violation, thereby contravening international humanitarian and human rights law. The LRA case was consonant with those crimes against humanity punishable according to the standard of international humanitarian law. Article 6(c) of the International Military Tribunal (IMT), otherwise referred to as the Nuremberg Charter, defines crimes against humanity as

[crimes ... including] murder, extermination, enslavement, deportation, and other inhumane acts committed against civilian populations, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. (IMT, 1949)

This category of crimes had been included in the statutes of the ICTY and the ICTR, as well as in the Statute of the ICC (Kelly, 2000). The referral of the LRA case was further strengthened by the assumption that the international community shared a fixed hierarchy of universal goals which were best served by prosecution and are applicable to every situation (Aukerman, 2002: 40).

Although it was the President of Uganda who initially invited the ICC to investigate alleged war crimes and crimes against humanity committed by the LRA, his position changed when, in May 2006, Joseph Kony sought peace talks (Allen, 2006). The President not only responded positively, he further stated that the Government of Uganda was willing to extend total amnesty to Joseph Kony and other LRA leaders. He undertook moreover not to hand them over to the ICC provided they renounced violence. This development was widely welcomed by a cross-section of Ugandans as a viable route to a peace that had been elusive for several years. They hoped that as a result, millions of internally displaced people would be able to return to their homes.

What emerged, however, was that a considerable proportion of Ugandans challenged the relevance of the ICC intervention and preferred their own local initiatives. This

position is consistent with the views of some critics who interpret international intervention as a global hegemony that trumps the wishes of the people in determining what constitutes transitional justice and its trajectory (van Zyl, 2000: 42, 52; Farer, 2004; Armstrong, 1993). The core values upon which the ICC was based, namely, the principle of universal jurisdiction which overrides sovereignty and the focus on individual responsibility in situations of gross human rights violations constituted the central target of the court's critics.

In this context therefore the ICC came to be seen as the central obstacle to ending the brutal civil war and its prescription as exacerbating conflict in Uganda, since the LRA had asked for talks with the Ugandan Government to end the 20-year civil war. Those who rejected the court's intervention argued that the need for peace justified engaging the LRA leaders in dialogue so that the people would have the opportunity to air their grievances, an element they considered important in the search for peace. Moreover, the LRA leadership had vowed not to surrender unless the prosecutor of the ICC withdrew the targeting of their top commanders (Liu Institute for Global Issues, 2006). Thus, the ICC intervention might have the effect of exacerbating the violence.

Opponents of the Court argued that, the situation in Uganda was one of ongoing war rather than the result of limited criminality, as had persistently been claimed by the Ugandan Government. The ICC as an international institution did not have its own military and for this reason it would have no means of enforcing its warrants other than through the cooperation of states party to the Rome Statute (Allen, 2006). This would give Government forces a free hand to pursue military objectives when executing the warrants. In the process, the military might kill Acholi children who had been abducted by the LRA and were still in the bush (Allen, 2006).

Members of the civil society and Acholi traditional leaders, though cognisant of the need for justice, thought that the best route for ending the suffering in northern Uganda was to pursue the path of forgiveness and reconciliation. Peace would bring immediate benefit to all the parties affected by the conflict (Allen, 2006: 102-103). Against this backdrop the victims, civil society, community leaders and Government representatives opted for amnesty and *Mato Oput*, a traditional Acholi approach to justice and the reintegration of offenders (Afako, 2002). *Mato Oput* is a voluntary

process that involves, according to Afako (2002), [the] ‘mediation of truth; acknowledgment of wrong doing; and reconciliation through symbolic acts and spiritual appeasement.’ The ritual was used in traditional Acholi communities in cases of murder and sought to embody principles of truth, accountability, compensation and restoration. The elders played a vital role as mediators in the process. Initially following a dispute, the elders engaged with both sides of the conflict in order to ascertain the relevant facts of the crime and to administer justice through compensation and reconciliation, as the case might be. This was followed by a ceremony of ‘drinking the bitter root’ which aimed at reconciling and facilitating the reintegration of the offender back into the community.

Thus the ICC’s first intervention encountered critical challenges regarding its appropriateness in a situation of ongoing conflict with alternative models of justice being proposed as more suitable in the northern Uganda context. This situation raises critical questions about the competing goals of peace and justice, compelling us to grapple with issues regarding the appropriate role of the ICC in a transitional situation and how it articulates the link between peace and justice in an ongoing conflict situation. Equally important is the question of the efficacy of the proposed local peace initiatives in a situation where human rights have been grossly violated. These issues constitute some of the enduring challenges to the pursuit of a global standard of justice and are central to transitional justice.

1.2 Statement of the problem

Whereas the establishment of the ICC was applauded as a turning point in the history of transitional justice, the court encountered opposition in its first intervention in northern Uganda. The encounter between the ICC and local preferences presented a conundrum in the pursuit of peace and justice in northern Uganda. Traditional leaders and civil society members advocated the use of traditional approaches to justice as the panacea. But the ICC insisted that the indicted LRA leaders had to be made accountable for their crimes. The ICC Prosecutor, Luis Moreno-Ocampo, maintained this on the grounds that war crimes and crimes against humanity cannot go unpunished. Any form of settlement that would preclude prosecution, including amnesty, was rejected by ICC on the grounds that it would encourage a culture of

impunity. Failure to prosecute the perpetrators would be interpreted as a triumph of impunity over human rights and a frustration of justice.

The problem resides in the fact that the ICC's insistence on the punishment of flagrant violations of human rights occurring within a context of ongoing war complicated the prospects of peace and the end to conflict through a negotiated process. Conversely, a peace process that concentrates on a ceasefire, covering criminals without any form of punishment, might be a recipe for continued systematic atrocities and send a message to the effect that violators of human rights are always free to act with impunity. It was also not clear how political leadership in Uganda would spearhead and foster the process of truth and reconciliation when some of them were perceived as being culpable in the perpetration of past abuses and responsible for the prevailing miserable social conditions of the Acholi. Here a sharp contrast emerged between demands made by the norms of international justice and the interests of conflict resolution and peace-building at a local level. The logical problem posed by the above raises the question of whether the above instruments were appropriate models to bring about real conflict transformation in northern Uganda.

1.3 Research Questions

The central question in this thesis revolves around the capacity of contrasting models of transitional justice, namely, those of the ICC and local initiatives, in responding to human rights violation and bringing about sustainable peace in northern Uganda.

This question has four dimensions:

- i. To what extent would the ICC be able to navigate the terrain of political and pragmatic considerations in order to achieve urgently needed peace, justice and stability in northern Uganda or would the court itself be an obstacle to peace and stability?
- ii. Should demands for peace be effected through non-prosecutorial mechanisms at the cost of accountability for crimes against humanity? The critical issue here is whether it is ethical to reject a prosecution on the

grounds that it would harm the innocent and jeopardise the prospects of a peace agreement.

Given that members of civil society, religious leaders and other stakeholders in northern Uganda advocated non-prosecution and chosen the mechanism of '*mato oput*', a third question arises:

- iii. Does the Acholi's '*mato oput*' have sufficiently comprehensive scope to cover serious offences like mass murder and is it applicable to all those whose human rights have been violated in various ways during the conflict? This question is relevant because justice needs to be appropriate and relevant for each group of victims and the Acholi cleansing ceremonies as a mechanism for justice need to be interrogated accordingly.

The above questions revolve around whether to prosecute or not to prosecute. There is yet another question which rests at the core of the issue, namely,

- iv. To what extent are the social conditions of the Acholi relevant to sustainable peace in northern Uganda? In answering this question, I seek to demonstrate that the debate about transitional justice in Northern Uganda has not interrogated the conflict in relation to the social conditions of the Acholi as an issue of political relevance. Analytical focus on the social conditions of the Acholi and how they relate to the Government and rebels requires an exploration of the structural dimension of the war, its causes and longevity.

1.4 Scope of the Study

The present study scrutinises the competing interests of punitive and retributive approaches to contemporary transitional justice and the political considerations for peace that may entail entering into dialogue with criminals. In the context of the atrocities perpetrated by the LRA, this thesis interrogates the notion of peace and justice from the perspective of international standards and the standpoint of the victims, within the context of an ongoing conflict. The aim has been to investigate what the victims of crimes against humanity sought when dealing with the perpetrators of such crimes and how this approach might undermine or enhance

justice and sustainable peace. In the final analysis this study explores the complexities of the transitional justice processes unfolding in northern Uganda in order to interrogate prevailing assumptions and theories about transitional justice. The work further proposes a much broader conception of justice that embraces local structural conditions and broader questions about transitional justice. It is hoped that this work will contribute to new theory-building and policy options in relation to the intersection of peace and justice in order to develop a new paradigm for transitional justice.

1.5 Hypothesis

The first hypothesis is that practical challenges to transitional justice present structural problems that can be catered for not only through a process-centred approach, but also through a people-centred approach to transitional justice. In this research I have shown that the two models proposed for transitional justice in northern Uganda – international judicial processes and local systems of justice – have not been able to deal in sufficient depth with the exclusion and disempowerment of the Acholi.

The research began from the assumption that some of the claims being propounded by the advocates for the prosecutorial approach and the advocates for traditional mechanisms are based on dichotomous and under-examined assumptions regarding the relationship between peace, justice and human rights and the distinction between victim and perpetrators. I have argued that by placing people at the centre of transitional justice process and developing a structure-orientated process it is possible to arrive at an anchorage from which both peace and justice can emerge.

1.6 Significance of the Study

The importance of this study is that it seeks to re-conceptualise the link between justice, peace and human rights. The research envisages that such a re-conceptualisation would enable post-conflict peace processes and mechanisms to appreciate the need to understand the local conditions and structures that are fundamental to a given conflict and that would in turn be fundamental to sustainable peace-building. In this connection I note that, in its first big case in northern Uganda, the ICC was caught between demands for peace and the need for justice to be done by

punishing those who were responsible for serious human rights violations. It is important for the ICC to fulfil its obligation to prosecute gross violators of human rights, but in acting on this obligation it met with objections from traditional leaders, religious leaders, civil society, non-governmental organisations and even, contrary to its expectations, the Ugandan Government which had called for its intervention in 2003. The objection to the ICC was prompted by a number of concerns: that the ICC would be biased; would endanger vulnerable groups, notably witnesses and children; exacerbate the violence; spoil the peace process by undermining the amnesty and ceasefire; and finally ignore and disempower local judicial procedures (Allen, 2006, 98).

The dichotomy between community justice, which focuses on forgiveness and reconciliation, on the one hand, and international criminal justice, on the other hand, has elicited debates and generated a massive body of literature. The emergence of community justice, as enshrined, for instance, in the *gacaca* courts following the 1994 Rwandan genocide and the South African Truth and Reconciliation Commission (TRC), has indeed excited a lot of scholarship. Community justice has attracted attention among academicians owing to its apparent uniqueness and apposition to international criminal justice, which is seen to be based on western conceptions of justice. Whereas both sides of the intellectual divide have engaged in very exciting debates, each side has defended its position as the paradigm and only alternative. The dominant trend in transitional justice scholarship is to examine these paradigms in terms of how each paradigm stands in opposition to each other or rather how each provides a better alternative to the other. This research is not limited to this dualist approach. Although it starts by examining the claims that the ICC would obstruct peace and that the alternative local initiatives would be more appropriate, it goes beyond this trend by interrogating the potentials of these paradigms as such, that is, according to how each relates to conflict transformation. In so doing this research seeks to expose the lacunae within the dominant dualist approach to transitional justice practice and scholarship. This is achieved by analysing the extent to which each of these instruments can adequately contribute to conflict transformation and sustainable peace in the particular situation in northern Uganda.

Taking the social conditions of the Acholi population as a central theme, the study therefore seeks to propose a theoretical tool to deal with the dilemma in northern Uganda. Given the complexity of the northern Uganda conflict, this study has sought to bring new insights relevant to transitional justice scholarship and issues of justice within conflict zones. By investigating the potentials and limitations of the judicial mechanism and alternatives systems of peace and justice, I have endeavoured to generate a theoretically-informed transitional justice framework for sustainable peace, namely transformative transitional justice. In the process, this research has critiqued the mainstream theoretical assumptions about transitional justice put forward by the dominant models of transitional justice such as peace initiatives and international judicial instruments. Of particular importance in this respect is the place of the victims and their narratives in the search for peace and justice in transitional situations. This research has shown that, in order to realise sustainable peace-building, certain elements are necessary as part of a broader transformational policy agenda. These elements include socio-political inclusion, political reforms, good governance and economic empowerment. These, as the study reveals, cannot be achieved by a polarised approach to transitional justice processes.

1.7 Theoretical Framework

Discussions regarding whether to hold perpetrators of mass atrocities accountable or to forgive them are situated within of the broader framework of transitional justice. The mainstream transitional justice debates and processes are concerned with how a stable and just political order can emerge from a state of instability, repression and injustices or with how a society composed of groups which have committed heinous crimes against each other in the past are better able to face and deal with the past atrocities (Crocker, 1998; Kritz, 1995: xx; Teitel, 2002; Teitel, 2000: 213). In other words, the concern has been whether to pursue criminal prosecution for those responsible for massive abuses or to engage them in peace negotiations and grant them amnesty (Kritz, 1995). Criminal prosecution imposes obligations on states to apply international law by prosecuting the perpetrators of serious crimes against humanity and to use it as an instrument for peace and justice, rule of law and democracy (Bickford, 2004: 1045). Given the context of transitional states, there are nonetheless always insurmountable hurdles which may be encountered when effectuating international law. Examples of these are strongholds retained by an

ousted regime and the fact that elements of ousted regimes may be still holding key state organs like the judiciary, the police and the national intelligence (Dugard, 1997: 269-290). Pursuing members of a former regime with threats of prosecution may in such instances pose a danger to the populations which are to be liberated in the process.

In this research, therefore, I have employed two broad theoretical orientations as my analytical tools for appraising the social phenomena in question. These include maximalist and forward-looking approaches. The first orientation, the maximalist approach, which is traceable to the Nuremberg principles, holds that trials promote the rule of law, accountability, citizenship rights, deterrence, and democracy (Nino, 1995: 417-436). Theoretically, it falls within the universalist conception of human rights. Maximalists ground their claim on the recognition of the inherent dignity and inalienable rights of human beings that should be protected by the rule of law (Eide, 1992). On this basis countries have a moral, legal and political obligation to prosecute gross violations of human rights (Orentlicher, 1991). This obligation is enshrined in international agreements for the protection of human rights, namely the Universal Declaration for Human Rights, the Covenant on Civil and Political Rights, the Convention against Torture, and the Genocide Convention (Roht-Arriaza, 1995). As a principle, maximalists reject amnesty as incompatible with international law and hold to the duty to prosecute grave violations and demand accountability for the worst types of crimes (Goldstone, 1997: 1, 2). They contend that the long-term objectives secured through accountability are more profound than any immediate but superficial peace that may be realised through amnesty. In this case judicial intervention is seen, in the final analysis, to contribute to peace by breaking conflicts down into individual building blocks through approaches like arrests, detentions and punishments. The judicial option pursues peace not by focusing on conflicts between groups, but by criminalising acts committed by individuals. The arrest of criminal individuals would contribute to future peace by assisting the entire population to deal with what constitutes evil in their political community.

The second approach stresses the need for a society to forge ahead and not to remain tied to the past since this only serves to nurture unpleasant and painful memories and does not allow the society as a whole to invest its energies in reconstructing a new

society. This falls within the particularist conception of human rights. According to this approach prosecutions threaten rather than strengthen transitional democracies and would only serve to endanger ailing democracies that have already experienced the pain of transition. Prosecutions jeopardise democratic experiments by provoking the former security apparatus and its supporters to re-emerge. Rather than promoting democracy and human rights, prosecutions are viewed instead as undermining such prospects. This orientation advocates the use of amnesties as the best option for moving ahead and as a means of reassuring former regime forces and their supporters that they will continue to play a role within the new political system and need not overthrow it. To address the needs of citizens, they advocate restorative justice (Motala, 1995). Zalaquett (1995: 203-206) argues that societal stability, actual political opportunities and constraints override the needs of the victims and ethical principles of justice. Huntington (1995) suggests that the transformative nature of transition cannot be realised through prosecution.

1.8 Research Methodology and Design

1.8.1 Secondary Data

The research has used both secondary and primary sources. Secondary data formed the major source of material for this work. I relied on books, journals, institutional documents, reports, internet sources, news papers and other news agencies. This was necessary in order to provide information on transitional justice scholarship and debates relevant to the situation of northern Uganda. Secondary data also provided some of the foreground information about the conflict and human rights abuses on northern Uganda.

Since the study scrutinises the competing interests of punitive and restorative approaches to contemporary transitional justice and post-conflict peace-building, I have undertaken a systematic review of literature on transitional justice models relevant to post-conflict peace-building in northern Uganda. This undertaking is instrumental in establishing the assumptions in support of either the ICC intervention or local initiatives according to how they were proposed as responses to the northern Uganda conflict. In the process of identifying the assumptions that underpin the various mechanisms under consideration, theoretical questions have been raised in

order to clarify concepts regarding various forms of transitional justice paradigms and how they relate to peace-building.

In order to understand how the victims of crimes against humanity would respond to the ICC's punitive justice or restorative justice initiatives as they emerge within the local community, I have sought to understand the dynamics of the conflict that informed the victims' thinking about the conflict and its resolution. I, therefore, used secondary data to reconstruct the historical context of the conflict. I also exposed the extent and nature of human rights violations in northern Uganda. These processes have been important in enabling me to locate the Acholi question at the centre of my investigation and analysis and to understand what informed the local views and preferences with regard to the conflict. This process is based on my assumption that understanding the capacity of the ICC and local peace initiatives to contribute to post-conflict peace-building in northern Uganda is connected to understanding the nature, extent and social dynamics of the conflict. By this I mean that conflict is socially constructed by people who, as individuals or as a collectivity, give meaning to their world of conflict. Thus the conflict had a social, economic and political character and therefore to interrogate the effectiveness of a given conflict resolution instrument it is necessary to understand the social dynamics of the conflict.

1.8.2 Primary Data

Although they were not the sole information source, primary data constituted a significant component of my research. Since the research springs from the assumption that the local population in Acholi land who were also victims of LRA atrocities rejected prosecution of the rebels, these primary data gathered through field research were important in testing this assumption. I, therefore, gathered primary information about the local population's views and attitudes regarding the conflict and their immediate social conditions that arose from the conflict. The intention of this field research was to gather information about their understanding of the conflict, their beliefs and attitudes, their understanding of the mechanisms that had been proposed for the transition, how they would wish those who had committed heinous crimes against them to be treated. I undertook field research to interview people who had been affected in different ways by the conflict in northern Uganda. In terms of

demarcation, the northern part of Uganda is constituted by five regions of Acholi, Teso, Lango, Lugbara and Karamojong (see Uganda's map on page viii).

Although the LRA atrocities plagued the whole of northern Uganda, my research focused on the Amuru, Gulu and Kitgum districts of the Acholi sub-region. There are number of reasons for this choice. First it was because the Acholi sub-region had borne the brunt of the war at the hands of the Acholi-dominated LRA who claimed to be fighting to emancipate the Acholi. Second, the proposed local peace initiative, *mato oput*, focused on the Acholi community versus the Acholi-dominated LRA. Third, the mobilisation-for-local-peace initiative was spearheaded by the Acholi-dominated civil society, the Acholi Religious Leaders Peace Initiative (ARLPI) and Acholi traditional leaders. It was the ALRPI who spear-headed the objection to the ICC intervention. Finally, owing to financial constraints I was not able to carry out my research in the whole of northern Uganda.

Theoretical Underpinning of Field Research Method

Before going to the field I undertook a substantive literature review on the dynamics of the conflict in northern Uganda as presented in chapter three of this work. The review revealed the complex nature of the conflict in northern Uganda. The revelation in turn guided the choice of research method that I adopted, namely, qualitative method. More particularly, I chose phenomenological approach which is a type qualitative method.

In my investigation of the various aspects of the conflict in northern Uganda, I was guided by the principle that an action can be best understood when observed in the setting in which it occurs. Given the nature of the conflict in northern Uganda as already highlighted in this introductory chapter, phenomenological approach was appropriate since it would help me in understanding the meaning of events, contextual situation of the conflict and interactions of ordinary people caught up in the conflict. Phenomenological approach would focus on how people understood the conflict, why the conflict lasted for so long, its causes and the best instruments that could bring an end to the conflict. This is so because in phenomenological approach a researcher seeks to gain entry into the conceptual world of their subjects in order to understand how and what meaning they construct around events in their daily lives (Bogdan and

Biklen, 1996: 23-24). Phenomenologists believe that there is a multiplicity of ways of interpreting experiences. This can be realised through interacting with others during which we get insight into the meaning of experience that constitutes reality (Bogdan and Biklen, 1996: 24). The method is based on the understanding that reality is socially constructed so that the meaning people give to their experiences and their process of interpretation are essential and constitutive. To understand behaviour, we must understand definitions and the processes by which they are manufactured (Bogdan and Biklen, 1996: 25).

According to phenomenological approach, human beings are actively engaged in creating their world. People act, not on the basis of predetermined responses to predefined objects, but rather as interpreters, definers, signallers and symbol and signal readers. To understand people's attitudes, views and behaviour, the researcher needs to enter into a defining process through methods such as participant observation (Bogdan and Biklen, 1996: 25). The approach therefore was qualitative in nature in the sense that it aimed to understand perceptions constructed by respondents. In qualitative research, the researcher seeks to grasp how, when and under what circumstances an event occurred (Bogdan and Biklen, 1996: 5). It sets out to capture what those interviewed said or did not and how they interpreted the questions raised during discussions.

Based on the above methodological underpinning, I sought to capture this process of interpretation through an understanding of the feelings, motives and thoughts of respondents with regard to the protracted conflict in northern Uganda. Through interviews, the study probed into the various issues that influenced feelings and perceptions of the people of northern Uganda about the ICC and local peace and justice initiatives. I sought pinions of victims/abductees and perpetrators to establish their perceptions and experiences toward the ICC and local Acholi peace and justice instruments. This in turn helped me to understand the various patterns of thinking about transitional justice processes in northern Uganda.

Qualitative approach was appropriate since the study stressed personal experiences in order to understand the intersection and deeper meaning that the people of northern Uganda attached to the various aspects of the ICC intervention and the alternative

peace and justice instruments. The approach was also appropriate because the study sought to elaborate on the meaning of causality of events that were associated with the protracted conflict in northern Uganda and to clarify the prospects and limits of the role of the ICC and local peace initiatives as instruments for conflict transformation in northern Uganda. Overall, qualitative method was preferable in capturing the complexity and context of the conflict in northern Uganda.

The Target Population

I interviewed members of civil society, especially religious leaders under the rubric of the Acholi Religious Leaders Peace Initiative (ARLPI), traditional leaders, survivors, women, community workers and government officials living and working in the camps. It must be underlined that it was difficult to draw a clear distinction between the various groups caught up in the conflict. For instance, it was difficult to draw distinction between victims and perpetrators or ex-combatants since most of the perpetrators were initially victims of abductions. As it emerged the majority of those interviewed were at one moment victims or survivors of the conflict in northern Uganda. In terms of figures, I did fifty six interviews though actual number of individual respondents is higher because I conducted some group interviews. Given the overlapping nature of the respondents, I have not given the numerical representation of each respondent group as this would not be accurate.

I did not interview the ICC Chief Prosecutor or any of the International Court's representatives because information regarding the ICC and the LRA indictment were readily available in the Court's official documents and website. The information available was sufficient enough for a meaningful analysis. Moreover, during this field research the ICC prosecutor was based in The Hague and financial constraints could not allow me to travel to The Hague for an interview with the ICC Prosecutor.

Interviews

Questions during interviews were more open-ended. According to Bogdan and Biklen (1996), open-ended interview is effective since it enables one to treat the respondent as an expert. It is a personal and inviting approach which sets the interview up in such a way that establishes the subject as the one who knows and the searcher as the one who has come to learn. It creates confidence in the interviewee that interviewer

respects his or her ideas. Here the interviewee is not just a person who only tells his or her story but instead goes beyond telling his or her story by sharing his or her own ideas and observations about the issue in question. This approach is useful in generating good descriptive material and generating more abstract ideas.

However, my research was guided by general questions such as experiences of victims/survivors of LRA activities; attitude and perceptions of the victims or survivors towards the government; attitudes of the survivors of LRA activities towards the rebels; attitudes and perception of the survivors or victims of LRA activities towards the ICC—whether the people were satisfied or dissatisfied by the ICC or alternative peace models; views of traditional/local leaders in the peace and justice process; effectiveness of the traditional Acholi cleansing ritual, *mato oput*, from the stand point of the victims/survivors; the role of the civil society in the overall peace and justice processes. These were only broad guide during the interviews and did not constitute specifically predetermined questions which I asked during interviews.

As mentioned earlier, the methodology was guided by my goal of understanding the dynamics of the conflict and attitude to the transitional justice instruments from the respondents' point of view. I collected my data through sustained contact with people in their own settings such as IDP camps. In this respect, I employed in-depth interviews and some degree of participant's observation. This involved spending time with the subjects and asking open-ended questions. Open-ended questions proved to be useful and appropriate because the interviewees would respond according to their own views and perceptions. This would help in discovering much deeper information better than using structured and predetermined questions. In other words the open-ended questions would enable the respondents to freely express their thoughts concerning the conflict in northern Uganda and what they thought would bring about sustainable peace and stability. As part of participant observation, sometimes I was simply hanging around on roads, attending church services, visiting IDP camps. While doing these I would, where appropriate, initiate informal discussions with people I encountered on the streets or in buses or while visiting camp families on informal basis. I also visited IDP camps on very regular occasions to see the

conditions of the people. All over the region, I observed people whose lips or hands had been mutilated as a result of the LRA activities.

While guided by the above broad questions, I sought to discover how the Acholi negotiated meaning of terms such as conflict, reconciliation, justice and peace. I was concerned with participant perspectives, focusing on what assumptions Acholi people made about their lives during the conflict, what they thought about the reasons that had caused the war to last for so long and what they made of their lives while living in the IDP camps. I was also concerned about how the Acholi population developed specific stories about their struggles in the course of the war. All these would be useful in evaluating the effectiveness of the proposed instruments for peace and justice.

I conducted interviews within the time range of 1 to 3 hours for each interview. The interviews were conducted in the selected three districts of the Acholi sub-region, namely Gulu, Amuru and Kitgum as mentioned earlier in this introduction. This field research lasted for a period of six months, between January and June 2008.

Before launching my research, I had anticipated difficulties in accessing and getting respondents to talk to me since the field was a conflict zone characterised by suspicion and distrust towards strangers. I discovered at one point in the initial stages of my research that the people did not trust me since they were not aware of who I was, what my intention was or whether I was spying for the government. And during my first interview, one respondent confronted me and asked: 'by whose mandate are you here to interview us.' It was only after an intervention from my companion that the respondent allowed me to talk to him. I was also afraid of my security because I was warned that the LRA intelligence sources easily mingled with ordinary people and it was not easy to notice them. What helped me out of these difficulties was my entry point, namely the Locor Seminary in Amuru district. In this case, my research was supported by Catholic priests who were working in various parishes and institutions across northern Uganda. Being associated with priests made it easy for me to access the respondents because the priests were well known to the camp dwellers since the former are in the forefront in giving the people both material and psychosocial support, involved in rehabilitation programmes and are part of the

initiatives to bring an end to the conflict. The fact that I was introduced and guided by priests during my interviews made it easy for the people to develop trust in me. Another reason why accessing respondents became easy was the fact that majority of respondents were IDP camp dwellers who stayed close to one another in the camps. This made group interviews not taxing to realise.

When conducting interviews, individuals or groups from various categories were approached with questions that were related to their experiences about the conflict and peace and justice processes that were being negotiated. There was no pre-arranged order of the research exercises. The required research objective and type of information that I needed informed the basis upon which the selection of participants was founded.

Accordingly, participants were selected according to the kind of information that was being sought. My research assistants would identify them and approach them beforehand to ask about their willingness and availability to participate in an interview. Before beginning an interview, I made a general introduction upon meeting the respondents. As part of the introduction, I thanked the respondents for offering their valuable time, and then I introduced myself, where I came from, the nature and purpose of my research. This was geared to making the respondents informed as fully as possible about the aims and possible implications of the research. After explaining the nature and purpose of my research, I asked the participant(s) if they would be free to participate in the research. This was to ensure that respondents were not coerced into participating in the research. Once I got consent of the participant, asked them if I could take notes and whether they would wish to remain anonymous or allow their identities to be revealed. This was meant to protect respondents' identity and avoid revealing confidential matters. This introductory process was quite significant because it enabled me to build a rapport in an environment in which I would possibly be treated with suspicion. Respondents developed confidence in me. Some interviews were, however, conducted without formal introduction. These were interviews which were conducted without formal arrangement such as cases where I met a respondent in a bus or in a church functions or on a dinning table.

In order to respect privacy of a respondent anonymity was maintained when required by a particular respondent or where an issue talked about was sensitive. Indeed every time a respondent made a statement that I considered sensitive, I sought to confirm from the respondent whether he or she would wish to be quoted by real names. Since the information I collected from the field were meant for thesis writing which eventually would be in the public domain, the most effect way of keeping confidentiality was through letting sources of information that may be sensitive to remain anonymous. I promised that I would never reveal, whatsoever, the identity of participants who sought anonymity.

In the course of the interviews, I was very careful about asking direct questions which would bring about emotional harm. If there were sensitive information, I only asked a general question and let the participant volunteer such information. I also adopted a kind of interactive process by engaging participants in open discussion. Indeed, in most cases I adopted a more fluid discussion with respondents to build confidence among the respondents towards me and about the issue being discussed. This approach was necessary to allow hidden information to be drawn to the surface.

General questions proved to be important for they enabled free flowing interview which was instrumental in getting a general understanding of a range of perspectives on a topic. It is after this that in-depth interviews were pursued in order to get focused on particular topics that emerged during the preliminary interviews. I did this by spending, for instance, two weeks on general questions addressed by a range of respondents. Then I would take the following two weeks getting into a follow-up in-depth interview on specific issues. In certain cases, I did not raise questions beyond the introductory statement, instead I let respondents to speak about areas that were of interest to them or those in which they were knowledgeable. After this, I explored issues more deeply in the course of the discussion by singling out pertinent issues mentioned by the respondents. In this sense, the respondents played a significant role in defining the content and shaping the direction of the interview. Since I was so much concerned about generating respondents' perspective and how they constructed meaning of the conflict, I set them to talk freely about their points of view. I only intervened to ask for clarification when a respondent mentioned something that

required a follow-up. To follow-up on emerging issues I used phrases such as “could you please explain that” or asked, “could you please give an example”.

Since the situation in northern Uganda would most likely elicit an interviewer’s feelings, I did not escape being emotionally touched by the human condition that prevailed in northern Uganda. I sought not to suppress my feelings, but instead transformed them as aid in my research. I allowed myself to get inserted in the situation so as to build rapport with respondents. The feelings also enabled me reflect on the respondents’ circumstance and from this I was able to generate meaning and insight into the concrete situation of northern Uganda. In the process I was in a way able to become part of the group and grasped issues from the people’s standpoint.

A synthesised summary of primary data is provided as an appendix. The material constitutes part of the corpus of the thesis. The material offered me away of understanding attitudes and perception on the conflict in northern Uganda and the peace and justice instruments which were being employed to bring about stability in the region. This understanding was instrumental for the analysis and discussion about the appropriate mechanism for transitional justice in northern Uganda.

1.8.3 Data Analysis

For data analysis, the study examined specific thematic issues about transitional justice processes in northern Uganda. Themes were formulated and discussed while claims and concepts were appraised against both secondary and primary data. Some of the conceptual elements that I delineated included individual responsibility, communal responsibility; universality of human rights and how they anchor sustainable peace and justice. The analysis involved qualitative synthesis of the pertinent issues of the study questions. These issues were singled and pulled out from the data collected and organised into a coherent body of meaning. In other words, the analysis involved distilling and substantiating insights and assertions from the diverse sources of data.

More particularly, I considered assumptions about capacity of local peace initiatives and international judicial mechanisms and weighed them against information which I gathered from the field. I considered the information gathered from both primary and

secondary sources against the assumptions about transitional justice in northern Uganda in order to assess which approach to transitional justice would be likely to yield peace in northern Uganda, which goals would need to be prioritised and which might be misplaced. Some of the variables that guided my analysis included transitional justice mechanisms, socioeconomic structures and ethnic and gender dimension of the conflict in northern Uganda. I weighed the international criminal/restorative justice paradigms against the nature, extent and dynamics of the protracted conflict in the northern Uganda. From this the study arrived at conclusions about the relationship between the ICC intervention and local peace and justice initiatives on the one and conflict transformation on the other hand.

1.9 Chapter Outline

Chapter one outlines the background of the study, its objectives, research questions, rationale, hypotheses, theoretical framework and research methodology. Chapter two sets the theoretical framework for evaluating the capacities of the ICC and local instruments to bring about sustainable peace in northern Uganda. It does so by surveying the scholarship and debates on the basic tenets of the rule of law, international criminal justice and restorative justice, and their applicability in transitional situations. The chapter surveys debates on the nexus between prosecutorial justice and sustainable peace, on the one hand, and the nexus between forgiveness and justice, on the other hand.

Chapter three exposes the background factors related to the causality and the intractable nature of the conflict in northern Uganda. It discusses the LRA insurgency and their atrocities in relation to deeply rooted socio-political engineering since the colonial period in which the use of violence became a key instrument in the acquisition and maintenance of political power. These historical realities were useful when analysing the potentials of the proposed transitional justice instruments under consideration in this study.

Chapter four exposes the nature and ramifications of atrocities in northern Uganda between 1986 and 2006; and the ICC's judicial response to these atrocities and the local reactions elicited by the Court's intervention. The chapter reveals the complexity of the transitional situation of northern Uganda as one characterised by the radical

disruption of social order, the difficulty of drawing the line between victims and perpetrators, and the Government's alleged complicity in the conflict. The chapter also shows how the ICC became entangled in the politics of the northern Uganda conflict.

Chapter five shifts its focus to the alternative responses to the ICC's prosecutorial intervention. The chapter reveals that, given the longevity of the war and its complexity and the extraordinary nature of the conflict, the people had recourse to traditional reconciliatory approaches to promote social healing among the victims of grave abuses and their abusers. Particular attention is paid to *mato oput*, the traditional Acholi system of justice.

Chapter six interrogates the contending transitional instruments against the background of the dynamics of the protracted conflict in northern Uganda and in relation to sustainable peace and stability. The chapter suggests that, given the complex nature of the conflict in northern Uganda, there was a need for a multidimensional strategy that would promote justice, peace-building, social economic development and poverty reduction in northern Uganda.

Chapter seven concludes the entire treatise by stating that although the contending instruments have some potential for post-conflict peace-building, neither the ICC intervention nor the local justice systems can be applied as if they were adequate in themselves to deal with the complex nature of the conflict in northern Uganda. The concluding chapter reiterates what is said in chapter six by stating that the magnitude and nature of the problem in northern Uganda call for comprehensive forms of justice, ranging from structural reforms, redistribution of resources and reintegration, and judicial processes.

Chapter Two

Theoretical Grounding of Transitional Justice and Peace-building Instruments: A Survey of Scholarship and Debates

2.1 Introduction

The post-Cold War era has been plagued by an upsurge in conflicts which has led to critical debates on the principles and values underpinning the various instruments intended to bring about peace and justice in post-conflict societies. These debates centred on making the link between respective peace and justice instruments, on the one hand, and the promotion of peace, human rights and sustainable socio-political stability, on the other hand. Some of the questions raised in the debates are the following: What are some of the challenges to be encountered in tying the realisation of peace to the pursuit of justice? In what ways can reckoning with past atrocities lead to reconciliation and sustainable post-conflict peace-building? What are the prospects of and impediments to the development of international standards for dealing with the past? Central to these questions are the competing goals of peace and justice. The present chapter, therefore, provides critical engagement with the theoretical frameworks and debates that are useful in analysing the competing models and goals of transitional justice in the conflict situation in northern Uganda. The objective of this review is to identify and explore the concepts applied to evaluate the capacity of the ICC and alternative peace and justice models as responses in the northern Uganda context. Since the ICC is an international criminal justice instrument, the survey explores classical concepts, such as the rule of law, human rights and punishment, which underpin its operations. The survey goes on to discuss how international criminal justice applied in transitional situations is distinct from the traditional understanding of criminal justice. Finally, I explore the concept of restorative justice, which frames more pragmatic or community-based models of justice and involves negotiating peace with the perpetrators of human rights violations.

2.2 The Rule of Law, Human Rights and Justice

The relevance of the ICC in transitional situations is based on the assumption that the transition from conflict marked by gross human rights violations to peace and stability requires the application of universal legal and moral norms. The Preamble to the Rome Statute links criminal justice to the realisation of 'peace, security and well-

being of the world.’ (United Nations, 1998) The assumption implies that any transition from violent conflict to peace and stability requires the application of criminal justice in accordance with the rule of law. This involves holding violators individually responsible for their actions and punishing them once their guilt is determined through due process. Accordingly, perpetrators of war crimes, genocide and crimes against humanity would be expected to account for their crimes (Ratner and Abrams, 2001; Orentlicher, 1991: 2537). Criminal prosecution of human rights abusers in the aftermath of civil wars, according to this position, becomes the appropriate mechanism for dealing with past atrocities, for pursuing justice and preventing future crimes (Orentlicher, 1991: 2537, 2548; Penrose, 1999: 321; Finnemore and Sikkink, 1998). The pursuit of a human rights agenda in post-conflict situations is here conceived as a moral obligation to follow rules, where duties and rights are determined by the rule of law (Shklar, 1987: 1). According to Jean-Marie Guehenno (2003: 3), ‘[t]he rule of law is recognized as an inherent element in ensuring long-term sustainable peace, economic and political development in post-conflict states.’ In order to grapple with this nexus between application of universal legal and moral norms and the achievement of peace and stability, we need to begin with a brief conceptual survey of the meaning of the rule of law and how it is connected to human rights protection.

2.2.1 The Concept of the Rule of Law

There are two main conceptions of the rule of law, namely, the formal sense and the substantive sense. The formal conception of the rule of law is an off-shoot of legal positivism, which focuses on procedural rationality. The substantive conception of the rule of law, in contrast, is reminiscent of natural law theory which invokes a higher source. Certain substantive rights are understood to underpin the rule of law so that a good or a bad law is judged in terms of how it protects basic human rights, secures minimum welfare and regulates a market economy (Calhoun, 1997: 127, 135). This is distinct from those holding a formal conception of the rule of law who believe that it only relates to attributes concerning the form of law, which must as a rule be stable, publicised, clear, and general (Calhoun, 1997: 135). The proponents of the substantive conception go beyond such a formal description in order to include in their analysis a broader discussion of the legal protection of moral rights (Calhoun, 1997: 92-111; Fallon 1997; Goldsworthy, 2001: 64).

2.2.1.1 Formal Conception of the Rule of Law

In the formal conception, a law is considered valid when it possesses certain procedural qualities and instrumental aspects of the rule of law such as functioning effectively as a system of laws (Peerenboom, 2005: 19). In other words, a system of laws is good if it can be defended procedurally and is consistent and coherent as a system. All rules, procedures and decisions must follow from a legal system. The value of law does not reside in its intrinsic nature, but rather in its coherence as a system and in its procedural application.

In his book, *The Morality of Law*, Lon Fuller (1968: 187) outlines basic elements which, according to him, should constitute the rule of law. These include generality, publicity, non-retroactivity, clarity or intelligibility, possibility of compliance, constancy through time. Generality according to Fuller (1968: 53) means that laws should be impersonal in order to avoid the possibility of legal prejudice or legislatively singling out of individuals for pain or benefits and treat persons impartially and as equals. The requirement of generality aims to ensure that particular and arbitrary decision-making is avoided so that laws do not bring harm to particular individuals or social groups. Instead the law should seek to ensure the interests of the community at its core. Publicity is the requirement that law should be made known to those whom it binds. The reason for this requirement is that if people do not know what the law requires it becomes difficult to obey it. The requirement that the rule of law must be non-retroactive means that people are not held accountable for non-compliance for a law that was not in existence before an act was performed. The only exception is when the rule of law is applied retroactively to correct anomalies within a legal system (Fuller, 1968: 53). Clarity means that the rule of law should not be vague, since a vague law may be manipulated and arbitrarily applied by public agencies (Walker, 1988: 25). Constancy through time means that the law should be stable. A legal culture cannot develop if the substance of legislation is always altered or amended. Stability of the rule of law makes it possible for a citizen to be aware of his or her legal obligations. If the law keeps changing, it becomes difficult for citizens to plan their lives in accordance with it (Walker, 1988: 25). The possibility of compliance means that the law should not be unnecessarily burdensome for those who are obliged to adhere to it. The people whose conduct is regulated by the law must be able to follow the law, otherwise the rule of law becomes disempowering instead of

empowering. These basic elements provide procedural constraints that should enable a society to minimise the abuse of the legal process and political power (Fuller, 1968: 187). For Fuller (1968: 153), a legal system with the formal characteristics outlined above is more likely to be fair and just. For instance, the fact that the rule of law has to be public means that law enforcers are forced to justify their actions and to be accountable.

Thus, the formalistic understanding of the rule of law can be reduced to certain basic principles. First, the legal system must have a complete set of decisional and procedural rules that are fair. This means that law is required to be governed by procedures that are applied fairly and without bias. Authority has to be based on the rules and not on the will of particular persons; there should be no arbitrary exercise of power (May, 2005: 201-202). Second, these rules must also be beforehand and promulgated. That means they must be known to the public before their application. Third, these decisional and procedural rules must be applied in a transparent manner (May, 2005: 202). Finally, these decisional and procedural rules must be applied consistently. In this case the notion of justice is more concerned with process and procedure than with content (Shen, 2000: 30). This means that if the process is fair, transparent and consistent then justice is realised.

Some limitations on the formalistic conception of the rule of law can be identified. From a theoretical perspective, formalists are concerned with the rule of law as a procedural ideal and not with the nature of law as such. What would happen if an authoritarian system applied a system of laws to legitimise its tyranny and smashed dissidents in a manner consistent with the rule of law? The formalists' position would seem to be that the value of the rule of law does not reside in its moral underpinning but in it being an effective and efficient instrument for achieving the purpose for which it was intended. Such a conception overlooks the fact that the formal definition of law presupposes more profound elements for it to be meaningful. Sartori (1987: 323) argues that the rule of law presupposes, for instance, the existence of a constitutional state and needs to be consistent with the fundamental values that it seeks to uphold. In contrast, Mathew Kramer (2004: 65), one of the contemporary defenders of the formalistic conception, maintains that the rule of law is not an inherently moral ideal. For Kramer the rule of law refers to '[n]othing more and

nothing less than the state of affairs that obtains when a legal system exists and functions.’

Kramer’s position implies that laws may be enacted in the service of non-democratic or oppressive goals as long as it is consistent with its own stipulations. Yet legality or the rule of law should represent a moral or political value in its own right. Reducing the formal conception of the rule of law in this way is likely to deprive it of any substantial foundation and violate the fundamental goals of law (Schauer, 1988: 510; Sartori, 1987: 322-323). For instance, in countries reputed for their adherence to the rule of law, like the United States and South Africa, the rules of law applicable in these countries were in fact instruments of great injustices including slavery, colonialism, capitalist exploitation, racism, apartheid, and massive disregard for the suffering of others (Peerenboom, 2005: 20). John Dugard (1997: 270-271) observes that,

[t]he apartheid order was a legal order. Most injustices perpetrated by successive apartheid governments between 1948 and 1990 were committed in the name of law. Millions were deprived of their South African citizenship in order to provide the Bantustan states with citizens; millions were arrested and imprisoned for violating influx control laws which required Africans to produce identity documents...on demand by a police officer and prohibited their free movement....Political activists, such as Steve Biko and Matthew Goniwe, were killed by members of security forces acting under the ostensible authority of their commanders. Others simply ‘disappeared’ after their arrest.

Inhuman and inhumane acts can be legally sanctioned. Joseph Raz (1979: 211) emphasises this point when he remarks that

[a] non-legal system, based on the denial of human rights, on extensive poverty, on racial segregation, sexual inequalities, and racial persecutions may, in principle, conform to the requirements of the rule of law better than any of the legal systems of the more enlightened Western democracies.It will be an immeasurably worse legal system, but it will excel in one respect: its conformity to the rule of law. ... The law may ... institute slavery without violating the rule of law.

Another characteristic of the formal conception of the rule of law is that it must be reasonably acceptable to the majority of the public or people affected. However, the fact that laws may be reasonably acceptable to the majority of people governed by

them does not mean that the laws are necessarily good laws in the sense that they are morally justified. The majority may well support immoral laws like racial exclusion and segregation in America.

Even though a formal conception of the rule of law holds that principles of procedural fairness may enhance prospects for individual autonomy, it cannot guarantee substantive justice since a formal conception of the rule of law is not concerned with achieving substantive goals. The rule of law should enhance human autonomy and dignity by allowing people to realise their self-determination, while having the knowledge of law to guide their interaction with other individuals.

2.2.1.2 Substantive Conception of the Rule of Law

I now turn to the substantive conception of the rule of law which emphasises substantive qualities of law, bringing ethical, religious or political elements into the evaluation of the value of law. The substantive conception of law, as mentioned earlier, follows on the natural law theory propounded by, for example, Aristotle, Thomas Aquinas and John Locke. In classical Greek thought, the rule of law was conceived as immanent in human rationality. Plato thus proposed the notion of the philosopher King who was endowed with superior capability and knowledge, qualities that were considered to be civic virtues (MacIntyre, 1981: 221-145). Aristotle (2000), in his *Nicomachean Ethics*, asserted that reason is the rule of human actions. From the standpoint of the rule of reason Aristotle's notion of good government was differentiated from bad regimes on the basis of the prevalence of justice, and an equitable and non-repressive way of life (Dallmyr, 1990: 1449). This idea later influenced Thomas Aquinas (1991: 169) who defined law as 'nothing else than an ordinance of reason for the common good, promulgated by him who has the care of the community.' The important element here is that the rule of law means rule of reason for the promotion of human well-being. The conception of law as rational is the foundation of moral responsibility and retributive justice, which presuppose conscious moral choices.

The Aristotelian-Thomistic conception would later influence enlightenment social-contract political thinkers like John Locke and Thomas Hobbes. In the *Second Treatise* Locke (1955) argues that the law of nature governs and regulates everyone's

conduct. Reason, which, for him, is the same as law, informs all mankind about universal human equality so that no one ought to infringe upon the life, health, liberty or property of another. Thus Locke developed an essentialist or universalist conception of the rule of law, according to which leaders ought to govern on the basis of promulgated laws which are applicable under all circumstances to everyone alike and are intended for the common good (Locke, 1955). According to Jennings (1959: 49), Locke sets out a basic standard for the rule of law which is essential for the regulation of the interests of citizens among themselves and of government action. Dallmyr (1990: 1449) observes that Locke's essentialist or universalist approach underpins the contemporary substantive conception of the rule of law.

The substantive conception, according to Ronald Dworkin (1978), is not concerned with formal rules except inasmuch as they contribute to the achievement of a particular substantive goal of the legal system. The substantive approach to the rule of the law is driven by the moral objective of fostering the good life by means of a good legal system. He writes,

[the substantive conception] assumes that citizens have more rights and duties with respect to one another, and political rights against the state as a whole. It insists that these moral and political rights be recognized in positive law, so that they may be enforced upon the demand of individual citizens through courts or other judicial institutions of the familiar type.... The rule of law on this conception is the deal of rule by accurate public conception of individual rights. It does not distinguish, as the rule book conception does, between the rule of law and substantive justice (1978: 259 and 262)

Dworkin (1978: 269) maintains that the above-mentioned rights, which are discernible on the basis of political principles, are not themselves granted by positive law, but that they are prior to and an integral aspect of positive law.

Thus the substantive conception of the rule of law emphasises the rule of law as something normatively good and desirable. The rule of law is conceived as good because it upholds universal principles over particular circumstances (Dallmyr, 1990: 1449). Decision-making, in accordance with the substantive conception of the rule of law, should conform to universal standards of justice. This would mean that punishment would be handed down only where it was actually warranted (May, 2005:

202). The overriding assumption of the substantive conception of law is that there is an explicit link between the rule of law, in the substantive sense, and good life in a community.

This conception of the rule of law nonetheless has certain limitations. First, it is an extremely complex process to establish how just a given legal order is and this process may be value-laden since our judgments are usually obscured by our own contexts and backgrounds. Secondly, the definition of the rule of law as a good legal system may be too vague, and we need to be explicit about how it constitutes a good legal system. In the substantive definition, the relationship between law and societal outcomes is problematic. For example, an ethnically polarised society develops laws for a unitary system of political and economic governance intended to foster national cohesion. This results in too much power being centralised in the hands of the executive. As a consequence, a portion of such a society is discriminated against because the law empowers the executive to distribute resources. The law is to be reformed to allow adoption of a devolved system of governance which will allow the people to take charge of their political and economic life. However, a portion of this same society may argue that the country is so polarised along ethnic lines that a devolved system of governance would be a recipe for further division and that a unitary system would best for national cohesion. This example demonstrates the difficulty in correlating substantive definitions with societal outcomes.

The quest for a conception of the rule of law that respects the natural rights of individuals reveals that there is no uncontroversial way to determine what these rights entail and that many complexities emerge in the process. The general ideas that ground the substantive understanding of the rule of law – equality, liberty, privacy, the right to property, and freedom of contract – are all contestable in terms of their meaning and realisation, and have been the subject of debate since the early periods of philosophical discourse. These conceptual limitations notwithstanding, in a system governed by the rule of law, public authorities and private individuals are subject to certain rules and principles. Societies governed by the rule of law are politically much more stable and more successful in terms of guaranteeing the moral rights and duties of the individual citizens (Dworkin, 1978: 262). The rule of law is also important in

ensuring certain conditions necessary for the enjoyment of human rights such as economic resources and good governance.

2.3 The Link between Rule of Law and Enjoyment of Rights

There is a nexus between rule of law and enjoyment of human rights. By human rights we understand requisites which are based on intrinsic values and the dignity of persons and which are necessary conditions for meaningful human life. Such requisites include freedom, life, well-being, freedom from torture or mayhem and freedom from coercion (Oruka, 1996:60-61; Starba, 1991: 113; Shue, 1980: 20-24). These basic human rights are intrinsically linked to our final end as personal beings which, according to Emmanuel Kant (1957: 309), ought to be treated as an end in itself and not as a means to an end. A right provides the basis for a justified demand. If a person has a particular right, the demand that the enjoyment of the substance of that right be guaranteed is justified by good reasons and therefore, ought to be provided (Shue, 1980:13).

Since human beings are social by nature, the enjoyment of their rights does not occur in isolation. The enjoyment of particular rights by a person may be limited by enjoyment of another right by another person. For one to enjoy rights there is a corresponding duty on the side of another person or institution to guarantee such enjoyment. Within a political community, the rights secured by law are in most cases correlated with citizens' duties not to interfere with the enjoyment of recognised rights. This presupposes restraint in order to ensure the effective enjoyment of rights, and lack of restraint would entail the infringement of the rights of others. By infringing on another person's rights, the offender intrudes upon the enjoyment of another person's liberty and, thereby, oversteps the limitations of his own sphere of liberty and thus limits the other person's liberty (Sadurski, 1985: 225). It is this situation which requires the introduction of the rule of law to provide safeguards.

The rule of law is intrinsically associated with individual freedoms and the enjoyment of rights in that it safeguards them from undue and arbitrary interference (Leoni, 1991). The rule of law becomes a crucial mechanism in guaranteeing the enjoyment of human rights because it is a system in which law imposes meaningful restraints on the state and individual members (Leoni, 1991; Ratnapale, 1999: 18-20). Viewed

from this perspective, an underlying theme of modern social and political thought is that the rule of law checks despotism, which would otherwise exert abusive external control over the life, liberty and property of individuals (Ratnapale, 1999: 19). A good government or an ideal regime is measured in terms of rule-governance, namely, as a government of laws and not of men. According to Max Weber (1948: 336) a government under the rule of law is one whose legitimacy resides exclusively in the exercise of power, not in the person who holds that power, but rather in an impartial order which confers such powers upon him. In positive terms, the rule of law is related to the improved protection of rights in that rule of law is associated with economic development, democracy and political stability, which are key determinants in the enjoyment of human rights (Peerenboom, 2005: 4; Kurczewski and Sullivan, 2002: 251). This is said to be so because the rule of law not only protects, but also lays the ground for safeguarding the social, economic and political well-being of individuals.

In order to enjoy the benefits of the rule of law, each person must be prepared to make an important sacrifice – namely, to obey the law even when he or she does not desire to do so. Each person calls on others to do this, and it is therefore only just and fair for this to be reciprocated, otherwise the arrangement would be inequitable (Murphy, 1979: 77). This requirement provides the justification for restoring the balance of benefits and burdens, hence the need for justice (Sadurski, 1985: 226). We therefore need to turn our attention to the nexus between rule of law and retributive justice.

2.4 The Rule of Law and Retributive Justice

According to the retributive theory of punishment, a criminal, by committing an offence, creates an imbalance in the social order, which ought to be redressed by action against the criminal. This means that retribution is a backward-looking approach to punishment justified as a response to past injustices. The argument is that the offender has unfairly gained advantages over the victim(s) and that punishment is meant to restore the equilibrium (Murphy, 1979: 77). Punishment thus attempts to maintain the proper balance between benefit and burdens by ensuring that there is no profit in criminal wrongdoing (Murphy, 1979: 77). Feinberg identifies two categories of retributive justice, that is, moral or deontological retributive justice, which views punishment as necessary for moral wrongdoing and the consequentialist conception of

retributive justice (Feinberg, 2000: 727). However, the literature on post-conflict punishment tends to combine both categories while leaning more towards the moral category.

2.4.1 Deontological Approach to Punishment

According to Michael Moore (1997: 747), retribution is based on a legal moralist theory of law according to which legislation ought to address morally wrongful behaviour. Punishment becomes a moral act in itself and justified on the basis that offenders deserve to be punished. Thus retribution is justification for the existence of law based on the conviction that the criminal bears responsibility for his or her free and conscious actions. In this regard moral guilt is both a necessary and sufficient condition for punishment, and the appropriate amount of punishment is proportionate to 'the moral gravity of the offence' (Feinberg, 2000: 728). Consequently, Moore (1997: 747) contends that retribution theory of justice demands an obligation to set up institutions for its realisation.

Given its moral underpinning, retributive theory of punishment maintains that criminal guilt merits punishment, regardless of considerations of social utility. According to Kant (1965: 100), retributive punishment is a moral duty to ensure that the moral law is in effect. Punishment is inflicted for its own sake and not for any purpose, because it is understood that criminal law carries a sense of moral blameworthiness with it (Kant, 1965: 100). Kant holds that no man should profit from his own wrongdoing and that retribution attempts to keep this from happening. If one benefits from one's disobedience to the law, then it is unfair or unjust, not merely to the victim of the crime, but to all those who have been obedient (Murphy, 1979: 78). Regarding the severity of punishment, retributive theory maintains the principle of proportionality, according to which the severity of a sentence should be proportional to the seriousness of the criminal conduct (Aukerman, 2002: 54).

There are several practical concerns with retribution. First, retribution is difficult to distinguish from vengeance. Secondly, in order to justify imposing punishment, there must be absolute certainty of guilt and intent. This is practically impossible to ascertain. Imposing pain upon someone who is innocent or unaware is unfair. Aside from this concern, the development of appropriate sanctions seems to be impossible.

Codes which outline punishments for offences rarely take into consideration the vast differences which exist between cases.

2.4.2 Consequentialist Conception of Punishment

The foregoing conception of punishment is a strictly deontological approach which considers punishment as an end in itself. Many theorists have, however, advocated a consequentialist approach to punishment. For Rawls (1969: 107), punishment should be shown effectively to promote the intent of society for it to be justifiable. That means there are goals of punishment which are utilitarian in orientation. One of these goals is communication. Aukerman (2002: 85) identifies two related elements in this approach to punishment, namely, that punishment communicates social condemnation and plays a role in reaffirming and creating societal solidarity. For Émile Durkheim (1973: 176), punishment is a form of moral communication used to express condemnation and strengthen social solidarity. Durkheim (1973: 176) argues that the 'true function [of punishment] is to maintain social cohesion intact.' Crimes, according to Durkheim, are acts that violate a society's fundamental moral code of sacred norms, thereby weakening those norms. Punishment plays a critical role in preventing the collapse of the moral order by limiting the demoralising effects of crime. It also functions as a collective response that demonstrates and reaffirms the real force of the common moral order. Through punishment, a society expresses its shared moral outrage, and strengthens and reinforces the norms of social life. For Durkheim (1973: 176), therefore, sanctioning offenders is a way to communicate the continuing validity of the law. This means punishment has the utilitarian benefit of maintaining societal cohesion.

The Durkheimian model of punishment as communication nonetheless has certain limitations. Given that punishment is a form of communication, what happens when different forms of punishment convey differing messages, which is bound to result in different forms of social solidarity? In certain situations, the intentions lying behind penal codes may vary.

Another consequentialist goal of punishment is deterrence. Deterrence seeks to discourage people from committing crime by making them aware of the different forms of punishment and their severity. Specific or individual deterrence and general

deterrence are generally distinguished. The former seeks to prevent future crime by setting sentences that are strict enough to ensure that a particular offender does not repeat the offence. According to Griffiths and Verdun-Jones (1994: 407), the specific deterrence 'occurs when a convicted offender is deterred from committing further offence as a consequence of his or her personal experience of punishment.' A legal system imposes sanctions in the hope of making offenders fearful of re-exposure to those sanctions. General deterrence seeks to instil fear in other prospective offenders (Aukerman, 2002: 63). It 'is achieved when the threat of legal sanction prevents the commission of potential crimes by people other than punished offenders.' (Griffiths and Verdun-Jones, 1994: 407) In this respect, the preventive goal of punishment serves as a warning to those who may wish to do the same. A prospective criminal will assess the possibility of being caught and the cost of the consequences. This is based not on the objective severity of sanctions or the real risk of apprehension, but on the potential offender's subjective assessment of these factors. Accordingly, the effectiveness of any deterrent depends on the potential offender's perception of possible sanctions and on the assessment of the ability to evade law enforcement. This means the actual severity or certainty of punishment is less significant than its perceived cost in the event of being found out.

There are several arguments against this objective of punishment, which relate to the correlation between punishment as deterrence and its effects. Legal sanctions will not have a general deterrent impact unless they are widely promulgated. Not many people are aware of prevailing sanctions. Moreover, deterrence does not impact on every person in the same way. Humans perceive impact differently and some have less to lose than others. Thus deterrence cannot be effective across the board (Griffiths and Verdun-Jones, 1994: 408). Miller rejects utilitarianism by arguing that a utilitarian approach to punishment would not bear results *vis-à-vis* human behaviour because individual agents tend to perform moral calculations before they act to assess whether an action or its alternative would yield a better result (Miller, 2003: 49-62). The utilitarian approach is further rejected because it overemphasises deterrence as its prime goal, at the expense of normative moral dimensions of crimes as such (Lacey, 1994; Hart, 1968; Honderich, 1989). It is also rejected based on the reasoning that it could, under certain circumstances, justify the punishment of innocent persons as

when, for example, it would produce greater good for the society or greater social pleasure (Richards, 1977: 232-233; Rosen, 1999: 23-37).

Finally, punishment has been pursued as a mode of rehabilitation. Rehabilitation seeks to cure previous offenders of their criminal tendencies so as to prevent the future commission of crime. This approach is based on the assumption that once the offender is rehabilitated, he will no longer commit crimes hence the society will become secure (Aukerman, 2004: 71). According to this approach appropriate rehabilitative sentences should reflect the measures that reintegrate an offender into the community; once an offender has been rehabilitated, there is no need for further punishment. Strict proportionality is not required.

In principle, rehabilitation could have a positive outcome on the lives of criminals in that it is geared towards helping people to transform their lives in order to achieve an improved and meaningful life. However, the efficacy of punishment as rehabilitation is indeterminate. Rehabilitation programmes may produce positive outcomes in the case of some offenders but not in others (Aukerman, 2004: 71; Mani, 2002: 32).

In the preceding discussion, I have reviewed basic concepts that are applicable in criminal justice discourse, that is, the rule of law, human rights, and retributive justice and how they are interrelated. The rule of law is essentially concerned with protecting individuals from arbitrary interference by individuals or government in matters vital to their interests and guarantees the enjoyment of human rights. If it happens that the enjoyment of human rights is interfered with in such a way that one person gains undue advantage over another, then punishment becomes instrumental in correcting the imbalance. Regardless of their practical and conceptual limitations, the rule of law, human rights, and punitive justice are fundamental to the pursuit of meaningful life and social harmony. It is against this background that the principles discussed above are applied in transitional situations characterised by instability and disrupted social harmony.

2.5 Linking International Criminal Justice and Peace-building: Survey of Scholarship and Debates

In the following discussion I focus on criminal justice as applied in contexts which are making transition from situations of conflicts characterised by mass atrocities to situations of peace and stability. The kind of justice meted out during these periods of transition is referred to as transitional justice (Teitel 2000). International criminal justice as applied during transitional situations, therefore, is an instrument of transitional justice. Transitional justice from the standpoint of judicial intervention shares many aspects in common with the basic tenets of ordinary justice and the rule of law discussed above. More importantly, it is based on the notion of individual accountability (Ratner and Abrams, 2001; Orentlicher, 1991: 2537). This was the principle that underpinned the ICTY in the wake of the Balkan war in the early 1990s. It also underpinned ICTR following the 1994 genocide. The same principle underpins the ICC. In creating the ICTY and ICTR the United Nations Security Council believed that pursuing individual responsibility would make the repetition of the grotesque extermination witnessed in the former Yugoslavia between 1991 and 1995 and during the 1994 genocide in Rwanda impossible in future. In relation to these developments, scholarship has presented various arguments in support of the relevance and prospects of international justice system in transitional situation.

Some proponents of judicial intervention have advocated prosecution as a means of realising the transition from conflict and authoritarianism to democracy and an end to sovereign impunity. While describing this position, Vinjamuri and Snyder (2004: 348) state the contention that there is a link between accountability, the rule of law and democratic norms. According to Bassiouni (2002b: 820-821), the open trial processes of the ICC would reinforce social values, and in turn contribute to the individual internalisation of these values, and redress harmful results that arise from crimes against humanity. Taking cognisance of the apparent limitations that the previous international tribunal had displayed, Boed (2002: 487-498) argues that the link between individual accountability, rule of law and eventual democratic values need to be considered in terms of the long-term realisation of peace and democratic culture and should not be judged in terms of perceived short-term failures. Mayerfeld (2004: 147-156), referring to the ICC in particular, sees judicial intervention as an important tool for the consolidation and spread of democracy. He argues that the ICC protects

democracies against anti-democratic forces since it can prosecute anyone who uses terror to seize or retain unconstitutional power and thereby transform political culture (Mayerfeld, 2001: 107). The Rome Statute's preamble conceives the ICC as an instrument designed both to 'put an end to impunity' and to contribute to the prevention of 'grave crimes [that] threaten the peace, security and well-being of the world' (Preamble to the Rome Statute, 1998).

Trials are said to bring about democratic culture and an end to impunity by individualising justice (Meron, 1998: 282; Akhavan, 2001: 31). For instance Beigbeder (1999: xvii) thinks that the Nuremberg trials of Nazi war criminals made a remarkable contribution to international criminal law and justice and provided an essential historical, legal and judicial basis for the later creation of ad hoc tribunals against impunity by pursuing individual Nazi leaders. The trials of Nazi war criminals were instrumental in bringing an end to impunity because they established the principle that individuals at the highest level of government could be prosecuted and punished by an international body for serious breaches of humanitarian law. Accordingly, the link between trials and the end to impunity is based on the understanding that criminal law accuses multiple individuals, ranging from the highest authority to low-ranking soldiers, of single criminal acts. The claim here is that trials have the capacity both to prevent and deter potential future conflicts (Orentlicher, 1991: 2540). Based on the deterrent role of punishment, trials are meant to instil in the minds of prospective abusers of human rights the awareness that they are answerable as individuals for their actions.

Another central element of the legal approach is a link between the demand for justice, accountability, the desire for security and the maintenance of peace. According to Jean-Marie Guehenno (2003: 3), the rule of law is as an inherent instrument in ensuring long-term sustainable peace. Richard Sannerholm (2006) explains the link between the rule of law and post-conflict peace-building as follows. Conflict and crisis result from human rights violations coupled with high levels of insecurity. But rule of law is an essential condition for making justifiable claims based on human rights. Rule of law is, thus, the key strategy for post-conflict recovery (Sannerholm, 2006). Kofi Annan (2004) captures this in his comment that '[i]t is by introducing the rule of law and confidence in its impartial application that we can

hope to resuscitate societies shattered in conflict.’ It is on this basis that all the tribunals created in the post-Cold War era contain transformative objectives in respect of the ability of trials to heal societal wounds caused by mass atrocities. Resolution of the Security Council (1993) which established the ICTY proclaimed that the international tribunal ‘[w]ould contribute to the restoration and maintenance of peace.’ The ICTR Statute states that prosecuting those who bore the highest responsibility for the Rwandan genocide would ‘[c]ontribute to the process of national reconciliation’ and make sure ‘that such violations are halted and effectively redressed.’(Security Council, 1994) In its preamble, the Rome Statute links criminal prosecutions to the ‘peace, security and well-being of the world.’(UN, 1998). Trials are therefore held as ‘the single most appropriate response to communal violence ... the centrepiece of social repair.’ (Fletcher and Weinstein, 2002: 573, 573) Thus, advocates of the prosecutorial process argue that addressing the legacy of past conflict during the crucial period of transition from violence or repression may be a key to reducing the possibility of future violence and increasing prospects of peace. They view addressing crimes through courts as an important part of any policy to advance reconciliation and the prospects of peace (Ratner and Abrams, 2001).

The link made between trials and societal peace and security is based on the idea that such an approach avoids imposing collective responsibility. In this respect the international criminal justice contributes to peace by focusing on individual accountability in which mass atrocities perpetrated either by state or non-state actors are reduced to individual crimes. International criminal justice targets individuals, whether they are in the highest echelons of political leadership or foot-soldiers, insofar as each is personally complicit in serious human rights violation (Orentlicher, 1991: 2599). In this case judicial intervention reduces conflicts into individual crimes through individualistic approaches such as arrest, detention and punishment. Since most ethno-political conflicts have a collective dimension, the individualistic approach seeks to remedy collectivisation of guilt and responsibility by distinguishing the guilty from the innocent. Separating the guilty from the innocent is one of the major obstacles to reconstruction experienced by most post-conflict societies. Once guilt is collectivised, even the innocent are stigmatised if they belong to the perceived perpetrator group. This scenario is likely to lead to the collapse of trust and could weaken post-conflict reconstruction. Thus international criminal justice pursues peace

not by focusing on conflicts between groups, but by criminalising acts committed by individuals. In this way it neutralises inter-group tensions and contributes to peace and stability.

Another line of argument in support of the relevance and importance of international accountability is based on the belief that, because it has gained in status and effectiveness over many years, it has to be of some validity. In his study of transitional justice processes, Geoffrey Robertson (1999: xiii) comes to the conclusion that the evolution of 'crime against humanity' as a legitimate and important element of international law has given rise to important new international rights and obligations on the parts of states. His argument is that, although international interventions do have limitations, the obligation to adopt collective action to stop crimes against humanity continues to exist as long as the right specifications are followed. The existence of crimes against humanity as a legal dictum, first defined at Nuremberg and then in subsequent charters, remains key to unlocking the hitherto closed door of sovereignty, which for many advocates of humanitarian law has represented an impediment to the enjoyment of human rights. Falk (1999: 44) sees the 'beginning of an ethos of criminal accountability that contains no exemption for political leaders and is being implemented at the global level.' Human rights advocates and scholars point to a series of events since the end of the Cold War that demonstrate the global impact of the adoption of human rights norms on international human rights politics. Referring to the establishment of the ICTY, ICTR and the ICC, Robertson (1999: xiii, 535) suggests that the Nuremberg principles have been revived by recent events and could now be actively used to promote an end to the culture of impunity and unaccountability that has developed.

Other scholars have shared in this belief that international humanitarian law has evolved since Nuremberg, which contributed to the evolution of the law in the sense that states are now required to punish crimes against humanity committed in their own territories and to develop and implement norms of accountability (Orentlicher, 1999: 2593; Vinjamuri and Snyder, 2004: 350; Akhavan, 2001: 95). According to Meron (1998: 304) the tribunals of the 1990s spurred 'the elevation of many principles of international humanitarian law from the rhetorical to the normative and from the normative to the effectively criminalised.' Scharf (1999: 621-46) points out that,

despite errors, missteps and political difficulties, the precedents of the Nuremberg and the Tokyo tribunals in the aftermath of World War II demonstrated the feasibility of international criminal tribunals. He interprets the creation of a permanent ICC as a further development emanating as a result of the spirit generated by the *ad hoc* tribunals for Yugoslavia and Rwanda as an international endeavour to deal with gross human rights violation.

The relevance of international judicial intervention is also defended on the basis of its universal character. The advocacy of a universal model of international justice is hinged on the controversial assumption that all nations subscribe to similar notions of justice and law. International judicial intervention, in these terms, is intervention inspired by the belief that transition to more stable and peaceful political system implies upholding universal legal and moral norms. In this respect, transitional justice is conceived as criminal justice where the usual goals of rules of law and justice apply, namely, holding violators accountable for their actions and punishing them once their guilt is determined through a rigorous process before an impartial judge (Ohlin, 2007: 52). Accordingly, perpetrators of war crimes and crimes against humanity would be expected to be accountable for their crimes (Ratner and Abrams, 2001; Orentlicher, 1991: 2537). The pursuit of the human rights agenda is here conceived as moral conduct which is a matter of following rules, where duties and rights are determined by rules (Shklar, 1987: 1). According to its proponents, the universal character of international accountability places it above alternative instruments for peace building.

Robertson (1999), with his deep conviction about the universality of human rights law and the fundamental nature of human rights, rejects claims in favour of cultural relativism upon which many local initiatives of transitional justice are based. For him the universality of these norms justifies the moral obligation of states to prosecute crimes against humanity. He argues that there is a clear right to humanitarian intervention, a right that overrides the principle of non-intervention (Robertson, 1999: 426). For him the moral imperative to prevent crimes against humanity forms the basis for a legal right that is not dependent on the political will of leaders. While advocating trials as the best option in respect of gross human rights abuses, Biegebeder (1999: 49) disputes the effectiveness of local initiatives, which he calls 'self-

appointed bodies' created by individuals who are not legitimate and act as replacements for war crimes tribunals or the ICC. He contends that local initiatives are hampered by their concentration on collective rights rather than individual human rights. Generally, advocates of judicial intervention argue that alternative approaches, such as truth commissions and amnesty, are inferior substitutes to prosecution (Mendez, 1997; Minow, 1998). These alternative approaches, according to advocates of the universality of human rights, must not be advocated at the cost of the victims' rights.

The need to prosecute the top LRA leadership for crimes against humanity was informed, in the first place, by the above suppositions given that the crimes allegedly committed by the rebels are crimes against humanity, namely, the universal obligation to ensure the protection of human rights (Hall, 2003). In the second place, prosecuting the LRA would bring an end to impunity that had characterised human rights abuses in Uganda. Failure to prosecute Joseph Kony and other LRA commanders would amount to giving way to impunity in respect of the most egregious deeds and would be a betrayal of the victims of the atrocities. In the third place, prosecution of the LRA would contribute to sustainable peace and stability as it would de-legitimize and destabilise them.

But the nexus between prosecution, the rule of law, peace and democracy is debatable. It is not scientifically based since we cannot predict that prosecution, if pursued, will ensure that individuals or armies will not commit the same crimes again and will always follow the rule of law (Shklar, 1987). It cannot be scientifically determined that, if the LRA were to be prosecuted by the ICC, peace would return to northern Uganda. This also applies to other future prosecutions by the ICC. This is a complication inherent in the application of deterrent theory of justice to crimes against humanity. There is insufficient empirical data to assess the impact of international trials and the stress on individual accountability to be measured. Gary Bass (2000: 280-304) argues that we do not live in a world in which the legalist empirical claims are supreme and it is not true that trials have a strong deterrent effect on potential war criminals. These are some of the critical issues that will inform our discussion in chapter six where I evaluate the potential of international criminal justice instruments vis-à-vis local alternatives.

As evident in the foregoing survey of debates, international criminal justice operates on the basic tenets of ordinary criminal justice in that it focuses on individual criminal responsibility. This is bound to raise some critical questions regarding the nature of the ICC as an international transitional justice instrument, given that I have asserted that the ICC is an international judicial instrument that seeks to foster the rule of law, human rights and justice in the classical sense and, in chapter one, that the establishment of the ICC represents a paradigm shift in the history of international justice.

2.6 International Criminal Justice as Transitional Justice: Newness

Since, as I have stated above, international criminal justice as applied in transitional situations operates within the framework of classical notions of justice, does this mean that transitional justice is fundamentally different from the ordinary conception of justice (Crocker, 1999; Kritz, 1995: xx; Teitel, 2002)? Does the work of transitional justice require revision of the basic principles of justice or is it more concerned with a modest inquiry into appropriate institutional arrangements to achieve peace (Ohlin, 2007: 52)? Where does the paradigm shift of the ICC reside given that the court operates according to the classical notions of justice? These questions are significant because they involve a discussion of the new dimension which an enquiry into the field of transitional justice brings to the available corpus of knowledge about justice.

Some critics have critiqued the claim that international judicial instruments applied in transitional situations present moral and legal dilemmas. Posner and Vermeule (2004: 1-3) have repudiated any claim that '[t]ransitional justice is a distinctive topic that presents a distinctive set of moral and jurisprudential dilemmas.' They contend that transitional justice is continuous with ordinary justice in that even the ordinary laws of consolidated democracies are equally dogged by jurisprudential dilemmas similar to those characterising transitional situations (Posner and Vermeule, 2004: 3). Giving an example of American domestic law, they argue that there are intra-regime transitional dilemmas, such as changes in criminal and civil law and procedure, judicial identification of new institutional rights, which may pose questions of retroactivity or compensation. These, claim Posner and Vermeule, are provided for within the framework of ordinary law and that political transitions fall within that

framework. Thus, from a judicial justice standpoint, they believe that there is nothing new in transitional justice debates and that the problems raised in these debates should be reduced to ordinary moral and jurisprudential dilemmas that have always characterised the application of universal moral principles to particular situations.

Contrary to the position taken by Posner and Vermeule, I argue that although international criminal justice, as a mechanism for transitional justice, is based on the same legal and moral foundations of 'ordinary times', there is a new dimension in its application in transitional situations. Two elements are distinguishable, namely, the nature of the crimes pursued by international criminal justice instruments and the notion of universal jurisdiction.

Crimes which are dealt with by international criminal justice instruments have an extra-ordinary nature of a collective character and threaten collective peace and security. In this respect, the ICC is more than a criminal court in the ordinary sense if it is required to prosecute cases when collective peace and security demands are its concerns (Ohlin, 2007: 62). Ordinarily, societies engage in prosecutions of individuals because criminals must be punished and the innocent go free as required by the rule of law. Mark Drumbl (2007: 4) refers to crimes committed during relative peace as 'ordinary domestic crimes' which affect a small number of victims targeted in indiscriminate manner. However, crimes during extraordinary moments have both individual and collective character. Collective character means, such crimes systematically threaten a significant proportion of the population. Drumbl (2007: 11) refers to such crimes as 'extraordinary international crimes [...as opposed to] ordinary domestic crimes'. Extra-ordinary crimes include genocide and crimes against humanity involving large numbers of victims particularly targeted because of their group membership. To illustrate this distinction, let us consider the case of rape, which is undoubtedly a crime against the person. As an isolated case, rape rests within the domain of ordinary criminal justice. However, the same act becomes an extra-ordinary crime – a subject of transitional justice – by virtue of it being perpetrated as a systematic means of intimidation, terror or genocide. As a crime against humanity rape has an overwhelmingly destructive effect on the identity, integrity, peace and stability of the entire society (May, 2005: 96-111). Thus, ordinary crimes like murder and rape acquire an extra-ordinary character – crimes against humanity or genocide –

when committed as part of a 'widespread or systematic attack' on a civilian population.

Apart from the collective target group, extraordinary international crimes are distinguished from ordinary crimes in terms of the number of perpetrators. According to Drumbl (2007: 25), whereas ordinary crimes are committed by a small number of perpetrators, extra-ordinary crimes are committed by a large group constituting a multilevel pyramid. At the peak of the pyramid are the individuals who commandeer the plan. The planners are followed by the mid-level officials who are 'ordered into ordering others' to kill while paying allegiance to conflict commanders. Below the mid-level officials are the 'hoi polloi' who do the actual killing. At the very bottom-line are the multitudes who simply acquiesce and do nothing (Drumbl, 2007: 25). What matters in the case of extraordinary crimes during conflict is not the mind of the individual criminal (Robertson, 2006: 241). What is significant is the fact that the individual is part of a wider apparatus, which makes the crimes so horrific and locates it in a category outside ordinary criminality (Robertson, 2006: 241). Moreover the individuals acting as part of the wider apparatus are the ones considered to be conforming to social norms while those who choose to act otherwise are understood to be eccentric (Drumbl, 2007: 30).

Accordingly, during transitional moments the rule of law is applied to respond to events which defy our ordinary conceptual and moral categories (Friedlander, 1992: 3). Transitional justice is concerned with capturing what has been referred to as radical evil (Sarat, Douglas and Umphrey, 2005). The notion of radical evil dates back to Emmanuel Kant, who described it as that which destroys the very foundation of moral possibility (Cherkasova, 2005: 574-5). The notion was used by Arendt in the aftermath of the Second World War to describe the Holocaust. For Arendt (1992: 6), radical evil is that which makes '.... human beings as human beings superfluous, not using them as means to an end, which leaves the essence as human untouched and impinges only on their human dignity; rather making them superfluous as humans.' Thus radical evil, for Arendt (1967: 447-457), emerged in connection with a system that sought to reduce human beings to meaninglessness through total domination, epitomised by the concentration camps and the extermination of an entire people. Radical evil is about the strongest form of humiliation which destroys the very person,

a fundamental assault against the most common denominator of being human. It is a direct onslaught against humanity as a moral community, a crime against humanity. In this respect, what sets radical evil apart from ordinary crimes is that, in some sense, humanity is harmed when these crimes are perpetrated (Arendt, 1967). Thus, insofar as transitional justice addresses events of radical evil or extraordinary crime, it becomes distinct from ordinary justice dispensed during ordinary moments and is bound to raise distinct moral and jurisprudential dilemmas.

A corollary to the nature of extra-ordinary crimes is the notion of international jurisdiction, which overrides national limits in the pursuit of justice in respect of such crimes. The notion of international jurisdiction, according to Sands (2004: 69), is based on a belief that certain crimes are so serious that they are treated by the international community as being international crimes. The obligation to prosecute and punish perpetrators of such crimes rests on the country having jurisdiction over these offences, but also applies to members of the international community (Mendez, 1997: 6). Given the international dimension of such crimes, Sands (2004: 69) argues, any state may claim jurisdiction over them. This implies a shift from pre-Nuremberg trials when the international laws of war were not concerned with the way a government treated its nationals.

From the IMT of Nuremberg, the notion of individuals having concrete duties under international law, as opposed to national law, was clearly enunciated for the first time and later accepted by the international community of states. Until the Nuremberg trials, war crimes trials had been held at national level under national military law (Clapham, 2004: 31). This enunciation, though in retrospect, was a radical moment in the history of human rights and humanitarian law. The IMT set the beginning of a new way of thinking about international law attaching duties to individuals who committed massive criminal acts while acting on behalf of the state. Human rights law developed around the prohibition on genocide, torture, disappearances and summary executions, so that it became possible to consider individual responsibility for human rights violations, even in the absence of armed conflict (Clapham, 2004: 33). The new understanding and application of crimes against humanity elevated human rights violations to the level of international crimes (Clapham, 2004, 43). Thus, one of the novelties of international criminal justice applied during transitional moments vis-à-

vis justice during ordinary times is that the former is based on an unprecedented doctrine of universal jurisdiction. This doctrine appeals to the conscience of mankind, based on the universal recognition of human rights and invokes ideals of justice, impartiality and fairness geared towards preservation of peace on a global scale (Kochler, 2003: 353).

The notion of international jurisdiction is also relevant in situations making transitions from conflict to peace for practical reasons. Ordinary crimes are dealt with by a state judicial apparatus which cannot respond to evils of radical nature given the context of transitional situations. In transitional situations it is likely that many of the judges will be the same judges who served in the old regime and so are thought to be deeply compromised from the start, as in the case of Rwanda of the 1994 genocide. Second, many of the newly appointed judges are likely to be appointed because they were excluded from the old regime and they too would be possibly or perceived to be compromised, or there may simply be no judges, as in the case of post-genocide Rwanda. Third, judges in a transition are often faced with having to hand down decisions on deeply political matters, thereby putting their independence in jeopardy. There is therefore a need for judges from non-interested parties and this can only be possible within the frame of international justice institutions.

We can thus conclude that international criminal justice administered in post-conflict situations is founded on principles of ordinary law applied by national courts and particularly enshrined in the principle of individual accountability. However, there is an aspect in which the two are distinct, as captured by Teitel (2000). Transitional moments are times of massive paradigm shifts in understanding justice given that at such times societies are struggling with political, legal, and economic transformation (Teitel, 2000: 11). The rule of law at these junctures appears deeply paradoxical with justice being re-conceptualised in terms of the goal of rebuilding broken communities; the basic principles of justice are, at these times, subjected to revision (Teitel, 2001: 241; Teitel, 2000, 6). Law, according to Teitel (2000: 6), shifts from its ordinary role of providing order and stability to the role of enabling transformation in extraordinary periods of political upheaval in which 'legal responses generate a *sui generis* paradigm of transformative law.'

From the foregoing discussion it emerges that transitional situations present enormous challenges that cannot be overcome through the application of instruments of ordinary justice at national level. This thus justifies the existence of international system of criminal justice. However, in the history of transitional justice practice and scholarship, there were those who rejected the relevance of punitive justice as such. Non-prosecutorial instruments, under the rubric of restorative justice as opposed to punitive justice, were proposed, defended and applied as better alternatives in transitional situations.

2.7 Transitional Justice as Restorative Justice

Human rights activists, lawyers and political scientists agree that crimes against humanity, war crimes and genocide are so widespread that they confound the categories for ordinary moral assessment. This means that such extra-ordinary crimes need extra-ordinary responses. There is, however, lack of agreement about what extra-ordinary response should actually constitute. For proponents of international judicial intervention, as discussed above, crimes such as genocide, crimes against humanity and war crimes are so grave that they defy national boundaries and place an obligation on the international community to intervene. However, advocates of non-prosecutorial models contend that, given the widespread nature of such mass atrocities and crimes, the adversarial approach is not effectively applicable in rebuilding societies shattered by mass crimes. The approach to transitional justice that advocates non-prosecution and focusing on the restoration of social order is referred to as restorative justice. The following discussion takes a survey of the emergence of and discourse on restorative justice.

2.7.1 Emergence of Restorative Justice

The notion of restorative justice emerged as international justice registered developments in the post-Cold War periods (Teitel, 2003b: 78). According to Alex Boraine (2000: 152-153), restorative justice is applied in post-conflict periods and aims to repair harm, heal the victims and communities, and restore offenders to a healthy relationship with the community. The notion of restorative justice requires that crimes should be addressed by the community through many different processes such as rebuke and reintegration into the community of those offenders who admit their wrongdoing (Drumbl, 2000: 1258). Restorative justice focuses on the healing of

the broader community and recognises that crime affects the entire community. In this respect, criminals are considered ‘not as individuals that must be handled but as persons who, together with victims, are members of one community.’ (Etzioni, 1998: 374) Restorative justice took many forms, notably truth and reconciliation commissions and more localised traditional forms of justice.

2.7.1.1 Truth Commissions: The South African Truth and Reconciliation Commission

A truth commission is an official body, mandated by a national government, to investigate, document, and report on human rights violation in a country over a specified period of time (Teitel (2003b: 78). Generally truth commissions were constituted, following the fall of an authoritarian government, by a successor government to expose past injustices and facilitate the reconciliatory process (Rotberg, 2000: 3). Thus the goal of truth commissions was to make hidden truths public so as to facilitate the reconciliatory process. The philosophy behind such attempts is that truth, not punishment, contributes to reconciliation.

The use of truth commissions up-surged in the post-Cold War periods as responses to mass atrocities. However, the instrument can be traced back to as early as 1974 when, as shown in chapter five of this work, Uganda under the regime of Idi Amin Dada established Commission of Enquiry into the Disappearances of People in Uganda since 25 January 1971. Truth commissions were also used in Argentina to achieve reconciliation in post-junta Argentina following the collapse of the military regime in 1983 (Teitel, 2003b: 78). However, truth commissions became paradigmatic in post-Apartheid South Africa in the 1990s when the Apartheid regime and its structures were dismantled. As a result of decades of conflict in South Africa, parties to the pre-1994 negotiation process agreed that, in order to deal with the challenges of the new democracy and face the future with confidence, the violence of the past had to be exposed and acknowledged – hence the South African Truth and Reconciliation Commission, TRC (Maepa, 2005: 66).

The commission’s key restorative goals included generation of in-depth information on the extent, nature and causes of human rights violations in South Africa under apartheid; identifying persons responsible for the violations; providing a platform for

the victims to bring out their feelings. It was also aimed at granting amnesty to those who offered to disclose their involvement in such violations and giving recommendations on how to prevent future human rights violations (Graybill, 1998). An amnesty is a legislative undertaking by a state to pardon offences punishable by law and as such goes against the principles of the rule of law (Bhargava, 2002:1309, 1327).

The South African TRC stressed the importance of acknowledgement. This was based on the belief that acknowledgement of the truth would lead to healing, reconciliation and nation building. According to Villa-Vicencio (2003: 235) the TRC provided the fragile South African context with an opportunity to explore an option for nation-building. The TRC was to promote peaceful co-existence while highlighting the need to understand the 'motives and perspective' of all involved in conflicts of the past, as the beginning of a process that could ultimately lead to national reconciliation (Villa-Vicencio, 2003: 235). As such, the TRC was a restorative transitional mechanism designed to allow a society characterised by conflicts, injuries and brokenness to make the step towards a future holding out the prospect of respect for human rights, democracy, peaceful co-existence and development opportunities (Villa-Vicencio, 2003: 237). Accordingly, the TRC, though quasi judicial in terms of its operation, fulfilled the basic principles of restorative justice by focusing on truth, healing, reconciliation and reintegration.

2.7.1.2 Traditional Alternative Models: *Gacaca* Court in Rwanda

The idea of restorative mechanisms emerged with the operational and institutional challenges mentioned in chapter one. The ICTR could not adequately deal with all the dimensions of the genocide. The number of the suspects was far too large for the ICTR to handle. This motivated the post-genocide Rwandan Government to rediscover a traditional mechanism for dispute resolution and reconciliation, referred to as *gacaca*. *Gacaca* means judgement on the grass. This model was applied in the pre-colonial periods to resolve disputes concerning land use and rights, cattle, marriage, inheritance rights, loans, damage to properties caused by one of the parties or animals, and petty theft (Werchick, 2003). Thus the courts were meant to reintegrate suspects back into the community and restore harmony and social order in a given society, and to reintegrate persons who were the source of the disorder (Daly,

2002: 371). The courts had a community dimension. Participants in the *gacaca* included all those affected by the crimes and also those who would be affected by the suspect's return to the community. The courts were presided over by elders and judgements were settled only with consensus from all parties (Werchick, 2003).

Gacaca, as applied in the post-genocide Rwanda, was meant to serve two purposes. The courts were meant to ease the congestion in Rwandan prisons by dealing with the large number of suspects which could not be handled by the national courts and the ICTR (Daly, 2002: 371). It was also intended to restore harmony and social order. In this respect *gacaca* courts were founded on the principle of restorative justice drawing from the key elements such as reconciliation and reintegration.

Given their restorative principles and goals, *gacaca* courts were different from trials at the ICTR. The courts were closer to the people of Rwanda whereas the ICTR in Arusha was isolated from Rwanda in terms of its geography. This necessitated the involvement and participation of the people. In addition, as Daly (2002: 381) points out, whereas the ICTR focused on the elites who had organised the genocide, the *gacaca* courts focused on the community. The process of hearing the confessions and admissions of guilt of the accused and the forgiveness that followed was, in principle, a necessary step towards reintegration (Hamilton, 2000). In promoting the goals of restorative justice, decisions rendered by *gacaca* courts allocated compensation to victims. The Rwandan Government set up a genocide survivor's fund in 2003, which represented eight per cent of the annual budget and assists destitute survivors. Those convicted provided compensation through their prison services (Gabirol, 2002).

Although *gacaca* was highly acclaimed as having the potential to restore peace and reconciliation in Rwanda, many elements in its application were in conflict with its own restorative purpose (Daly, 2002: 371). The processes were highly politicised and the participants *ethnicised* by assumptions of guilt based on ethnic group membership (Daly, 2002: 371). Furthermore, *gacaca* courts were modified to act as criminal courts in the modern understanding of criminal courts. Although the courts were founded on communal values, the *gacaca* trials espoused individual responsibility as in the modern judicial system. This entailed a dramatic departure from its indigenous restorative nature since it became a state-imposed model of justice which departed

from the reconciliatory and restorative purposes upon which this community-based system was founded. Its state-imposed dimension was evidenced by the order given by President Paul Kagame that the 'duty to testify is a moral obligation, nobody having the right to get out of for whatever reason it may be.' (Quoted by Packer, 2002). The Rwandan Government, as a Tutsis 'ethnocracy', and its heavy-handed approach to reconciliation thus painted *gacaca* as a type of victors' justice. In effect, the courts constituted a form of punitive justice that involved community testimony and judges.

This shortcoming notwithstanding, the fact that genocide victims had a chance through the *gacaca* courts to speak out publicly, in a state-sponsored forum, about the atrocities committed during the 1994 genocide was a great step forward in creating and sustaining peace in Rwanda. However, the lack of basic standards of human rights, coupled with the post-genocide Government's unwillingness to be held accountable for its own actions, threatened the *gacaca*'s potential (Tiemessen, 2004: 57). These limitations have led to a critique of traditional mechanisms, which will be useful in assessing the Acholi traditional system of peace and justice applied in the situation of northern Uganda.

2.7.2 A Review of Debates on Restorative Justice

From what has been discussed above, it emerges that restorative justice is pursued as suitable for rebuilding societies which have been fragmented by violent conflicts. Such conflicts result in injuries to victims, communities and the offenders themselves. This situation has given rise to the assumption that the objective of transitional justice process should be to reconcile parties while repairing the injuries caused by crime (Auckerman, 2002). Restorative justice therefore attempts to accomplish several goals. First of all, justice needs to be served in respect to both the victim and the offender. Each party should feel that he or she has received fair treatment. Second, the relationship between the perpetrator and the victim needs to be addressed and an opportunity provided for reconciliation. Third, the process must also take into consideration the concerns of the community. Last, direction for resolution must be provided. Thus, Bazemore and Umbreit (1995: 302) suggest that restorative justice, in contrast to retributive justice, is concerned with the broader relationship between offender, victim and the community.

Advocates of restorative justice reject prosecution as a mechanism for post-conflict reconstruction. Many scholars in the field of political science such as Huntington (1991: 231) prefer to advocate an approach guided basically by the trajectory of political considerations. Acuna and Smulovitz (1997: 95) argue that prospects for democratic openings should be nurtured by pardoning leaders associated with authoritarian regimes for past human rights violations. General amnesty for all, according to O'Donnell and Schmitter (1998: 69), provides a far stronger base for democracy than prosecution. In this regard, three broad arguments in favour of restorative justice can be singled out in the scholarship of transitional justice.

The first is that peace comes before justice and can lead to democracy (Stepan, 1986: 64). Informed by pragmatic considerations, Henry Kissinger (2001: 95) argues that flexible and prudent political judgment about when to advance peace and justice yields better outcomes than obstinately clinging to legalism. In this connection, opponents of prosecutions in post-regime regime change reason that amnesty for human rights abusers is a pre-requisite for a smooth political transition, since many transitional democracies do not have the power, popular support, legal tools or conditions necessary to prosecute effectively (van Zyl, 1999: 647, 651; Landsman, 1996: 81-84; Villa-Vicencio, 2000: 205, 220). Van Zyl (1999) points to the South African case, in which the apartheid regime and its security forces would not have allowed the transition to a democratic order had its members, supporters and operatives faced a warrant of arrest. Landsman (1996: 81-84), like Van Zyl warns that prosecuting criminal leaders runs the risk of leading to renewed conflict, since these leaders could potentially use their military establishment to bring down the transitional government if they feel threatened. For Zalaquett (1995: 203-206) peace is more important and should precede justice in the sense that peace provides the proper basis for justice. He argues that societal stability, actual political opportunities and constraints override the needs of victims and the ethical principles of justice. Roehrig (2002: 186-88) argues that attempts to uncover the truth should follow successful efforts to secure peace and that only after a democratic culture has taken root should trials be considered. The stress is placed on a cautious approach to prosecution which is conducive to a smooth transition to peace (Roehrig, 2002: 198-99; Huntington, 1991: 231).

Secondly, restorative justice deployed in post-conflict regime transitions is also conceived as having inherent value over and above purely pragmatic considerations. For instance, truth commissions, amnesty and eventual reconciliation invoke the long-term aspirations of the political community as an alternative to revenge or victor's justice. The concept of reconciliation incorporates features such as tolerance for political and ethnic diversity, respect for human rights and rejection of racial or ethnic stereotyping (Zalaquett, 1992: 1425; Wilson, 2001). Such values of restorative justice are relevant to the nature of societies making transitions from conflict to stability. This is so because, observes Miriam Aukerman (2002: 41-45), massive human rights violations are an 'extraordinary evil' to which the response should be to focus on the society rather than individuals. She suggests that such crimes require an alternative model to protect the society against such horrors and to ameliorate the harm they cause, taking cognisance of the larger context within which widespread human rights abuses occur. Such a mechanism focuses on rebuilding societies by developing shared histories (Aukerman, 2002: 41-45).

The third claim is that restorative justice processes are suitable for addressing traumas. Most intra-state violent conflicts with resultant human rights abuses imprint negative psychosocial legacies on society, rendering individuals susceptible to future conflicts (Van der Merwe and Veinings, 2001: 345). Such conflicts destroy the fabric of society, which then needs to be repaired. Post-conflict reconstruction therefore requires that cognisance be taken of these psychosocial and emotional dimensions of a given conflict. If post-conflict trauma is not dealt with it is likely that some of the victims of past violence may end up becoming the perpetrators of future conflicts (Van der Merwe and Veinings, 2001: 344). In this respect, Zalaquett (1992: 1425) advocates the idea of a truth commission as being better than trials in addressing trauma, anger and fear. Dealing with post-conflict trauma is a significant element in sustainable peace building since those who have experienced the horrors of violent conflict are in most cases psychologically and emotionally devastated. Post-conflict trauma healing is instrumental in reconstructing relationships that have been shattered on account of terrible crimes committed one against the other. Post-conflict societies are characterised by mistrust across various groups. International criminal prosecutions do not have the ability to reach the victims and meet their emotional

concerns. Through restorative processes, such as truth and reconciliation, survivors, witnesses and presumed perpetrators all come together to witness and narrate, and perpetrators confess what they know about the past atrocities. This leads to a psychosocial healing (Lederach, 1997; Graybill, 2004). It is therefore necessary to deal with trauma in order to break the cycle of violence which may characterise a country's history. Socio-psychological approaches to peace building emphasise relational aspects such as trust building. It seeks to minimise poorly functioning interactions and maximise mutual understanding between the previously conflicting groups (Lederach, 1997: 81-83). If trauma is not dealt with, unhealed social losses and psychological trauma usually continue to dominate societies that have suffered conflict.

A general consensus of the above views is that prosecutions threaten prospects for sustainable peace in post-conflict situations. It is therefore easy to understand why the ICC ran into serious problems with its first big case – the situation in northern Uganda. It was confronted with outright hostility from a wide range of groups, including traditional leaders, representatives of the Catholic and Anglican churches, non-governmental organisations and, ironically, the Ugandan Government, which had initially invited the ICC to become involved in 2003. In place of judicial intervention, stakeholders advanced local initiatives as the most appropriate response to the northern Uganda conflict.

Given the suffering the community had undergone, many commentators thought that peace should be pursued first as means of realising sustainable peace in northern Uganda. Afako (2002) opposed the ICC prosecution on the basis that the Acholi traditional conflict-resolution method, *mato oput*, would stress forgiveness, reconciliation and the reintegration of offenders who had committed various offences, including murder. The Paramount Chief of Acholi, Rwot Onen David Acana II, argued that no one would act as witness against Kony since the Acholi had already forgiven all LRA rebels and their leader for the crimes committed (African News, 2003). Father Carlos Rodriguez (2003), bringing in the religious dimension, argued that while the Acholi condemned atrocities committed by the LRA, their religious ideals motivated them to love and forgive their enemies. Amy Colleen Finnegan (2005) argues that forgiveness, as a mechanism for post-conflict peace-building, was

overlooked and forgotten by the international community. She understands the concept of forgiveness as both interpersonal and political and hence as playing a cardinal role in conflict resolution, both at interpersonal and community levels (Colleen, 2005). Forgiveness then became relevant, given the nature of the conflict in Uganda where atrocities were committed by relatives of the victims and persons who belonged to the same community as the victims.

2.8 Conclusion

This chapter has laid a broad theoretical framework within which the discourses and transitional justice strategies for the northern Uganda conflict are situated. These strategies boil down to a dichotomy between the punitive system of justice and restorative mechanisms. The former focuses on individual accountability whereas the latter focuses on the communal dimensions of crimes. The international punitive system of justice operates on the basis of universal tenets of human rights and the rule of law whereas restorative justice embraces the contextual aspects of human rights and justice, which involves tinkering with the rule of law as a way of achieving peace. This is the dominant theoretical model. However, the mainstream scholarship on both retributive and restorative justice, as presented in this survey, evidently leaves out other aspects of human rights violations. Debates on criminal justice as transitional justice demonstrate the narrow scope of transitional justice, which is limited to transforming people's attitudes and behaviour. The dominant approach focuses on transitional justice either through punishment or amnesty and reconciliation, while leaving out broader social, political and cultural causes of conflicts. By identifying this gap, this review allows us to go beyond the dichotomous approach to transitional justice discourse to a more holistic discussion. In order to appreciate the need for a more holistic approach to transitional justice discourse and practice, a deeper exposition of nature and extent of the protracted conflict in northern Uganda is appropriate.

Chapter Three

Conflict Trajectory in Northern Uganda: Its Development and Nature

3.1 Introduction

In order to assess the potential of the ICC and alternative models of peace and justice in northern Uganda, this thesis explores factors associated with the beginnings and duration of the conflict. Some explanations have been offered by scholars. Ofcansky (1996: 37) has suggested that the colonial system of divide and rule in Uganda left behind a deeply divided society with differential access to economic development, political power; and a legacy of ethnic stereotyping and manipulation. Omara-Otunnu (1987) points to a militarised culture that emerged in post-independence Uganda whereby the military became a key instrument for securing political power and access to resources. To explain the above suppositions I offer a synoptic presentation of the trajectory of violence in Uganda beginning immediately after independence and continuing until the LRA insurgency in northern Uganda in 1986. I then provide a retrospective analysis of how the various historical factors mentioned in the synopsis developed into mutually reinforcing causal factors that explain the intractable nature of conflicts in Uganda in general and northern Uganda in particular.

3.2 A Synopsis of Conflicts in Uganda since the Colonial Period

3.2.1 The Colonial Legacy

Uganda, like most post-colonial African countries was a colonial construct. British colonial rule in Uganda was established by the 1890 treaty with the Buganda Kingdom. This was followed by the 1894 declaration of a British protectorate over the whole area of Uganda. A protectorate within British sphere of influence abroad was nominally distinct from a colony in that the former was semi-autonomous whereas the latter formed part of the British state. The country was created from the historical kingdoms in the south, such as the Buganda and the Bunyoro kingdoms, and the less centralised polities, such as chiefdoms among the Acholi headed by *Rwodi* (rulers) in the north (Hansen and Twaddle, 1995; Mudoola, 1996). Generally, the southerners were Bantu speakers while the northerners were Nilotic speakers. The Buganda Kingdom, which was more centralised and had well-organised traditional administrative structures and institutions, became a key player in the protectorate compared to other polities and was used by the British colonial administration to

administer the protectorate (Apter, 1965: 84-116). It is upon these traditional cleavages that British colonial administration built their system of indirect rule in Uganda.

One of the factors that historians have pointed to in trying to account for the conflict in northern Uganda is the British colonial system of indirect rule. Indirect rule consisted of the integration of local chiefs into administration of local governments in the colonies on behalf of colonial power. It also involved using certain chiefdoms or kingdoms to assist in conquering, pacifying and ruling over others. This system was consolidated by the protectorate status granted to Buganda under the 1900 Agreement which defined relations between British colonial authority and Buganda, as well as between Buganda and the rest of the Uganda Protectorate (Ofcansky, 1996: 22; Kisamba-Mugerwa, 1991: 311-321). According to the agreement, the Buganda Kingdom was considered to be a province of the Uganda Protectorate. The Kingdom was granted special status with a considerable degree of autonomy and was granted preferential status over other polities by the British. In return, the Buganda Kingdom recognised British sovereignty and divided their land equally between the British, in the form of crown land, and the Buganda chiefs, many of whom held the land in private ownership and leased plots to tenants (Kisamba-Mugerwa, 1991: 311-321). This was known as the *mailo* (native) system – a form of feudal authority with structured, hierarchically-based subordination. The Buganda also paid taxes for their privileges.

The preferential consideration given to the Buganda Kingdom and Baganda (the people of Buganda Kingdom) contrasted with British policy towards the Nilotic tribes in northern Uganda. The northern region was not economically developed during the colonial period and served mainly as a reservoir for cheap labour for the south, although the local population also carried out some small-scale but significant cotton and cattle farming. The British deliberately reserved the introduction of industry and cash crop production to the south. However, as a kind of *quid pro quo*, and consonant with the system of divide and rule, recruitment into the army was reserved for northerners and people from the east who, the British claimed, were naturally martial in nature (Lwanga-Lunyiigo, 1989; Omara-Otunnu, 1987). Amii Omara-Otunnu (1987), underscoring the prevalence of northerners in the army, notes that

...the African sector of the Army was not very representative of the ethnic composition of the country as a whole. The largest contingent was recruited from the north, especially from the people of Acholi ... By 1914, Acholi had become the main recruiting ground for the KAR (King's Africa Rifles), a pattern which was continued in the post-colonial period. (Omara-Otunnu, 1987)

At the time of independence in 1962, the Ugandan army was comprised predominantly of northerners, and the rapid expansion of the army during the first Government of Milton Obote (1962-1971) continued to rely primarily on recruits from the northern regions of Acholi, Teso, Lango and the West Nile (Brett, 1995: 135). Behrend (1999: 19) attributes the continued dominance of people from the north of the country in the army before and after independence to the fact that there were limited economic opportunities in that part of the country since the British had excluded the region economically.

The significance of these divisions was that the British managed to maintain distinctive authoritative roles and powers between the southern civilian elites, whose role was administrative and political, and the largely northern military elites (ICG, 2004: 2). Thus, the British instituted a system of indirect governance in Uganda, which relied on Buganda to administer and rule other Ugandan kingdoms and dominated sectors such as the civil service. The British relied on the use of northern troops to keep control. This meant the southerners received education to prepare them for administrative posts in the protectorate while northerners were prepared for employment in the military and other fighting forces or were recruited as labourers (Behrend, 1999, 19; Jackson, 2002: 29). Thus, a deliberate and conscious structure was created by the British colonial administration, which Behrend (1999: 19) refers to as the ethnic division of labour.

The British colonial policy in Africa, observes Young (1994: 97), was motivated by economic goals and had to be as self sustaining as possible. To realise their goals the British had to depend on the local elites in the affairs of the colony (Mungeam, 1966). The strategy was successful in Uganda where the British found a strong structure of social control and where those in charge of these structures were willing to collaborate (Young, 1998: 42-42). Gardner Thompson (2003: 22) notes that when the British introduced indirect rule it was not because they respected the feudal states but

because throughout the colonial period they did not have sufficient human or financial resources to sustain a team of British bureaucrats in Uganda. In 1955 there were only three white officials, including the District Commissioner, in the whole of Lango District, yet the day to day running of colonial affairs remained successful (Thomson, 2003: 22).

These policies created deep divisions which fractured attempts to build a unified nation-state after independence. These divisions were already evident on the eve of independence as certain polities such as the Baganda were not enthusiastic about being part of an integral unitary state. Independence was followed by increased ethnic tension between Nilotic-speaking northerners and the Bantu-speaking southerners in competition for political dominance.

3.2.2 Post-independence Political Upheavals and Legacies

In 1962 Uganda acquired independence from British colonial rule under a coalition government and constitution. The independence constitution incorporated semi-federal features which gave the traditional political elites in the Kingdoms of Buganda, Bunyoro, Toro and Ankole some scope (Osowa-Okwe, 1994: 133-164). The coalition government consisted of Milton Obote's predominantly Protestant party – the Uganda People's Congress (UPC) and the Buganda traditionalist political party, the *Kabaka Yekka* (KY), translated as 'The King Alone'. When Uganda became a republic in 1963, Milton Obote, who was from the northern part of Uganda, became prime minister with Kabaka Mutesa II as the president.

It is critical to note that this was largely a coalition of convenience which was bound to collapse within a relatively short space of time. The Buganda diehards had not been willing to let their identity and ceremonious Kingdom be swallowed by the nation-state initiated by the Protectorate's Governor, Sir Andrew Cohen in the 1950s (Wrigley, 1988: 30-33). For this reason, Kabaka's party entered into a coalition with Obote on condition that the Kabaka would become the president. For his part, Obote needed support since his party faced internal division and external threats from the Democratic Party, DP, which was dominantly a Catholic party (Wrigley, 1988: 30-33). Soon afterwards, the ruling coalition broke up due to disagreements over the Bunyoro territory. This territory had been annexed and transferred to the Baganda by

the British as reward for their loyalty and collaboration (Luanga-Lunyiro, 1989: 24-43). Obote called for a referendum in November 1964, the outcome of which led to a return of part of the disputed territory to the Bunyoro. The consequence was resentment on the part of Buganda Kingdom, especially the elite. In the same year there was an attempt by the then UPC Secretary-General Ibingira to push Obote out of power by accusing Obote and Deputy Army Commander Idi Amin of involvement in a gold and ivory scam. In response Obote arrested the main plotters of the attempted coup, suspended the independence constitution and promoted Idi Amin to army chief of staff. Most significantly, he deposed the Kabaka from the presidency. In April 1966, Obote convened a national assembly to write a new republican constitution, which then entrenched a strong executive presidency and substantially reduced the powers of the traditional leaders (Omara Otunnu, 1987). Accordingly, given the sectarian interests of coalition partners, the independence government and constitution collapsed after only four years of leading the country to a new turning point that would later shape Uganda's post-independent violent history.

The new constitution led to increased tensions between the new Government and the traditional Buganda parliament, the *lukiko*, which rejected the new constitution and the limitations it imposed on Buganda federal powers. The *lukiko* passed a motion ordering the central Government to leave Buganda. Obote responded swiftly and declared a state of emergency and ordered the army to attack and occupy the Kabaka's palace. The attack is estimated to have cost more than one hundred lives. Kabaka Mutesa II managed to escape to exile in London, where he later died (Lukwago, 1982). Obote promoted a new constitution which transformed Uganda into a republic with a strong presidential regime (Omara Otunnu, 1987). Over the next few years, Obote consolidated his powers by introducing yet another constitution in 1967 which abolished the traditional kingdoms and further strengthened executive powers. Following an assassination attempt on Obote in 1969, the UPC banned all opposition groups and effectively created a one-party state (Omara Otunnu, 1987).

Two significant points arise from these unfolding of events. First, the actions of Obote against the Buganda Kingdom created an enduring resentment that would be a key factor in later conflicts. Kabaka Mutesa II, who had been disposed by Obote, was seen as a victim of Obote's despotism and resulted in a crisis of legitimacy for the UPC

Government. The Baganda felt humiliated and alienated, leaving a sense of abiding hostility and heightened ethnic animosity against the people from the north of the country. According to Omach (2003: 68), these actions created a tendency in Uganda's politics to apply negative labels to whole communities and hold them liable and guilty for the actions of leaders from their region, ethnic group or with whom they shared religious affiliation. As a result of these events the Baganda harboured grievances against Obote and anybody associated with him.

Second, military power proved to be a key factor in settling political disputes. The effect was to legitimate the instrumentality of militarised politics. Under the colonial government, the military had been used as a divide and rule instrument. The structuring of a militarily strong north vis-à-vis an economically powerful south weakened the possibility of uniting opposition forces. As Omach suggests, the events of the 1966 crisis entrenched the culture of violence and militarism in the politics of Uganda. The consequent use of the military as a key political tool against the Government's opponents resulted in increased reliance on coercive state instruments to resolve conflicts and to consolidate state power (Omach, 2003, 69). Politicians or parties employed military might to impose their standpoint. In this context, Obote came to rely on the personal allegiance of troops, becoming dependent on soldiers whom he had to pay lavishly in order to buy their loyalty (Wrigley, 1988, 34). Idi Amin, who came from West Nile region, was the person in charge of the attacking of the Kabaka's palace and was promoted to army commander after the action. This experience led him to understand the instrumentality of military power. Once he took control, Amin's strategy was to recruit and promote West-Nile people into strategic positions, sacking Acholi officers and even executing them (Doom and Vlassenroot, 1999: 8-9).

As Obote became preoccupied with consolidating his own political power, Idi Amin consolidated his control over a considerable proportion of the Ugandan armed forces. Between 1969 and 1971 tensions developed between Obote and Amin as the former attempted to neutralise Amin's power base within the army. Just before leaving for Singapore in January 1971 to attend a summit of Commonwealth leaders, Obote had asked Amin to account for 2.5 million pounds sterling spent by the army. In Obote's absence Amin deposed him on January 25, 1971. Many Ugandans, especially those

living in Buganda and other areas, who had grown dissatisfied with Obote's oppressive government, at first welcomed Amin's military coup with jubilation. The same instrument, the military, which Obote had used to topple the Kabaka was used against him by Amin, the very person who had led Obote's onslaught on Kabaka.

Amin initially gestured towards tolerance and compromise. He released many detainees and allowed Kabaka Mutesa II's body to return from England for burial in Uganda. The Kabaka had died in exile in England where he had fled when Obote attacked his palace. These initial overtures were short-lived. Amin soon ordered the Acholi and Langi soldiers, who constituted the backbone of the army, to surrender their arms and return to the barracks only to have them killed there (Gersony, 1997: 7). While Amin's regime tortured or killed indiscriminately, Acholi officers were among those most likely to be targeted for murder (Doom and Vlassenroot, 1999: 9). As I have said earlier, at the time of independence in 1962, the Ugandan army had been predominantly northern, and this would continue until 1971 when Obote was deposed by Amin. Having witnessed the effects of military seizure and the consolidation of political power, Amin would not feel secure with members of the army whom he perceived to be loyal to Obote.

Amin's Government extended its control over Uganda by attacking all potential opposition. Highly educated and influential members of the Acholi and Langi were arrested, detained and killed (Ofcansky, 1996: 44). He created several new security organisations which reported directly to him, including the Public Safety Unit and the State Research Bureau. Along with the Military Police, these two organisations wrought terror on Uganda. Within three months of taking power Amin had suspended all democratic rights, had given the army dictatorial powers of arrest and punishment and had set up a military tribunal to try political offenders. Over the next few years, tens of thousands of Ugandans fell prey to Amin's henchmen. Ofcansky (1996: 44) states that by the end of Amin's first year in office, his security forces had murdered approximately 10,000 Ugandans, and during his eight-year rule between 100,000 and 500,000 Ugandans lost their lives or disappeared. These included not only the Langi and the northern groups, which had formed the backbone of the Obote Government, but also many Baganda intellectuals as Amin began to target people he perceived as disloyal from other parts of the country (Ofcansky, 1996: 44).

Amin recruited new soldiers into the national army, largely from West Nile, in order to protect the regime, which lacked political legitimacy. However, according to Ogenga Otunnu (2002), he appointed prominent Bantu to important positions in his Government. The regime largely maintained the dominance of southerners in the civil service and commerce, while the northerners largely controlled the Government and army (Mutibwa, 1992: 8-9).

To escape Amin's repressions many Ugandans fled the country including those who later established various liberation movements. In April 1979, the exiles formed the Uganda National Liberation Army (UNLA), members of which were overwhelmingly from the Acholi and the Langi. Assisted by the Tanzanian army and Yoweri Museveni's Front for National Salvation (FRONASA), they overthrew the Amin regime in 1980. The new military administration organised general elections in December 1980. Political parties which participated in the election included the Uganda People's Congress (UPC), whose presidential candidate was Milton Obote, the Democratic Party (DP), led by Paul Kawanga Ssemogerere, and the Uganda People's Movement led by Museveni (Odongo, 2000: 53-54). The elections were won by the Uganda People's Congress led by Milton Obote. This ushered in what has been referred to as the Obote II period. Accusations of widespread irregularities and pervasive political violence undermined the legitimacy of the elections. According to Onyango Odongo, the 1980 elections were actually won by the DP but were rigged in favour of Obote's UPC. Thus the DP, the main opposition, rejected Obote's victory. Museveni also rejected the results.

After the disputed election of Obote, a number of armed groups declared war against Obote's Government. These included Museveni's Popular Resistance Army, later renamed the National Resistance Movement/Army (NRM/A) among others. Museveni claimed that the rigged elections and the corrupt military-dominated system which returned Obote to power inspired him to form the National Resistance Army (NRA) and wage a guerrilla war. He argued that his call to arms was a legitimate response to undemocratic practices. He wrote, 'once again, a minority, unpopular clique was imposed on the people of Uganda, leaving them with no option but to take up arms in defense of their democratic rights' (Museveni, 1990: 3). Museveni (1990: 3) perceived his struggle against Obote as more than a struggle for power, describing

it as a struggle '[...] to free Uganda from the political manipulation of elitist and non-representative political parties and to create a more democratic and representative system of governance'.

Significantly, Museveni launched the guerrilla war against Obote's Government in the Luwero Triangle in central Uganda close to Kampala. The Luwero Triangle, formed by roads leading north and northwest out of Kampala, is situated between three lakes, Victoria, Albert and Kyoga. This region is inhabited by the Buganda from whom Museveni received popular support. In retaliation, in January 1983, Obote launched 'Operation Bonanza' against the Luwero Triangle Baganda for their perceived support of the rebels (Ofcansky, 1996: 54-55). Operation Bonanza was the name given to the relentless and murderous military operation that Obote's Government forces launched to mop out the NRA rebels within the Luwero Triangle (Mutibwa, 1992: 138-145; Ofcansky, 1996: 54-55). The attacks launched by Government soldiers were characterised by serious disregard for human rights, military excesses and massive loss of life. The UNLA troops destroyed small towns, villages and farms and killed or displaced hundreds of thousands of civilians (Mutibwa, 1992: 138-145). When the war ended in 1986, around 300,000¹ people had died in the Luwero Triangle and a third of the region's population were unaccounted for (Ofcansky, 1996: 54). Twenty-four years later, human skulls are still reported to litter the Luwero Triangle.

Although the UNLA was a national and multi-ethnic army, the NRM/A held the Acholi exclusively responsible for the atrocities committed. This perception was to shape subsequent attitudes towards the conflict in Luwero, the conflict in northern Uganda and the Acholi population in general. This attitude towards northerners is reflected in President Museveni's autobiography, *Sowing the Mustard Seed* (Museveni, 1997). In the autobiography, where he portrays himself as servant leader, Museveni provides an account of his life, the country's post-independence regimes, the struggles against Amin (1971-79), Obote's second regime dictatorship (1981-1985), the eventual overthrow of the brief rule of President Tito Okello in 1986, and his struggle to build a country which was on the verge of collapse. Various remarks

¹ One, however, needs to be cautious not to attribute the mass death to massacres by UNLA since the Luwero Triangle was also a battle field where both the government soldiers and rebels suffered serious casualties, a good number of NRA fighters being child soldiers.

made in this book by Museveni about the Acholi and other northerners reflect a rather negative attitude towards northern Ugandans.

Despite the repressive measures of the UNLA, the NRA/M continued to make significant progress in its guerrilla campaign against the Obote Government. The strong anti-Obote feelings in Buganda, where memories of Obote's first repressive government remained strong, guaranteed the NRA/M the region's support. Obote depended on a small core of his own sub-ethnic group, the Langi officers, to take command of the army and defend his political regime (Ofcansky, 1996). Captain Ageta who was a relatively junior officer was put in charge of a newly created *Reconnaissance Unit*² that was equipped with mounted guns to operate within the Central Brigade where Luwero was located (Ofcansky, 1996). The Acholi commander Bazilio Okello who led the Brigade was unable to control Captain Ageta's activities. This rift between the Obote core group, the Acholi officers and troops in the army led to their alienation. Obote made a number of promotions which favoured the Langi officers in the army (Ofcansky, 1996). Obote's overstepping of his political mandate was an indication of how, in a militarised society such as Uganda, the boundary between political office and the military becomes blurred. The military had been turned into instruments for maintaining state power, as mentioned earlier.

By 1985, Milton Obote had gradually set the stage for the elimination of Acholi officers from the Uganda army. The National Security Agency (NASA) was essentially an anti-Acholi intelligence organ. The Special Forces became an alternative army aimed at by-passing or replacing the UNLA Acholi-dominated officer corps (Pain, 1997). By 1984, Obote had virtually handed over responsibility for the Luwero Triangle to NASA. The Acholi officers retreated to the north and challenged the activities being carried out by these Special Forces (Pain, 1997). By 1984 the Acholi officers had lined up behind the then Vice-president Paulo Muwanga, a Muganda, in opposition to Obote. Muwanga used this support to establish links with Museveni who was then in exile in Sweden. With the support of Baganda factions in the ruling UPC, the Democratic Party and the NRA/M, Brigadier Bazilio Okello and

² In military terms reconnaissance unit is a unit tasked with conducting research to find out information about the enemy.

General Tito Okello, both Acholis, staged a coup against Obote in May 1985 (Pain, 1997). This coup by the Acholi officers against Obote could be interpreted as a pre-emptive self-defence move by Brigadier Bazilio Okello and Tito Okello to prevent Obote's plans of eliminating them from the armed forces. According to Pain (1997), Obote, for his own political survival, had begun to perceive the Acholi officers in the UNLA as being too independent of his political control and therefore a danger to his rule.

The Okellos seized power on a platform of national reconciliation, urging all political parties and insurgent groups to join the new government. Although many insurgent groups joined them, the NRA/M refused to join partly because Museveni was dissatisfied with the number of seats on the ruling Military Council offered to the NRA/M (Omara-Otunnu, 1987). There were also more fundamental reasons; including the fact that Tito Okello was a northerner. The NRA, however, engaged the regime in protracted peace negotiations in Nairobi. In December 1985, the Nairobi Peace Agreement was signed under the chairmanship of President Moi of Kenya. Meanwhile Museveni continued fighting against the Okello Government. The Okello Government was defeated when the NRA/M marched into Kampala and effectively established itself as the Government of Uganda on the 25th January 1986. Thus the Nairobi Peace Accord was never implemented (Omara-Otunnu, 1987).

3.3 Insurgency and Cultic Warfare in Northern Uganda

3.3.1 The NRA Revenge Mission versus Cultic Warfare

After the NRM/A captured power in the coup in Kampala, the Acholi military officers retreated to Acholiland to defend themselves. They were haunted by the memory of the massacres of Acholi soldiers by Amin in the early 1970s and fear that these would be repeated. Indeed, as soon as the NRM took over the main urban areas inhabited by the Acholi around March 1986, the regime launched a crackdown on Acholi UNLA soldiers who had fled Kampala. At this stage the NRA's perception was that all the UNLA were Acholi. The new Government's move was to hold former government soldiers responsible for the atrocities committed in the Luwero Triangle, the massacre of about 300,000 people (Gersony, 1997: 9). It was also meant to halt any threat to the consolidation of the NRA power. However, it turned into a revenge mission as the NRA committed almost an equal measure of atrocities as the former government

soldiers. Behrend (1991: 165) observes that the 35th battalion of the NRA, which was sent to Kitgum to pursue the UNLA soldiers for their atrocities in Luwero, took the opportunity to loot, rape and murder. According to a number of sources, terrible atrocities were committed during these operations. The NRA buried many people alive in northern Uganda in 1988 and forced men and women into sexual acts in front of their families in order to humiliate and degrade the Acholi community as a whole (van Acker, 2003: 6). According to Lumwaka (2002), in August 1986, a Baganda militia, operating with the NRA, the Federalist Democratic Movement of Uganda (FEDEMU), massacred 40 civilians in Tito Okellos's village of Namokora in Kitgum, partly in retaliation for UNLA killings in Luwero. FEDEMU had not been part of the original NRA, but was a fighting group that forged an alliance with it when the latter was about to take power. In July 1987, the NRA executed some 97 civilians at Kona Kilak in Gulu. In June 1988, 40 civilians were massacred at Koch Goma in the Amuru district (ICG, 2004: 2). These events in the north, in the immediate aftermath of the NRA victory, reinforced prejudices and created perceptions that led to the next phase of the conflict. The NRA's atrocities fed suspicions that a southern war of revenge was being undertaken against the Acholi (ICG, 2004: 3-4). Many Acholis, and others, believed that sending the most brutal elements of the 35th battalion of the NRA to the north was a deliberate strategy of revenge and subjugation (Apuuli, 2006).

These retaliatory operations created a breeding ground for guerrilla reactions (Allen, 2006: 30). Against the background of this mistrust and violence, in May 1986 the new Government ordered all former UNLA soldiers to report to barracks. The order was met with deep suspicion and fear because it was reminiscent of the massacres of Acholi officers by Amin in 1971 (Allen, 1991: 371). As a result some ex-UNLA soldiers decided to go underground; others took refuge in Sudan; and some resorted to engage in counterinsurgency. The ex-soldiers who decided to take up arms were soon joined by a stream of youths fleeing from the NRA revenge operations.

In August 1986, some Acholi refugee combatants, led by Brigadier Odong Latek, formed a movement with its military wing, the Uganda People's Democratic Movement/Army (UPDM/A) in Juba, Sudan. Some of Okello's ex-soldiers were incorporated into the new guerrilla army (UPDA). According the ICG, the UPDA's emergence in 1986 was generally seen across the Acholi region as a struggle to

recapture power, although it lacked a coherent programme since its political wing, the UPDM, was based in London (ICG, 2004: 4). Allen suggests that, there seems, ironically, to have been little sympathy for the former government soldiers among the Acholi population. The ex-soldiers were given a difficult time when they returned to their villages, taunted for their failures and castigated for their brutal action in Luwero (Allen, 1991: 371). Moreover, the local population feared that the presence of former soldiers would encourage NRA forces to take revenge on the broader population for what had happened in Luwero (Allen, 1991: 371). Thus the UPDA did not manage to mobilise broad-based popular support among the Acholi and failed to register meaningful success in their insurgency.

In late 1986, as UPDA's capacity to stage a sustained rebellion dwindled, a new somewhat cultic movement emerged to guide military operations, led by a 27-years-old Acholi woman by the name of Alice Auma (Allen, 2006: 31). Auma claimed to have been possessed by a Christian spirit called Lakwena which had called upon her to topple Museveni's Government not simply to restore power to the Acholi people, but to prevent the extinction of her people at the hands of Museveni. Auma, who later came to be popularly known as Lakwena, formed the Holy Spirit Mobile Forces (HSMF) in 1987 to guard against the annihilation of the Acholi community. The fear of annihilation was reinforced by the scale of the NRA massacres of the Acholis. This development marked a new chapter in the war, a development built on the interaction between Christianity and traditional Acholi beliefs in the power of protective charms and traditional anointment. The HSMF was explained as a social rebellion against the newly established order, and portended nationalist revival in the context of the restoration of ethnic identity (Behrend, 1999). Lakwena argued that the Acholi would soon find themselves marginalised due to their dominance in the national army that had fought Museveni in his guerrilla campaign to attain power (Lomo and Hovil, 2004).

Alice Auma had started her career as a healer after having been possessed by the Lakwena and her cult grew rapidly in significance. She performed healing rituals for UNLA soldiers after their retreat from the south. She claimed to have been directed to resort to a military campaign to defend the Acholi for there would be no call to heal those who would be killed in the end (Allen, 2006: 35). Lakwena, however, adopted

unconventional military strategies, anointing her soldiers with oil, promising that if they were pure, bullets would not penetrate them. Purity meant, among other things, abstinence from sexual intercourse and alcohol (Allen, 2006: 35). Thus, the HSMF soldiers had to be cleansed, initiated, and introduced to new and unorthodox methods of fighting (Doom and Vlassenroot, 1999).

In her military campaign she initially had a large following and achieved some successes. According to Allen (2006: 37), 'at the end of 1986 she claims to have had 18, 000 soldiers'. In November 1986 the HSMF carried out a major attack on the NRA position in a place called Corner Kilak, forty miles south of the town of Lira. According to Tim Allen the soldiers were taken by surprise and were terrified to behold hundreds of men coming out of the bush singing and walking upright without taking cover. Panic ensued and the NRA fled. However, between Christmas and mid-January 1986 the movement suffered serious casualties. The NRA had killed 700 of their fighters. On 18 January a further battle was fought at Corner Kilak. Again the soldiers were confronted by charges of men singing hymns (Allen, 1991: 372). This time the Government forces simply mowed down their attackers leaving some 400 dead. The battle field was littered with magical objects made from wire, including models of helicopters and tankers (Allen, 1991: 372).

Although the HSMF employed unconventional military tactics, it was successful for a short period, even coming within 100 kilometres of Kampala. Lakwena was finally defeated at Jinja and fled to Nairobi in October 1987 (Allen, 2006: 35-36). She lived the rest of her life in Kenya where she died in 2005. However, Lakwena's movement did not disappear immediately after her escape to Kenya. Sevarino Likoya Kiberu, Lakwena's father, claimed to have been possessed by his daughter's spirits. Thus he attracted some of Lakwena's followers to lead the resistance (Allen, 2006: 36). His resistance movement was called Lord's Army, based on religious purity. He encouraged his followers to be possessed by pure spirit. Lukoya's resistance was defeated by the NRA in 1989.

Lakwena's tactics, on face value, may be dismissed as lunatic, but one striking aspect was the manner in which the tactics and convictions became a rallying point for ethno-political mobilisation. Although the HSMF may have been a peasant cult, it was

nonetheless able to attract broader support than the UPDA, extending even beyond the Acholi to most tribes in northern and eastern Uganda (Allen, 1991: 372). Alice Lakwena invoked the fear of Acholi annihilation which needed to be faced through a fundamentally new strategy. To achieve this she exploited the spiritual world, which formed the core of the Acholi identity, as a rallying point (Behrend, 1999). As a mobilisation strategy, she played on fears of ethnic extinction which evoked a degree of ethnic renewal in response. Moreover, Lakwena's movement and its spiritual underpinning were rooted in the social milieu at the time. In the early 1980s the phenomenon of spirit messengers (or divination) and spiritual healing had emerged in Acholiland. As mentioned earlier, this spiritual intervention may have arisen because of fears that were beyond people's powers: the memories of the massacre of Acholis by Amin in the early 1970s; mass atrocities committed at Luwero purportedly by Acholi soldiers; and the mass killing of Acholi by the NRA soldiers. The spiritual healers were consulted in search of answers to problems that bedevilled the people and, in the upheaval that followed the victory of NRA in 1986, many diviners emerged. This religious intervention came to be used as an instrument of military campaigns (Allen, 2006: 31-37).

Meanwhile, the UPDA, who had been unsuccessful in its military campaign, resorted to negotiations with the NRM. This led to a peace agreement in 1988. However, this agreement was followed by NRA military operations to finish off recalcitrant Acholi rebels, during which a number of renowned UPDA Acholi leaders were killed (ICG, 2004: 4). The 1988 NRA counter-insurgency was brutal, including the deliberate destruction of civilian food stocks and domestic animals. Suspicions re-emerged and the whole operation was interpreted as being geared towards the extermination of all Acholi (ICG, 2004: 4).

3.3.2 From Spiritual Redemption and Political Emancipation to Auto-Extermination: The Trajectory of the LRA Insurgency

3.3.2.1 The LRA and their Command Structure

Joseph Kony, as mentioned above, sought to continue fighting for the emancipation of the Acholi. He operated in Acholiland, and recruited some of the Acholi army veterans into his force. Kony revitalised the Holy Spirit Movement and radicalised its teachings and methods. Like Lakwena, Kony incorporated Christian principles and a

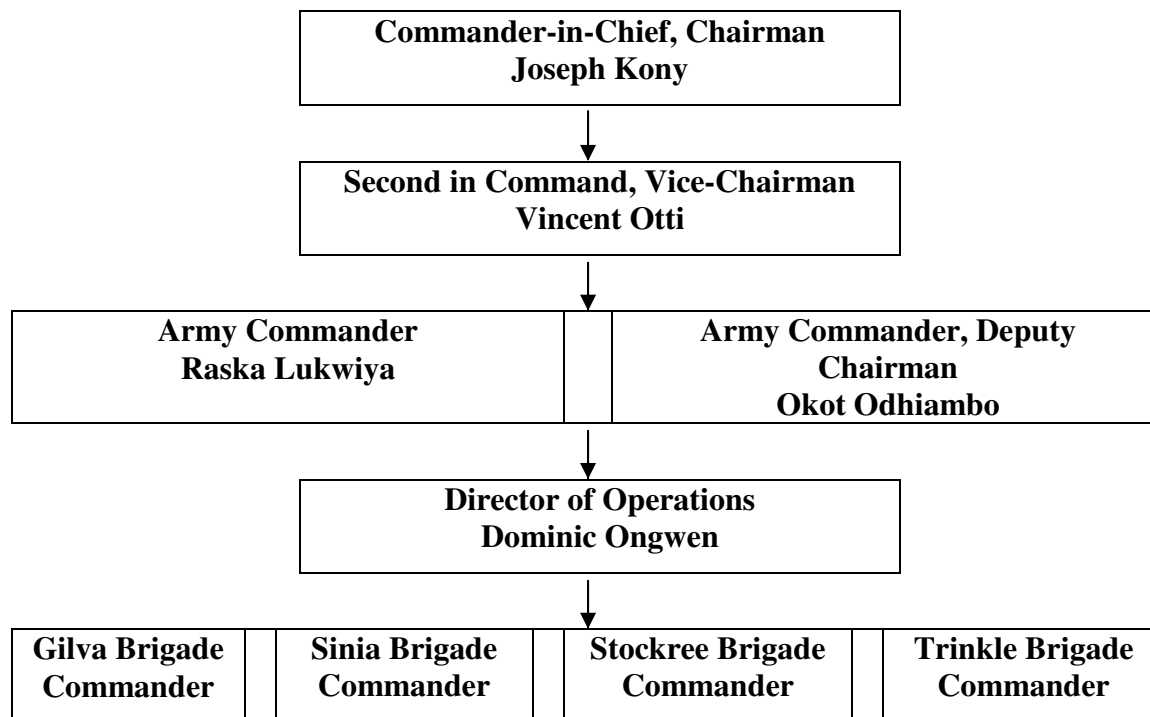
strong religious component with apocalyptic tones into the Movement, while adding his own dimensions of terror and coercion (ICG, 2004: 4). Kony combined spiritual redemption and political opposition with the goal of moulding Uganda into a country, 'ruled in accordance with the Biblical Ten Commandments.' (Jackson, 2002: 49) According to Doom and Vlassenroot, Kony offered spiritual redemption to the Acholi people who feared genocide and destruction with the rise of Museveni. The war in Acholiland was thus portrayed as being based on fear of ethnic extinction (Doom and Vlassenroot, 1999: 22). Kony provided an opportunity for frustrated Acholi citizens to mobilise against the new southern leadership in Kampala.

Because of the obscure nature of its operation, no clear facts are available about the structures, ideology, and membership of the LRA. At first, in 1988, Kony called his movement the Uganda Peoples' Democratic Christian Army (UPDCA), which he later changed to the Uganda Christian Democratic Army (UCDA) before renaming it the Lord's Resistance Army (LRA) in 1991. In terms of its ideological orientation, the LRA sought to rule Uganda in accordance with the Ten Commandments, the restoration of multi-party politics in Uganda and a federal system of governance. The LRA also called for impartial national socio-economic development, the inclusion of the Acholi in national politics, the enjoyment of human rights, promotion of peace and security and an end to corruption (Finnstrom, 2003). The LRA manifesto also called for free and fair elections, the separation of judicial and executive powers from the military, and the reform of parliament to tackle these issues (Finnstrom, 2003).

Membership of the LRA was often fluid and changing since, as new members were recruited, other were constantly escaping (Allen 2006). Estimates of LRA numbers fluctuated from time to time. Gersony (2000: 3), writing in the year 2000, puts the number at between 3, 000 and 4, 000 whereas Weeks (2002: 8), writing in 2002, puts the number at 2, 000. At the beginning of the Juba Peace Talks in July 2006, numbers given ranged from a few hundred to at least 10,000, depending on the source (Schomerus, 2007: 12). The UPDF portrayed the LRA as a group of a few hundred scattered fighters. The LRA claims that they have over 10,000 members, including fighters and non-combatants (Schomerus, 2007: 12). Reliable estimates of LRA numbers in the history of their insurgency are impossible to come by and it is unclear whether the LRA kept any records.

The command structure of the LRA is referred to as ‘control alter’, though there is not much information about it. The control alter had five levels of seniority. The topmost level was the Chairman, who was also the Commander-in-Chief. This position was occupied by Joseph Kony. Second in Command was Vice-Chairman Vincent Otti. The third level of command was that of the Army Commanders. Okot Odhiambo held the position of Army Commander and Deputy Chairman. The other Army Commander was Raska Lukwiya. Below the Army Commander was the Director of Operations, Dominic Ongwen. At the lowest level of the Control Alter were four brigades referred to as Gilva, Sinia, Stockree, and Trinkle headed by commanders.

The LRA Command Structure: the Control Alter³



Although the above command structure did exist, the LRA troops were constantly on the move and spread out across the vast jungles of southern Sudan and northern Uganda from where they operated and it is doubtful whether they kept track of every

³ This LRA command structure is adopted from Enough (n.d) ‘Wanted by the ICC: The LRA’s leaders: Who they are and what they’ve done’, Enough, The project to end genocide and crimes against humanity available at http://www.enoughproject.org/files/pdf/lra_leaders.pdf.

group of fighters. Some sources claim that field commanders operated with a certain degree of autonomy.

Kony fully expected the Acholi people to give him their popular support since he had taken-up their cause and had links with Lakwena's HSMF, which had enjoyed popular support. However, the people saw it as '[having] something of a schizophrenic or disjointed nature about it.' (Westbrook, 2000: 5) For instance to accomplish its goals all members of the LRA had to be formally initiated, cleansed and be predisposed to violence. This created an organisational culture predicated on exceptional cruelty, terror and fanaticism. The initiation rites included clubbing, stamping and beating friends and relatives to death, then licking their brains, drinking their blood and even eating their flesh as part of the indoctrination process following abduction (Doom and Vlassenroot, 1999).

Because of this, many Acholis questioned Kony's spiritual and military objectives. This deprived the LRA of the kind of enthusiastic support the Acholi had offered to Alice Lakwena and her HSMF/M (Westbrook, 2000: 5; Finnstrom, 1999). Some Acholi people believed that Kony's spirits were foreign, evil, and violent and therefore were not native to Acholi since 'there [were] no such violent and militant spirits or powers in Acholi cosmology' (Finnstrom, 1999: 20). Joseph Kony therefore lacked the support of the Acholi elders, which may explain his own ambivalent feelings towards them (Finnstrom, 1999: 38). When it became clear that the Acholi people would not support them, the LRA's war strategy changed to one that relied on civilian victimisation (HRW, 1997). Thus, although the LRA claimed to be fighting for the Acholi, they turned their weapons on their own people in Acholi, looting and destroying their villages and abducting 'recruits', mainly children (HRW, 1997).

In 1991, the Government initiated 'Operation North' which, apart from being the regular military action of the NRA forces, included mobilising paramilitary groups known as the 'Bow and Arrow Brigade'. This involved using local Acholi militia to fight the rebels by any means, even with bows and arrows (HURIFO, 2002:7). The person in charge of establishing the local militia was Betty Oyella Bigombe one of the few politicians from the northern Uganda who was incorporated in Museveni's Government in 1986. Operation North was aimed at completely crushing the LRA

and isolating them from the grassroots. The lack of popular support for the LRA among the local population seems to have made this possible. The Government also resorted to recruiting children to serve in Local Defence Units (LDUs), which amounted to vigilante groups.

These strategies did not succeed in rooting out the LRA but did have rather negative repercussions. The participation of the Acholi in the Bow and Arrow Brigade and LDU was interpreted by the LRA as an attempt to put the population against the rebel group (HRW, 2003b). As indicated, the LRA therefore resorted to a policy of civilian victimisation, as described above, in order to coerce the Acholi people to support them (Dolan, 2000: 17; Doom and Vlassenroot, 1999). Until 1991, the LRA had not engaged in civilian victimisation. They had carried out raids for supplies in which they forced captive villagers to carry for them and then released them. The LRA also engaged in sporadic but large-scale attacks, which may have been meant to expose the Government's incapacity to offer security to the people (Sanchez, 2007). Though Operation North may appear to be a failed military strategy, it managed to create bad blood between the LRA and the local population thereby destroying popular support base for the insurgents. In this respect, LRA brutality against its own people could be understood to be a response to what it considered was the betrayal of the people the organisation had sought to emancipate.

3.3.2.2 Bigombe Peace Talks of 1994

In 1994, after the failure of Operation North, Betty Bigombe initiated a peace talks between the Government and the LRA in an attempt to restore peace (Doom and Vlassenroot, 1999). According to the Human Rights and Peace Centre, HURIPAC (May 2004: 92-93), this was the first face-to-face peace negotiation between the Government and the LRA. Bigombe initiated the talks through Yusuf Okwonga Adek, who was based in Gulu and was one of Kony's most trusted people. He had been detained previously at Luzira prison on charges of collaborating with rebels, but was released and returned to his home near Gulu town (O'Kadameri, 2002). Previous intermediaries, who were not genuine, had claimed to have close contacts with the rebels so as to get goods such as money and bicycles in return for letters purportedly written by rebel commanders. Adek, however, had genuine contact with the rebels. He initiated genuine negotiations between Bigombe and the LRA (O'Kadameri, 2002).

As part of their demands the LRA asked for a blanket amnesty for their combatants stating that they would not surrender but were willing to come home. As the negotiations were taking place between the Government and the LRA, Kony was also talking to and seeking support from the Sudanese Government. This caused the Government to disregard Kony and claim that he was simply buying time. During a meeting held on 10 January 1994, Kony demanded that he be given six months to consolidate his fight for demobilisation. But in February of the same year, the LRA walked out of negotiations claiming that the NRA were trying to ensnare them. Four days later, President Museveni announced a one-week ultimatum for the LRA to surrender, bringing an end to the negotiations (Doom and Vlassenroot, 1999: 24). Immediately after Museveni gave the ultimatum of February 1994, LRA fighters crossed over to Sudan to escape the Government's anticipated counter insurgency.

It is not clear who really undermined the peace deal. Some commentators think that it was President Museveni who jeopardised the prospects of a peace deal when he abruptly announced his seven-day ultimatum (Westbrook, 2000). Doom and Vlassenroot (1999: 24) believe that the Acholi diaspora may have been pulling strings from abroad in order to undermine the peace deal. Some army officers in the NRA may have thought that there was no need to sign a truce with a weaker enemy who was already virtually defeated. What is significant is that neither party wholeheartedly embraced the peace deal. Since most Acholi had been very enthusiastic about the peace talks and were ready to settle with Museveni's Government, Kony yet again passed a collective guilty sentence, turning against his own people and drastically intensifying his policy.

3.3.2.3 The LRA Shifts Base to Southern Sudan

The collapse of the 1994 peace talks and the seven-day ultimatum marked a turning point in the history of the war. It was around this time that the LRA moved to southern Sudan to seek refuge from NRA counterinsurgency. The LRA, with the support of the Sudanese Government, established their base in Sudan which they used as a base from which to launch their civilian atrocities for over a decade. They also received the much needed supplies of weapons to continue fighting the Ugandan army. In Sudan Kony found a base conducive to establishing his rebel group. Southern Sudan had been the seat of rebel activity carried out by the Sudanese

Liberation Movement/Army (SPLM/A), led by John Garang, against the Khartoum Government. The military environment of Sudan in the 1990s was so muddled that it was not easy to distinguish between armed rebel groups and civilians (Schomerus, 2007: 19; Apuuli, 2005: 39). This made it easier for the LRA to gain root in that country, especially among the Sudanese Acholi who considered the LRA to be their brothers (Branch and Mampilly, 2005). The LRA also found some support among the Acholi of Sudan. The Acholi of Sudan supported the LRA to demonstrate their rebellion against the SPLM/A. The SPLM/A was dominated by the Dinka, one the dominant ethnic groups in Southern Sudan, and alienated other groups such as the Acholi and Madi from Equatoria Province in South Sudan (Schomerus, 2007: 19).

For its part, the Khartoum Government found an opportunity to retaliate against the Ugandan Government's support of the SPLMA by giving sanctuary and military support to the LRA to fight the Government of Uganda (Allen, 2006: 48-49). The Ugandan Government had been giving support to the SPLM/A through the Acholi districts of northern Uganda (Weeks, 2002: 7). The involvement of the Government of Sudan through the provision of military support to the LRA was one of the most devastating and complicating contributions to the conflict and played a significant role in the longevity of the northern Uganda conflict (Prunier, 2004: 359). Indeed the conflict situation in Sudan played a significant a role in the northern Uganda conflict, to the extent that some northern Ugandans even thought that the long-standing war was a proxy war between Uganda and Sudan (Prunier, 2004: 359).

3.3.2.4 The Carter Peace Agreement and Operation Iron Fist

The year 1998 was yet another turning point in the history of the war. Both the Sudanese and Ugandan governments had decided to ease the tension that had existed between them. The two countries thus decided to enter into an agreement in 1998. The agreement was brokered by former US President Jimmy Carter through the American Carter Centre (Nue, 2002). Sudan had been particularly keen to improve its diplomatic relations with its neighbours and the US. The Clinton administration had branded Sudan a terrorist state following its alleged role in the assassination attempt on Egyptian President Hosni Mubarak on 26 June 1995 and its hosting of Osama bin Laden, the mastermind of the 1998 terrorist attacks on the US embassies in Kenya and

Tanzania (Deng, 2005; Neu, 2002). In 1998 the US bombed an alleged chemical weapons factory in Khartoum. Sudan thus sought, through Jimmy Carter, to influence US policy on Sudan and improve their diplomatic ties.

Uganda may have envisaged that improved diplomatic relations with Sudan would make the latter withdraw its support for the LRA, thus making it easy to deal with the LRA (Neu, 2002). In the late 1990s, the Ugandan Government was already weighed down by three wars. The UPDF were fighting against the LRA in the north of the country; in the West Nile Bank Front the forces were engaged against the Allied Democratic Forces (ADF) and the Uganda National Rescue Front II (UNRF II). In the Democratic Republic of Congo (DRC) Ugandan forces were engaged in fighting in the war involving Angola, Namibia, Zimbabwe and Rwanda. Thus Museveni may have wanted to redeploy troops from the north and west to fight in the DRC (Neu, 2002).

Following the talks brokered by the Carter Centre, an agreement was signed between the Ugandan and Sudanese governments on 8 December 1999. According to the agreement Sudan was to stop supporting the LRA while Uganda was to reciprocate by withdrawing its support for the SPLA. This agreement seems to have led to a change in political climate in the region since a considerable calm was achieved in northern Uganda after 1999.

The calm that had started to return to northern Uganda disappeared in March 2002, when a new counter-insurgency operation, dubbed 'Operation Iron Fist', was launched by the UPDF in Sudan. The aim of this operation was to eradicate the LRA from their bases in southern Sudan. The operation followed an agreement between the governments of Uganda and Sudan, which allowed Ugandan troops into the Sudanese territory in order to deal with the LRA rebels (Apuuli, 2005: 40). According to Apuuli (2005: 40), the president was at that time very upbeat about finally defeating the insurgents.

Operation Iron Fist had mixed results. Schomerus (2007: 22) observes that, Operation Iron Fist was one of the bloodiest periods of the war, marked by regular helicopter gunship attacks by the UPDF on the LRA. The LRA, in retaliation launched ground

attacks. The battle left a good number of LRA and UPDF dead. The civilian population in Eastern Equatoria, where the LRA were based and which became the battleground, also suffered enormously. The expected routing of the LRA by the UPDF did not actually take place, and the LRA remained in Eastern Equatoria for a further four years until the Juba Peace Talks began in Juba. Even though the LRA was not completely dislodged from its base, Kony no longer had fixed bases in the southern Sudan area near the Uganda border from which he could launch attacks on Uganda (Apuuli, 2005: 40).

Overall, Operation Iron Fist did not bring positive results. The LRA in fact expanded its area from the original Gulu, Pader and Kitgum districts to other northern Uganda districts such as Lira, Apac and the two districts of Katakwi and Soroti in the Teso region. Since the LRA base in southern Sudan was destabilised through the operation, some LRA troops returned to northern Uganda (Human Rights Watch March, 2003). The Acholi Religious Leaders' Peace Initiative (ARLPI) remarked that Operation Iron Fist was one of the worst security miscalculations of the Government as it had doubled the number of displaced persons (*The Sunday Monitor*, 27 April 2003: 8). According to the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) the number of IDPs shot up from 800 000 to 1,2 million or more (Human Rights Watch, March 2003). The fact that the Government referred the situation in northern Uganda to the ICC in December 2003, one year after the operation, also meant that the operation was not completely successful in clearing the LRA.

This background survey on LRA insurgency from the colonial period through to the post-colonial period demonstrates the dynamic nature and development of the protracted conflicts in Uganda as a whole and northern Uganda in particular. Certain factors associated with the nature of conflict in Uganda can be identified. These include overlapping factors such as the British colonial legacy of divide and rule, ethnicity, the instrumentality of the military in political process, and the quest for dominance over economic and political opportunities. A deeper understanding of how these factors contributed to the start and continuation of the conflict in northern Uganda is important when assessing the appropriateness of instruments designed to deal with the conflict.

3.4 Causes and Continuation of the Northern Ugandan Conflict: Analytical Perspective

Protracted ethno-political conflicts are by their very nature very complex since they involve many stakeholders under a wide range of conditions and circumstances. Causal explanations of such conflicts need to take cognisance of the different dynamics and factors. These may be long-term causes and the immediate factors that lie within the decision-making power of stakeholders. Gurr and Harff (1994: 77-78) agree that there is no comprehensive and widely accepted theory of the causes and consequences of ethno-political conflicts. Rather, there are approaches and hypotheses that seek to explain particular aspects of ethnic conflicts. What is significant is how particular conflicts emerge at different times and the particularity of the triggers that actually cause them to take place. Thus any attempt to develop theoretical explanations for the causes of armed ethno-political conflicts needs to involve the analysis of a myriad of variables which interact to generate such conflicts (Smith, 2004: 5, 8; Welch, 1993: 8). With respect to the conflict in northern Uganda, it emerges that scholarship and analyses do not agree on a single theoretical and factual account of the causes of the conflict. Apart from it being unique, the conflict in northern Uganda has continued for a very long time, which makes it quite complex. The best approach in uncovering the causes and reasons for the longevity of the conflict is to look at the interaction of key variables such as colonial legacy, ethnic polarisation and stereotyping; regional dimension and economic differentials; and how these factors were manipulated in a manner that not only caused but also sustained the conflict. I therefore undertake a deeper analysis of the causal factors related to the conflict in northern Uganda as they can be identified in the first section of this chapter.

3.4.1 The Role of British Colonial Legacy: In Retrospect

Researchers have argued that one of the causes of the perennial conflicts in Uganda in general and northern Uganda in particular was the manner in which the British colonial administration structured and manipulated pre-existing cleavages for their own goals (Jackson, 2002: 29; Omara-Otunnu, 1987: 35; Apuuli 2005; Allen 2006, 28). The Ugandan state was constructed in line with the British divide and rule system (Jackson, 2002: 29; Omara-Otunnu, 1987: 35). This system meant that the traditional patterns of social organisation were instrumentalised and bolstered in order to

enhance the efficiency of the colonial administration. By adopting pre-colonial social organisational structures, the British deliberately kept the different traditional polities within the colony from forming alliances across the ethnic divide and challenging British hegemony. The result of this process was that the populations in a given colonial territory were not integrated into a single centralised system of formal bureaucratic control. In effect, the British cultivated factional ethnic rivalries among the different ethnic communities within the colony as a means of maintaining their control (Blanton et al, 2001: 479-480).

In the case of Uganda, as we have noted earlier, the Buganda Kingdom was given preferential treatment compared to the Nilotic and Sudanic polities in the north of the territory which worked against national integration. The British colonial administration did not develop the northern region, reserving it instead for cheap migrant labour to the south and for military recruitment, a process that would continue in the post-independence period (Lwanga-Lunyiigo, 1989; Omara-Otunnu, 1987). The British also relied on Buganda to subdue and administer other groups and Kingdoms (Jackson, 2002: 29). Given the people of the Kingdom of Buganda played a central role in colonial administration, they were advantaged in comparison to other groups in the protectorate (Mutibwa, 1992: 8-9). This meant that they received education and were exposed to opportunities that bolstered their dominance. These form the basic elements of social and political structures upon which Ugandan society was constructed as a result of the British colonial system of indirect rule.

The policies resulted in uneven development across the protectorate and led to the development of the state along markedly ethnic lines, empowering some while disempowering others in the process. The fact that development by the British colonisers in Uganda was uneven led to the theory of the 'North-South divide' – the north being poor and the south prosperous. The trend has also been used to provide an explanation for why the Acholi, in particular, came to predominate in the army. The inevitable consequence was inequality and structural difference, which in turn generated and sustained intense and disruptive tensions and conflicts between the different ethnic groups after the fall of colonialism (Omara Otunnu, 1987; Brett, 1995: 135). Remarkably, the dominance of the Baganda elite in the colonial era straddled independence. Obote's undermining of their dominance in the civil service and in the

economy engendered bitterness. In the same vein the northerners, with their advantage of military dominance, would earnestly seek a political stake in the new system to end their political exclusion. This goes some way to explaining the ethnic dimensions of the conflicts that emerged in Ugandan following independence in the sense that, with the exit of the British colonial rule, the social cleavages and structures provided forums for the mobilisation of aggrieved minorities around collective action (Hansen and Twaddle, 1995; Mudoola, 1996).

3.4.2 Economic Deprivation versus Greed

Emerging from the foregoing is that there were fundamental political and economic cleavages that were built on ethnic affiliation characterised by the exclusion of some groups from power, the systematic favouring of others and the creation of structural economic differences across regions. Accordingly, economic deprivation has been cited as one of the causes of the protracted conflict in northern Uganda. A sense of injustice, arising out of underlying divisions of power and prosperity in a society, provides the basic material for political mobilisation or a justified claim for political mobilisation (Smith, 2004: 9). The combination of poor economic conditions and lack of political avenues to address these operate as a double injustice. Political mobilisation then occurs around the theme of injustice. People commit themselves to a cause because they believe it to be just or because they at least think that it will redress the injustices they experience in their own lives. In the light of this thesis and in relation to the political and economic exclusion of the Acholi, built on British colonial structures, one could argue that the LRA insurgency can be understood as advancing Acholi grievances. Indeed, the grievances underpinning LRA operations included the lack of opportunity for the Acholi in the Museveni Government, the lack of development in the north and the failure to integrate the Acholi into the national identity of Uganda (Allen, 2006: 43; Finnstrom, 2003). In this respect, economic conditions emerge as one of the most important explanatory factors. The contention is that low levels of economic development are key factors that lead to conflict (Hauge and Ellingsen, 1998). But do economic deprivation and grievances provide a strong explanatory factor for intra-state conflict?

Paul Collier and Anke Hoeffler (1999) have a different view. They argue that the predominance of self-interest among individual leaders is a highly predictable cause

of intra-state conflicts compared to economic grievances or feelings of deprivation. In poor societies, leaders usually compete with one another for control over available economic resources (Collier and Hoeffler; 1998; Collier and Hoeffler, 1999). On the basis of statistical demonstration, Collier and Hoeffler (2004: 564; 2001) dismiss the link between inequality and violent rebellion as remote and conclude that rebellions are motivated by greed. Greed means that the presence of valuable resources such as diamonds, gold, or drugs constitute a necessary condition for occurrence of civil war (Collier and Hoeffler, 2001). Armed groups, according to this position, become involved in violent conflict with one another in order to take charge of resources. Various rebel activities are used as parts of the wider scheme of exploitation. Widespread crimes against civilians would be instrumental in confiscating ownership of resource-rich lands. Child-soldiering or forced conscription would be instrumental in the process of exploitation. Sustained disruption of peace and stability would provide an occasion for exploitation since the re-establishment of legitimate state authority would end their profitable control over resource-rich areas (Collier and Hoeffler, 2001).

In this respect rebellion is an enterprise that generates profitable revenue from looting. Rebellions are therefore explained in terms of the circumstances that produce profitable prospects. This is because, according to Collier and Hoeffler, opportunities associated with conflict and motivated by greed are likely to motivate stakeholders to engage in conflicts. Collier (2000: 4-5) goes further to argue that, even though rebels develop programmes of action based on what is perceived as genuine grievance, this is only meant to build an internationally acceptable image since they would not wish to be considered as criminals, which is an untrustworthy picture of the rebels whose real motives are likely to be greed. Let us apply the protracted conflict in northern Uganda to assess Collier and Hoeffler position.

If the LRA insurgency and its longevity were to be placed within this explanatory paradigm, then the reasoning would be that the parties to the conflict were motivated by greed rather than by economic grievances. This could be corroborated by a number of factors. LRA strategy appeared at odds with the claim that they represent Acholi grievances. The LRA's mode of operation, in which the LRA's atrocious actions were directed against the very people whose interest they claimed to represent, made the

war appear as a struggle between the predominantly Acholi LRA and the Acholi population, who are the main victims (Apuuli 2005: 1, Omara-Otunnu, 1987; Doom and Vlassenroot 1999: 22). Kony targeted mainly Acholi civilians in the north because he believed that he had been told by God to punish anyone who collaborated with the Government, which he defined as the entire Acholi population (ICG, Feb. 2005). Indeed, the LRA was a marginalised, highly isolated group that controlled no territory and had no clear political agenda, made few attempts to communicate its aim to the public and cared little for public opinion (Neu, 2002). The abductions, the senseless and cruel killing of innocent children and adults, displayed the extent to which the LRA operated without ethics or concern for the welfare of their own people (Neu, 2002). In this respect one could argue that the driving force behind the LRA was merely predatory in exploiting the vulnerable Acholi children and the wider society.

Thus, in the light of the foregoing, the main reason for the longevity of the conflict would be that it served the economic interests not only of the LRA rebels but of the Government as well. The LRA pursued, not political goals, but economic strategies for personal benefit and the insurgency served as an income enterprise (Vinci, 2007: 343). This is because the LRA's primary source of supplies came from the looting of villages, IDP camps, and even relief organisation such as the World Food Programme food aid (Vinci, 2007: 343). A number of respondents interviewed during my research in northern Uganda confirmed that there were shops and stores in Gulu town where looted goods such as bicycles, bicycle tyres or farm tools were sold. Matthew Kustenbauder (2008: 8) argues that, by prolonging the conflict, LRA members were able to earn a better living for themselves and for their families than they would have been able to earn if they returned to civilian life. For the Government, the insurgency was instrumental in raising revenue. Since the US included the LRA in their list of terrorist organisation, fighting the LRA by the NRM's was part of the larger war on terror. The NRM foreign development assistance, relief aid and military strength were bolstered through US support partly to fight LRA insurgency. This led to economic growth especially in the southern part of the country. Individuals in the national army and the Government also secured private benefits through the persistence of the insurgency (Kustenbauder, 2008: 3-4).

In respect to the above, acts such as forcing abducted children to beat, torture, and even kill other children or their parents would be conceived as a form of functional violence to realise the goal of enriching the top LRA commanders. By functional violence is meant violence which is not enacted by chaotic madmen but which is used as a tool by stakeholders who have worked out effective tactics of violence in order to reach their goals (Duffield, 1994; Duffield, 1998). Incorporating children within LRA ranks through violence was meant to strengthen the manpower of the LRA, which otherwise enjoyed no popular support. Without the tactic of abducting children and forcing them to become soldiers, the LRA would run out of soldiers, and their existence would be threatened. The application of the greed theory seems to be grounded on what would seem to be a very low correlation between the manner in which the intra-state wars are conducted and the claim that the goal of the wars is to secure economic, political and social inclusion. However, is it correct to say that the manifestation of subjective intentions in insurgency necessarily entails the absence of political objectives?

The LRA programme of action may make them appear to be greedy, extortionist and predatory, but, given the structural realities preceding the war, we can not say that the LRA insurgency is predominantly motivated by greed and not grievance. Thus the statistical explanatory model of grievance developed by Collier and Hoeffler cannot stand as the sole explanation for the emergence and longevity of the armed rebellion in northern Uganda. The model is reductionist and does not explore many of the explanatory factors related to conflicts. According to Nathan (2005: 30), statistical analysis of the measurable variables used by Collier and Hoeffler may not accurately explain the reasons behind rebel behaviour and motive. This is because such a model fails to consider many indeterminate factors such as structural conditions, causality dynamics, catalytic events, the reasons for the decision of various actors and soldiers, which cannot be easily determined through statistical analysis (Nathan, 2005: 30).

Moreover preferring greed to grievance as a better explanatory variable presupposes that one can be certain that a given conflict necessarily results from greed. Yet, as Doom and Vlassenroot (1999: 6) cogently observe, the boundaries between political and criminal violence, between social banditry and looting, between gangs and rebels are blurred in certain contexts. They point out moreover that a mixture of motives

may be at work and that the dynamics of a conflict may change while it is in progress. In this respect the model developed by Collier and Hoeffler cannot adequately explain the nature and longevity of the conflict in northern Uganda and the foregoing invalidates the model as the sole explanation of insurgencies.

The incursions of Kony's LRA were not a sudden or inexplicable disaster, but the outcome of a long political process in Uganda through which both the struggle for power and the use of violence became part of the country's political culture (Doom and Vlassenroot, 1999: 6). Prevailing social and political circumstances in a given country play an important role in the emergence of conflicts. Overt, wide-scale violence and unpredictable behaviours by rebel groups do not happen in stable societies. They result from insidious processes which produce chaos that is not at all sudden or incidental (Doom and Vlassenroot, 1995). In this perspective, the kind of terror inflicted upon society has structural roots. Accordingly, in trying to understand the dynamics and fundamental causes of the kind of terror that was used in the northern Ugandan conflict and the motivation of the LRA, one cannot point to a single root cause. Attempting to do this miss specifies the struggles; it oversimplifies the complex mutual interaction of factors – the constitutive nature of historical factors such as the effects of colonial imposition that left a legacy of economic marginalisation and inequality enshrined in the north-south divide. The exclusion was deepened with the political and economic marginalisation of the Acholi under successive independence regimes.

In this respect, the manifestation of greedy, predatory and extortive motives among Konyi and his lieutenants at a subjective level would not entail the absence of objective demands on the part of the Acholi population. In other words, if Kony and his topmost generals had changed their strategies so that no one gave orders for abduction, would the Acholi people have supported Kony's struggles and how could one be sure that the conflict would not assume a different dimension altogether? The point is that the Acholi's grievances were based on their conditions of exclusion in relation to the state and not on Kony. Kony wants to gain power in order to address that exclusion, but his strategy alienates rather than mobilises his support base. On these grounds, it would be more reasonable to choose both greed and grievance as explanatory variables. Greed and grievance may therefore be complementary and

show mutually reinforcing elements of ethno-political mobilisation (Smith, 2004: 9). The argument should be formulated less in terms of grievance or greed, but in terms of how these are mutually reinforced in particular situations. In this respect we can appreciate the role played by systematic political and economic differentials in relation to the conflict without ignoring the LRA mode of operation. This allows us to distinguish a subjective demand on the part of Kony from objective circumstances (Acholis' grievances).

3.4.3 Ethnicity and Ethnic Stereotyping

Ethnic divisions and differences, real or perceived are important factors in understanding causes of conflict in Africa. Gurr (1970) suggests that ethnic diversity should be understood to cause conflicts insofar as it fosters competition between groups' expected and actual access to resources and political power. Conflict based on ethnicity is usually understood to mean not only that the parties involved are ethnically different, but also that ethnic difference is central to the conflict. However, it is important to clarify whether ethnicity or ethnic diversity in itself is a necessary condition for the occurrence of armed conflicts.

Most conflicts in Africa have ethnic dimensions. However, ethnicity by and of itself is not a necessary condition for the occurrence of intra-state conflicts. It is not ethnicity as such or the existence of ethnic diversity as such that appears to be the cause of armed conflict. Experience shows that it is not necessarily the most ethnically diverse countries in the world that are the most prone to violent conflict. Tanzania is more numerically diverse compared to other East African countries, yet the country is not as ethnically polarised as its East African neighbours. Kenya is quite ethnically diverse and characterised by ethnic factionalism and distrust, yet there has been no major conflict comparable to that in Uganda at least until after the 2007 disputed general elections. Somalia is inhabited by one ethnic group with one religion, Islam, and many clans, yet it is one of the most war-torn countries in eastern Africa. This suggests that even in cases of civil wars and armed conflicts involving ethnically divided states, we cannot assume that ethnicity alone is the reason for the conflict (Smith, 2004: 10). Instead it is the way ethnic ideology and ethnic politics provide access to power and resources that is of significance. Ethnic differences are

interjected into political loyalties, and ethnic identities are politicised in such a way that they shape political process (Smith 2004, 11).

Even though it does not constitute a necessary condition for civil war and armed conflicts, ethnicity remains a powerful component of common prejudice. As such it can easily be manipulated by political leaders seeking to mobilise a population, especially when a society is undergoing major socio-economic change. Mobilisation strategies, according to Dessler (1994), consist of both the objectives of key political actors and the way in which they go about trying to fulfil their objectives. Ethnic mobilisation is informed by what a group believe about others, defining their attitude and interaction with others. This need not be based on any primordial identity, but constructed and posed by political brokers who define who we are vis-à-vis others.

Analysis of the manner in which ethnic differences are manipulated as a mobilisation strategy can help us grasp the dynamics of the conflict in northern Uganda and why it has taken so long to quell. The Luwero Triangle incident in the early 1980s provides a first step. The Luwero Triangle region was a popular support base for the NRA rebels. The inhabitants around the Luwero Triangle supported the NRM because they were all fighting against bad leadership and poor governance. More significantly the Baganda who resided in the Luwero Triangle supported the NRM because they were promised the restoration of kingship in Buganda and the entitlements that went with it. The Baganda had felt humiliated and resented the destruction of their kingdom in 1966 by President Obote's first regime. So they supported the war against Obote to ensure restoration of the kingdom. Gersony (1997: 30) suggests that, during the NRA insurgency, Museveni allegedly promised to restore the Buganda kingship. This promise of restoration would be quite appealing since the kingdom was so dear to their culture and way of administration. So the expectation was created that joining the struggle would lead to the re-emergence of Buganda's deserved pre-eminence in Uganda's governance (Gersony, 1997: 20-36). By launching his war in Luwero, among the Baganda to whom he promised the restoration of their kingdom destroyed by the northerner Obote, Museveni exploited the hatred of the people for northerners. In this case, although the events in the Luwero Triangle were the immediate triggers of the war, the Luwero events were preceded by the mobilisation and rekindling of ethnic hatred.

The ethnic dimension of the protracted conflict in northern Uganda was also catalysed by ethnic stereotyping. The British had promoted the stereotype of a martial ethnic group with reference to British military policy. This became a structural stereotype (Luwanga-Lunyiro, 1989: 24-43). One of the effects of structural stereotyping and discrimination is that '[i]ndividuals are assigned to specific types of occupations and other social roles on the basis of perceived cultural mark' (Hechter, 1974: 1154). This deliberate policy, as discussed earlier, determined who was recruited from which ethnic groups for different roles. Thus the Acholi were identified as warlike and suited to soldiering (Omara-Otunnu, 1987: 31). The myth had two negative effects which could explain why Acholi became willing participants in the events leading to the war. The myth was extended to the claim that because of their 'domination' of the army since colonialism, the northerners had 'dominated' politics since independence. Doornbos (1988: 265) maintains that the British favoured the northern 'martial tribes', especially the Acholi, in the armed forces at the expense of the more educated and economically more developed southerners, who were a potential threat to colonialism in Uganda. The Amin and Obote regimes basically maintained their sway over the economically more important south through their army support, which had been overwhelmingly recruited from the north (Doornbos 1988: 265).

The political elites exploited these myths and the ethnic divisions. Luwanga-Lunyiigo (1989: 45) goes so far as to say that this was what led to 'the many skulls that now litter Luwero Triangle.' The NRM leadership used these myths in whipping up the threat of the northerners in order to get support for the war in Buganda whose traditional king, the Kabaka had had been deposed by Obote in the years immediately following independence, creating a lasting resentment among the Baganda. Moreover, the myth that the Acholis were a martial tribe made the war in northern Uganda appear to be a northern problem (Rupesinghe, 1989). This partly explains why the war was never an important concern for southerners and further partly explains its longevity.

Though the notion of martial tribe shaped the trajectory of the intractable conflict in northern Uganda, it was indeed not a reality. Rupesinghe (1989) seeks to dismantle the notion of martial tribe by pointing out that the claim about the Acholi having

martial characteristics had no scientific basis, and was based on prejudice and political misrepresentation of facts. He contends that the notion of martial attributes was employed by the British to foster political divisions and safeguard colonial rule. According to Lwanga-Lonyiro, when it suited British colonial policy, the British relied on the Nubians and Baganda to fight the Banyoro and the Acholi in order to 'pacify' the north. The British concocted a theory to the effect that the Baganda had a history of martial dominance over its neighbours. They propounded this theory because they needed more than 20,000 Baganda armed men to pacify and subjugate the Bunyoro. At the same time, in order to create enmity, they propagated the myth of Bunyoro irredentism. They annexed part of Bunyoro territory to Buganda as a reward for its collaboration (Lwanga-Lunyiro, 1989).

The above claims are corroborated by Kasozi (1994: 54) who argues that, contrary to perceptions, the Acholi were never preferred by the British to populate the army in the early years of colonialism. Pain (1987: 45) further discredits the authenticity of the notion of Acholis' martial tribe by pointing out that the Nubians were employed to carry out punitive expeditions against the Lango and the Acholi and were instrumental in putting down the first anti-colonial uprising, called the Lamogi Rebellion of 1912, in Acholi. According to Omara Otunnu, early records show that the Acholis were not considered a warlike people and that it was only after World War I that the Acholi began to feature in British military recruitment (Omara Otunnu, 1987). Thus the inclusion of the Acholi and the rest of the northerners and the exclusion of the southerners from the military cadres, at any moment of colonial reign in Uganda, were not based on any fundamental military endowment or lack thereof. On the contrary, the notion was created as part of the British system of divide and rule.

Another myth that has been used to explain the longevity of the conflict in northern Uganda is that the Acholi were not hard working, especially on their farms, which was why they depended on a military occupation for their livelihood. Pain (1987: 47-50) points to the linking of this economic 'backwardness' with the massive recruitment of the Acholi in the armed forces and their 'looting' of the country during counter their insurgency against the NRA. Museveni used the same myth to justify the marginalisation of the Acholi. In his biography, he states:

the people in the area did not get in the habit of generating wealth through cash-crop production ... I always hear the cliché that the north was once prosperous and that it has declined in the last ten years. I have never shared this opinion. I do not think that the north has ever been prosperous at any time. It is true that in the last ten years there has been more human suffering than before, but to say that the area has ever been prosperous is to tell a lie. (Museveni, 1997: 211-212)

Yet historians have shown that the Acholi were indeed productive and engaged in cash-crop production. Acholiland was part of the cotton belt that provided Uganda with much needed foreign exchange (Pain, 1987: 45-50). Pain further states that the Acholi were able to overcome the British colonial policy of economic marginalisation by engaging in agricultural production and that, between 1946 and 1953, the Acholi enjoyed an economic boom. According to Thomson (2003: 33-34) during the 1950s, the Uganda National Congress gained popular support in that district because cotton farmers were concerned about cotton prices and marketing. By the time of independence in 1962, the Lango and Acholi were producing more cotton than was being produced in Buganda, and west Nile too became the leading producer of tobacco in Uganda (Thomson, 2003: 33-34). Atkinson (1999) reasons that although Acholi was considered 'backward' by the southern elite, its economic strengths lay in a form of agro-pastoralism that was well adapted to the ecological conditions of the region. This, in his view, made a very real and substantial contribution to Uganda's national economy (Atkinson, 1999). On the basis of these considerations, it is not accurate to claim that the protracted conflict in northern Uganda was sustained by laziness among the Acholi who depended on looting as a means to acquiring their material needs.

Contrary to the above claims it is more plausible to argue that it was not the Acholi's naturally warlike nature that caused them to dominate the army. A more cogent reason was the way that economic structures were constructed by the colonialists to build a militarily strong north. If it is possible to identify a militarised culture among the Acholi, this is not because they are naturally so inclined but stems rather from the systematic introduction of a 'military industry' among the northerners. Moreover, it is inaccurate to argue that the Acholi were the militarised section of the country. A militarised culture pervaded the whole the country. Museveni, who launched a successful military campaign, had believed in the power of the gun in his pursuit of

political leadership and yet, in the 1980 elections, he lost miserably especially to the DP's Paul Ssemogerere. On the basis of the above discussion, it is also illogical to infer that the Acholi dominated the military because they were not hardworking in other economic sectors and were therefore unable to derive their livelihood from any other source of employment. In contrast, one should argue that it was the systematic introduction of the 'military industry' that led to the Acholi domination of the military.

We also need to question whether the attribution of responsibility for the events in the Luwero Triangle exclusively to Acholi elements in the UNLA is justified. Museveni suggests that the entire Acholi were responsible for the events in the Luwero Triangle, thus justifying the ensuing war as punishment for their atrocities. This can be deduced from Museveni's autobiography where he argues that the Acholi people as a whole had participated in the looting of the south by the northern soldiers (Museveni, 1997). He claims that:

You could not say that they were fighting to bring resources to the north, other than by way of looting and corruption, for social corruption had widely taken root in the region. Under previous regimes, the soldiers, most of whom came from the north, had been free to loot civilian property. Whenever they looted such things, for example corrugated roofing sheets, they would take them to their homes, and their parents would not ask where they obtained them, in spite of the fact that they could easily tell the difference between a new iron sheet and one that had been previously nailed to someone else's roof. In this way, the whole community in Acholi and Lango became involved in the plundering of Uganda for themselves. (Museveni, 1997: 177-178)

The view expressed by Museveni points to the legitimization of group victimisation that had become so typical of ethnic-based conflicts in Africa. Gersony (1997: 20-36) questions the justification for placing responsibility for the events in the Luwero Triangle exclusively on the Acholi elements in the UNLA. He admits that the Acholi were 'only one of several ethnic groups prominently represented in the armed forces', but he also underlines the fact that the Acholi in the army were subordinate in rank to senior officers of President Obote's Lango tribe. He further notes that the powerful figures in the security apparatus who influenced military policy, such as National Security Agency Director Chris Rwakasisi, were of Bantu and not Acholi background (Gersony, 1997: 20-36). Gersony shows that the army relied upon North Korean

technical advisors in its Luwero operations. Moreover the way politics was manipulated along ethnic lines by both sides in the war in the Luwero Triangle reveals Obote's mistrust of Acholi soldiers and officers, which eventually led to his overthrow (Gersony, 1997: 20-36). Nyeko and Lucima (2002: 20) write that the Acholi officers in the UNLA, acting with the connivance of Paulo Muwanga, tried to stop the war by making overtures to Museveni's NRA after December, 1984.

From the forgoing, placing the burden of responsibility on the entire Acholi community was quite unjustified. Gersony (1997: 30) asserts:

The vast majority of Acholi civilians in Gulu and Kitgum participated in no way, were remote from events in Luwero, and had no immediate reason to be concerned about them at the time. Despite all of these mitigating factors, many Ugandans hold mainly the Acholi responsible for the Luwero atrocities because of the high proportion of Acholis in the armed forces at that time.

According to Omara-Otunnu (2002), President Museveni's blaming the entire Acholi people for the wrongs done by the Acholi soldiers in the south after independence convicts the entire Acholi community of these gross human rights violations. The stereotypical claims, though wanting in rational justifiability played a crucial role in forming the opinions of the various actors in the conflict.

3.4.4 The Role of Sudan

The involvement of the Government of Sudan, through the provision of military support to the LRA in accordance with the pattern referred to as 'mutual interference', was one of the complicating factors in the conflict and played a significant role in its longevity (Prunier, 2004: 359). The notion of 'mutual interference' is used by Lionel Cliffe (1999: 89) in his analysis of the regional dimensions of conflicts in the Horn of Africa. Referring particularly to the incessant conflicts that have plagued the Horn of Africa for about thirty years, Cliffe (1999: 89) argues that regional factors contributed to the longevity of internal conflicts in African states. Within this scenario of mutual interference, opponents of existing regimes received some support from governments or other forces outside the countries of the region. The correlation between the regional dimension of the war and its longevity cannot be downplayed. Conflict analysts have taken cognisance of the way security threats traversed geographical and

political boundaries (Buzan and Waever, 2003). Conflicts became interconnected and bound by their geographic proximity, making them more complex (Rubin et al, 2001). Thus neighbouring countries' internal conflicts significantly influenced and sustained conflicts in other countries (Wallensteen and Sollenberg, 1998: 623).

In this respect, as explored in the first section of this chapter, conflict and instability in Sudan influenced and sustained the conflict in northern Uganda. The support from the Sudanese Government helped to sustain the LRA rebellion allowing them to operate with a free hand and take advantage of the protection, security and immunity and military support secured from the Khartoum Government (Kustenbauder, 2008: 8). On the international front, both the Ugandan Government and the SPLA received military and political support from the US. The USA supported the Ugandan Government in financing the war against the LRA, which it categorised as a terrorist organisation. The main reason for the US support was that the US sought to curtail the influence of the Islamic Government in Khartoum and some Islamic fundamentalist forces in the Sudan. Sudan thus found reasons to continue to support the LRA (Allen, 2006: 51). In this respect the conflict in northern Uganda did not escape the effects of international political realities which contributed to its continuation.

3.5 Conclusion

What emerges from this overview and analysis of the LRA insurgency in northern Uganda is that there is a multiplicity of factors which contributed to the start and continuation of the conflict in northern Uganda. One of the major underlying factors of the war was the deep-seated divisions between northern and southern Uganda, a divide that engendered a fear of being dominated by other regions and ethnic groups. This served as a barrier to national unity. By inheriting and exploiting the economic and political structures established by the British colonial administration under their divide and rule policy, Uganda's post-colonial leaders, from the very beginning, built the country upon ethno-political fault lines. Obote, Amin and Museveni all exploited ethnic differences to win support from the respective groups. The civil war that raged in the Luwero Triangle between 1981 and 1985 and the atrocities that characterised it were the result of this propensity of political leaders to manipulate ethnic divisions. In this respect, the Ugandan political elite continued the politics of divide and rule, especially the politics that increased the divide between the south and the north of the

country. An enduring political culture characterised by animosity, deep-seated hatred and distrust developed. Another important element worth noting was the militarisation of politics. A militarised culture was established, a culture that became an instrument of domestic politics for the following decades. The use of the military was instrumentalised in the solving of political disputes. The colonial government had implanted this culture as a divide and rule instrument to weaken the possibility of uniting opposition forces. They did this by building a militarily strong north while empowering an economically strong south. Obote too made use of the military following independence; Amin did the same in his endeavour to seize and consolidate state power; and Museveni used the military to seize and sustain political power. It therefore makes sense to argue that the LRA believed they would not be able to realise political and economic emancipation for the north except through a military option.

Chapter Four

Human Rights Violations, Justice and Politics in Northern Uganda: The ICC and the LRA Atrocities

4.1 Introduction

I have stated earlier that, when President Museveni referred the hitherto forgotten humanitarian situation in northern Uganda to the ICC, the referral did not receive enthusiastic support, even though the LRA had committed human rights violations punishable by the ICC. The central theme of this chapter is therefore that, even though the LRA orchestrated systematic gross human rights abuses against civilian populations, abuses that were punishable by the ICC, the Court met with opposition from a section of the very population whose rights it sought to defend. I develop this theme in three progressive sections. I begin by exposing the nature, extent and dynamics of human rights violations in northern Uganda. This exposition is not limited to human rights abuses that are punishable by criminal justice, but looks at the multifarious nature of human rights violations during the 20-year conflict in general. An exploration of various aspects of human rights violation in northern Uganda helps us to assess the extent to which the ICC and alternative local instruments of peace and justice could respond to the atrocities. I then present the Court's intervention in investigating and punishing the alleged perpetrators of such atrocities. The final section looks at the opposition elicited by the ICC intervention.

4.2 The Nature and Extent of Human Rights Abuse in Northern Uganda

4.2.1 Abductions and Child Soldiering

One of the hallmarks of the LRA atrocities in northern Uganda has been the abduction of children. The rebels abducted children, boys and girls alike, mostly between the ages of twelve and sixteen years old, but at times as young as eight or nine (UN, 1999). The rebels carried out these abductions by invading camps, villages or schools in large numbers and rounding up the people living in the settlements. In this way they captured as many as thirty children in a single raid (Human Rights Watch, 2003: 7). There are numerous cases of abductions during the 20 years of insurgency. The most infamous of all abduction cases is that of St. Mary's College in Aboke, in the northern Apac district. The incident took place on 10th October 1996 when about 200 armed men broke into the school and captured 139 secondary school girls who were

between thirteen and sixteen years of age. 109 girls were later released. By 2006, five of the remaining thirty children had died; all except two were eventually released (Foundation for Human Rights Initiative, January 2007: 14; UNICEF, 2005).

Abductions and LRA atrocities in general increased in the early 1990s, following relocation of the rebels to Sudan in 1994 (United Nations Integrated Regional Information Networks, IRIN, 28 January 2004). A semblance of calm seems, nonetheless, to have fallen over northern Uganda between 1999 and 2002, largely the result of international factors, especially the diplomatic agreement between Khartoum and Kampala brokered by Jimmy Carter in 1999 as mentioned in chapter three.

The level of abductions rose sharply from the moment the LRA returned from Sudan following the Uganda Peoples Defence Force's (UPDF) 'Operation Iron Fist' launched inside Sudan in 2002. In 2002, the United Nations Human Rights Commission (UHRC) reported that since the inception of the conflict in the North, it was estimated that over 26,833 people had been abducted, including more than 10,000 children destined to become child soldiers, with girls being especially targeted to become sex slaves (UHRC, 2003). According to the report, most of the so-called combatants in the LRA were children who were abducted or fathered by rebel commanders. They formed 85% of the LRA forces (UHRC, 2003). UNICEF estimates that some 20,000 children have been abducted in 19 years of war (UNICEF, 2005). In 2004, the UN Department of Public Affairs estimated in the 18 years since the inception of the war in 1986 about 30,000 children had been abducted (UNDPA, 2004). The World Development Report of 2007, a more recent source, estimates that up to 66,000 children may have been abducted by the LRA, the majority of whom remain unaccounted for (World Bank, 2006: 182).

It emerges that there is a certain lack of clarity with regard to the information on abduction records. The uncertainty vis-à-vis the number of children abducted is due to the lack of accessible information about the LRA as well as the dislocation of the families concerned. Much of the available information was obtained through interviews of ex-abductees or their families. Since some families may have been entirely wiped out by the LRA or because some children may have died in the bush, it is possible that not all the information about abductions has been discovered.

The LRA relied almost entirely on abductions to provide them with fighters. For this reason they had to devise a method of training and retaining their forces. They used extreme violence as a means of achieving psychological control over the abductees (HRW, 2005). Children were subjected to brutal treatment as child soldiers, labourers, sexual slaves and were even forced to kill others (HRW, 2003a; McKay and Mazurana, 2004). The abductees were intimidated and brutalised to such an extent that they were often too frightened to return home. According to the UNDP (2004) report,

[o]ver half of the children surveyed – over 300, all [of whom] had been abducted at an average age of 12 – had been severely beaten, 77 percent had witnessed another person being killed, 39 percent had killed another person and 39 percent had abducted other children. Over one-third of the girls had been raped while 18 percent had given birth while in captivity.

The indoctrination process began from the moment that a child was abducted. The abducted child would be forced to beat and kill their own parents, sisters or brothers. The killing of a child's own relatives was intended to cut the child off from his or her family roots and ordinary life and also to predispose a child to commit any form of violent act. After having been incorporated in the LRA ranks, the abductees were required to engage in combat actions against Government soldiers, capture new recruits, loot and work long hours for their commanders. They received training in combat actions, the handling of light firearms, such as AK 47s, and in how to launch hand grenades.

Combat actions were the most dangerous encounters for the newly abducted boys. According to one of the ex-LRA abductees, they would be placed in the frontline to test the strength of their opponents, and in such cases the casualties were severe given the boys' lack of experience in combat actions. This meant that children were used by senior combatants to shield themselves. Those badly wounded would be shot dead by their fellow rebels as they were no longer useful. Kony believed that those who were wounded were impure and did not deserve to be a member of the group. Since the LRA did not have proper doctors and medical supplies, the conditions of the wounded were deplorable. According to Joseph Okwera (Interview, 17 March 2008), who was abducted in 1997 and escaped from the bush in 2007, those fighting in the bush did not even have medical supplies. While in combat with the UPDF, a bullet lodged in

the left side of Okwera's abdomen. Since there were no medical facilities in the bush, he had to rely on his friends to operate and remove the bullet using a sharp hooked piece of metal. His wound was disinfected with hot water (Okwera, Interview 17 March 2008). Apart from their involvement in direct combat action, the children were commanded to undertake other unimaginably risky tasks such as creeping into villages to interact with other children of their age in order to gather information for the rebels (Okulu, Interview 30 March 2008). In this respect child soldiers became instrumental in undertaking rebel activities.

Generally girls were not assigned to combat, looting, and abduction tasks. Following their abductions, many younger girls were reported to have been assigned as brides to commanders in forced marriages, having to carry out gruelling domestic tasks and endure long hours and continuous beatings (HRW, 2003d). The abducted girls were responsible for cooking, cleaning, fetching water and food and for caring for any of their children who may have been born in the bush. In this respect girls served as sex slaves or wives to high-ranking LRA commanders. However, according to the LRA code of conduct, subjecting the girls to sexual activities against their will did not constitute rape. For them rape consisted in having sexual intercourse without the approval of the LRA top commanders (Okidi, Interview 17 May 2008). Rape was therefore institutionalised in the LRA code of sexual conduct and considered normal practice in the bush where a sexual act with a girl against her will was approved as a reward for those who had qualified for sexual intercourse (Okidi, Interview 17 May 2008). Rape was also approved as a punishment. According to one ex-abductee (Interview 17 May 2008), gang rape was permitted as punishment when a girl tried to escape and was caught. This 'control' of the sexual act was due to the LRA belief system that sexual intercourse was considered impure unless socially sanctioned. Moreover, the LRA soldiers believed that Kony had supernatural powers to know when someone had engaged in an 'illicit' sexual act (Ex-abductee, anonymous, Interview 17 May 2008). This attitude towards sex informed the abduction of younger girls who were considered to be virgins and hence pure.

Discipline was enforced either through the death penalty or through other cruel and violent acts. Children who did not follow directives as required had parts of their bodies – hands or lips – chopped off or were killed by their fellow abductees. The

chopping of body parts was, according to one former abductee, part of the LRA doctrine, probably a fundamentalist application of the Biblical phrase that ‘if a part of your body leads you to sin then you must chop it off’ (JB, Interview 18 May 2008). When abductees attempted to escape, those intercepted would be punished severely by being killed or forced to kill their fellow abductees as an example to other abductees. One woman, abducted by the LRA in 2004 and later rescued by the UPDF, told me how a girl who was abducted together with her attempted to escape.

They [LRA soldiers] pursued the girl and captured her. When she was brought back to the camp, the captors beat her to death using crude weapons. They hit her on the head, neck and back until she succumbed. When she died, the one who was in charge of the killing commanded me to carry the body away to bury. This was meant to be a warning to me and others not to try the same. (Anonymous Ex-abductee, Interview Kitgum 18 2008)

Since any insubordination carried with it the death penalty, the level of allegiance to the LRA command was very high. Through this kind of training, the LRA managed to a large extent to instil psychological detachment vis-à-vis the abductees’ previous lives at home and developed an organisation founded on a cruel and torturous mode of operation.

The child soldiering adopted by the LRA was clearly an example of child abuse and immoral. Child soldiering became a common trend in guerrilla warfare in the last part of the twentieth century and the beginning of the twenty-first century, practised not only in Africa but also in other conflict zones around the world. The phenomenon was prevalent in Uganda, Liberia, Sierra Leone, Burundi, Rwanda, Congo-Brazzaville, the Democratic Republic of the Congo, Sudan, Ivory Coast as well as Afghanistan and Burma among others (Coalition to Stop the Use of Child Soldiers, 2004). In Uganda, child soldiering first gained prominence during Milton Obote’s repressive reign following the disputed 1980 elections. When President Yoweri Museveni was a rebel leader, the NRA/M movement included an estimated 3 000 child soldiers, boys and girls under the age of sixteen and known as *kadogos*⁴(China, 2002).

The phenomenon of child soldiering was a product of certain factors associated with failed states in most African countries which made children easy prey for recruitment

⁴ The term *Kodogos* was a derivation from Kiswahili word ‘kidogo’ which means small.

into rebel or militia groups. These factors included the situation of protracted conflict and instability, poverty and the demographic dominance of children (Fuller, 2003: 2). The protracted conflict resulted in a shortage of soldiers either among Government forces or rebel groups. As an alternative these groups resorted to recruiting child soldiers. Given the conflict situation, most families were likely to have been displaced or the parents killed, leaving children destitute and vulnerable. Poverty was likely to prevail in conflict ridden regions, which meant that there were few opportunities for education and limited future prospects. All of these factors meant that children were more susceptible for recruitment (Singer, 2002). Some children joined rebel groups to revenge the killing of family members (China, 2002; Brett and Specht, 2004). The factors associated with child soldiering were prevalent in northern Uganda and Kony's enlistment of child soldiers is therefore to be seen within the wider context of child soldiering in Africa. However, Kony's extremely brutal methods of recruitment, training and discipline call for particular parameters when interpreting the LRA's use of child soldiers.

We can recall that Kony claimed that he was inspired by Alice Lakwena. Lakwena herself had called for an ethnic renewal. It is likely therefore that Kony was also motivated by the desire for ethnic renewal. Indeed Kony sought to cleanse the Acholi community, which he considered impure. According to Human Rights Watch, the LRA targeted Acholi children as the next loyal generation, the *tabula rasa* that would be raised in accordance with Kony's commandments, remain loyal to Kony's ideology and breed a loyal generation (HRW, 2003c: 20; Human Rights Watch, 2005). Moreover, the fact that the LRA did not enjoy popular support among the Acholi people, as shown in chapter three, not only exacerbated his anger against the Acholi, but also gave him a reason to resort to abductions as a means of enlisting their personnel.

4.2.2 Post-abduction Syndromes

Regardless of the possibility of death if the abductees were caught escaping, some managed to escape from the LRA; others surrendered themselves to or were captured by the UPDF; and others were released or abandoned when they become sick or too injured to function (HRW, 2003c:15). The Gulu Children of War Rehabilitation

Centre, a reception centre which began receiving children in 1995, estimated that 11,000 children had passed through their rehabilitation and reception programme.⁵ HRW (2003c: 15) reports that one-third of those abducted returned home. In 2002, more than 1,700 returnees passed through the World Vision and Gulu Support the Children Organisation rehabilitation centres based in Gulu after escaping from the bush (HRW, 2003c: 15). However, there are no clear records on the number of children who returned from captivity which can be reconciled with the estimated size of abductions. Most of the records were kept by rehabilitation centres or non-governmental organisations such as World Vision which relied on the records of children passing through their programmes. In addition, some children escaped immediately after capture and returned directly to their families upon their escape, which meant that their numbers were not recorded (HRW, 2003c: 15).

Those who returned from captivity after having been trained in the LRA suffered trauma. The kind of training they were subjected to and the indoctrination they received made it impossible for them to think about resuming ordinary life once they returned from the bush (Apola, Interview 6 March 2008). They found it difficult to adjust and cope with normal life or faced other predicaments (Apola, Interview 6 March 2008). Their parents may have been killed by the rebels. Some of the abductees may have killed their own parents or relatives or neighbours. Moreover, the kind of traumatising experiences they were subjected to while undergoing training in the bush created psycho-social dislocation or, and particularly, post-traumatic-stress-disorder (PTSD) (Apola, Interview 6 March 2008). PTSD, according to the American Psychiatric Association (1994), is an anxiety disorder that can develop after exposure to one or more traumatic events that threatened or caused great physical harm. A research study carried out in Gulu on PTSD among children who had returned from abduction revealed that children aged between 6 and 18 years had been exposed to and participated in horrific acts of war in the bush. Some of these children had been threatened by death or narrowly escaped death. Some had tortured someone or witnessed someone being tortured or killed; some had abducted or participated in killing; some had killed a relative or a close member of the family (Ovuga et al, 2008). Such experiences, according to the report, exposed the children to poor mental

⁵ World Vision, Children of Gulu, <http://www.worldvision.ca/ContentArchives/content-stories/Pages/ChildrenofGulu.aspx>.

health characterised by contemplated or attempted suicide, alcohol abuse and the loss of significance of other persons in their lives (Ovuga et al, 2008).

The violent detachment of the children from their parents and family networks and introduction to an abusive, inhuman and violent life was a traumatic experience. In the bush there was no emotional or moral guidance, and the children were denied the nurturing social development usually provided in a family set-up (Olweny, Interview 3 April 2008). Their development from childhood to adulthood was characterised by extreme violence and hostility culminating in negative social and psychological dislocation. Having been introduced into life of violence at a formative age, some of the formerly abducted children understood violence to be the normal way of life (Ovuga et al, 2008). Their appreciation of the value of life disappeared as a result of early exposure to killings in combat, executions, beatings, rape, physical abuse, and other forms of torture (Odwar, Interview 16 March 2008). Moreover, the indoctrinating environment fostered new forms of destructive skills and values which were antithetic to human existence, thereby replacing social and moral categories with new forms of orientation (Odwar, Interview 6 March 2008).

Christine Labogo (Interview 23 March 2008), observed that some of the ex-abductees who had been exposed to high levels of violence found it difficult to reintegrate into normal life and were incapable of interacting with other children. They were withdrawn, suspicious of people, insecure, violent and seemed not to trust people. The boys behaved as if someone were pursuing them. Christine Labogo (Interview 23 March 2008) attributed this to the kind of life in LRA camps where no one trusted anyone. The abductees had lived in a situation where punishment took the form of execution, and they had seen their friends betraying other friends to gain favour. Some of them had also witnessed (or participated in) the killing of other friends as a form punishment whereas others had seen Kony executing some of his commanders (Ovuga et al, 2008). Given the lack of trust that characterised the LRA camps, ex-abductees, even after leaving the LRA, remained in perpetual fear and lack of trust (Opio, Interview 29 May 2008).

For some, the emotionally devastating experiences resulted in loss of memory. Some ex-abductees could neither speak about nor reconstruct their experiences as rebels in

the bush. Some demonstrated a very vague memory of their past whereas others displayed some form of schizophrenic complex. Justine,⁶ for instance, had been in the bush for over seven years. When we talked to him he only made disjointed and conflicting statements about the past. For instance, we asked him if he had met Kony to which he answered in affirmative saying that he had lived with him in the bush. Later we asked him if he could remember how Kony treated the boys who lived with him, whether Kony was a kind or harsh man. To this question Justine responded that Kony lived away from them. According to Fr. Crispin Opio (Interview 29 May 2008), some of the boys who returned from the bush demonstrated remarkable inconsistency in their thought processes. Considering these predicaments, it emerged that the abduction and child soldiering adopted by the LRA left very devastating effects on the victims, physically, socially, psychologically and emotionally.

4.2.3 Torture, Mutilation and Killing of Civilians

Apart from the abduction of children, the LRA tortured, mutilated, maimed and killed civilians. Victims' hands, feet, noses, ears, lips and breasts were cut-off, often as punishment. These brutal tactics promoted fear and deterred people from co-operating with the Government (HRW, 2005). Margaret Oyella (Interview 18 April 2009), a 55-year old woman who lived in Kitgum, told me that in 1993 rebels attacked her home and forced her to watch as they killed her brother. Her only son was severely injured when his head was hacked open. He never recovered. In her words, 'his head is neither straight nor stable' (Oyella, Interview 18 April 2009). She also watched as her nephew was killed. She said, 'The rebels cut all over his body until he died. Then they piled his body parts in a heap. The sight was disgusting as the body parts looked like red meat. Since that time, I always experienced nightmares and always thinking of some people coming to kill me.' (Oyella, Interview 18 April 2009) The year 2005 was one of the worst periods. In March 2005, the *New Vision* daily newspaper reported that seven civilians had been beaten to death with hoes in Adjumani district in an attack on the Dzaipi trading centre (Allilo and Moro, 2005). The Adjumani district, which is situated northwest of Gulu district on the right bank of the Nile bordering Sudan, was soft sport for LRA attacks. The district's vicinity to Sudan meant that it was a strategic place for the LRA to raid and then escape into Sudan. In May 2005,

⁶ This is not his real name due to the sensitivity of the interview.

ten civilians were killed in a raid near Koch Goma camp in the Gulu district (Wallis, 2005). In July 2005, IRIN news reported that the LRA had ambushed a pick-up truck in the Kitgum district and burnt to death fourteen civilians who were travelling in the vehicle (IRIN, August 8 2005). These are just a few of the numerous cases.

The LRA abducted adult persons to transport their loot. Refusal to cooperate would result in severe beating and death. Those who were unable to carry the loads for lack of strength were likely to be killed. Two young men, who were members of the LRA between 1997 and 2007 and chose to remain anonymous, narrated the horrors of the LRA actions. An old man was killed simply because he was unable to carry a load of loot for the rebels. The man was very old and frail with the result that he fell under the weight of the load. This seemed to have angered some of the boys who beat him to death (Two Anonymous Returnees, Interview 18 May 2008). However, in most cases those who co-operated and managed to deliver the goods to the bush would be released soon afterwards.

The mutilation of the body parts of civilians started in the early 1990s. Matthew Odida reasoned that mutilation was a reaction to the Government's decision to deploy local militia against the LRA in 1991. The LRA interpreted this as a betrayal by the community (Odida, Interview 12 April 2008). To retaliate they resorted to cutting off the hands, feet, noses, ears, lips and breasts of victims. Thus mutilations were part of the LRA strategy to discourage people from co-operating with the Government. According to one of the local dailies, the *Monitor*, one of the LRA commanders, Same Kolo, surrendered to the Government in early 2005. After his surrender, President Museveni became very excited and, on 17 February 2005, announced that the LRA was finished since its top commanders had started to surrender (Nyakairu, 2005). This would appear to have annoyed the LRA which set about mutilating civilians. A few days after the publication Kolo's surrender, eleven women were abducted, driven into an abandoned hut where they were stripped naked, and mutilated (Kirunda, 2005).

The brutality of the LRA combatants, according to an ex-abductee, was attributable to Kony's successful indoctrination of abductees which stripped them of any human feeling. Having alienated the children from their families, social surroundings, social formation skills and social networks, the abductees lost their moral bearing and

acquired a new form of social and moral universe. This predisposition transformed the LRA into lethal, violent and brutal, soldiers.

4.2.4 Social Effect of the War on the Community

Apart from cases of abduction, rape, mutilation and torture, other adverse predicaments, arising from LRA activities, were suffered by families and the wider society. These included the socio-economic dislocation resulting from the war, especially the phenomenon of protected villages and a general lack of security. One of effects of LRA activities was the phenomenon of ‘night commuters’. Fearing the too common nightly abductions by the rebel Lord’s Resistance Army, thousands of children travelled at night from rural villages into Gulu town and the Lacor trading centre to escape this fate. They slept in hospitals, on verandas, in bus parks, on church grounds, and in factories. In the mornings, they returned to their homes (HRW, 2003c: 6). Another predicament was the loss of property through LRA destruction. The ICC (2004) estimates that, by 2004, the LRA had burned at least 1946 houses and 1600 storage granaries and looted at least 1327 houses, 116 villages and 307 shops, leaving the people destitute.

The population of northern Uganda was also displaced from their homes to IDPs. The uprooting of the people was basically a Government programme. Although I found out that in Gulu, Kitgum and Amuru some people had moved voluntarily to the camps, the majority were forced by the Government. According to one district leader (Interview 10 April 2008), the Government opted to take the people to these camps in order to facilitate its own military operations and to deny the LRA access to villages. The Government reasoned that it would be easier to protect the civilians if they were concentrated in camps. For Matthew Odida (Interview 12 April 2008), a resident of the Pabo IDP camp, under the Government’s ‘scorched earth policy’, the intention was to cut off any lifeline to the rebels. The ‘scorched earth policy’ is a military strategy adopted since ancient periods and consisting in destroying anything that might be helpful to the enemy as it moved through or retreated from an area. Initially, it was limited to the burning of crops in order to deny the enemy food resources, but its contemporary application includes destroying, not only food stocks, but also any other infrastructural facility – shelter, transportation, communications and industrial resources that could assist the enemy. The scorched earth policy was one of the war

tactics successfully adopted by the Soviet Republic against German invasion during the Second World War.

The Ugandan Government's use of the scorched earth policy against the LRA, entailed moving the population to protected camps. The Government envisaged that, by doing this, it would deny the LRA not only the possibility of recruiting child soldiers, which had formed a key source of their personnel, but also food supplies. As a result, all homes were destroyed and the people displaced. According to the HRW (2003c: 5), between the year 1996 and 2000, up to 400,000 civilians, predominantly from Gulu district, were forced into IDP camps by Government soldiers. The HRW (2003c) further reports that, in 2002, the LRA returned to Uganda from Sudan where Ugandan forces had launched a counter insurgency operation, 'Operation Iron Fist', to flush out the LRA. Following this return another 400,000 were forced to leave their homes and to relocate in camps, mainly in the Kitgum and Pader districts. By 2003, up to 800,000 people out of an estimated total population of 1,100,000 in Acholiland were living in IDP camps (HRW, 2003c: 5). According to figures given by Global IDP in December 2003 up to 1.5 million people were displaced in northern Uganda and resided in IDP camps; the majority were mainly from the districts of Gulu, Kitgum, Pader and Lira (Global IDP Database, December 2003). Displacement in Gulu, Kitgum, Pader in general accounted for more than 80% of the population in Acholiland and ranged from 70% to 80 % of the 1.5 million IDPs in northern Uganda (Global IDP Database, December 2003).

When all crops were burnt and all cattle taken away 'to be kept safely', the message given to the people was that the cattle would be returned once stability had returned. This, however, never happened. According to Dominic Ochar (Interview 3 June 2008) the 'scorched earth policy' programme was devastating. Cattle were the main source of income for the people and allowed them to educate their children and manage other financial needs. According to Kizito Odhiambo (Interview 5 May 2009), cattle were also a source of milk and meat. As stock holders, the people of northern Uganda traded in livestock and livestock products, such as milk, ghee, skin and hides. Livestock also provided them with manure for their farms. Removing the cattle meant that the people were completely disempowered and destitute, forced to rely on donors. Because of the security situation, camp dwellers were not able to travel to their fields

to till their land for fear of being attacked by the LRA. The UPDF was unable to provide people with adequate protection when they worked fields. Moreover, if the civilians had to travel a significant distance to work their farms, they would be labelled LRA collaborators and severely punished by the UPDF (Odhiambo, Interview 5 May 2009). This experience was interpreted by many people whom I talked to as a scheme by Museveni's Government to fight and exterminate the Acholi. The scorched earth policy seemed to be a policy not so much against the LRA as against civilians. This is captured by Adam Branch (2004: 23):

The displaced people's camps themselves were created through a government campaign of displacement, including bombing and burning down entire villages. Those in camps cannot leave because the UPDF kills civilians outside them. The government does not protect the camps, so they are easy targets for the predation of the LRA – and often of underpaid, undisciplined UPDF soldiers. The failure to provide food, medicine, decent housing, and protection, in direct contravention of the Geneva Conventions, has led many Acholi to see the camps not as 'protected villages' (the government's euphemism), but as a calculated effort to destroy the Acholi as an ethnic group – as genocide.

As mentioned early, the displacement phenomenon resulted in severe humanitarian conditions. Food insecurity posed a serious threat to the people's well being and resulted in high levels of malnutrition. For some time food security was mitigated by the international donor agencies, such as the World Food Programme (WFP) which supplied people with food. By 2005 the WFP was catering for around 1.4 million people in the region, providing about 75% of daily requirements per person (World Food Programme, 2005). This programme, according to Fr. Crispin Opio (Interview 29 May 2008), made the situation bearable but only for some of the time. At the time this research, there was evident donor fatigue. Benson Otto (Interview 20 March 2008) observes that, '[w]e used to receive good food rations from organisations, but now it is not there, we are really suffering.' Even with sustained donor support, adds Otto, relying on donations was not befitting for people who could till their own land, produce their own food and keep their own cattle. This sentiment was shared by many informants.

The scorched earth policy also failed because it did not prevent the LRA from recruiting through abduction. Although the camps were meant to make it easy for

Government forces to stave off the LRA, Government forces failed to protect the camps adequately. The camps made it even easier for the LRA to round up abductees and take them away. Moreover, any single attack was likely to result in many deaths since the camps were very congested (Otto, Interview 20 March 2008). According to a survey carried out by the World Health Organization (2005), it is estimated that, between the months of January and July 2005, about 12, 000 were abducted from the camps. Thus the camps did not adequately serve their purpose.

Generally, the conditions in these camps were deplorable. Camp dwellers lived in dehumanising conditions, in tiny, densely built, grass thatched mud huts, with poor sanitation, no toilets, no water and no health facilities. Human waste spread all over the pavements. This was yet another form of threat to human security. Moreover, Pabo, one of the largest camp in Amuru and probably the largest in the Acholi region, had a population of about 62,000 people without facilities (Bosco, Interview 4 April 2008). Over-population meant that the grass thatched huts were very close to each other which made incidences of fire outbreak very common and exacerbated security risks. Fire outbreaks were also common because of the hot and windy weather, especially during the dry season. Camp life therefore subjected people to health hazards.

Fr. Charles Odwar (Interview 16 March 2008) observed that, from the moment the people moved to the camp, having left their farms and had their crops destroyed and cattle taken away, people's health deteriorated. Malaria was prevalent. Poor sanitation in the camps brought about widespread cases of cholera and diarrhoea. In a survey conducted by WHO in 2005, mortality rates were very high, calculated as over 1,000 deaths per week in the region, commonly resulting from malaria, fever, cholera, AIDS and violence (World Health Organisation, 2005). According to a report produced by Norwegian Refugee Council/Global IDP Project (2005: 1)

[a]ccess to health care, water, education, land and shelter and the denial of freedom of movement [...] have contributed to a situation which has yielded a mortality rate which is above emergency thresholds and nearly double the mortality rate of Darfur, the conflict generally considered the worst humanitarian crisis in Africa.

Given this dislocation and poverty, education was seriously affected, there were no schools and parents had no resources to pay school fees for their children. Most mothers were widowed or their husbands shirked their responsibilities through lack of ability (Oyella, Interview 18 April 2009). Girls were easily lured out of school by sexual predators, especially the UPDF. Soldiers were among the few people to have a regular salary in the camps. Soldiers often took advantage of the poor conditions suffered by young women and girls (Oyella, Interview 18 April 2009).

These inhuman conditions in northern Uganda affected the very core of human well being and constituted serious human rights violations. Any appropriate mechanism to bring peace in northern Uganda would need to focus on these aspects of the conflict in northern Uganda.

4.2.5 Atrocities Committed by Government Soldiers

Apart from atrocities committed by the LRA there were also claims of atrocities committed by the Government forces, the Uganda Peoples Defence Forces (UPDF), formerly the NRA. The atrocities by the UPDF amounted to human rights violations and violation of international humanitarian law (HRW, 2003a). HRW reports that the UPDF, especially the 11th Battalion of the NRA, killed civilians in northern Uganda. People found outside the IDP camps were commonly assumed by the army to be rebels or rebel collaborators and were shot at by the army. Several victims were even shot inside the camps (HRW, 2003a). Many shootings occurred at night, at close range, and were deliberate, not merely cases of mistaken identity as the army often asserted in its defence (HRW, 2005). The UPDF soldiers beat or tortured people almost every day for the first two months of 2005 (HRW, 2005). The HRW adds that the 11th Battalion treated civilians, whom they are supposed to protect, in a heartless and brutal manner. Civilians alleged to be 'rebel collaborators' were commonly detained and sometimes tortured or severely beaten with sticks as part of the interrogation process (HRW, 2005). Rape and other sexual violence were also frequent occurrences in and around the camps. A UNICEF report released on June 15 2005 concluded that rape was the most common form of violence in the sprawling Pabo IDP camp in Gulu district (UNICEF, 2005). The lack of discipline within the army and the almost total lack of accountability contributed to an environment in which women were extremely vulnerable to abuse from the UPDF.

The foregoing discussion has not only revealed the criminal aspects of the conflict in northern Uganda, but also the social, economic dimensions of the war in a broader perspective. These included destabilisation, torture, loss of family members, loss of material well-being and work, and uncertainties associated with IDP camps life. Parents and relatives did not escape the extreme trauma associated with the predicaments of their children. Thus, all the populations living in northern Uganda and the Acholi in particular suffered not only physical injuries inflicted on individuals but also very serious social injuries inflicted on the community as a whole. Chris Dolan (2005: 30) refers to such suffering as social torture. According to Dolan, when directed at individuals, torture directly affects only a minority and the majority does not feel the impact of it, but in social torture only a minority will escape its impact. Social torture may constitute the cumulative impact of multiple violations, triggering a visible symptom, the impact of which cannot be traced back to any one of those violations in particular (Dolan, 2005: 30). In the case of northern Uganda these multiple violations include the human rights violations committed by the NRA in the north after it had seized power, the multiple human rights violations committed by the LRA and the phenomenon of being forced to abandon one's home.

Overall, I have exposed the nature and extent of the conflict in northern Uganda and its ramifications. Much of the literature available on northern Uganda tends to limit the scope of the conflict to that between the LRA and the Government of Uganda. I have sought to go beyond such a narrow approach to expose the dynamics of the war in terms of its various aspects. I have therefore explored the criminal, socio-political and moral dimensions of the conflict. I have demonstrated how the violence ran deeper than the phenomena of abduction and looting. The violence pervaded all other aspects of people's lives. The victimisation was extensive, and the line between victim and perpetrator blurred. The perpetrators of vicious acts such as sexual torture, mutilation and murder were themselves the products of the very same kinds of acts. How could this situation be dealt with? Was the ICC the appropriate instrument, or were alternative systems of justice more appropriate?

4.3 International Criminal Judicial Intervention: A Response to LRA Atrocities

According to international criminal justice standards, the situation in northern Uganda could be dealt with through the punishment of the perpetrators. The LRA atrocities

that we have discussed were in violation of international law applicable to non-international armed conflicts. These violations took the form of the conscription or enlisting of children below fifteen years in the army, wilful killing, rape, sexual slavery, forced pregnancy and forced displacement of civilians; they constitute crimes against humanity according to article 7 of the Rome Statute and war crimes under article 8 of the Rome Statute. In the following discussion I discuss the application of international justice standards in response to the gross human rights violation in northern Uganda.

4.3.1 The Ugandan Government Referral of the Situation in Northern Uganda to the ICC

The intervention of the ICC was triggered when the Ugandan Government, through President Museveni, referred the ‘situation concerning the Lord’s Resistance Army’ to the Prosecutor of the ICC in December 2003 (ICC 2005). This initiative fell within the category of self-referral, which was in line with the ICC’s mandate and particularly articles (13) (a) and 14 of the ICC Statute (ICC January 2004). These articles permit State Parties to the Treaty to refer, to the ICC Prosecutor, a situation in which one or more crimes falling within the jurisdiction of the Court may have been committed. The cutting of hands, feet, noses, ears, lips and breasts allegedly committed by the LRA were punishable by the ICC. These acts fell within the Courts jurisdiction, requiring it to prosecute and punish those who allegedly committed such acts (Ernesto, 2004: 329-330).

Uganda’s referral was the first one to be submitted to the ICC subsequent to the Rome Statute entering into force. As mentioned earlier in chapter one, other referrals were made in subsequent years, predominantly from Africa (Bekou and Shah, 2006; ICC, 2006). These included those submitted by the Democratic Republic of Congo in April 2004 and the Central African Republic (CAR) in January 2005 (Grono, 2006). The DRC referral targeted violations allegedly committed by the various parties in DRC between 1998 and 2002, which included the killing of civilians, forced recruitment of child soldiers, destruction of villages, internal displacement, cannibalism, rape and torture. In early 2006, Thomas Lubanga was already in Congolese custody pending prosecution under national court for crimes against humanity and genocide (Politi and Gioia, 2008). The ICC, in February 2006, preferred charges of enlisting child soldiers

against Lubanga, who was to be transferred to The Hague.⁷ The situation in the CAR pertained to the cases of sexual violence and rape suffered by hundreds of victims, allegedly at the hands of Jean-Pierre Bemba Gombo's 'Mouvement de Libération du Congo' (MLC). Bemba was already arrested at the time of writing. In this respect, it is noteworthy that while Uganda was the first referral to the ICC, the first trial was in the DRC. Overall, by December 2006 there were already three self-referrals to the Prosecutor of the ICC. In addition, there was the Security Council referral of the situation in Darfur in Sudan in March 2005 (Bekou and Shah, 2006). The ICC Prosecutor eventually issued a warrant of arrest for Al Bashir in 2009, accusing the Sudanese President of genocide, crimes against humanity, and war crimes in Darfur. These referrals provided the first opportunity for the ICC to demonstrate its capacity in relation to situations of human rights violations and impunity.

The referral of the situation in northern Uganda followed several attempts to find a peaceful solution to the conflict and bring it to an end through military action and dialogue with the LRA. The peace initiative by Betty Bigombe, referred to in chapter three, failed before it could bring peace. Another attempt to achieve peace was represented by the adoption of the Amnesty Act of 2000 by the Ugandan parliament, which I discuss in the following chapter. Under this act, the Government of Uganda had granted the LRA rebels pardon and full immunity from prosecution provided that they renounced rebellion (The Amnesty Act 2000, Cap 294, Law of Uganda). The LRA leadership refused to honour this offer. Even though President Museveni had signed the Amnesty Bill, he still had confidence in a military solution. This preference for a military option to end the conflict was in all likelihood inspired by the military credentials he earned in the bush war that brought him to power in 1986. It was also likely to have been reinforced by his disdainful opinion of the LRA commanders, whom he referred to as 'empty-headed criminals' (*The Monitor*, 2003). But President Museveni's confidence in a military option did not bear fruit, a failure he justified by claiming that Sudan had continued to support LRA rebels in disregard of an agreement reached earlier. This was a reference to the agreement brokered in 1998 by former US President Jimmy Carter in terms of which the Ugandan Government was to stop supporting the SPLA/M and the Sudanese Government the LRA/M (Allen,

⁷ Pre-Trial Chamber I Decision on the Prosecutor's Application for Warrants of Arrest (ICC-01/04-01/06-8), 10 February 2006.

2006: 72). Even though he defended his failure, the prolonged and devastating humanitarian conditions in northern Uganda raised international concerns and President Museveni's international reputation began to wane.

Given the constant failure of military strategies to bring the conflict to an end, some of Uganda's key development partners, like the European Union and the United Kingdom, began to express their reservations about a continued military option. In November 2003, the UN Under-Secretary for Humanitarian Affairs, Jan Egeland visited Uganda and commented on what he referred to as the unacceptable humanitarian conditions in northern Uganda, which needed to be dealt with (Allen, 2006: 73). It was in response to this international pressure that, in December 2003, the Ugandan President, Yoweri Museveni, shifted from his strategy of a military solution and referred the situation in northern Uganda to the ICC prosecutor to investigate crimes committed by the LRA. This referral was in accordance with article 14 of the Rome Statute of the International Criminal Court. As already mentioned, this article permits State parties to 'refer to [the international Criminal Court] Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed' (Rome Statute, Article 14).

4.3.2 Determining Admissibility of the Situation in Northern Uganda

After the President Museveni referred the situation in northern Uganda to the ICC Chief Prosecutor, Luis Moreno-Ocampo, one of the key hurdles to be overcome was to ascertain whether there were reasonable grounds for an investigation into the atrocities allegedly committed by the LRA (ICC, July 2004). The prosecutor had the task of determining whether the case referred to the ICC was admissible in accordance with the Statute's principles of gravity, interest of justice and complementarity (ICC, 2007). Accordingly, the ICC Chief Prosecutor indicated that he would determine whether the case was admissible according to the Rome Statute (ICC September 2007; Glassborow, 2006).

When the ICC intervenes in a particular situation, one of the crucial and sensitive considerations is whether a case is admissible or not. This consideration helps the prosecutors to intervene in a situation without interfering with the prerogative of state sovereignty. In this regard, article 1 of the Rome Statute states in part that, a case

‘being investigated by a State which has jurisdiction over it’ is inadmissible ‘unless the state is unwilling or unable to genuinely carry out the investigation or prosecution’ (art. 17 (1) (a)). This article safeguards against the possibility of the Court usurping the role of national courts. According to legal experts, such as Kress, the Ugandan self-referral was admissible since it was not in disagreement with art 17(1) (a) (Kress, 2004: 944, 946). At the time of the referral, the Ugandan Government had not launched any national judicial investigations or court proceedings against the LRA, strengthening the case for admissibility before the ICC pursuant to article 17 (1) (a) and (b) (Akhavan, 2005: 412–15). In this connection, when issuing warrants of arrests for the LRA, the Pre-Trial Chamber II made reference to a letter of 28 May 2004 from the Ugandan Government which stated that ‘the Government of Uganda has been unable to arrest ... persons who may bear the greatest responsibility’ for the crimes within the referred situation; that ‘the ICC is the most appropriate and effective forum for the investigation and prosecution of those bearing the greatest responsibility’ for those crimes; and that the Government of Uganda ‘has not conducted and does not intend to conduct national proceedings in relation to the persons most responsible.’ (ICC, 8 July 2005)

This initiative taken by the Ugandan Government was in accordance with the spirit of the international obligation to end the impunity of perpetrators committing what is referred to in the ICC preamble as the ‘most serious crimes of concern to the international community’ (Preamble to Rome Statute, 1998). The preamble to the Rome Statute stresses ‘the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes’ (Preamble to the Rome Statute, 1998). Article 18 of the Statute is equally explicit on the obligation of State parties to cooperate with the court in bringing violators of international human rights to justice. Thus up to this point, it appears that there was no impediment to the ICC intervention to bring the LRA to justice.

The above notwithstanding, it remained important to clarify the question of whether the LRA, as a non-state actor, fell within the jurisdiction of the ICC or that of the national courts. The relevance of this question lies in the fact that this was the first time in history that an international tribunal was to deal with non-state actors. The Nuremberg Trials, the ICTY and the ICTR had as their primary concern acts of

violence committed or sanctioned by state-actors. The LRA however was not a state actor. According to some lines of thought, non-state actors operate outside the political and public realm and are judged at the level of free and autonomous parties, and hence should not be subjected to international human rights standards (Wood and Scharffs, 2002: 531, 544–545). Such an application and interpretation of the standards of human rights would exclude the LRA from being accountable in accordance with international human rights standards which form the fundamental guiding principles of the ICC. The LRA would, instead, be liable under ordinary national criminal justice and not international human rights standards. The crimes committed by the LRA would be judged not as extra-ordinary but rather as ordinary crimes.

However, the LRA atrocities fell within the prescriptions of international human rights. The rebel group committed systematic, massive and serious human rights violations, especially against women and children during the armed conflict. The LRA or any other armed opposition group cannot be precluded from being responsible for upholding international human rights standards. According to the UN General Assembly, 1970, human rights ‘continue to apply fully in situations of armed conflict’ (UN, 1970) such that any actors, whether state parties or armed opposition groups or rebel movements, are bound by the international human rights standards (Robinson, 2003: 5–6; Chapman, 2005). Consistent human rights protection would require both state-actors and non-state actors to uphold international human rights standards. This line of reasoning provided a sound basis for the inclusion of the LRA within the sphere of international human rights standards. Since the *raison d’être* of the ICC is anchored on the international human rights values, the LRA case fell within the domain of ICC’s jurisdiction. Thus, the ICC proceeded on the basis of the fact that the crimes allegedly committed by the LRA leadership fell within its jurisdiction (Rome Statute 1998, art. 5). Further, the crimes were allegedly committed within Uganda, that is, within a territory of a State party to the *Rome Statute* (Rome Statute 1998, art. 12(2) and art.11). In addition, as already mentioned, the case was admissible in accordance with article 17, since no investigation and prosecution had been initiated by the Ugandan authorities in response to crimes allegedly perpetrated by the LRA leadership. In its decision to issue arrest warrants for the LRA leaders, the Pre-Trial Chamber II simply stated that,

[b]ased upon the application, the evidence and other information submitted by the Prosecutor, and without prejudice to subsequent determination, the case against Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen falls within the jurisdiction of the Court and appears to be admissible ... (ICC, 8 July 2005: 2)

Notwithstanding the foregoing, there still remained some critical questions. There was no evidence of an initiative from the Ugandan Government to investigate or prosecute the LRA for allegations of causing atrocities in northern Uganda (HRW, 2005). Uganda's court structures were intact and working at the time of the referral. A significant question is why did Uganda turn to the ICC when its national judicial capacity was strong? The issue seemed to turn on political relevance (Frohlich, 2007: 271, 299-300). A possible reason could be linked to the claim that practical difficulties had made it impossible for the Ugandan Government to capture the LRA leadership and bring them before the local court. The LRA operated largely from Sudan and was supposedly supported by the Sudanese Government, making it practically impossible for the Ugandan Government to apprehend them without causing an international incident. Given this scenario, the ICC, as an international body, became the most appropriate instrument.

Were an element of inaction on the side of the Ugandan Government to be revealed, would this constitute a justifiable reason to stop the court from intervening? According to the ICC Prosecutor, Moreno-Ocampo (2003a: 5), in some cases 'inaction by States is the appropriate course of action.' The ICC prosecutor noted, to quote at length, that,

[t]here is no impediment to the admissibility of a case before the Court where no State has initiated any investigation. There may be cases where inaction by States is the appropriate course of action. For example, the Court and a territorial State incapacitated by mass crimes may agree that a consensual division of labour is the most logical and effective approach. Groups bitterly divided by conflict may oppose prosecutions at each others' hands and yet agree to a prosecution by a Court perceived as neutral and impartial. ... In such cases there will be no question of 'unwillingness' or 'inability' under art 17. (Moreno-Ocampo, 2003b, 4)

Finally, given that at the time of the referral the Ugandan Government had passed the Amnesty Act of 2000, was this to be considered a local judicial initiative? The thrust

of the Amnesty Act of 2000 was in essence forgiveness and did not enshrine investigation and prosecution. The Act ran contrary to the very fundamentals of the ICC. Moreover, given the nature of crimes that call for international judicial intervention, international obligations prevail over national law should there be any conflict between international obligation and national law and domestic law may not be invoked to justify non-fulfilment (Denza, 2006: 425). In this regard, Uganda's international obligations under the ICC Statute would prevail over national amnesty law and practice, particularly in dealing with crimes against humanity. The Amnesty Act, therefore, was not an obstacle to ICC enforcing its warrants of arrest. I discuss the Amnesty Act of 2000 further in the next chapter and it is important therefore to avoid pre-empting its relevance in the peace and justice debate in the present discussion.

Considering all the above arguments, we can conclude that, as far as international standards were concerned, there was no impediment to ICC intervention. The requirements for admissibility, according to the Rome Statute, were met. Any issues that might possibly hamper ICC operations would be of a political rather than legal nature.

4.3.3 Warrants of Arrest for the Top LRA Commanders

After establishing that the crimes allegedly committed by the LRA fell within jurisdiction of the ICC jurisdiction and that the Ugandan Government had not initiated any formal investigation and prosecution, the ICC decided to issue warrants of arrest against the LRA leadership. According to the Rome Statute, Article 58, warrants of arrest can be issued by a pre-trial chamber when there are reasonable grounds to believe that the arrest of a person suspected of committing a crime falling within the jurisdiction of the Court is necessary to ensure the person's appearance for trial (Rome Statute 1998, art. 58 (1)). Accordingly, on 6 May 2005, the Prosecutor applied to the Pre-Trial Chamber II for warrants of arrest against Joseph Kony and four other LRA leaders after establishing that there were reasonable grounds to do so (Moreno-Ocampo, 2005). The warrants were issued by Pre-Trial Chamber II on 8 July 2005 but were kept under seal (ICC, 13 October 2005).

The request for the arrest and surrender for indictment of the LRA commanders was transmitted to the Government of Uganda, although the Government was advised not to reveal the warrants (ICC, 8 July 2005). On 9 September 2005, the Prosecutor made an application to the Chamber to unseal the warrants (ICC, 8 July 2005). On 27 September 2005, following this application by the Office of the Prosecutor, the Chamber ordered the Registrar to transmit, under seal, the requests for arrest and surrender to the governments of the DRC and Sudan (Hapold, 2007; IRIN, 2007). Eventually, on 13 October 2005, the Chamber ordered the unsealing of the warrants (Hapold, 2007; Allen, 2006).

On 14 October 2005, it was finally announced that arrest warrants had been issued against the five leaders of the LRA top command (Moreno-Ocampo, 14 October 2005). According to the warrants, these LRA leaders had allegedly committed multiple counts of crimes against humanity and war crimes as defined in ICC Statute, Art. 7(1) and ICC Statute, Art. 8(2) (c) (ICC, 8 July 2005). The warrants charged the LRA leaders with a total of 33 counts of crimes against humanity and war crimes. These included sexual enslavement, rape, enslavement, murder and inhumane acts. They were also charged with war crimes committed in a non-international armed conflict which included attacks against the civilian population, the enlisting of children, cruel treatment, pillage and murder (ICC, 8 July 2005: 12-20). The offences, according to the ICC warrants, were allegedly committed by the LRA on IDP camps and other places in northern Uganda between 2003 and 2004 (ICC, 8 July 2005: 6-9). It is interesting that these charges situated the crimes as having been committed between 2003 and 2004, whereas in fact the LRA atrocities date back to the late 1980s and early 1990s. The reason for this is that the ICC's mandate only allowed it to consider crimes committed after 2002.

The top five members of the LRA leadership targeted by the warrants were referred to as members of the LRA 'control altar', the group in charge of executing LRA strategy (ICC, 8 July 2005: 4). Seated at the top of the 'control altar' was Joseph Kony, who was listed as the chairman and commander-in-chief of the LRA. He was alleged to have committed, ordered or induced 33 counts of crimes against humanity and war crimes. These included twelve counts of crimes against humanity: murder, enslavement, sexual enslavement, rape, and inhumane acts of inflicting serious bodily

injury and suffering; and 21 counts of war crimes: murder, cruel treatment of civilians, intentionally directing an attack against a civilian population, pillaging, and enforced the enlisting of children. (ICC, 8 July 2005: 12-19).

Vincent Otti was the LRA vice-chairman and the commander of LRA operations in Uganda between 2003 and 2004. He was charged with 32 counts of crimes against humanity and war crimes. These included 11 counts of crimes against humanity: murder, enslavement, sexual enslavement, rape, and inhumane acts of inflicting serious bodily injury and suffering; and 21 counts of war crimes: murder, cruel treatment of civilians, intentionally directing an attack against a civilian population, pillaging, and the enforced enlisting of children (ICC, 8 July 2005: 12-20). Otti was reportedly killed on Kony's orders in October 2007 because of his interest in pursuing peace and the potential threat he posed to Kony (British Broadcasting Corporation, December 2007).⁸

Raska Lukwiya was the LRA deputy army commander. He was charged with four counts including enslavement, cruel treatment, attacks on civilians and pillaging (ICC, 8 July 2008: 8-10). Lukwiya was later killed in fighting against the Ugandan army in northern Uganda in 2006. Specific details of his death remain obscure.

Okot Odhiambo, an LRA brigade commander, was charged with 10 counts and on the basis of his individual criminal responsibility. These included two counts of crimes against humanity, that is, murder and enslavement; and eight counts of war crimes, namely, murder, intentionally directing an attack against a civilian population, pillaging, and the enforced enlisting of children (ICC, 8 July 2005: 10-12).

Dominic Ongwen, another LRA brigade commander, was charged with seven counts (ICC, 8 July 2005: 10-12). The warrant of arrest for Dominic Ongwen lists seven counts on the basis of his individual criminal responsibility including: three counts of crimes against humanity: murder, enslavement, and inhumane acts of inflicting serious bodily injury and suffering; and four counts of war crimes: murder, cruel

⁸ 'Otti executed by Uganda rebels,' BBC, December 21, 2007, available at: <http://news.bbc.co.uk/2/hi/africa/7156284.stm>

treatment of civilians, intentionally directing an attack against a civilian population, and pillaging.

As a follow-up to these warrants, the International Criminal Police Organization (Interpol) issued Red Notices for the arrest of the five LRA commanders named in the ICC arrest warrants (Mukasa, 2006). The Interpol Red Notice system is part of its global network as a law enforcement agency, created to assist in tracing and arresting internationally wanted fugitives. This is the only effective instrument for international arrest warrant in use today. Interpol circulates notices to member countries listing persons who are wanted for extradition. The names of the persons in the notices are placed on watch lists. When a person whose name is listed comes to the attention of the police abroad, the country that sought the listing is notified through Interpol and can request either his provisional arrest, if there is urgency, or file a formal request for extradition. These notices were instrumental in ensuring that the descriptions of the persons pursued by arrest warrants were known globally and in facilitating the international obligation to pursue and arrest people accused of committing crimes against humanity. The ICC made use of the Interpol Red Notice as it did not have its police force and had to rely on other established international institutions.

The ICC prosecutor, however, did not consider the atrocities allegedly committed by the UPDF. The Prosecutor explained that his decision to target the LRA leaders and not members of the UPDF was guided by the gravity criterion laid out in Article 53 of the *Rome Statute*. According to this criterion, focusing on those who bear the greatest responsibility for the most serious crimes would be more feasible than bringing charges against all apparent perpetrators (ICC, September 2003: 6-7). According to the ICC Chief Prosecutor, the accused were selected on the basis of who was responsible for the decisions. The Prosecutor indicated that the selection was carried out on the basis of careful analysis in accordance with the principles of objectivity and impartiality, and in accordance with the criterion of gravity set out in Article 53 of the *Statute* (Moreno-Ocampo, 24 October 2005: 5-6). With specific reference to the situation in northern Uganda, the Prosecutor noted that:

In Uganda, the criterion for selection of the first case was gravity. We analyzed the gravity of all crimes in Northern Uganda committed by all groups

– the LRA, the UPDF and other forces. Our investigations indicated that the crimes committed by the LRA were of dramatically higher gravity. We therefore started an investigation of the LRA. (Moreno-Ocampo, 24 October 2005: 7)

In the context of criminal justice, the gravity of the crimes committed by the LRA/M called for the prosecution of the perpetrators. This was ultimately expected to have a deterrent effect, reducing hostilities and providing greater accountability worldwide (Punyasena, 2006: 57). The Prosecutor nonetheless gave the assurance that his office had not closed its books on investigations, and that it had simply made a positive decision to seek arrest warrants against certain LRA leaders, a decision which did not rule out subsequent charges against members of other parties to the conflict (Schabas, 2007: 246). The Prosecutor stated that, the ICC would ‘[...continue] to collect information on allegations concerning all other groups, to determine whether other crimes meet the stringent thresholds of the Statute...’ (Moreno-Ocampo, 24 October 2005).

These assurances notwithstanding, the apparent impartiality and the expected cooperation from the Ugandan Government, combined with the political dimensions of the conflict in northern Uganda, were bound to shape the attitude of the local Acholi population towards the ICC intervention. It was bound to raise questions as to whether the Court was being used by the state to fight its battle and whether the Government would still assure the Court of its support if persons associated with it were targeted. Paola Gaeta’s research showed how this mode of operation posed a potential problem for ICC legitimacy (Gaeta, 2004: 951-952). Gaeta argued that the Ugandan state might be seeking to use the Court as a political weapon against its opponents and willing to cooperate with the Court only when the court scrutinised the activities of their opponents and not those of the actors on the Government’s side (Gaeta, 2004: 952).

Accordingly, with issuance of warrants of arrests against the LRA, while ignoring the atrocities allegedly committed by Government forces, the stage was set for subsequent processes and debates on the northern Uganda situation. More immediately, there was a need for the States party to the ICC, including Uganda, to fulfil their obligation by arresting and handing those indicted over to the ICC.

4.3.4 State's Obligation and the Ambiguity of Self-referral

The ICC did not have its own police force and had therefore to rely on the support of the State party to the ICC to arrest the LRA suspects. In this respect it was expected that Uganda, itself being a State party to the Rome Statute, would provide all necessary support to facilitate the investigation and provide protection to investigators and witnesses (ICC, September 2003, 5). Indeed, for the ICC to execute these warrants, it was essential that, in accordance with the international obligation to end impunity, all states respected the demands for justice and international criminal accountability not only in Northern Uganda, but wherever such crimes occurred. Thus, on 15 September 2006, the Pre-Trial Chamber requested

[t]he Prosecutor to submit to the Chamber, on or before Friday 6 October 2006, without prejudice to his powers and functions under the Statute, information and comments in writing on the status of cooperation with the relevant states and with the Registry as regards the execution of the Warrants. (ICC 15 September 2006)

The ICC Prosecutor, Moreno-Ocampo, maintained that States party to the ICC were expected to respond positively as part of their obligation to assist in combating and eradicating the culture of impunity which could undermine the democratic order. Since the LRA was a regional problem, its elimination required greater regional cooperation and sustained support from the international community. Thus, arresting the indicted LRA/M leaders was not only a challenge for Uganda, Sudan and the DRC, but also a challenge for the international community, especially those which were party to the ICC Statute (ICC, 12 July 2006).

The anticipated cooperation in arresting the LRA was probably based on the fact that the referral was made by the President of Uganda, Yoweri Museveni. In the Prosecutor's eyes this seems to have demonstrated political will on the side of Uganda and to have reassured the Prosecutor that the national authorities would cooperate in the investigation and enforcement of the warrants of arrest. But was this really as obvious as it may have appeared? The human rights abuses by the LRA had existed in northern Uganda for close to two decades, since the war begun in 1986, yet the Government of Uganda had failed to deal with it.

The fact that the case was taken to the ICC by the Government meant that these crimes were beyond the capacity of the state; otherwise they would have been arrested, investigated and prosecuted through national judicial organs. The ICC was to do what the Government had failed to do. It did not make sense therefore to hope that the Government would be effective in enforcing the warrants of arrest. Moreover, the State was itself a party in the conflict and asking the ICC to intervene meant that the State was asking the ICC to fight its battle. Another consequence of the process was that the Government was likely to be jittery to have the forces associated with it investigated for any malpractice during the conflict. The question is therefore whether the international court's intervention in northern Uganda was a case of the law being made to serve as the handmaid of politics? This seemed to have been the case when the ICC targeted the LRA but left out the UPDF. Evidence to the effect that the LRA had committed atrocities was not difficult to come by. Child soldiers were in the bush; girls raped and held as sex slaves were still in the bush; and cases of mutilations were evident across the region. These stood as testimonies. But would international criminal justice be able to isolate legally pertinent issues without getting caught up in the politics of the conflict? To highlight the complexity of these questions, we need to turn our attention to the reaction that ICC intervention elicited among across-section of Ugandans.

4.4 Reaction to the ICC

Although the atrocities allegedly committed by the LRA constituted war crimes and crimes against humanity and fell squarely within the realm of the ICC, the ICC's appropriateness was questioned by sections of Ugandans including the victims, civil society, and community leaders. These groups challenged the relevance of the ICC intervention and instead opted for alternative instruments of justice and peace-building. In this section I turn my attention to some of the concerns that underpinned the negative reaction against ICC involvement in the situation of northern Uganda.

Immediately after the Kampala Government's announcement of the indictments, the LRA leadership offered to negotiate with the Government for a peaceful settlement of the conflict on condition that the ICC dropped the warrants of arrest (IRIN, November 2005). In the ensuing years the LRA stated that withdrawal was a prerequisite for the signing of any peace deal. This offer by the LRA was embraced by a section of the

local population, especially traditional leaders and the civil society. The leaders based their argument on the fact that, during the years of war, the predominantly Acholi population had borne the brunt of the suffering inflicted by the LRA, despite several attempts by the Ugandan Government to bring the war to an end by military means. Given that the LRA had agreed to negotiate with the Government, this offer should have provided the point of departure for reaching a feasible solution to the conflict (Allen, 2006). The ICC intervention therefore elicited a number of objections from victims, civil society, community leaders and some Government representatives. My field research in northern Uganda revealed various views of the people on the ICC intervention.

The first objection was that the ICC was not balanced. This was an issue of particular interest to the local population. Key concerns in this respect arose from the manner in which the referral was made to the ICC and from the fact that the ICC did not target the UPDF, also accused of atrocities against the civilian population. It did not escape the attention of the Acholi population that it was President Museveni who made the referral, and yet the President was one of the protagonists in the conflict (Opio, Interview 29 May 2008). There was also no evidence of consultations between political leaders in President Museveni's Government and political leaders in northern Uganda. Thus the impression was created that the ICC was part of the political manoeuvring carried out by President Museveni. The impression first arose when the ICC Chief Prosecutor Luis Moreno-Ocampo held a joint press conference with President Museveni in London on 29 January 2004, when the Prosecutor announced his decision to begin investigating crimes allegedly committed by the LRA. Although the joint conference may have been a gesture on the part of the Ugandan Government to assure the ICC of cooperation, it turned out to be a political mistake given the dynamics in northern Uganda. Furthermore, the ICC intervened at the request of the Ugandan Government, but the Government had been a party to the conflict and was also accused of human rights violations. This would make many northerners who were familiar with dynamics of the war suspect that the ICC was operating at the behest of the Ugandan Government, a suspicion corroborated by the ICC decision not to investigate the alleged UPDF atrocities. These led to conclusions about the main intention of the referral and to the perception that the Ugandan Government was using the Court as a weapon against the LRA. According to Fr. Charles Olweny, a Catholic

priest working among IDPs living in the Pabo camp in the Anuru district and a native Acholi,

[i]f a balanced trial were to be realised then both the LRA and the UPDF must be tried for their atrocities. We agree that LRA have committed serious atrocities, but there is equally enough evidence that the UPDF have committed [serious] atrocities. The government is only using the ICC to score his political goals against the Acholi (Olweny, Interview 3 April 2008).

Fr. Charles Olweny referred to some IDP camps as 'death dens for eliminating the Acholi'. In Pabo, Fr. Olweny pointed out two sites which he said were mass graves. He told me how the UPDF battalions had killed the Acholi in Pabo. The people, according to him, were simply collected together, killed and buried in the camp. He spoke about the mass graves and how whoever spoke about them would mysteriously disappear. He also claimed that there were cases of torture and rape by UPDF forces (Olweny, Interview 3 April 2008). The Government forces had been accused of raping women and torturing anyone they suspected of being rebel collaborators. According to an informant Caroline Auma (Interview, 31 May 2008), 'the LRA abducted children, but the UPDF also committed very grave human rights abuses on our people like raping, torturing and killing.' Some of the interviewees had personally experienced violations. One informant, Ochola, told the story of how his father was pulled out of his vehicle and killed by Government soldiers manning road blocks. The other occupants who were from the south of the country were spared and allowed to proceed (Ochola, Interview 2 June 2008).

Experience and knowledge of these UPDF violations and the fact that the ICC did not target the UPDF brought the court's impartiality into question. The local population maintained that both the UPDF and LRA were equally responsible for serious human rights violations in northern Uganda (Allen, 2006: 95). Some of the informants demonstrated an understanding of the complex nature of the conflict in northern Uganda. According to Charles Abok (Interview, 23 April 2008), interviewed in Pabo IDP camp,

[t]he conflict in northern Uganda is complex and it is difficult to state who was really fighting for the people and who was against the people. Both the government and the LRA claimed to have been fighting for the interests of the Acholi, yet both had committed very serious and vengeful crimes against the Acholi people.

The above view was corroborated by Christine Labogo (Interview, 23 March 2008) who argued that

[b]oth the LRA and UPDF should face justice in equal measure. The warrants should not be lifted. Both sides have caused suffering. Both sides should face justice. How can the government be the accuser while it is an accused? The government killed civilians; looted property of the civilians, raped women, looted cows. The people through the paramount chief have asked the government to compensate them for the losses.

The years of conflict since Amin and the persecutions that accompanied these conflicts have left painful memories in the minds of many northern Ugandans. The Acholi people seem to have suffered extremely in the hands of successive governments especially that of Amin (see chapter three of this work). The role President Museveni's Government in the conflict brought back painful memories. One respondent remarked that it was necessary for the ICC to pursue

those leaders in Museveni's government who [had] killed innocent people and buried them in mass graves. As long as the ICC does not pursue those who committed such atrocities, there will be no justice since justice should apply to all parties (A young man, Interview 25 May 2008).

According to popular understanding, the beginning and continuation of the war should not have been blamed on the rebels alone and 'if there were any prosecution, the government should also be prosecuted.' (Anonymous Man (b), Interview 24 May 2008) A man living in Pabo IDP in Amuru district painfully recalled how a Government soldier allegedly killed over 30 people in Pabo. He reasoned that justice demanded that all parties to a dispute be treated according to how much responsibility they held and anyone who carried any responsibility should be held accountable. He wondered why the ICC was not concerned with Government soldiers. Another participant said,

[b]oth sides have caused suffering to innocent people. Both sides should face justice. How can the government be accused while it is the accuser? If Kony wins the case, the government should be accused. The government killed civilians; looted property of the civilians, raped women, looted cows. (Man (a) Interview 15 April 2008)

This perception impressed itself strongly on the minds of both the local Acholi population and their leaders. In October 2004, the Acholi Religious Leaders' Peace Initiative (ARLPI) and the Acholi Paramount Chief, Rwot Onen David Acana II, wrote to the Court stating that, '[w]hile we recognise your need to investigate the crimes committed by the LRA against humanity, we would strongly suggest that the investigation encompasses the whole of the situation of the war in northern Uganda in order for true justice to be done....' (ARPI, 2004)

Such deep-seated feelings reinforced the position that, within the context of the northern Ugandan situation, consideration had to be given to all the parties involved in the conflict if any justice initiative was to have a popular impact. What emerged for the local population was that the failure to target the UPDF was the result of it being protected by the Ugandan Government (Allen 2006: 97). Any judgment would not be perceived as just if the Government forces were not also held accountable for their actions (Okidi, Interview 17 May 2008).

The ICC, however, justified exclusion of the UPDF, as mentioned earlier in this chapter, on the basis that one of the parties to the conflict, the LRA, had committed worse atrocities than the other. It is important to note, however, that, if members of only one group were prosecuted, a number of undesirable results might ensue, especially in situations characterised by political polarisation. The Court sought to prosecute the worst offenders on one side of the conflict and excluded, at least initially, offenders on the other side whose crimes it did not consider sufficiently serious to prosecute. This omission foregrounded the political dimensions of the conflict. People's perceptions were that the process was uneven and therefore unjust. Even civil society organisations raised concerns about the ICC's apparently partial decision. Amnesty International, for instance, remarked that '[a]ny Court investigation of war crimes and crimes against humanity in northern Uganda must be part of a comprehensive plan to end impunity for all such crimes, regardless of which

side committed them and the level of the perpetrator.’⁹ It is for this reason that the apparently selective prosecution by the ICC led people to believe that the Court was a tool of Government.

The above objection reveals that the message to the ICC was to charge the UPDF as well. For ordinary people it was not whether the crimes committed by parties to the conflict were equally serious, but whether the court allowed impunity or not. Their perceptions demonstrate that, in a war zone, the punishment of all offenders is important.

The second objection was that the ICC process might exacerbate the violence and become a stumbling block to the peace process (Allen, 2006: 102). Political and religious leaders from northern Uganda contended that pursuing the LRA top command for prosecution could exacerbate violence and lobbied for the withdrawal of the ICC case against the LRA leadership. Reagan Okumu, a Member of Parliament for Aswa County in Gulu district, contended that prosecuting the LRA top commanders would not be healthy since the threat of prosecution would have the effect of making Kony resort to killing innocent people in protest (*The East African*, 16 February 2004). Other leaders who lobbied for the dropping of the charges include, among others, Archbishop Baptist Odama, of Catholic Diocese of Gulu, Bishop McLeod Baker Ochola, Bishop of the Anglican Church and the Acholi Paramount Chief, Rwot David Onen Acana (*The Monitor*, 14 April 2005). Rwot Acana argued that pursuing the LRA would not work in the interests of peace since it would hamper the ongoing peace negotiations between the rebels and Government (*The Monitor*, 18 February 2005). Many doubted that the LRA leadership would surrender freely without the prosecutor of the ICC withdrawing the indictments against the five commanders (Liu Institute for Global Issues, 2006). Abel Ojara, an ex-rebel soldier whom I interviewed, said that it was impossible for a rebel leader who knew that he had committed serious crimes and who was being pursued by a warrant of arrest to give himself up, surrender his weapons and sign a peace deal (Ojara, Interview 16 May 2008). The fear that the ICC indictments would exacerbate the conflict was shared by most of the people interviewed. Beatrice Akello, in

⁹ Amnesty International, Public Statement 59/001/2004.

response to whether she knew about the ICC and whether she thought it would bring peace by pursuing the LRA, said:

Yes, I have heard about the ICC. I know that they have released warrants of arrest for Kony and the LRA commanders. But that should be withdrawn because it will derail peace processes. The war is enough and no one would wish to go back to the bush. What the people are for is peace no matter what it costs. (Akello, 25 March 2008)

Local leaders too expressed their awareness of the fact, without its own military to enforce the warrants of arrest, the ICC would have to rely on the very Government forces, the UPDF, for this purpose (Group of Elders, Interview 11 March 2008). A further concern about the UPDF was that it had not been able to defend the people from attacks and abductions by the LRA (Ojara, Interview 16 May 2008). This sentiment is captured in the remarks of Matthew Odong, Secretary General of ARPI.

It has taken the government of Uganda 21 years to do away with Kony to no avail. How will the ICC arrest them? Does it have its own military or is it going to rely on the UPDF which have failed to defeat the LRA, protect the people against the LRA and have themselves caused atrocities comparable to those of the LRA. How long will it take the ICC to arrest Kony? The people have questioned the ability of the ICC. In the case where the ICC sits on the way of dialogue with the LRA it is merely perpetuating the conflict. The best way is to allow the LRA back (Odong, 27 March 2008).

As noted early in this chapter, the Ugandan Government had moved almost the entire Acholi population into IDP camps in order to protect them from the LRA. However, observes Auma, Government soldiers had not managed adequately to protect the camps from being attacked by the LRA (Auma, Interview 31 May 2008). These camps were also characterised by very poor conditions and posed serious health hazards. The camps had no clean water or infrastructure, and the people were completely dependent on food aid (Auma, Interview 31 May 2008). Benson Otto, who had been residing in Lacor IDP camp for four years, told me that he was driven to the camp where his community were told they would receive maximum protection. Over the years, they had become completely incapacitated, had no land to plough, no food, no water, no school fees for children, no clothes and relied entirely on donation from NGOs. His desire was to go back to his homeland (Otto, Interview 20 March 2008).

Such adverse experiences partly explain why any offer on the part of the LRA to negotiate received immediate positive response.

What the people want is simply peace, they have pardoned the rebels. They want to forget the past and start a new life. Many people have lost their properties and relatives. The government does not have the capacity to bring the war to an end except through negotiations. They have fought for over twenty years. The civilians are the ones suffering (Otto, Interview 20 March 2008).

What people harboured in their minds was that the Government had wilfully neglected the northern Ugandan situation. As noted earlier, according to the ICC's reasoning, failure on the part of the Government to act decisively against the LRA would not be an impediment to intervention. But for the Acholi population, this inaction was a political issue. Given its extensive machinery and intelligence, the people questioned the apparent inability of the Government to put down the war in the north as it had done elsewhere in Uganda. According to some reports in the media, the failure of the UPDF to defeat the LRA was attributed to a myriad of factors such as lack of resources, prevalence of HIV/AIDS, low morale, indiscipline and drunkenness among troops (*The Monitor*, February 1998). But this situation in the army was not a strong enough reason to explain why the Government failed adequately to protect its civilians against the LRA. Because of its military profile and advantages, the Government's failure to protect its civilians was interpreted not simply as incapacity but as negligence. The UPDF should have been able to defeat the rebels given their numerical dominance over them. According to Chris Dolan (2009: 72-73), throughout their insurgency, the number of rebel soldiers was estimated to range between 1000 and 5000 while the Government troops were estimated at between 50000 to 60000 troops – excluding ethnic militia deployed in the north such as the LDU whose number was estimated at 20,000. It was therefore incomprehensible how the Government forces could be defeated by a rag-tag rebel group surviving on abduction and looting from a very poor neighbourhood (Dolan, 2009: 72-73). Moreover, the UPDF had guerrilla-fighting credentials which they could apply in understanding LRA operations. They had registered military successes against other insurgencies across the country, notably the ADF in Western Uganda in the late 1990s (Dolan, 2009: 73). Within southern Sudan, where the LRA were based, the UPDF had the support of the SPLA. Moreover, the UPDF had military support from the US in the

form, for example, of training and information. Thus factors such as lack of resources, prevalence of HIV/AIDS, low morale, indiscipline and drunkenness among troops were not compelling enough to justify the UPDF's failure, at least in the judgment of the victims.

This apparent inability on the side of the Government led to speculation that fostered radical interpretations of the Government's role in the war and shaped the people's attitudes towards various peace initiatives. One of these radical views was that the continuing insurgency of the LRA gave Museveni an opportunity to exterminate the Acholi. According to Otto (Interview 20 March 2008), since Museveni was well aware of the conditions in the camps, letting the people live in them for over a decade was a '[d]eliberate plan too make people die slowly'. According to Odwar, some interpreted the Government's incapacity as a lack of good will and revenge. Odwar noted that 'northerners were perceived as paying for the atrocities they had allegedly committed in the south' (Odwar, Interview 16 March 2008). He attributed this lack of good will on the part of Government to what he referred to as the 'political usefulness of death' (Odwar, Interview 16 March 2008). This, according to Odwar (Interview 16 March 2008) meant deliberately allowing people to suffer and die so that they would not rise up against the Museveni's regime. The failure of the UPDF was also seen as the deliberate intention of the Government to prey on the people's suffering because continuation of the war was beneficial to personalities associated with Museveni. Odwar pointed to the popular belief, both within Uganda and abroad, that Government soldiers were using the war for economic gain. Army officers used the situation to enrich themselves through the *ghost soldier* scandal. Ghost soldiers were non-existent soldiers within the military budget for fighting the rebels in the north (Mwenda and Tangi, 2005).

Thus, for many people in northern Uganda, the self-referral to the ICC was considered to be a political ploy presented as a genuine initiative. Odwar (Interview 16 March 2008) suggested that it was meant to portray the LRA in a negative light to the international community and label the rebel group a terrorist gang, making it possible for them to be formally accused, and to make the Government appear to be resolving the conflict. In the process, argued Odwar, the Government would also have succeeded in covering-up of the atrocities committed by the UPDF. The ICC was

therefore faced with the enormous task of dealing with such perceptions and the dynamics which informed the conflict.

The third objection to the ICC intervention was in relation to the abduction of children. Respondents, especially those whose children had been abducted, were apprehensive of the manner in which the LRA would be arrested. They envisaged a military encounter which would place their children in the crossfire. In other words, the central issue was not the possibility of the LRA being prosecuted, but the manner in which Kony could be apprehended without harming the abducted children. During my interview with Matthew Odong, it emerged that the local leaders who advocated forgiveness were aware of the heinous nature of the crimes committed by the LRA except that the circumstances surrounding the commission of these crimes obscured straightforward legal redress:

We acknowledge that the LRA have violated fundamental human rights such as right to life, right to education, right to freedom. But forgiving the LRA has some sort of ethical consideration, since the people are caught in crossfire. You strike the LRA you arm the people who are already wounded in many respects. It is a problem of double effect. (Odong, Interview 27 March 2008)

Thus, the key concern here was that of the abducted children. The predicament of abducted children raised not only legal but also moral questions. The northern Uganda situation was an ongoing conflict, where pursuing the culprits implied military action which could possibly kill loved ones. These loved ones were initially abducted and later turned into perpetrators as shown in chapter three and the first section of the present chapter. International standards of criminal justice generally seem to assume that, in cases of war crimes, it is easy draw a clear distinction between perpetrators and victims such as the distinction between the Nazis and the Jews or between Hutu extremists and Tutsi victims. This was not the case in the northern Uganda situation. The majority of the combatants and/or perpetrators in the LRA were forcibly abducted and were themselves victims. This scenario elicited fears among the Acholi that the military apprehension of the LRA and their subjection to judicial processes would result in the death of abducted Acholi children. The abducted children may have turned into serious criminals, but the process that led them along such a path had deprived them of their agency. At the time of their abduction, the children were not yet capable of making informed choices about becoming involved in militia activities.

As discussed earlier in this chapter, their abductions and training took place in contexts characterised by very limited choices.

In the strictest sense, the objection to the ICC was not based on a justice issue, but rather on fears that the intervention would bring victims face to face with family perpetrators, possibly people's own children. A second factor had to do with exhaustion. People wanted the fighting to stop and peace to prevail. Apprehending the LRA would most likely involve a military operation. A further observation was that the immediate response to military attacks against the LRA was dependent on whether a child or relative had been abducted. Indeed many of the responses relating to what should happen in a post-conflict environment differed according to the extent to which individuals interpreted the conflict within a national and historical context but on a personal level, informed by personal experiences. Accordingly, those whose children or close relatives had been abducted immediately rejected military action against the LRA. This was not because of adherence to the LRA as an organisation but because such attacks might kill abducted children.

The final objection was that the ICC's methods of punishment might not make an immediately positive impression on those Acholi people who questioned its adequacy and relevance. This objection had two versions. The first was that the ICC mode of punishment was a punitive model. Concern about the ICC's punitive approach was motivated by an understanding of the need for a system that would be both restorative and integrative whereas the application of the legal system would simply isolate the individual from the community without necessarily bringing peace. A member of a group interview remarked that even if 'the ICC decided to condemn Kony it would not bring peace, it would leave a gap in the hearts of the people' (Group Interview, 2 April 2008). According to this view, traditional systems of justice would better serve the need for reconciliation and would make the people truly forget. In other words, traditional systems would reintegrate and reform. Punishment, in the ICC manner would target an individual, but the conflicts had community dimensions in that the entire community was affected by the various aspects of the conflict such as abductions, killings, mutilations of civilians and dislocation. Moreover, people believed that, once peace was obtained, the criminals should be allowed to live in the community. By living together in the community people would come to accept and reconcile

themselves with the past. According to many respondents the system of reconciliation was very successful in traditional society and was applicable in this context (Group Interview, 2 April 2008). This proposal is fully discussed in the next chapter where I have dealt with alternatives peace and justice systems.

The second version of this objection was that the ICC was an international instrument with international standards of punishment according to which persons sentenced by the ICC were not subjected to the harsh and dehumanising conditions prevalent in African jails. Pursuant to Article 77 of the ICC Statute, the LRA leaders, if convicted, would have life sentences imposed on them by the Court. In the minds of the local population, such punishment was not the kind of punishment appropriate to the kind of atrocities committed by the LRA. According to Peter Onega (Interview, 13 March 2008), if Kony were arrested and handed over to the ICC, the latter would impose a life sentence if he were found guilty, but the kind of treatment received by Kony in prison would be extremely lenient in comparison to the far harsher conditions he experienced in the bush and to those experienced by his victims. Corroborating this view, a local leader remarked that arresting Kony and taking him to The Hague, would not be much of a punishment for a culprit of his kind since he would watch TV in prison, read newspapers each morning, be examined by doctors and have his health regularly monitored, eat good food and no longer have to be worried about UPDF revenge (Cultural Leader, Interview 8 March 2008). According to Jacinta Apola (Interview 6 March 2008), a social worker who had worked with IDPs since 2002,

Kony caused a lot of pain to the population and it would be important that he came out to see the pain he caused the people. If Kony is arrested and taken to The Hague, he will probably be jailed for life and in this case he will live in comfort not comparable to the pain he has caused the people. Even if he were to hang, he would not have had a personal experience of his atrocities.

This was echoed by a woman whose daughter had been abducted and raped by the LRA and who argued that it was important to reintegrate the LRA back into the community so that they would realise what they had done as killing them would not achieve this (Mother of abducted girl 5 April 2008).

Underlying this sentiment was the view that, Kony should be made to stay in the community in order to live with the consequences of his actions. Victims in most cases wished to be directly involved in the justice process in some way as they wanted justice to be seen to be done. Such involvement has featured in various transitional justice processes in Africa, for instance in post-genocide Rwanda. During the proceedings of the ICTR in Arusha, Tanzania, the general public expressed interest in attending the court cases and judgments of some of the masterminds of the 1994 genocide. They were, however, distant from the proceedings and not actively involved in the tribunal processes. The tribunal was also seen, in terms of procedure, as foreign to Rwandese society (Human Rights Watch, 1999). It is against this background that the *gacaca* court system was seen as relevant in filling the gap that arose between the ICTR and the Rwandan population. In similar respects Ugandans who had suffered at the hands of Kony would feel even more detached if Kony were prosecuted and jailed in The Hague. In this respect, international punishment for the perpetrators could be interpreted as a form of alienation which further severs relationships and harmony in a community already suffering from the impact of broken family relationships (ARLPI delegate, Interview 24 May 2008).

The views expressed by informants against the ICC reflect a diverse set of concerns. The first objection suggests a perceived lack of impartiality in the pursuit of perpetrators by the ICC. The second and the third objections focus on the fears that the ICC might bring more suffering. The underlying contention among ordinary people appears to be that if justice were to be seen to be done, then all sides needed to be held responsible. The final objection raises questions about how people conceived of the ICC. Some indicated that Kony needed to be more severely punished emotionally, so that he could feel the same pain that the LRA had caused the population. It appears that those who wished forgiveness for the LRA at the same time did not want a punishment that would be too lenient. What emerges is people's ambivalence and confusion about what they really meant when they spoke of forgiveness and punishment.

4.5 Conclusion

This chapter shows that civilians living in northern Uganda suffered serious crimes at the hands of the LRA and Government soldiers. These crimes were punishable

according to standards of international criminal justice by following the rule of law. Certain dimensions of the conflict, such as suffering inflicted on the entire society, did not directly fall within the legal jurisdiction of the ICC. Moreover, some of the perpetrators were initially victims of these same crimes. The issues raised here relate to the intersection of the nature of atrocities committed in northern Uganda, international justice systems and other forms of justice. What emerges is that it is not true that people did not want punishment or justice but that their concerns were complicated. They wanted the violence to stop, but they did not want their children to die. They may have been afraid of vengeance from the LRA, but did they really think about what it would mean to live with the perpetrators of violence in the future? Could they ever imagine what that would be like? Is this why they turned to the mechanisms of justice that they knew better? Were they sure that this form of justice would be the panacea? These are some of the questions dealt with in the next chapter.

Chapter Five

Local Initiatives and Alternative Approaches to Peace and Justice in Northern Uganda

5.1 Introduction

The critique of the relevance of international criminal justice, as presented in the previous chapter, is based on the understanding that the nature and dynamics of the conflict in northern Uganda require more localised and context specific approaches. Accordingly, civil society and traditional leaders called for a more restorative approach to the resolution of the situation. This entails a departure from strict adherence to the fundamental principles of civil law. This alternative system of justice would rely on reconciliation rather than punishment and would serve to heal the wounds caused by this devastating conflict to victims, offenders and entire communities. The present chapter builds on chapter four by exploring the nature and scope of local initiatives which were proposed as a response to the incessant conflict in northern Uganda. Particular attention is paid to the Uganda Amnesty Act 2000, the Juba peace talks and *mato oput*, the Acholi cleansing ceremony, all of which were advocated as alternatives to ICC intervention.

5.2 Legislative Measures: Amnesty Act 2000

5.2.1 Previous Efforts

It was demonstrated in chapter three of this research that successive post independence regimes subjected Ugandans to a wide range of systematic human rights abuses. However, there is no evidence of robust efforts to institute transitional justice for survivors or to bring lasting peace in the country. Indeed it seems that successive regimes sought not only revenge but also, more seriously, the elimination of any possible opposition. This can be attributed to the structural polarisation that underpinned these conflicts and to the fragility of successive regimes whose primary concerns were the seizure and consolidation of state power.

The first attempt to deal with gross violations of human rights in Uganda can be traced back to 1974 when the Commission of Enquiry into the Disappearances of

People in Uganda was established.¹⁰ The commission was established under the reign of Idi Amin Dada to enquire into the aspects of the disappearances of persons in Uganda since January 25 1971. The commission was also expected to recommend what the government should do to stop disappearances of people in Uganda. The establishment of the commission was in response to public pressure that demanded an investigation of disappearances (Hayner, 1994: 612).

The commission was chaired by an expatriate Pakistani Judge, Justice Mohamed Saied, two Ugandan Superintendents and a Ugandan army officer. The Commission had power to compel witnesses to testify and to call for evidence from official sources, although access to information was frustrated by actors in the government, such as military police and intelligence (Carver, 1990: 612). The commission concluded that the Public Safety Unit and the State Research Bureau, special security bodies set by Amin, were the institutions mainly responsible for the disappearances (Carver, 1990: 356). It also condemned army officers, military police and intelligence for abuse of office (Carver, 1990: 356). The Commission recommended that police and security forces be reformed and law enforcement officials be trained in legal rights of citizens. Ultimately, the commission had little impact and the commissioners targeted for reprisal that led to the Pakistani Judge losing his employment with the government, one commissioner being framed with murder charges and subsequently sentenced to death and the third fleeing the country (Carver, 1990: 400). As highlighted in chapter three of this work, murder by Amin forces increased.

A better intentioned attempt as a form of transitional justice is associated with the rule of General Tito Okello. After overthrowing Obote's second regime, General Okello made attempts to bring lasting peace to Uganda. As part of this peace initiative, Okello invited all rebel groups that had been fighting Obote's regime to join his Government. This invitation implied that the junta offered pardon to all the groups despite any serious crimes they may have committed in the course of their insurgencies (Apuuli, 2005: 43). He also initiated peace negotiations as part of the effort to bring lasting peace to Uganda. As was discussed in chapter three, this took

¹⁰ Commission of Enquiry into the Disappearances of People in Uganda since 25 January, 1971: Charter, The Commission of Inquiry (Cap 56) Legal Notice No. 2 of 1974, Published on 30th June 1974.

the form of comprehensive peace talks held in Nairobi with other rebel groups involved in insurgencies against Obote's Government. Despite the peace talks resulting in an agreement signed in December 1985 in Nairobi, peace was short-lived as Museveni's NRA/M failed to honour the agreement. Museveni's guerrillas continued fighting and soon afterwards overthrew Okello's Government.

When Museveni came to power, his Government enacted certain legislation designed to encourage opponents to return from exile or to cease fighting. For example, in 1987 the National Resistance Council (NRC) passed the Amnesty Statute of 1987 (Jones, 2009: 56-57). This was a presidential pardon which was aimed at rebels such as the UPDA/M and Ugandans who were living in exile and were reluctant to return to the country for fear of reprisals (Jones, 2009: 56-57). However, under the 1987 Amnesty Statute four offences were considered too heinous for the perpetrators to be granted amnesty. These offences were genocide, murder, kidnapping and rape (Afako, 2002). Thus, the 1987 Amnesty Statute did not provide a blanket amnesty but rather a selective one and failed to end rebel activity in the country.

5.2.2 Establishment of the Amnesty Act 2000

A notable legislative initiative undertaken some years before the situation in northern Uganda was referred to the ICC was the Amnesty Bill introduced in 1998 by the Ugandan parliament with regard to the LRA. The bill was a product of pressure on the Government emerging both from within Uganda and from abroad to end the conflict (Apuuli, 2006: 44). At the international level, the Amnesty Act passed by the Ugandan Government was pressurised by negotiations taking place in Sudan between the Khartoum Government and the SPLM (Finnegan, 2005: 41). Peace in northern Uganda and peace in Sudan were intimately linked. The Ugandan Government agreed to stop supporting the SPLA who were fighting the Sudanese Government while Khartoum reciprocated by withdrawing support from the LRA (Finnegan, 2005: 41). This was consistent with the diplomatic agreement between Khartoum and Kampala brokered by the Jimmy Carter. From within Uganda, local Acholi leaders began to put pressure on the Government to pass an amnesty act that would allow the rebels to surrender (Latigo, 2008: 94-95). According to Ojara Latigo, Museveni had maintained a strong belief in the ability of his military response against the LRA and had not been willing to negotiate meaningfully with the LRA who he considered criminals (Latigo,

2008: 94-95). Acholi leaders considered Amnesty a more feasible option after it became apparent that the military response and formal criminal prosecution of all the LRA members for the atrocities allegedly committed would be impracticable. The amnesty initiative was designed to encourage the LRA fighters to surrender (Allen, 2006: 74). Even though the amnesty act was aimed primarily at the LRA, it offered broad based pardon to all Ugandans who had been engaged in acts of rebellion against the Government of Uganda since 26 January 1986 (Apuuli, 2006: 44).

The Amnesty Bill was introduced in 1998, it was, however, not until 2000 that it was enacted as Amnesty Act of 2000, Cap 294 of Uganda law, with the goal 'to provide for an Amnesty for Ugandans involved in acts of a war-like nature in various parts of the country and for other connected purposes' (The Amnesty Act 2000, Cap 294, Law of Uganda). The Act was founded on what its preamble referred to as:

The expressed desire of the people of Uganda to end armed hostilities, reconcile with those whom they have caused suffering and rebuild their communities and the desire and determination of the Government to genuinely implement its policy of reconciliation.... (Preamble to the Amnesty Act 2000, Cap 294, Law of Uganda)

The terms of the act provided that those who had been accused of human rights violations would be, in effect, forgiven. In the Act 'Amnesty' meant 'pardon, forgiveness, exemption or discharge from criminal prosecution or any other form of punishment by the state' (the Amnesty Act 2000, Law of Uganda, Cap 294, section 1). In this respect, the Act provided that,

An Amnesty is declared in respect of any Ugandan who [had] at any time since the 26th day of January, 1986 engaged in or [was] engaging in war or armed rebellion against the government of the Republic of Uganda by (a) actual participation in combat; (b) collaborating with the perpetrators of the war or armed rebellion; (c) committing any other crime in the furtherance of the war or armed rebellion; or (d) assisting or aiding the conduct or prosecution of the war or armed rebellion. (Amnesty Act 2000, Cap 294, Law of Uganda Law, section 3(1))

In this respect, the objective of the Act was to forgive those involved in armed rebellion, bring an end to the conflict, promote reconciliation and prevent 'unnecessary suffering' (Amnesty Act 2000, Cap 294, Law of Uganda Law, section

3(1)). According to the Act, any person falling within the category described in Section 3(1) of the Act, '[S]hall not be prosecuted or subjected to any form of punishment for the participation in the war or rebellion for any crime committed in the cause of the war or armed rebellion.' (Uganda Government 2000, Cap 294, Law of Uganda Law, section 3(2))

To qualify for amnesty, the Act required that a person:

- a. report to the nearest Army or Police Unit, a Chief, a member of the Executive Committee of a local government unit, a magistrate or a religious leader within the locality;
- b. renounce and abandon involvement in the war or armed rebellion;
- c. surrender at any such place or to any such authority or person any weapons in his or her possession and
- d. be issued with a Certificate of Amnesty...(Amnesty Act 2000, Cap 294, Law of Uganda Law Section 3(1)).

Section 4(5) of the Act provided that in a situation where a person granted amnesty was living outside Uganda, such a person would have to '[report] to any Ugandan diplomatic mission, consulate or any international organisation which has agreed with the Government of Uganda to receive such persons' (Amnesty Act 2000, Cap 294, Law of Uganda Law, section 3(5) (b)).

In brief, if Amnesty was accepted, it offered its recipients binding and lasting legal immunity from prosecution or punishment for crimes committed during insurgency activity during the period specified. However, new legislation was later introduced by the government, which held that, if, after receiving amnesty, a further insurgency offence were committed, the recipient would not be protected from prosecution for the new offence.

The Amnesty Act came into effect on the 21 January 2000 and was initially intended to remain in force for a period not exceeding six months subject to ministerial extension (Amnesty Act 2000, Cap 294, Law of Uganda, section 17). It was, however, later extended several times to enable rebels to surrender and continued to remain in force for a number of years that followed.

Before the Amnesty Act of 2000 was enacted, the Government had insisted that the 1998 Amnesty bill should be consistent with the 1987 presidential pardon, which

excluded certain offences such as genocide, murder, kidnapping and rape (Finnegan, 2005: 42). This proposal was rejected by the leaders from the northern part of the country, particularly members of the ARLPI who called for a comprehensive blanket amnesty. The ARLPI strongly advocated the adoption of a comprehensive amnesty, arguing that threats of prosecution to any of the combatants would pose an obstacle to the peaceful resolution of the conflict (Finnegan, 2005: 40-42). Ironically the support for comprehensive blanket amnesty emerged from the very communities which were directly affected by the conflict. This indicates that a strong desire for reconciliation existed within the victim community (Finnegan, 2005: 42). Given this strong desire for reconciliation, the extent of the role played by Acholi leaders in pressuring the Government's decision to adopt the Amnesty Act remains to be considered.

5.2.3 The Amnesty Act 2000 and the Politics of the Northern Uganda Conflict

Tim Allen claims that the Act did not receive positive backing from President Museveni who only assented to it hesitantly (Allen, 2006: 77). Although Allen does not provide clear evidence in support of his claim, the claim is corroborated by some factors. First among these factors was President Museveni's general attitude towards the LRA which made him sceptical about the possibility of a peaceful end to the conflict. President Museveni had repeatedly declared that his Government forces would defeat the LRA militarily, yet the military option was a devastating failure putting the Government's military solution into question (Latigo, 2008: 94-95). Moreover, the President did not consider the LRA a group with whom he could negotiate. Latigo observes that, in August 1986, Museveni went to Gulu to address the people of Acholiland about the rebel war and swore that he would never talk peace with the LRA who he described as criminals with no real cause (Latigo 2008: 94-95). In a 1987 speech President Museveni referred to the insurgency as a product of 'rear-guard actions of defeated, moribund, sectarian and neo-colonial elements.' (Museveni, 1987) He also referred to the insurgency as 'elements that have caused untold suffering to the people of Uganda, violated human rights, murdered people, destroyed the economy and violated the sovereignty of the people of Uganda [...and] fighting and annihilating these types of elements is a justified cause.' (Museveni, 1987)

Moreover, in early 2002, just as the Amnesty process appeared to be bearing fruit with many members of the LRA returning from the Bush, the Government seems to

have frustrated the process by embarking on Operation Iron Fist: a military operation intended to conclude the war. This only served to worsen the situation as the rebels, in retaliation, intensified their attacks on the civilian population, as was shown earlier in chapter three (Refugee Law Project, 2006: vii). The military could not deliver victory because the army was reportedly riddled with command and control problems, corruption and inefficiency, was unmotivated and, as a result of its past failures, lacked the support of local populations (Latigo, 2008: 94-95). The military failure placed the President in an awkward position since it would mean embracing the alternative: the amnesty. However, embracing amnesty as a solution would mean conceding the failure of his military option which he had held in high esteem. While the President found it unpalatable to accept the failure, the Acholi leaders pressured the Government to pass the amnesty bill.

Other views held that President Museveni may not have wished the war in northern Uganda to come to an end through the amnesty so as to prolong the benefits of what can be referred to as the political economy of war in northern Uganda (Ongom, Interview 11 January 2008; Odwar, Interview 16 March 2008; Olweny, Interview 3 April 2008). According to the theory of the political economy of war in northern Uganda, the persistent insurgency in northern Uganda served the interests of both the Government and the rebels. Kustenbauder (2008: 3-4) argues that the persistent war offered significant political, economic, and military advantages to Museveni's Government. According to Kustenbauder, the war in northern Uganda contributed to growth in the national economy because, when the LRA were declared a terrorist organisation by the US Government, fighting them became part of the larger war on terror justifying military assistance, foreign development assistance and relief aid especially from the US (Kustenbauder, 2008: 3-4). The third political advantage mentioned by analysts is that peace and stability in the north of the country would offer a strong opposition to Museveni's grip on power. These observations seem to corroborate the claim that President Museveni could not fully embrace the amnesty initiative. Since amnesty was intended to bring about peace and stability in northern Uganda it would not be a welcome idea for president Museveni. It is not easy to establish the authenticity of these views, however, they shaped some opinions regarding Museveni's attitude toward the amnesty.

Even though President Museveni's commitment to the amnesty was questionable, there was enthusiastic support for the Amnesty Act of 2000 from political activists, churches, NGOs, traditional leaders and sections of the Acholi population in northern Uganda (Allen 2006: 76; Refugee Law Project 2004: 45). Those who supported the act understood amnesty as forgiveness. Tim Allen observes that religious organisations and traditional leaders understood amnesty to mean forgiveness arguing that the traditional Acholi system of justice is based on forgiveness (Allen 2006: 76-77). The Refugee Law Project (2004: 45) suggests that the ARLPI and sections of the Acholi population held that amnesty was consistent with traditional Acholi dispute resolution mechanisms because it was anchored on the Acholi idea of forgiveness. The Acholi system of justice was based on a belief that revenge does not solve conflicts. Traditionally conflicts among the Acholi were solved through forgiveness and reconciliation. Given the understanding that the Amnesty Act was founded on the cultural values of the Acholi people, it was considered appropriate and relevant to the context of the LRA insurgency. In the spirit of amnesty, all LRA returnees would be accepted back into their communities and pardoned (ICG, 21 February 2005:7). For this reason the process was perceived as a positive strategy because the initiative would enable 'the Government to genuinely implement its policy of reconciliation in order to establish peace, security and tranquillity throughout the whole country' (Amnesty Act 2000, Cap 294, Law of Uganda, section 4(1)).

5.2.4 Implementation of the Amnesty Act

To bring the Statute into effect, sections 6-16 of the Act provided for an Amnesty Commission to encourage those who had been involved in systematic human rights abuses to seek amnesty. According to an undated document, *A Handbook for Implementation of the Amnesty Act 2000: Procedures and Principles of Operation*, the Amnesty Commission was to convince combatants of the advantages of surrendering and accepting amnesty and to encourage victim communities to reconcile with those who perpetrated atrocities against them. The commission was also charged with ensuring that the rebels conformed to the conditions of the amnesty and were received into the communities (*A Handbook for Implementation of the Amnesty Act 2000: Procedures and Principles of Operation*). The creation of a Demobilisation, Disarmament and Resettlement Team (DDRT) was also provided for under the Act. This team was commissioned to take charge of the disarmament

process and facilitate the reintegration into the community of those who applied for amnesty under the legislation. The Amnesty Commission and the DDRT were expected to undertake relevant activities including, promotion of dialogue, sensitisation, drawing up programmes for decommissioning of weapons and resettlement of returnees (*A Handbook for Implementation of the Amnesty Act 2000: Procedures and Principles of Operation*). In ordinary military terminology, demobilisation means either the dissolution of an armed unit, the reduction of the number of combatants in an armed group or temporary dissolution in an interim stage before the reassembly of the armed forces, be they regular or irregular forces. In the 2000 Amnesty Act, demobilisation referred to the complete dissolution of armed groups. This often takes place when a new government or a dominant regime questions the political legitimacy of an armed group following a military stalemate which draws the warring parties to the negotiation table (Gleichman et al, 2004:15). Disarmament forms an integral part of demobilisation in that it constitutes handing over of weapons used by the demobilised personnel to the authorities who take charge of the safeguarding, redistribution or destruction of said weapons (Gleichman et al, 2004:15). Reintegration is a social and economic process by which ex-combatants are taken on civilian status and forms of work (Gleichman et al, 2004:15). Reintegration of ex-combatants is necessary for sustainable peace because if ex-combatants are not incorporated into the community both economically and socially they are likely to turn into practices that threaten peace and security such as robbery or drug addiction.

As part of the Amnesty Act of 2000, the DDRT began following a disarmament, demobilization, and reintegration programme in 2005. The programme sought to support ex-combatants efforts to start new lives and reintegrate into the community (ICG, 2005). Some of those who sought amnesty received a reintegration package as part of the DDR programme. The program provided those who surrendered with resettlement packages which included the equivalent of US \$150 and a home kit which included mattress, a blanket, saucepans, plates, cups, a hoe, maize flour, and seeds (Mugabi, 7 October 2009). The undertaking, however, was largely inadequate. The Amnesty Commission and the DDRT did not have the capacity to play a broader social role in the reintegration process and results were deficient. The Amnesty Commission and the DDRT were overwhelmed by a sudden influx of thousands of people without income who sought reintegration into the community. The

programmes were under strain to provide projects that could sustain the reporters as there was insufficient funding to cater for the large number reporters who needed to be integrated back to ordinary life (Mugabi, 7 October 2009).

Moreover, these DDR programmes focused on reuniting families and providing psychosocial care-activities to lessen psychological trauma and social dislocation (Blattman and Annan, 2008). DDR economic programmes tend toward keeping ex-combatants occupied after demobilisation so as to cut-off their ties with the rebels. But economic and educational programmes have tended to remain small in scale. As mentioned earlier, DDR involved provision packages such as cash and household items years after return. NGOs promoted skills training and micro-enterprises. But even if effective, the promotion of short term activities only results in short term solutions. But, an increased supply of services through increased vocational training and enterprise development programmes soon encounters lack of demand. This is because, establishment of enterprises such as numerous kiosks, tailoring shops soon or later result in over-supply of services against the meagre economic base of camp economies. This renders such activities unprofitable in the long run. Accordingly, these activities have done little to help youth to recover their losses and increase their productivity. A comprehensive economic transformation would be more viable for sustainable stability in the region.

5.2.5 The Outcomes of the Amnesty Initiative

The Amnesty Act had immediate positive outcomes. Its existence encouraged hundreds of insurgents around the country to return to their homes. Some of the LRA's key members such as Brigadier Sam Kolo, a former chief spokesman for the LRA, took advantage of the amnesty law and surrendered (Ruaudel and Timpson, 2005). David Okwera, Albino Ongom, Michael Okwar, ex-LRA combatants, who I interviewed, informed me that news of the amnesty they received through radio or by word of mouth motivated them and many of their fellow combatants to leave the bush and return home (A group Interview with three returnees, Interview 17 March 2008). David Okwar said, 'Some of us in the bush wanted to escape and return back home, but we were afraid of being rejected or being arrested by the Government. The news of amnesty which we received through Mega Radio encouraged us to escape.' In Acholi, even before the arrival of the Amnesty Commission, the community, local

government and other agencies had developed reception and reintegration programmes for those returning through the Acholi traditional system of justice. This is discussed later in this chapter. The Commission also retained the responsibility for the legal procedure of issuing amnesty certificates. By mid-2004, over 5000 LRA soldiers had surrendered and applied for amnesty (Allen, 2006: 75-76). By June 2005, more than 15,000 former combatants and abductees of the LRA had taken advantage of the Amnesty Act (IRIN, 2005). As a result of the apparent success of the amnesty legislation, some Ugandan political opposition groups, such as the Forum for Democratic Change (FDC) and civil society organisations like the ARLPI, as I shall discuss at length later in this chapter, remained supportive of amnesty as a plausible route to peace (Komakech, 2004). The Amnesty Act had political consequences because it allowed other initiatives towards dialogue and on the whole had the potential to enable further peace negotiations and reconciliation. The pardoning of war-crimes, as understood in the framework of restorative justice, was to contribute to the achievement of the nobler social good of peace and stability.

Regardless of the restorative goal of the amnesty and the apparently positive response from many LRA combatants, the LRA leadership rejected the Amnesty Act and discouraged its fighters from benefiting from it since LRA representatives had not been party to the formulation of the law (Quinn, 2008). In their estimation, since the Amnesty was extended without LRA consultation in negotiations, it amounted to a one sided amnesty. There was no strong reason to believe the top LRA command would accept an agreement of which they had played no part in negotiation (Latigo, 2008: 95-96). Amnesty was offered on the grounds that the rebels were guilty and that the Government was exercising mercy in the hope that the rebels would welcome the spirit of the pardon.

Hovil and Quinn (2005) suggest that the Amnesty Act of 2000 that prevailed in northern Uganda was different from other amnesties initiated in other situations of transitional justice. They point out that the amnesty granted in Chile, for instance, targeted military personnel after the conflict was over. The Chilean Amnesty provided blanket immunity for the military from being prosecuted in the trials that would follow. The amnesty granted in South Africa as part of the TRC initiative was a negotiated outcome granted in exchange for full disclosure of information regarding

human rights abuse. The South African TRC was only set up after the apartheid government had left office. The amnesty in Uganda was declared before the end of the conflict (Hovil and Quinn, 2005). It was meant to create an environment conducive to negotiations and an end to the conflict.

Since the Amnesty Act of 2000 was not a negotiated agreement between warring parties, the willingness on the part of both sides of the conflict, especially the LRA leadership to engage in DDR was doubtful. Ordinarily, for parties to take part in a DDR programme there is a need for a peace agreement to govern the process. In the Ugandan situation, the armed groups such as the LRA had not willingly agreed that they be demobilised and disarmed, instead they were unilaterally offered pardon by the Government whose victory in the armed struggle was far from decided. Those from among the rebels, who benefited from amnesty, from the point of view of the rebel groups, were deserters. In this respect, the Amnesty Act did not fulfil its ultimate goal of bringing lasting peace and the LRA continued its strategy of abduction and looting. The situation remained precarious for those living in IDPs in the following years.

5.3 The Juba Peace Talk

Another notable local initiative which attempted to bring lasting peace to northern Uganda was the Juba peace initiative. The initiative began in 2006 and presented a more sustained peace process between the LRA and the Ugandan Government compared to previous attempts made since the beginning of the conflict in 1986. The intention of the initiative was to open a path for LRA Rebels to surrender and to provide for the eventual execution of a traditional justice system, the *mato oput* which is discussed in the next section.

5.3.1 The Role of Civil Society in Juba Peace Talks

The Juba Peace Talks were the brainchild of the Acholi Religious Leader's Peace Initiative (ARLPI). The ARLPI came into existence in 1997 as a response to the incessant conflict between the Government and the LRA. The initiative comprised an inter-faith collaboration of leaders from the Catholic Church, the Anglican Church of Uganda, the Orthodox Church and Muslims in the districts of Gulu and Kitgum in Northern Uganda. Bisho Macleord Baker II Ochola, an Anglican cleric, points to the

significance of this partnership of religious leaders when he remarks that the ARLPI ‘pools together moral authority, status and an extensive organisational anchor of churches, parishes and mosques.’ (Ochola, 2004: 4)

The ARLPI was formally inaugurated in February 1998 to proactively pursue a peaceful means of bringing an end to the conflict in northern Uganda. It pursued this goal through community-based mediation, advocacy, peaceful negotiation, community mobilization and awareness creation. Thus, the main objectives of the ARLPI included uniting and mobilising the people especially from the Acholi region to pursue peace and development and to promote the advocacy of social justice and human rights in the conflict area (Ochola, 2004: 4). It also sought to build capacity in conflict analysis and conflict resolution. It promoted the idea of peaceful co-existence and good neighbourliness for different communities in Uganda. Finally, the ARLPI sought to undertake any other activities which might contribute to the ‘[... creation and promotion] of love, harmony, forgiveness, reconciliation, healing and peace’ (Ochola, 2004: 4). It is based on to the achievement of these goals that the ARLPI supported the Amnesty Act of 2000 and subsequent peace processes.

According to Matthew Odong, the Secretary General of ARLPI, the local religious leadership ‘wanted to be part of the solution to the problem and to contribute towards ending the conflict and to provide an alternative to the parties who believe in the military option.’ (Odong, Interview 27 March 2008) They likened the situation to the following: ‘...when two bulls are fighting then it is the grass that suffers which, in this case, is the Acholi population.’ (Odong, Interview 27 March 2008) According to Matthew Odong, the ARLPI appealed to all the parties involved in the conflict: the Government, the LRA and victims. On the Government side, they sought to highlight the fact that a military option was not a feasible solution to the problem and would only result in ever more carnage. For this reason, the ARLPI asked the Government to consider engaging the LRA in talks. The ARLPI appealed to the LRA to put down arms and seriously consider dialogue. They also appealed to the LRA to embrace forgiveness and reconciliation. To the victims, they pointed out that, in keeping with religious values, there could be no peace, nor a stable future, without forgiveness. Mathew Odong (Interview 27 March 2008) argued, ‘Unless the victims forgive as Jesus forgave, the war will not end.’ They also pointed out that those who were in the

bush, even though they had committed all sorts of atrocities, were not strangers but brothers and sisters, sons and daughters of the community because they had been abducted from among the people. Underlying all these appeals was the notion of forgiveness and reconciliation.

As a consortium of religious organisations, the ARLPI sought to promote the values of the dignity of human life, of joy, of peace, of happiness and of the sanctity of life (Odong, Interview 27 March 2008). Odong (Interview 27 March 2008), remarked ‘... the values of preservation of human life is what is binding us together and leaving everybody happy.’ He went further to say that, in modern terms justice meant prosecution and imprisonment if the defendant was found guilty, yet he reasoned that this could not be an appropriate mechanism in the northern Uganda as prosecutions would not bring about lasting peace.

The role of the Acholi religious leaders’ initiative was, thus, to persuade the people to move in a new direction. In this respect, the generally positive disposition towards the idea of forgiving the LRA that preceded the Juba Peace Talk was the product of lobbying and advocacy by the religious leaders. The impact of religious leaders cannot be underestimated given their influence at grassroots level, their simple message and the core human values which they advocated. In this respect, the Carnegie Commission (2004: 1) observes,

Religious leaders and institutions are well-suited for promoting peace for a variety of reasons; a clear message that resonates with their followers; a long standing and pervasive presence on the ground; a well developed infrastructure that often includes a sophisticated communications network connecting local, national and international offices; a legitimacy for speaking out on crisis issues; and a traditional orientation to peace and goodwill.

Admittedly, conflicts in some parts of Africa like Sudan and Nigeria are linked to religious rivalry. Even in Uganda the association of religious identities in politics, as manifested in the rise of religious political parties such as the DP in post-independence Uganda, was associated with the protracted conflicts in Uganda. This notwithstanding, Christian institutions have played significant roles in terms of fostering human development in Africa since the Christian church is the most pervasive religious institution in most parts of sub-Saharan Africa (Gifford, 1999: 57).

This dominance is necessitated by values and beliefs central to Christianity such as compassion, love, justice, sacrifice, trustworthiness, belief in the dignity of a human person and respect for fundamental human rights. Inspired by these fundamentals, Christian institutions have brought social development, especially in the fields of education, health services, guidance and counselling, food programmes, empowerment and the pursuit of peace and justice. Religious organizations, therefore, have filled the gaps left open by the negligence and incapacity of many African state structures. This was the case in the situation in northern Uganda. Since the situation in northern Uganda for the most part had not been in the international limelight, it was the religious bodies which were available and provided moral and practical support to their parishioners in this conflict ridden zone. Church institutions became centres of support for thousands seeking shelter from violence. It is against this background that over time, a greater consensus emerged among church leaders regarding the need to be proactive in bearing witness to the conflict, and to engage directly in peace building (Rodriquez, 2000: 58). The proximity of religious institutions to the people and the values for which they stood made their message of forgiveness palatable and powerful among the people.

Notwithstanding the fact that the ARLPI were at the forefront of initiating the Juba Peace Talks, the religious organisation only remained as observers during the formal talks. They continued, however, to play an important role even after having initiated the talks. For instance those who would wish to surrender following agreements were supposed to do so through ARLPI channels (Odwar, Interview 16 March 2008).

5.3.2 The Formal Processes in the Juba Peace Talks

On 16 May 2006, the President of Southern Sudan, Salva Kiir Mayardit announced that his Government would convene and broker peace talks between the LRA and the Government of Uganda, having agreed on terms with President Museveni and Joseph Kony. Thus, the Juba Peace Talks were formerly mediated by Southern Sudanese Vice-President Riek Machar and former president of Mozambique and UN Special Envoy to northern Uganda, Joaquim Chissano (House of Commons Development Committee, July 2007: 13). Joaquim Chissano had been named by the UN Secretary General as his Special Envoy for the situation in northern Uganda, with a mandate to search for a comprehensive political solution to address the root causes of the conflict,

including liaising with the ICC (House of Commons Development Committee, July 2007: 13-14)

Negotiations began in July 2006 in Juba, the capital of Southern Sudan. Taking part in the Juba Peace Talks were the Government of Uganda and the LRA. To create an environment conducive to peace talks, the Ugandan President Yoweri Museveni offered total amnesty to all LRA combatants including the top five LRA leaders in July 2006, on condition that the Juba Peace Talks met with success (Allen, 2006). The LRA/M on their part instituted a unilateral ceasefire on August 4, 2006. Following the ceasefire, an agreement was signed between the Government of Uganda and the LRA/M, to cease hostilities and took effect on 29 August 2006. This was the first formal bilateral agreement between the parties in the two decades of the armed conflict (ICG, 2007, 5).

The ceasefire agreement called for all LRA fighters to assemble at and remain within 15km of Ri-Kwangba, in South Sudan's Western Equatoria province for final disarmament and demobilization. The LRA fighters were also assured of protection within the specified location. They were, not technically in compliance however, because they remained on the Congolese side of the border (ICG, 2007: 5). Kony and most of the LRA fighters were at a jungle base in Garamba National Park in the DRC as of June 2007. There was also to be an official release of women and children associated with the LRA as part of the cessation of hostilities agreement (IRIN, 2007). This had not yet taken place, however, by the time this research was carried out.

The peace talks were seen to offer the best chance to end the twenty-year civil war while the ICC arrest warrants were considered to be a complicating factor. In this respect, Vincent Otti, who was then the LRA second in command, was quoted saying in October 2006 that the ICC was the greatest obstacle to the peace process (Halera, 13 October 2006). Elsewhere, Otti was quoted as saying that as long as the ICC arrest warrant were still upheld then there would be no prospects of peace since the LRA top commanders suspected that the Government's offer of amnesty could be meant merely to entice them out of the bush only to have them placed in ICC custody (Banya, 15 October 2006).

For a period at least, the talks were a success since they managed to remove most LRA combatants from Uganda and allowed thousands of civilians anguished by the protracted war to experience some sort of calm. I talked to three returnees who had had been motivated by the talks to come out of the bush and who informed me that they received the information from the media which encouraged them to escape (Group Interview, 17 March 2008). They had desired that the talks succeed. The former abductees and LRA combatants expressed their opinion that the talks would be the best way to resolve the conflict since they did 'not see any side defeating the other as Kony could not be as easily defeated as the Government had mistakenly believed.' (Group Interview, 17 March 2008) These sentiments were echoed by Joseph Okwera in an interview with a group of elders, who expressed the people's optimism about the Juba talks (Elders group, Interview 2 April 2008). Okwera argued that for the sake of peace for the people, the Government needed to accept and put pressure on the ICC to withdraw the case against the LRA. He reasoned that, from experience, military action had failed and could not solve the problem (Elders group Interview 2 April 2008). While he underlined the significance and the viability of the talks, he discounted the possibility that ICC intervention could solve the problem. According to the elders the ICC did not have popular support (Elders Group Interview 2 April 2008).

As the talks progressed in Juba, there emerged signs of levels of trust and confidence conducive to reconciliation and to the resettlement of the displaced populations (Grono and O'Brien, 2007). As a gesture of goodwill, the Government of Uganda had already offered a total amnesty to the LRA fighters. President Museveni considered this offer a golden opportunity for Kony and the LRA since, in his opinion, the LRA had been defeated militarily by the Government (Wasike, August 2006). To reassure the LRA, President Museveni went against the ICC demands and stated that he would not hand Kony over to the ICC if the latter came out and personally apologised upon the signing of the Comprehensive Peace Agreement, CPA, that was to be negotiated in the Juba Peace Talks. Handing Kony over, for Museveni, would amount to betraying the indicted rebel leader (Rugunda, 8 July 2006).

5.3.3 LRA Grievances at the Juba Peace Talks

Having been invited to the talks, the LRA acquired some legitimacy from the Juba Peace Talks. They began to be viewed in the talks not as criminal perpetrators of serious atrocities, responsible for thousands of deaths, but as a political voice speaking on behalf of northern Ugandans. The LRA demanded an end to the marginalization of the Acholi, inclusion of the Acholi in government, political and economic processes, the development of the north and an end to the targeting of the Acholi for extermination (ARLPI Delegate in Juba Peace Talks, Interview 31 March 2008). Regardless of the atrocities committed by the LRA, the grievances they raised were representative of the dissatisfaction of the wider Acholi population living in northern Uganda. This is captured in the remarks of Olweny (Interview 3 April 2008) below:

The current government, a government of the southerners has not developed the north. All development goes to the South; government positions go to the south. The government looks at the LRA and the northerners as one, as government enemies, that the LRA and northerners are birds of the same feathers.

This sentiment reflects general perceptions about the Museveni administration. The Acholi also felt marginalised by Museveni's Government and demanded political, economic, and social initiatives that would give them a higher stake in the decision-making process. They demanded participation in the central government. Some of the reasons for this perception include the fact that the economic and social prosperity in the south contrasted sharply with the situation in the north characterised by abductions, landmines, displacements.¹¹ Northern Uganda lagged behind most parts of the country in terms of human development. Loss of assets resulting from lootings and displacement, poor infrastructure, lack of social services and poor access to markets were responsible for retarding economic activities (Nannyanjo, August 2005: 9). From 1986, the NRM regime had engaged in peace and prosperity initiatives which saw the country gaining stability and economic progress, but these improvements were largely felt in the southern part of the country.

¹¹ United Nations Humanitarian Coordination Unit, Humanitarian Update, vol. 2 Issue 9 29 November 2000.

Against the backdrop of Acholi marginalization by Museveni's regime, the LRA appeared to a section of the local community as the only remaining group able to face the UPDF's brutality and the marginalization of northern Uganda by the Government. Though lacking outward popular support, Kony was a symbol of emancipation in the conflict between the people of Acholi and the Government. Kony and the LRA enjoyed some support from prominent Acholi people living both in Uganda and in the diaspora who offered him not only financial support but also legal and political advice, according to Patrick Okulu, an ex-abductee (Okulu, Interview 30 March 2008). This recognition of the LRA needs to be understood in the context of the marginalization of the Acholi people living in northern Uganda.

During my interview with Odong a member of the ARLPI, I asked whether the invitation of Kony to the peace talks amounted to the legitimization of the LRA despite the atrocities that they had committed. His view was that, 'this was a unique situation calling for unique approach.' (Odong, Interview 27 March 2008). He reiterated that ARLPI did not recognise the legitimacy of the LRA, but emphasised that their activities destroyed life and that the talks represented a practical means of ending the violence. Odong (Interview 27 March 2008) disputed the LRA's claims that they were acting in defence of the Acholi and reasoned that this claim was not sincere, since 'if they were honestly fighting for the Acholi, why then do they kill the very innocent Acholi?' However, while he agreed that the LRA were insincere and brutal, Odong (Interview 27 March 2008) maintained that they needed to be forgiven for the sake of future peace.

There existed an obvious paradox. The Acholi community felt marginalised; Kony claimed to be fighting to redeem the people from this marginalization but his organisation committed atrocities against the very population it claimed to be protecting. Due to Kony's tactics, the people rejected his movement, but at the Juba Peace Talks supported the pardoning of his group. This paradox could be explained by the fact that, the Acholi people had been the principal victims of both the LRA and the UPDF. In addition to the violence of the LRA and the UPDF, the Acholi had experienced the disruption of their entire social, economic and cultural life during their long internment in IDP camps. Because of this, a deep-seated desire for peace appeared to shape their attitudes towards the situation in Northern Uganda. Moreover,

as discussed in chapter three, Acholi grievances against the government could not be nullified by the brutal means used by the LRA.

Although a portion of the population felt that they needed to forgive the LRA for the sake of peace, Kony himself treated the talks with contempt. In terms of generally accepted standards regarding international human rights and in light of their atrocities, the LRA were an illegitimate group and their place at negotiation tables could not be clearly justified; the criminal courts or tribunals seeming rather more fitting for an organisation of its type. The LRA leadership were no doubt aware of their crimes. And this is probably why, in the initial stages, neither Joseph Kony nor Vincent Otti was enthusiastic to attend the talks in Juba fearing possible arrest having been well advised by his 'very good lawyers and political advisors' (Okulu, Interview 30 March 2008). Indeed, during these initial stages, the LRA negotiators at Juba were primarily from the diaspora. Kony and Otti did not directly join the talks but had been visited by Ugandan Government negotiators and maintained telephone contact with them (ICG, 2007: 2).

Kony was very well informed and knew he could possibly be arrested even after signing a peace deal and he would not take such a risk (Okulu, Interview 30 March 2008). Indeed, the LRA demanded that the Ugandan Government publicly guarantee that they would not be surrendered to the ICC. Kony insisted during the talks that the ICC dropped the indictments against them (ARLPI delegate to Juba Peace Talks, Interview 31 March 2008). He was aware that he could be arrested later and charged as had happened to Sierra Leone's rebel leader, Foday Sankoh, whose forces had committed widespread atrocities. After Sankoh had been offered an amnesty and even appointed as the vice president, he was finally arrested, and indicted by the Special Court for Sierra Leone for crimes against humanity (Doyle, 2006). Similarly, the former president of Liberia, Charles Taylor, was indicted by the UN-backed Special Court for Sierra Leone (SCSL), before being offered asylum in Nigeria. Though Taylor was offered asylum in contravention of court orders, international pressure was placed on Nigeria to hand over Taylor to the court (HRW, January 2006). Eventually, Taylor was arrested and charged by the SCSL for war crimes, crimes against humanity, and other serious violations of international humanitarian law such as the

use of child soldiers during Sierra Leone's armed conflict that spanned over 10 years (HRW, June 2006). This could well have been Kony's fate.

5.3.4 The Outcome of the Juba Peace Initiative

Amid fears and suspicions, the Juba Peace Talks continued and on 2 May 2007, an agreement on a comprehensive end to the conflict was reached. On 29 June 2007 the Agreement on Accountability and Reconciliation, (AAR) was signed between the Ugandan Government and the LRA. The agreement also provided for reparations which would include rehabilitation, restitution, compensation, guarantees of non-recurrence of acts of violence, and other symbolic measures such as apologies, memorials and commemorations (Latigo, 2008: 101). The LRA were expected to renounce their insurgency, sign a comprehensive peace agreement and submit their members to the process of disarmament, demobilization and reintegration. The Government would reciprocate by striking the LRA off the list of terrorist organizations (Latigo, 2008: 101). The parties expressed their commitment to honouring the suffering of victims by promoting lasting peace and justice, promoting a culture of accountability and redress in accordance with the constitution and international obligations, especially the requirements of the Statute of Rome which set up the ICC (Latigo, 2008: 101).

The AAR, in part, stated that, traditional justice mechanisms as practiced in the communities affected by the conflict would be promoted, with necessary modifications, as a central part of the framework for accountability and reconciliation. The debate on the use of traditional, restorative justice methods had been central to the Juba peace talks. To accommodate Kony and other LRA leaders, Uganda's negotiators proposed a mixture of *mato oput* (the traditional Acholi system of reconciliation rituals) for lesser crimes and recourse to a special Ugandan High Court for more serious offences (An ARLPI delegate in Juba Peace Talks, Interview 31 March 2008). Article 4(4) of the Agreement stated that 'accountability mechanisms shall be implemented through the adapted legal framework in Uganda' (article 4.4). Article 6.3 stated that 'Legislation shall introduce a regime of alternative penalties and sanctions which shall apply, and replace existing penalties, with respect to serious crimes and human rights violations committed by non-state actors in the course of the conflict' (article 6.3). The use of *mato oput*, which emphasised reconciliation rather

than punishment, was favoured by Uganda's Chief Justice, Benjamin Odoki, as well as many Acholi leaders who were anxiously looking forward for an end to the protracted war, LRA terror tactics and the UPDF's ruthless revenge (*The New Vision*, May 17 2007). It was, however understood that the High Court could still charge Kony with various offences such as treason, murder and rape which carry with themselves death penalty (*The Monitor*, February 2007).

There was an anticlimax when the LRA leader Joseph Kony failed to show up on April 10 for the long-awaited signing of the Final Peace Agreement (FPA), designed to bring a negotiated end to years of brutal violence in north Uganda. Kony's failure to appear and sign the peace agreement marked a disappointing conclusion to two years of intensive negotiations. This, however, did not come as a surprise for a number of reasons. First, by the designated date for signing the FPA, the ICC had not yet withdrawn the warrants of arrest and indictments. Kony maintained his position that a peace agreement was only possible if the ICC indictments against him were dropped. Secondly, it was still possible that Kony could be charged by the Ugandan criminal justice system even if the FPA were signed, according to the AAR. Kony seems to have been aware of this. There had been fears that the LRA's participation in the peace talks was merely tactical. Some observers expressed concern that the LRA could use the lull in hostilities, while in cantonment in Garamba, DRC, to rest and restore their fighting capacity and return with a renewed intensity (ICG 2007, 2). The failure to sign the agreement disappointed many members of the Acholi population who had been hopeful that the Juba peace deal would finally bring peace.

Despite this obvious disappointment, there were positive outcomes following the talks. The Agreement on Cessation of Hostilities signed in August 2006 between the LRA and the Ugandan Government and the ceasefire which was part of the Juba Peace Talk resulted in somewhat of a lull in attacks in northern Uganda (Ssenyonjo, 2007: 76; Mukasa, 2006). This agreement forced the LRA commanders to flee their former sanctuary in Sudan for the jungles of the DRC and to negotiate a political deal in effect from May 2006 (IRIN, 2006). At the time of this research there was a considerable calm in northern Uganda and those who had been living in the IDPs had started moving back to their homes or were able to work their land free from the fear of attack unlike during the period before the talks. It however, cannot be clearly

determined whether the calm was primarily attributable to the ICC indictment that may have drawn the LRA to the negotiation table or to the talks or a combination of the two. A discussion of this will appear in the next chapter.

5.4 *Mato Oput*: The Traditional Acholi System of Peace and Justice

If the Juba peace talks succeeded, then they were to be followed by *mato oput*, the traditional Acholi cleansing ritual. The ritual had come to be considered an alternative mechanism to promote peace and reconciliation. The ritual was considered by its advocates to hold the key to lasting peace-building following the long conflict. The value of *mato oput* was based on its widely acclaimed restorative dimension: a psychosocial value. In the following discussion, I present the nature and practice of *mato oput* as it was practiced among the Acholi and its relevance in solving the northern Uganda conflict.

5.4.1 Understanding Conflicts in the Traditional Acholi Community

The nature and practice of *mato oput* as an instrument for conflict resolution and reconciliation among the Acholi is founded on their understanding of conflict in general and murder in particular. Among the Acholi, conflict was understood as a life threatening phenomenon (Odong, Interview 11 January 2008). Life as such was valued and celebrated. By life, among the Acholi, is meant a network of social relationships. Life outside the community was considered meaningless. Thus, an individual existed in and for the community. According to an elder, Matthew Odida living in Pabo camp, nobody could stand on his own and survive (Odida, Interview 12 April 2008). As well as the living members of the community, the spirits of the dead were believed to play an important part in the life of the community and continued to be enjoined in the well-being of the community. Moral order was measured in terms of communal harmony and good relations with both the living and dead members of the community. Evil or immorality, crime or violence, therefore, was understood as an act of breaking societal harmony not only with members of one's own living community but also with the ancestral or spiritual world.

The value of community in African society was upheld not just among the Acholi but among most African communities as is demonstrated by available communitarian literature. In communitarian literature, the individual was regarded as a component of

social relationships and not as an independent being. The individual is a being whose whole nature is constituted by the network of social relations of the wider community (Turner, 1968: 36). John Mbiti (1970: 141) captures this when he asserts that in Africa 'I am because we are, and because we are then I am'. The value of a person was defined within the framework of the community. People defined themselves in terms of group identity, as members of a clan, a tribe or a village and in terms of the specific duties they held within their communities (Mbiti, 1970: 108). According to Cobbah (1987: 331), a person's dignity and honour proceeded from his or her transcendental role as a cultural being. These assertions underscore the significance of kinship the African sense of being and enshrines, according to Cobbah, '[...] the general guiding principle of survival of the entire community and a sense of cooperation, independence, and collective responsibility' (Cobbah, 1987: 320). Thus, the self was considered as intrinsically connected to the community and personal welfare inseparably depended upon the welfare of the community (Dixon, 1976).

Given the centrality of the community in the life of Acholi, according to Okot Okumu (Interview 10 January 2008), post-conflict peace-building and conflict resolution formed an integral part of traditional patterns of societal harmony in the Acholi community. Societal structure in Acholi community was characterised by mutual support in well organised social units (Okumu, 10 January 2008). According to a former Secretary General of ARLPI, conflicts had to be solved since it was believed to have consequences for generations to come:

It bounces back with consequences. These consequences turn back to haunt the children. It is not the two who will be affected. They see it as bringing sickness to the children. Reconciliation must come. The people must come to discuss the issue and press those involved in the conflict to agree. (A former ARLPI Secretary General, Interview 18 March 2008)

The Acholi believed in *Jok*, the divine spirit or ancestors which guided their moral order. When a wrong was committed, ancestors would send *cen* or misfortune unless appropriate actions were taken by the elders and the offenders to restore the broken relations (Liu Institute, 2005). The 'phenomenon of *cen* illustrates the centrality of relationships between the natural and the supernatural worlds in Acholi, the living and the dead, [and] the normative continuity between an individual and the community'

(Liu Institute, 2005). The 'living-dead' played an active role and had a great deal of influence in the world of the living. This meant the challenges of life extended beyond the world of the living and required consultation and reconciliation with the spiritual world (Okumu, Interview 10 January 2008).

One of the crimes that contributed to breaking community relationships was that of murder. Acholi society strongly believed that human life is sacred and that human blood ought not to be spilled, thus killing of a human being was strictly forbidden by their traditional beliefs (Latigo, 2008: 103). According to Callisto Otim (Interview, 10 January 2008), the crime of murder broke the social fabric of the community. This was because, in the event that a member of a family committed the crime, the person's whole clan bore the guilt. Similar sentiments were also echoed by Samuel Odong (Interview 11 January 2008), according to whom, when one killed a member of another clan, the killing automatically severed the relationship between the clans. He said, 'when a conflict arose between two clans and there was a killing there must be abstinence from eating together because death did not allow people to eat together since the whole clan was involved' (Odong, Interview 11 January 2008). Food was a source of union. Ordinarily, people would beg millet from another clan or community in reciprocal and distributive circle. This stopped when there was a killing. Reconciliation, thus, became imperative (A former ARLPI Secretary General, Interview 18 March 2008). They could also not participate in any activities like hunting, marrying, trading, or worship or even shaking hands when a murder had been committed (Odong, Interview 11 January 2008).

Accordingly, conflict among the Acholi, had both relational and moral dimensions. The collective responsibility and guilt which weighed heavily upon each and every member of the offender's community compelled them to accept collective responsibility. A collective repentance and remorse for the murder committed became necessary. Since there was no adversarial cross-examination as in a modern law court in Acholi society, judgement depended on truthfulness and ready acceptance of responsibility for one's actions. Telling the truth was a societal and moral obligation that everyone was bound to fulfil (Otim, Interview 10 January 2008). According to Southwick, '[t]he process of sharing that burden also contributes to a process of reconciliation and prevention of future violence' (Southwick, 2005: 114).

Once somebody committed murder, the offender had to undergo a ritual cleansing ceremony in order to be allowed through the entrance of the village. It was believed that the vengeful spirit of the dead person would usually haunt the killer and his entire family. Accordingly, the rituals which were performed to cleanse the killer meant cleansing the entire community (Okumu, Interview 10 January 2008). On this basis, the community were always vigilant to the effects of possession by *cen* or the effects of being disturbed by the spirit, like talking to oneself, having bad dreams, calling on the deceased and beseeching them not to harm him (Odong, Interview 11 January 2008). Cleansing ceremonies were, therefore, meant to reconcile two families or clans that had been separated by an act of killing and to appease the spirit of the dead in order to prevent them from being haunted by the dead person's spirit (Odong, Interview 11 January 2008). In addition, the traditional healing was meant to let the bereaved see that justice was being carried out (Otim, Interview 10 January 2008).

5.4.2 The Acholi Traditional Leadership and Conflict Resolution

The traditional Acholi conflict resolution system was an integral part of the area's indigenous system of governance. Before colonialism, the Acholi people had a traditional system of governance founded on religious beliefs, norms and customs. These values were maintained by the anointed chiefs of the Acholi people, known as the *rwot* or *rwodi* (plural for *rwot*) (Odong, Interview 11 January 2008). During the colonial period a distinction was made between *rwodi moo* and *rwodi kalam*. The term *rwodi moo* was used to designate chief anointed by oil (*moo*) and *rwodi kalam* was used to refer to those chiefs who acquired their power through official appointment or through pen (*kalam*). The latter acquired his authority from either colonial administrations or post-colonial administration. The *rwodi moo* were believed to have been chosen by supernatural powers and were enthroned to preside over traditional government of the Acholi people. The chiefs were anointed with fat (*moo*) preserved from the carcasses of lions in solemn religious ceremonies (Odong, Interview 11 January 2008). Once anointed the chiefs were believed to have acquired an esoteric relationship with the supernatural world. This elevated the chiefs to a position of respect and adoration (Latigo, 2008: 102).

Whenever there was conflict *rwodi* would intervene to promote reconciliation within the community (Afako, 2002). It was also the role of *rwodi* to intervene and calm tempers in the case of homicide (Afako, 2002). In the course of dispensing their duties the traditional leaders ruled by consensus under guidance of a council of elders called the Grand Council (*Gure Madit*). Members who sat in the council of elders were chosen by their respective clans. The council of elders identified problems and needs of the community and sought appropriate solutions to the problems of the society and ways of fulfilling its urgent needs. The Grand Council presided over cases arising from mass killings and land disputes between different clans. The aim of council of elders was to mitigate social problems that confronted the community. There were no written laws but decisions were taken in accordance with religious doctrines that were followed by the members of the society for the harmony and well functioning of the community (Latigo, 2008: 103). This structure was, however, watered down by the British colonialists who replaced the *rwodi moo* with colonial administrators or chiefs, *rwodi kalam*. Although the 1995 Uganda constitution resuscitated cultural institutions, enshrined in the person of paramount chief, this was not founded on traditional beliefs and cultural norms of the Acholi (Latigo, 2008: 103). The prominence of *Rwodi moo*, however, was rejuvenated in the wake of the need to respond to the devastating conflict in northern Uganda.

5.4.3 The Nature of *Mato Oput*

Conflict resolution processes were based on certain fundamental values that fostered the social fabric of Acholi society. These included acceptance of responsibility, repentance, forgiveness and compensation (Odong, Interview 11 January 2008; Odong, Interview 27 March 2008; Otim, Interview 10 January 2008). These values among the Acholi, were embodied in the practice of *mato oput* (Afako, 2002). The term *mato oput* is composed of two words in Acholi language, “*mato*” meaning drinking and “*oput*” which is a type of tree with bitter herbs. Hence, *mato oput* literally means drinking of bitter herb made from the leaves of the *oput* tree. The drinking of this bitter herb means that the two conflicting parties accept the bitterness of the past and promise never to taste such bitterness again. In terms of its role in conflict resolution, *mato oput* is a traditional approach to justice and reintegration of offenders involving mediation of truth, accountability, and reconciliation through symbolic acts and spiritual appeasement (Afako, 2002). Most of these principles

emphasise the need to live in harmony with others and restoring social relations. As a practice, *mato oput* was a participatory process involving not only the victims and the perpetrators but also both the victim's community and the perpetrator's community in restoring the relationship broken by either an intentional murder or accidental killing. Thus the purpose of *mato oput* was to avoid revenge (Liu Institute, 2005). From a psychosocial standpoint, the ritual was a practical exercise aimed at fostering friendly relationships. Other such rituals included mock fights, the symbolic and actual sharing of food and drink all of which were designed to make each of the hostile parties become hosts of the other. These procedures skilfully exploited cultural symbolism to show that relationships between two parties could effectively improve by involving them in joint rituals. *Mato oput* had symbolic importance but this symbolism had to be meaningful to the people it sought to reconcile for it to have an impact.

The ritual of *mato oput* normally followed a long process of mediation between the two parties involved and only when the offender was willing to take responsibility. This consisted in what Villa-Vicencio referred to as co-operation among those involved in an endeavour to discern the best way to achieve peace (Villa-Vicencio, 2004: 35).

5.4.4 Practice *Mato Oput*

As mentioned earlier, the actual enactment of *mato oput* began with acceptance of responsibility. The council of elders presided over by *rwodi moo* played a vital role as mediators in the process. Initially, in the aftermath of a dispute, the elders engaged with both sides of the conflict in order to ascertain the relevant facts of the crime. This was to set the stage for the administration of justice. Self-confession was out of the individual's volition and the commitment to do so was not so much a legal necessity but rather a moral imperative that was binding. Cheating was sacrilegious as it offended even the ancestors. As a requirement of moral accountability, according to traditional beliefs, a person who killed must, as soon as the act was committed, inform the community about the incident (Okumu, Interview 10 January 2008).

If it was not clear who bore the guilt then a process of investigation had to be carried out to determine who was guilty. This could be achieved through testimony presented at interrogation or testimony gathered through informal processes set up by

community elders presided over by *rwodi moo* (Okumu, Interview 10 January 2008). Acknowledgement and acceptance of responsibility both on the side of the individual and the community allowed the people to begin to come to terms with the past. It also allowed the people to deal with their troubling past thereby allowing them to avoid dwelling on the past and thoughts of revenge (Okumu, Interview 10 January 2008). Govier highlights the need to confess to wrongdoings when he points out that ‘to make sense of the idea that groups could be subjects and objects of forgiveness, it is required that groups be agents responsible for wrong doings, suffer wrongful harm and that can have and can amend feelings, attitudes, and beliefs about various matters, including the harm they have suffered at the hands of others (Govier, 2002: 87).

Acknowledgement was essential but not enough for rebuilding a social relationship. Forgiveness formed an essential and integral part of the process of reconciliation. Cobbah explains that “within reconciliation lives the unique process of forgiveness” (Cobbah, 1987: 8). To Cobbah, forgiveness is a powerful transformation in which parties release feelings of resentment and bitterness toward an enemy in an effort to focus on the future. Forgiveness as encapsulated in *mato oput* should be seen as an ‘internal process that is chosen freely by the victim. Through forgiveness, the victim acknowledges the wrong done to him but releases the resentment caused by such wrong doing’ (Finnegan, 1995: 15). Govier captures this notion clearly when he says that ‘for forgiveness to offer a way of healing ethnic and religious conflicts, it must first of all be possible for groups to forgive one another’ (Govier, 2002: 78-79). It is in this light that after a genuine and wilful confession and repentance were received from the offender’s community, that the victim’s community would have to forgive in good faith. The assurance of forgiveness was a great relief and gave the offender’s community a very real hope of peace. It was an assurance that the victim’s community was on the path of reconciliation despite their loss (Otim, Interview 10 January 2008). Shriver observes that forgiveness as a human event means the commitment of members of a society to each other, because, in spite of the evil, only in that relationship does life make sense (Shriver, 1995: 28). He further points out that ‘forgiveness is an act that joins moral truth, forbearance, empathy and commitment to repair a fractured human relation’ (Shriver, 1995: 28). The situation in northern Uganda shows that human relations were adversely severed since the protracted war destroyed everything that is human.

Once the victim's community chose to forgive the perpetrator, a settlement was agreed on and a form of compensation arrived at. The community from which the perpetrator came had a collective responsibility to collect the compensation and surrender it to the victim's community. The genuineness of repentance, says Callisto Otim (Interview, 10 January 2008), was measured by the willingness to pay compensation as required in traditional Acholi culture. The form of compensation depended on the circumstance and nature of the crime committed. The offender's community was required to pay 10 head of cattle if the murder was not deliberately committed. But if it was proved that the murder had been a deliberate act, then compensation was to be in form of a human person. In this case, the offender's community was required to give one of their young daughters between the ages of 6 and 10 years to the victim's community (Otim, Interview 10 January 2008). The girl-child given would become, by assumption, a daughter to the victim's community and in effect a replacement of the lost one. The willingness of the offender's community to sacrifice one of their daughters to the victim's community affirmed the genuineness of their commitment to peace and co-existence through the whole process of reconciliation (Otim, Interview 10 January 2008).

From the standpoint of modern human rights, the role of a girl-child in compensation would be conceived as oppressive and a violation of the individual rights of the child who was being ransomed on behalf of the entire offender's community. She had to bear the pain of separation from her own family and taste the bitterness of violent conflict on behalf of the entire community, bearing the burden of collective responsibility. However, advocates of this practice argue that compensation was not a punitive imposition but was deemed as a process for healing and re-enhancement of life within the community (A Group Interview, 23 March 2008). The presence of the girl-child as a new member in the victim's community also became a channel for communication between both communities who were formerly aggrieved and cut off from each other. Her physical presence and her life guaranteed life to everyone in both communities. It was as if her presence and life was a recreation of both communities. That means the role of a girl-child in compensation was understood as redemptive. In most African communities, the girl-child was associated with the extension of life and friendship. Warring communities would marry their daughters to enemy clans or tribes. This was considered a gesture of friendship and the fostering of

a relationship. In this case compensation in terms of a girl not only extended friendship, but more profoundly, meant the girl would bring more life to a community through her reproductive capacity.

After compensation, a third party invited both the offender and the offended parties for the important ceremony of *mato oput*. The cleansing ceremony of *mato oput* took place somewhere along the border between the conflicting communities. Goats and rams were exchanged and finally the victim and perpetrator's communities took the bitter herb, *mato oput*, from the same calabash. This was the culmination of reconciliation process. The very process of drinking the bitter herb from the same calabash was highly symbolic, depicting the bitterness in conflicts that ended in bloodshed (Pain, 1997: 82). The bitter drink also symbolised the sacred blood of a human being. Two people from each community took the *oput herb* with hands behind their backs. They would then sip the bitter juice simultaneously with their heads touching in the process. This would go on until every member from the victim community had shared the herb with another member from the perpetrator community (Odida, 12 April 2008).

The second phase of the process involved the sharing of meals together. After drinking the bitter herbs, animals were slain, cooked and eaten by both communities. Sharing meals in Acholi culture was always a profound fellowship that makes someone become part of family (Odida, Interview 12 April 2008). It was believed that this process took place in the presence of the ancestral living-dead and the creator as a witness to the covenant of peace. The taint that soiled their relationship became cleansed. The cleansing allowed normal social life between the two communities to begin again. At the end of the whole process, the perpetrator had acknowledged and confessed to that act and the victim's community forgave the crime and thus social relations were restored.

5.4.5 *Mato Oput* and the Atrocities in Northern Uganda

Many advocates of *mato oput* believed that, when applied to the situation of northern Uganda, it could bring true healing, reconciliation and reconstruction in a manner that the international justice system could not (Liu Institute, 2005). According to one respondent who identified herself as Jennifer (Interview 8 March 2008),

Ultimately both the victims and perpetrators will have to stay in the same community. The case of northern Uganda is too complex to imagine that the problem can only be resolved by merely arresting the top LRA leaders and jailing them in Europe. Most of these perpetrators are members of the same families where the victims belong.

According to its advocates, one of the fundamental aspects of *mato oput* that makes it appropriate for post-conflict peace-building is that it is based on trust. Trust is one of the pillars of interpersonal peace-building. According to Hovil and Lomo, trust is important because it allows people within war-affected communities to engage in activities outside of their primary social groups, a participation that is essential in building and sustaining social cohesion (Hovil and Lomo, 2005: 5). Social cohesion refers to those interrelated features of society, namely, the absence of covert conflict and the presence of strong social bonds manifested in terms of levels of trust, norms of reciprocity, abundance of association that bridge social division (Berkman and Kawachi, 2000: 175). For the case of northern Uganda, argue Hovil and Lomo, social bonds had been broken and appropriate processes had to start from the fact that the society was confronted by a situation of broken social trust (Hovil and Lomo, 2005: 8). In this situation, the local population trusted neither the Government nor the LRA since each of these parties had caused them a great deal of harm. They did not even trust members of the communities in which they lived. An Elderly woman who wished to remain anonymous commented regarding this as follows:

Really, the war has spoilt everything that is human. Today you do not have a friend. Kony's soldiers have done very bad things to us; Museveni's soldiers have done equally bad things to us. You cannot say that even your closest neighbour is your friend; he may be a government spy or an LRA spy. How can you think of having a friend when our own sons come and loot from us? (Elderly Woman, Interview 12 March, 2008)

According to Fr. Charles Odwar, the war destroyed basic social values traditionally valued by Acholi society. He said that, the value of life had become meaningless. Life in the bush and that in the camps destroyed social order, social cohesion and other values that reinforce harmonious social order, like forgiveness, the sanctity of human life, respect for elders and social responsibility (Odwar, Interview 16 March 2008).

In the context of this social disruption, proper peace and reconciliation, according to Odwar (Interview 16 March 2008), could only be realised after restoring these values. This state of affairs, according to its advocates, made *mato oput* the appropriate mechanism given the value it places on forgiveness and trust building. According to Putzeys, without forgiveness, there can be no peace and justice in northern Uganda which can only be achieved through the restoration of basic building blocks of relationships such as trust, forgiveness and respect (Putzeys, 2007). And *Mato oput*, according to its advocates, has the requisite symbolic influence to restore such values. During a group interview, Robert Kidega, a member of the group remarked that,

Whatever had happened had already happened. People were too bitter to talk about what has happened and they would not wish to bring back those memories. There is no need of going to the past, instead we should focus on the future. Forgiveness is the most viable option (A Group of 8 Elders 2, Interview April 2008).

In line with this sentiment, the former Secretary General of ARPI expressed what he considered as the ICC's inadequacy, remarking that,

The ICC stresses punishing the individual. You punish the individual, what about the clan. By involving the clan everyone is reconciled. The whole clan won't be happy until reconciliation takes community dimension. The death of Slobodan Milosevic did not reconcile the whole society. Within a clan a conflict causes both social and spiritual separation, hence societal reconciliation is more important than legal procedures (A former ARLPI Secretary General, Interview 18 March 2008).

A critical question needs to be raised. The LRA committed heinous crimes against their own people. The ICC has offered to punish the culprits, but the religious leaders and community leaders were bent on convincing the people that it was better to forgive and rediscover *mato oput*. Did rediscovering *mato oput* with its fundamental values constitute a kind of vague serene disposition and uncritical mutual reconciliation that made the people appear as if they could not distinguish between the right and the wrong community values? Traditional *mato oput* constituted a justice system that sought to go beyond social conformity. A system that can be considered both restorative and retributive simultaneously is possible. As in the aftermath of the protracted conflict in northern Uganda, the endeavour to rediscover *mato oput* as a restorative form of justice, as revealed by this research, sprang from the recognition of

the complexities that characterised the conflict in northern Uganda. The term 'rediscovering' used here is consistent with the nature of the Acholi community as it was during the time of this research. It emerged during my field research that, as the Acholis reconstructed the *mato oput* ritual and its underpinning values, they were in a way constructing a new community which had never been there even before the war. The transfer of the Acholi population to the IDPs totally destroyed the traditional social fabric of the community with its lineages and values. In fact, the IDP phenomenon, a product of radical evil, destroyed the minimal threshold of social existence where the IDPs were reduced to what Giorgio Agambem refers to as *homo sacer*. Agambem (1995: 66) describes *homo sacer* as an individual who though has biological life, has no political existence and excluded from what gives an individual an identity. Agambem (1995: 44) calls such an existence, *bare life*: a life where violence has bred a decay of all that is normative. The human condition of northern Uganda which was characterised by torture, mutilation of body parts, dispossession, other gross human rights violations and marginalisation fit within Agambem's notion of bare life.

Indeed, one of the themes that prevailed in the majority of interviews was that Acholi society had lost many of its basic values. Accordingly, the dominant appeal for restorative justice as a key value seems to have been based on desperate search for a lasting peace and a meaningful life and the restoration not merely of relationships with members of the LRA, but the restoration of worthwhile human existence. The rediscovery of *mato oput*, therefore, seems not to be based on any uncritical disposition among Africans to forgive too easily and to always submit to what their leaders think is right, but rather on a desperate search for peace and stability. Thus a better interrogation of the value of *mato oput* would need to go beyond its perceived relevance as has been advocated but also to interrogate fundamental elements that underpin its rediscovery. It is only once one has taken cognisance of the deplorable conditions which characterise life in northern Uganda that one can adequately assess the relevance of *mato oput*.

Accordingly, taking into consideration the issues raised by the above, a better evaluation of the proposed peace and justice instruments require that one considers the interwoven aspects of the conflict. First, is how crime, conflict and punishment are

conceived traditionally from Acholi standpoint in relation to the existential situation that prevailed as result of the conflict. Crimes, as conceived by Acholi, were interpersonal. It is for this reason that truth becomes a key pillar in the process of restoring any broken relationships. The conflict in the north emerges as a case of broken relationship between the Acholi dominated LRA and the Acholi as manifested in the manner the LRA committed grave atrocities on them. But equally significant is that, there is also a broken relationship between Acholi and the Government of Museveni which is manifested in terms of social and economic marginalisation and atrocities allegedly committed by the UPDF and the kind of life the people were subjected to in the IDP camps. But could *mato oput* adequately deal with the complex dimensions of the conflict in northern Uganda?

5.4.6 Local Assessment of *Mato oput*

Regardless of the apparent popularity of *mato oput*, there was criticism brought against it in terms of its relevance as a system of peace and justice in the northern Uganda situation. Particular questions were raised about how the practice could be effective given the magnitude of the conflict where thousands of civilians both Acholi and non-Acholi had been killed and maimed. In the view of Thomas Odong, *mato oput* had been given too much value in its capacity to heal and restore social relationships. He pointed out that the practice in the past and among traditional Acholi people aimed at re-establishing relationships that had been suspended between two communities in response to either an act of killing done willfully or that which happened accidentally (Odong, Interview 18 March 2008). Odong added, however, that so much had changed in the course of the conflict that plagued the region for two decades. Odong's view was corroborated by Odwar's observation that, given the devastating effect of war, all systems and structures like education and religion had been affected and needed a reconstruction (Odwar 16, Interview March 2008). Other respondents observed that, morality itself had been transformed. Moreover, the cultural identity of the Acholi people had become very dynamic and was being reshaped by such factors as Christianity and modernity. Younger people in general who had grown up during a time of war had not been subject to such practices. Some Acholi had grown up in towns or the diaspora and had also lost touch with their traditions (Ongom, Interview 11 January 2008).

Specific questions regarding *mato oput* focused on the practice of compensation. Compensation, as traditionally understood, was no longer possible for a number of reasons. First, in many instances people did not know the exact identities of either the victims or the perpetrators. Thus, even if compensation were possible, it was not easy to determine who would compensate whom. Secondly, in certain cases where a perpetrator was forced to kill his own parents or where a person killed ten people, the issue of retributive justice was complicated. In this case it would be difficult for compensation to be applied (A woman, Interview 12 March 2008). According to the former Secretary General of ARLPI,

In the Acholi situation who is to pay for what? Many families have been affected, son and his father; brother and brother. Things have been meshed up. Victims and perpetrators are members of the same families. Victims are perpetrators at the same time. Who actually is afflicted by the atrocities is difficult to tell (A former ARLPI Secretary General, Interview 18 March 2008).

Another concern regarded the nature of the parties to the conflict. One interviewee who sought anonymity observed that any mediation process must include all the relevant actors (Anonymous, Interview 24 March 2008). But as *mato oput* was presented, it appeared that the reconciliation would be between the LRA and its victims or the wider Acholi society. That means that the LRA and the Acholi population would be considered the only parties involved in the conflict. Yet the perpetration of human rights abuse had also occurred by the army. According to a lecturer interviewed in Gulu University, there was no clear policy framework on how *mato oput* would include the Government which had also been a party to the conflict. Moreover there was a dimension of the conflict that placed the Government in opposition to the Acholi population according to popular perceptions. The Government of Museveni had itself been accused of targeting the Acholi for extermination (Lecturer in Interview Gulu University, Interview 10 March 2008). Such perceptions reveal that any peace and justice process that focused only on certain dimensions of the conflict or that ignored certain parties, risked being inadequate. According to an old man interviewed in Lapuje camp ‘in the same manner as justice, reconciliation needs to take into account all the parties’ (Elder, Interview 25 May 2008). This sentiment was expressed more explicitly by a former ARLPI Secretary General (Interview 18 March 2008) who said that, ‘the case in northern

Uganda involves killing. It is a larger conflict. The actual war is between the Government and the rebels. In this case, actual *mato oput* should be between the rebels and the government.' For *mato oput* to be properly applicable would require Museveni and Kony to participate in the ceremony as antagonising parties in the conflict. In this way it would have some impact according some of those people who questioned its relevance. The observations point to the limitations of *mato oput* and indicate further that stressing the system at the expense of other instruments would not likely lead to sustainable peace. I provide a deeper analysis of the capacity of *mato oput* in relation to the conflict in northern Uganda in the next chapter.

5.5 Conclusion

In order adequately to appreciate the capacity of alternative systems of justice considered in this chapter, one needs to consider the complex nature of the conflict and the deep seated longing for peace and stability that exists in northern Uganda. The first, regards the conception of crime, conflict and punishment, from the traditional Acholi standpoint in relation the prevailing conflict situation. Crimes, as conceived in the Acholi context, were interpersonal. It is for this reason that truth was a key pillar in the process of restoring any broken relationships. The conflict in the north emerges as a case of the broken relationship between the Acholi dominated LRA and the Acholi enemy in communities as manifested in the manner the LRA committed grave atrocities against them. However, there is also a broken relationship between Acholi communities and the Government of Museveni which is manifested in terms of social and economic marginalisation and atrocities allegedly committed by the UPDF and the kind of life the people are subjected to in the IDP camps. This second dimension seems not to have been captured in the advocacy of *mato oput* as a response to the two-decade conflict in northern Uganda. We, therefore, need to ask the extent to which the proposed peace and justice mechanism comprehensively respond to these interwoven dimensions of the conflict and if it would bring about the much-needed restoration of trust in the broader sense.

Chapter Six

Transitional Justice Instruments and Peace-Building in Northern Uganda: A Critical Appraisal

6.1 Introduction

The debates about transitional processes in northern Uganda would seem to imply that peace and justice are opposed to each other and that either the ICC intervention has to be sacrificed or the local peace initiatives. As Ted Nielsen observes, the debates were presented as if peace were limited to the LRA stopping their insurgency whereas justice was understood to mean punishment of the LRA by the ICC (Nielsen, 2008: 35). This research has so far explored the various issues that are pertinent to the debate, namely, the demands for peace and the objectives of justice against the backdrop of massive violations of human rights in northern Uganda. The present chapter turns its attention to providing a critical appraisal of the potential of the ICC and alternative peace initiatives as instruments for post-conflict peace-building in northern Uganda. In so doing, I identify the gap in the mainstream peace-versus-justice discourse and practice in northern Uganda. The question we need to ask in the following discussion is whether the people's wish for peace and accountability was best catered for by turning to local justice approaches, such as amnesty, traditional Acholi cleansing rituals, or through international judicial accountability? My argument is that international criminal justice and alternative peace and justice initiatives could go some way to achieving peace and justice in northern Uganda, but they are not sufficient for sustainable peace.

6.2 Peace-versus-Justice Dichotomy

Promoters of amnesty base their argument on the pragmatic notion that punitive justice for those responsible for atrocities against humankind is contrary to the well-being of the very people whose rights are meant to be protected and that punitive justice is therefore not the preferred option. This position is central to those opposed to the ICC's intervention in northern Uganda. In this respect pardoning perpetrators of human rights violations is acceptable as long as it serves the utilitarian goal of achieving greater social good. Social good is here understood as ensuring that the guns are silenced and must be achieved at the cost of the more fundamental norms of the rule of law. These are the ideas underpinning the argument that pursuing the LRA for prosecution and punishment would cause them to harden their position, with the

protracted spilling of blood. In this sense peace is seen as being opposed to justice. But the contrary could be the case.

At the time of writing, the LRA commanders had not been apprehended and it is not possible to make an asserted judgement of facts regarding the ICC's contribution or hindrance to the conflict in northern Uganda. However, remarkable calm has returned to region compared to the period before the ICC indictment. Some of those who had been living in the IDPs have started moving back to their homes, at least to till their land. However, it is not yet clear whether this calm was brought about by the ICC indictment which may have drawn the LRA to the negotiation table or whether it was the Juba peace talks, or a combination of the two. Many of the statements about the contribution of the ICC intervention and the Juba peace talks are largely speculative and based on the sequence of events. Notable events are ICC intervention, the LRA request for negotiations and the subsequent Juba peace talks, followed by an unprecedented lull in attacks by the LRA.

From the time that the warrants of arrest were issued there were indications that international criminal justice could go some way to bringing about peace and stability in northern Uganda, contrary to the claim that it would exacerbate the conflict. One of the indications that the ICC's intervention made some contribution is that the investigations and warrants of arrest discredited and destabilised individual members of the LRA top command. According to Akavan (2005: 418), the investigations and charging of Kony and his top commanders upset the LRA structures and operations, making it difficult for them to regroup themselves and driving them to the negotiation table and gearing up towards a longer term peaceful outcome. Although one cannot point to hard evidence linking the indictments and the Juba peace negotiations, it is highly likely that the threat of prosecution sent shivers down the spines of the LRA military leadership, enticing them to the negotiating table in Juba (O'Brien, 2006). The link between the ICC indictments and peace initiatives can be corroborated by the fact that the LRA had avoided peace negotiations for years until the ICC released its warrants of arrests against Kony and the LRA top command.

As part of the Juba Peace Talks, the Government and the LRA signed the Agreement on Cessation of Hostilities in August 2006 and a ceasefire accompanied the agreement

(Ssenyonjo, 2007: 76; Mukasa, 2006). In line with the ceasefire agreement the LRA leadership decided to pull most of its troops out of northern Uganda, thereby reducing the frequency of attacks (Ssenyonjo, 2007: 76). The ICC investigations also accelerated the peace process in that it brought the awful crimes in northern Uganda into the international spotlight, which in turn provided a springboard for regional and international support for the Juba peace process (Otim, 2007). Thus, the ICC indictment had the effect of increasing international support for ending the conflict in northern Uganda as it was only after the situation was referred to the Court that the UN and a number of countries began providing significant support for peace in northern Uganda (Akhavan, 2005: 420).

The ICC's criminal investigation also seriously restricted the flow of material support for the LRA from Khartoum. Sudan, a non-state party to the ICC Statute which had offered a safe haven to the LRA, signed an *ad hoc* agreement with the ICC committing itself to executing the warrants against the LRA commanders (Akhavan, 2005: 416; Moreno-Ocampo, 2006). This agreement forced the LRA commanders to flee their former sanctuary in the Sudan for the DRC jungles further from northern Uganda (IRIN 2006). Moreover, since the ICC indictments had exposed the rebels to international limelight, Sudan no longer supported the rebels in the same way as they had in the past.

The ICC's intervention also deterred other actors from committing human rights violations as the indictment of the top LRA commanders '[sent] a powerful signal around the world that those responsible for such crimes would be held accountable for their actions.'¹² As reported earlier in this study, the UPDF, as well as the LRA, had allegedly committed crimes against the civilian population in northern Uganda, especially against the Acholi. In launching investigations against the LRA, even though the UPDF was not targeted by the investigations, the Court signalled that those who had acted against civilians with impunity were likely to face charges.

It can therefore be argued that the ICC indictments, by destabilising and generating fear among the LRA leaders, speeded up the pace of improving the security situation

¹² Annan Hails International Criminal Courts' Arrest Warrants for Five Ugandan Rebels, U.N. News, Service, Oct. 14, 2005, <http://www.un.org/apps/news/printnewsAr.asp?nid=16243>.

in northern Uganda and led to a reduction in attacks on camps (Akhavan, 2005: 418). Both the ICC and the Juba Peace Talks seem to have complemented each other in achieving this lull in the conflict in northern Uganda. The ICC, which was thought to be a recipe for renewed atrocities, in fact set the pace for subsequent peace initiatives. In this regard, the court demonstrated its dual potential of pursuing justice and securing the peace crucial to the reconstruction of a stable post-conflict northern Uganda and this represented at least some link between conflict resolution and the rule of law. This observation is an indication that peace and justice may not be necessarily in conflict with each other.

However, as mentioned earlier, it is difficult to establish a clear and distinct correlation between transitional justice instruments and the subsequent calm that was realised following these initiatives. It is equally difficult to state that the calm was an indication of the possibility of lasting peace and stability in the region. The subsequent lull in hostilities does not provide undisputed grounds for concluding that lasting peace had been realised in northern Uganda. In this respect and in line with the ultimate goal of this research, it is important to go further and undertake an in-depth analysis of the potential of transitional justice instruments in the context of the dynamic and complex nature of the conflict in northern Uganda. I do this by looking at the constitutive elements of these transitional justice instruments in relation to the situation in northern Uganda.

6.3 The Question of Universal Jurisdiction and Sustainable Peace-Building

It is the involvement of the International Court that brought the debates on transitional justice in northern Uganda to unprecedented heights. Central to the debate was the argument that the Court was de-contextualised and external and would therefore interfere with more effective local peace initiatives. This concern centres on the principle of universal jurisdiction which underpins the ICC's mandate. International criminal justice founds the notion of human rights in the global arena on the universalistic principle of the rule of law. This implies that certain crimes transcend national jurisdiction and that their commission immediately elicits a global response. Since the rule of law, especially in its substantive sense, is characterised by the feature of universality, as discussed in chapter two, it can be applied to safeguard human rights not only at national level, but also at international level. It is this aspect of the

rule of law that gives the ICC its justified mandate to promote the moral vision of good life and respect for human dignity in societies characterised by violent conflicts and gross violations of human rights.

However, the notion of universal jurisdiction has elicited the accusation that international standards of justice apply a one-size-fits-all and a de-contextualised, normative remedy (Drumble 2005; Oomen 2005). Universal jurisdiction, according to its opponents, prioritises what may not be pertinent in a particular situation and has the potential of usurping local initiatives. Adam Branch (2004: 5), referring particularly to the ICC's involvement in northern Uganda, asserted that insisting on prosecuting the LRA while the local community preferred to reconcile with the rebels amounted to paternalism and a new form of imperialism. Such views implied that the ICC was undermining local autonomy and self-determination since it failed to consider local demands (Branch, 2004: 5). A further implication is that it should have been up to Uganda to decide which direction was best for them in the pursuit of a peace process in northern Uganda (Afako, 2008: 8).

Accordingly, the granting of amnesty to the top leaders of the LRA as an alternative to prosecution by the ICC was anchored on what was understood to be Uganda's right to political determination and the expectation that the ICC would refrain from interfering in its internal affairs. While making reference to the Uganda's Amnesty Act of 2000, President Museveni claimed that Ugandans had discovered an internal solution (IRIN, 2005). The internal solution meant opting for negotiations with the LRA, granting amnesty to the rebels followed by the administering of *mato oput*, the traditional Acholi system of justice, as an instrument of integration. *The New Vision* reported President Museveni as asking the LRA to surrender and 'engage in internal reconciliation mechanisms put in place by the Acholi community such as *mato oput* or blood settlement' (*The New Vision*, 2004). Yet when the President Museveni referred the situation in northern Uganda to the ICC, it was because the crimes allegedly committed by the LRA required global intervention. The contestation between the ICC's universal jurisdiction and the demands of self-determination in the context of gross human rights violation has certain implications. First, nervousness about the ICC's intervention in situations of gross human rights abuse implies that the mandate to end impunity should not fall on a particular international institution. Such an

institution would override local initiatives embodying self determination. This anxiety also implies that any instrument for peace and justice is better as long as it is a local initiative.

However, given that human rights have been violated and continue to be violated even by those entrusted to protect them, who should intervene when states who are supposed to guarantee protection and enjoyment of rights are either unable to do so or are the very perpetrators of human rights violations? Does it make sense to talk about international responsibility to protect human rights without a specific institution to act as human rights watchdog?

I want to argue that the absence of a particular institution to respond to serious human rights violation is bound to perpetuate partisan military interventions which could be counter-productive for national reconciliation in complex situations like that of northern Uganda. For instance, when the US formally withdrew from the ICC in May 2002, it maintained that countries should be left to decide on their preferred way of responding to human rights abuses without any external, overriding prosecutorial model (Mayfeld, 2004: 147; Morris, 2001; Bolton, 2001; Kissinger, 2001). But while the US had maintained that countries should be allowed to pursue internal solutions to internal problems, US officials took a partisan position during the Juba peace talks. The US officials joined President Museveni in making threats against the LRA during the period of the Juba Peace Talks. While on her trip to Kampala in September 2007, US Assistant Secretary of State for African Affairs Jendayi Frazer warned that, if the Juba peace process were not put into effect, the U.S. would support military action to mop up the LRA.¹³ Such military threats from the US would strengthen President Museveni's case for resorting to a military strategy against the LRA but, given the dynamics of the conflict, such bi-partisan intervention would not be in the interests of achieving peace in a situation where the Government had been seen to be complicit in these same human rights violation. Moreover, any US intervention would be interpreted as being biased since the US had identified the LRA as one of its targets in the war on terror – because of LRA actions and because the group was being

¹³ Media Conference with Assistant Secretary for African Affairs Jendayi Frazer, with Ambassador Steven A. Browning, September 5, 2007.

supported by Omar Al-Bashir (Allen, 2006). Another good example of bi-partisan intervention leading to more instability than stability is that of Iraq. Iraq was invaded by the US and its allies on the basis that the country had weapons of mass destruction which were a threat to international security. Although no weapons of mass destruction were found, the US and the UK argued that their intervention was meant to liberate the Iraqis from the dictatorial rule of Saddam Hussein. Saddam Hussein may have committed heinous crimes against his own people, but the US invasion equally amounted to a miscarriage of justice in the sense that the existence of weapons of mass destruction used as justification for the invasion turned out to be a figment of the imagination of the architects of the invasion.

The point is that, in the absence of an institution like the ICC, the gap would most likely be filled by bi-partisan interests that could work against the achievement of peace in war-torn areas. This is where the institutionalised mandate of the ICC comes into play. As a body of international accord, operating within institutional mandates, structures and under international scrutiny, the ICC could serve two purposes. First, it could guard against the miscarriage of justice camouflaged as international humanitarian intervention. Secondly, the ICC could guard against the possible abuse of human rights by leaders or parties in conflicts. Thus the ICC plays an important role as an instrument for harmonising national and international interest in criminal justice. It is self-defeating to reason that self-determination would tolerate violations of human rights by state actors or non-state actors within a territory. The involvement of the ICC should not be interpreted as a case of interfering in the self-determination of a country. On the contrary it should be understood as an instrument that works in support of the enjoyment of human rights and self-determination. The court has the potential to contribute to peace and security and it does not necessarily take the place of self-determination. The problem in relation to the Court must be located elsewhere.

6.4 Where the ICC's Dilemma Lies

In the discussion that follows, I argue that what seems to be the problem with the International Court is its inherent limitation in terms of power and scope and not its overriding powers. There is no contradiction in what I have said earlier and what I am saying at this point since to say that the ICC is limited in power and scope, as I am going to argue below, is not equivalent to saying that the Court has no potential or

power at all. The ICC's efficacy is contingent upon the backing it should receive from domestic and international actors. The ICC does not have its own police force and relies for this on the governments in those countries in which it is carrying out its investigations. It is these governments that are expected to provide the Court with the assistance it may need such as access to suspects, protection for investigators and witnesses.

The reliance on governments' support represents a conundrum. On the one hand, without government support there would be no arrests, and without arrests there would be no trials, as Kirsch (2006) observes. In this case, the ICC turns out to be what Cassese (1998: 13) refers to as 'a giant without arms and legs – it needs artificial limbs to walk and work. And these artificial limbs are state authorities'. When the Court issued warrants of arrests against the LRA, it shook the rebels prompting them to seek negotiations with the Government. Until that moment the Court had received good cooperation from the Ugandan Government. However, the moment the Ugandan Government started warming to the proposed alternative initiatives, it became clear that, without the Government's assistance, the Court was unlikely to be able to bring the LRA leaders to justice.

Since the ICC's arrest warrants can only be effected through national jurisdictions, this means that the court's effective response to mass atrocities remains contingent upon the political will of states. This implies that the logic of the principle of complementarity can turn out to be an impediment to the ICC or at least problematic. According to the principle of complementarity, before the Court could intervene in the situations of northern Uganda, it had to determine that the Ugandan authorities were unwilling or unable to prosecute those crimes. This means, the ICC's starting point was Uganda's inaction against the LRA crimes either in terms of inability or unwillingness. Yet the Ugandan Government was complicit in human rights violations, even though it was the Government which initially referred the case to the court. How, therefore, could the court expect the Ugandan Government to cooperate with it by providing evidence, executing searches or arresting suspects? Moreover, the expectation that the Ugandan Government would effectively support warrants of arrest would prove to be problematic even if the Government were willing to do so.

The Government had been unable to arrest of the LRA and prosecute them and it was questionable how this would be possible.

From the foregoing considerations, instead of claiming that the ICC intervention was likely to exercise unchecked power over Uganda, it would be more plausible to argue that the Court was weighed down by sovereign powers and prevailing political realities. The principle of complementarity does not necessary lead to proper accomplishment of the court's effective operations, instead it might undermine the ICC operations which it is meant to foster.

The second issue which seems to have undermined the Courts efficacy has much to do with perceptions. The Court seems to have focused predominantly on Africa, giving the impression that the court was using Africa as a guinea pig. The Court's first referrals and investigations were in Africa, namely, northern Uganda, the DRC, and Sudan. At the time of writing, the indictment of the Sudanese president Al Bashir had elicited criticism from among African leaders. The court seemingly turned a blind eye to human rights violations in Iraq, Afghanistan, Chechnya, Gaza and Guantanamo Bay. In the context of the US war on terror following the September 11 2001 attack on New York and Washington by Al-Qaeda, US officials sanctioned the coercive interrogation of terrorist suspects held under US authority at various detention sites such as Guantanamo Bay, Afghanistan and Iraq (Forsythe, 2005). Washington authorities *ipso facto* became violators of human rights and would be unwilling, in any serious manner, to investigate human rights violations sanctioned by them. The invasion of Iraq by the allied forces had been associated with the deaths of thousands of innocent civilians and led to severe insecurity, yet the actions of the US and the UK in Iraq did not constitute a central focus of the ICC. Other cases that could be mentioned include the actions of Israeli Government in Gaza, which led to numerous deaths, injuries and destruction. Although the ICC had arrested some warlords involved in human rights violations in the DRC, the court did not consider the involvements of 85 companies implicated in the UN report of October 2002 in connection with human rights violations in the DRC conflict.¹⁴ In this regard, the fact

¹⁴ See for instance United Nations (2002) *Report of the panel of experts on the illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of Congo*. Security Council. S/2002/1146. October 15.

that ICC intervention was overly focused on Africa not only brought into question its impartiality but also fostered the view that the Court was a neo-colonial instrument out to stifle Africa's self-determination endeavour. Okello (2007: 2-3) contends that the ICC's interventions would be morally appealing if it had not concentrated its investigations in sub-Saharan Africa, making the continent appear to be the site for testing trial justice and new ideas.

Upon its establishment, the ICC had been hailed as heralding a new era in the enforcement of international accountability, something which had been absent from international justice. With the coming into force of the Rome Statute, the International Court promised to be an authoritative institution with the power to enforce accountability in situations of human massive rights violation. Impunity would be a thing of the past. But from the dynamics emerging from the foregoing discussion, it appears that those backing the Court placed too a high premium on an institution which, in the strictest sense, was still in its nascent stages of development. The expectations that impunity had been overcome were overtaken by the reality of international *realpolitik* and the ICC was yet to reckon with the overbearing power of *realpolitik* in international relations.

A third limitation of the ICC resides in the very nature of the Court as a legal mechanism with respect to conflict situations. The primary goal of the ICC was to dispense justice through prosecutions and not to offer solutions for political stability. The role of the Prosecutor is to investigate and prosecute those he believes, on credible grounds, to be responsible for atrocious crimes. As evident in this research, there were voices among the Acholi population who accused the Government of scheming to exterminate their cattle, to marginalise them economically and politically through the violence visited on them by NRA/UPDF. One old man captured this sentiment when he asked me:

You have told me that you have travelled through Kitgum, Gulu and Amuru, have you seen any cattle grazing? But this used to be a land of cattle. Cattle used to be the source of our livelihood and our strength. The government knew that. In our language we say, when you want to kill a big tree you do not face the trunk; you begin by cutting its roots one by one and by doing that, you will

have succeeded in terminating its lifeline. (Ben La Dit, Interview, Gulu 15 April 2009)

These perceived historical injustices require politically conscious redress. If these grievances were not addressed, prosecuting a handful of the LRA would not bring about lasting peace since it was unclear if the conflict would transmute. Ideally and from a legal standpoint, the referral of the situation in northern Uganda to the ICC would appear to have been done in the best interests of the people of Uganda and the victims of the LRA atrocities. But due to historical grievances, a robust compensatory programme would be an important constitutive element of transitional justice in northern Uganda. Insofar as the ICC did not include in its goals the values of structural transformation, its problem, from the standpoint of the Acholi, lay in its incapacity to do anything about historical injustices.

As a legal institution with a mandate to prosecute, the Court does not make direct political decisions on what is necessary for post-conflict reconstruction and lacks the expertise necessary for post-conflict management or peacemaking (Blumenson, 2006: 816). The link that the ICC has with post-conflict peace-building and transformation is that of bringing about the rule of law and democratic culture. Thus, there are dimensions of justice that the ICC cannot bring to effect.

A final limitation of the ICC that I can highlight is its inability to deal with cross-border conflicts, especially where one of the countries in which the criminals may be residing is not party to the Statute. Sriram and Ross (2007: 57) observe that, the ICC was mandated to investigate human rights violations in northern Uganda but not the LRA activities in southern Sudan or support provided by the Sudanese Government to the LRA while in southern Sudan. The ICC had no jurisdictional mandate in the Sudan except for Darfur. Yet, conflicts in Africa are seldom limited by internal boundaries, but are sub-regional in character, as highlighted in chapter three. In some cases, states in a certain region may be collapsed states with no law enforcement institutions and therefore become a conducive breeding ground for guerrilla activities. This is particularly the case of the overlapping conflicts in the four countries in which the ICC was investigating crimes during the time of this research, namely, Uganda, Sudan, the Democratic Republic of Congo and the Central African Republic. One

reason it was difficult to apprehend the LRA was that they had their sanctuary in southern Sudan, later in the DRC Jungle and even later on in the jungles of the Central Africa Republic.

In terms of its legal and jurisdictional mandate, its investigative orientation and its entire modus operandi, the ICC's focus was inside the boundaries of the nation state in each of the countries in which it was operating. The Court therefore excluded any investigation of the role of regional actors, representatives of neighbouring governments, or global non-state actors (Simpson, 2008). However, experience shows that, in contemporary international relations, every intra-state conflict has an external component which may be foreign interests, proliferation of weapons, bad neighbours or bad neighbourhood (Stedman, 1999). The LRA atrocities were aided by the Khartoum Government, yet the Court did not implicate the Sudanese Government on that account. Al Bashir's indictment in 2008 was with reference to Darfur situation and not to the northern Uganda case. The escalation of the 1994 genocide in Rwanda was partly blamed on France, which allegedly supplied weapons to the dominantly Hutu Government. Similarly, the insurgency of the Rwandese Patriotic Front (RPF) was equally supported by Uganda. Yet the ICTR did not have a mandate to consider the role played by these global actors. What this discussion reveals is that the ICC, along with most other transitional justice instruments, still has to confront the challenge of peace-building in the context of conflicts which traverse national boundaries.

At the core of these observations is the reality that in the conflict situations which have to be dealt with by the ICC, the ICC Chief Prosecutor is confronted with a need to meet the demands of the various interests and goals which are linked to a peaceful outcome. The ICC prosecutor has to contend with balancing these interests. Although the ICC is a legal instrument which should be completely depoliticised it does not function in a political vacuum. Every post-conflict justice has to deal with the contextual circumstances in which crimes are committed; it has to gain access to evidence, which calls for the logistical and political cooperation of the state in which it is carrying out investigations.

Based on the above discussion, I can now make some comments on the international justice system as applied in northern Uganda. Justice under transition involves much more than judicial accountability meted out through prosecutions. In the context of massive scale violations, no criminal justice system can prosecute all those responsible. In the case of northern Uganda, the line between victim and perpetrator is vague, as this research has revealed. The LRA perpetrators were indeed victims before they were turned into abusers of human rights, making it difficult to effect justice through prosecution. Framing transitional justice in terms of jurisdictional mandate also falls short of interrogating what constitute the key elements of the war in northern Uganda, especially its root-causes, longevity and the reconstruction of the society. The ICC focused on the five commanders, and this was instrumental in sending out the message that no one can commit heinous crimes with impunity. However, insofar as it focused only on the few LRA commanders the ICC ignored two things, namely, the relationship between the Government and the Acholi population, and the fact that members of the LRA would come back and live in the community whose members they have tormented. It is also outside the domain of the ICC to deal with a number of critical questions such as the marginalisation of the Acholi. Since it is on the basis of some of these limitations of the ICC that antithetic alternatives mechanism were proposed as more appropriate responses to the conflict in northern Uganda, it is logical to turn our attention to these mechanisms to see if they offer more appropriate alternatives than the ICC. Specific focus is placed on the traditional Acholi system of justice, *mato oput*, which was preferred for its integrative and restorative values. I also consider whether the value and nature of the traditional Acholi system of justice constitutes a sound basis for the rejection of the international justice system.

6.5 Alternative Mechanisms and Sustainable Peace-Building in Northern Uganda

Critics of the ICC contrasted it sharply with alternative local mechanisms such as the traditional Acholi system of justice, *mato oput*, which was understood to be communal and integrative in orientation. The local systems of justice were portrayed by its advocates as embodying a distinctively African form of natural justice necessary for social harmony. This harmony is constituted by consultation, consensus, communal participation and reconciliation. The criminal justice approach stresses the responsibility of individual perpetrators. Restorative justice is pursued through

repentance, forgiveness and reconciliation. The promotion of these values is contrary to application of basic principles of the rule law, according to which criminals should be punished once their guilt is determined through fair and transparent judicial process instead of being based on culturally conditioned moral norms. The culturally conditioned norms are not universal, instead they are based on historical and cultural circumstances. It is their particularity that causes their advocates to consider them to be suitable in transitional situations in the sense that they are more immediate and relevant to particular situations in the lives of the people who apply them.

Moreover, as shown in chapter five, the traditional Acholi system of restorative justice stresses the communal aspect of justice by prioritising community responsibility over individual accountability. The process of the traditional justice system is also participatory, focusing on the healing of the community and reintegration of criminals back into the community. Mass atrocities assume societal and interpersonal dimension because they are committed by a multitude of actors, and the atrocities affect mass victims. Given this community dimension, forgiveness becomes relevant because it 'prioritises relationships between people over dark feelings of revenge, no matter how natural, deserved or rational they may be' (Finnegan, 1995: 11). Jeong (2005: 164) observes that focusing on reconciliation can be faster in generating peace while providing the victims with the opportunity for catharsis when they come to know the truth through public confessions. In this respect, the overall purpose of restorative justice is the reintegration of victims and offenders who have resolved their conflict into communities (Van Nes, 1997).

The foregoing separates criminal accountability from sustainable peace and consequently questions the link between upholding individual responsibility and the alleviation of human rights. Okelo (2007) remarks that linking criminal prosecution with sustainable peace-building means thinking within western orientated categories of the individual and ignores the domain of the communal and the prospect of reconciliation.

This position is based on communitarian philosophy, which maintains that humans establish their value within the community where they are related in terms of duties and defined, in the form of group identity, as members of a clan, a tribe or a village

(Mbiti, 1969: 108). The community itself is not a mere collection of fundamentally isolated individuals, but an organic structure of relationships. Personal welfare is dependent on the welfare of the community, with the community carrying more weight than the individual. This position is disputable.

The position upholding the dichotomy between African communalism and western individualism is largely anthropological. Anthropology took a somewhat structural functionalist and ahistorical approach to African society – and therefore misunderstood the modernity of culture, so to speak, so that the western/African dichotomy became something of an invention which is, of course, used today as a kind of ‘branding’ exercise. It is not valid to argue that Africans were completely devoid of individualistic tendencies. There is no indubitable validity in the claim that individualism is inherent in western mentality whereas communalism is entrenched in the African consciousness. Indeed individualism is a modern idea, basically absent from ancient civilisation and medieval Europe. The notion emerged in Europe for the first time after the French Revolution (Schwab and Jeanneney, 1995). For most of human history, the well-being of the group mattered more than the well-being of an individual. Aristotle, one of the earliest classical political theorists, maintained that man is social by nature and cannot survive outside the community. Morris (1972: 2) points out, while the vocabulary of the Greeks is rich in words, they had no concept for an individual person and had what they referred to as a community of beings. The starting point was the *polis* which was the natural unit of society. Individualism and communalism are both aspects of all human beings and the prevalence of one over the other in a society at any given moment does not necessarily place that society within a given category of humanity vis-à-vis others. In making a comparative analysis of some African and Western conceptions of morals, Kwasi Wiredu (1996: 72) remarks that

... the distinction between communalism and individualism is one of a degree only; for a considerable value may be attached to communality in individualistic societies just as individuality is not necessarily [trivialised] within communalism.

If one proceeds from the premise that communal forms of justice are distinctively African then it would imply that the traditional Acholi system of justice discussed in

chapter five of this work would appeal to Acholi in more or less generalised manner. The Acholi population would embrace such values without difficulty. But this is not the case as my research revealed. The traditional mechanism did not appeal to some sections of the population. The Acholi were in no generalised way in support of or opposed to the reconciliatory approach to justice. Some held the strong view that those who committed atrocities against civilians needed to be punished (Ochar, Interview 3 June 2008; Achan, Interview 20 June 2008; Awici, Interview 21 June 2008). *The Monitor* reported on 5 May 2005 that in that month a delegation of two local leaders from the Lira district in northern Uganda, the Local Council Five (LCV) Chairperson, Franco Ojur, and the Vice-Chairperson, Rebecca Atango, travelled to The Hague, Netherlands, for an audience with the ICC Chief Prosecutor to press for the arrest and prosecution of Kony and his top lieutenants (*The Monitor*, 5 May 2005). An informant John Bosco, a Local Council leader of Pabo Sub-county and a Resident of Pabo IDP camp, argued that

[i]n a community, people don't have the same feelings. Some, especially those who have been hurt physically, disabled or maimed by the LRA, will find it very difficult to forgive them. We are always sensitising people to learn to forgive. But not all people can respond in the same manner and decide to forgive. (Bosco, Interview 4 April 2008)

Some victims did not want to reconcile with offenders, and preferred prosecution for the LRA. While there was often sympathy for those who were abducted, some victims were firm that they would not accept former combatants including those who had been abducted (Five victims who sought anonymity, Interview 4 April 2008). Prior to this research, a field-based study to explore the victims' perceptions of accountability, reconciliation and transitional justice in northern Uganda had been conducted by the Office of the UN High Commissioner for Human Rights (UNHCHR) from January to June 2007. The research revealed that respondents expressed their reservation about the 'capacity of domestic institutions of justice effectively to deliver on accountability in a fair and transparent manner.' (UNHCHR, 2007: 69) It would, therefore, be inaccurate to claim that the Acholi wholeheartedly preferred traditional restorative justice to a retributive approach (Allen 2006; Arthur, 2007: 53).

Moreover, some respondents were adamant that they would not wish to see Kony back in the community. This raises further questions about the claim that the Acholi population had forgiven the LRA. It is possible that the mobilisation and sensitisation of the Acholi population by civil society organisations and traditional leaders may have created the general impression of Acholi reconciliation with the rebels, individually they may not have been truly reconciled with the LRA depending on their personal experiences.

Strictly speaking, reconciliation is a personal decision. According to Cose (2004: 95) reconciliation is a complex psychological process that requires willingness on the part of those involved in a disagreement. Juan Mendez (2006: 15) corroborates Cose's assertion when he observes that reconciliation between victims and their perpetrators is usually a misnomer since, although some victims may be ready to forgive, the choice ultimately remains a personal one that must always be free and voluntary. The fact that reconciliation is a personal undertaking is largely ignored in most peace agreements which are entered into at negotiation tables without proper representation of those affected. Such negotiations do not adequately appreciate the right of victims to help shape the trajectory of peace and justice (Mendez, 2006: 15). Local peace initiatives assume that victims should be able to forgive in order to promote peace, but this ignores the rights of individual victims who end up being treated as if they were not personal beings.

6.6 Limitations of *Mato Oput*

Apart from lack of broad acceptance of the Acholi system of justice, there were practical concerns regarding the efficacy of *mato oput* to engender real justice and the institutional reform necessary in northern Uganda. To begin with, there was the problem of establishing responsibility. Establishing responsibility on the part of the accused is one of the important elements of *mato oput*. As I have shown in chapter five, knowing who is responsible for a crime is the first step in the process of reconciliation, but given the nature of the conflict in northern Uganda it was not easy to identify individual perpetrators and their corresponding victims. In the context of extra-ordinary crimes characterised by mass killing, displacement and the inability to determine who the victims and perpetrators were, it became difficult to differentiate between the domain of the victim's community and that of the perpetrator.

Second, the traditional Acholi system of justice was not comprehensive enough to cater for the nature and extent of the conflict in northern Uganda. *Mato oput* was originally intended to resolve lesser cases of murder involving members of different clans or families. The traditional Acholi justice could not address the large-scale cases of murder committed by the LRA, let alone all other crimes committed in Acholiland or beyond. Since *mato oput* was initially meant to deal with murder cases, the practice did not articulate how it could deal with crimes such as rape, sexual harassment and gender-based violence that constituted part of the conflict in northern Uganda (Otim, 2007: 4). Not all the victims and perpetrators involved in the conflict were Acholi, and *mato oput* would not be meaningful to victims outside Acholiland. It is the case Acholiland was the epicentre of LRA atrocities with the Acholi population bearing the greatest burden of the atrocities. It is also the case that the LRA were dominated by Acholis. However, given that the whole of northern Uganda in general had suffered decades of conflict, any transitional justice mechanism needed to be comprehensive and take all the various aspects of protracted conflicts in the entire region into consideration.

Third, we note that, a key component of *mato oput* is compensation. Many difficulties were encountered in the implementation of this practice. The requirement to provide ten cows for reparation was not possible in the IDP context. There was no measure to compensate for the cruelty, depravity, and scale of the atrocities. The magnitude of the crimes was too great. Fulfilling the original requirement of *mato oput* – a girl child in compensation for a deliberate murder – would have been impossible and surely unjust, inhumane and a double violation.

The *mato oput* requirement that the victim's and the perpetrator's communities should come together could not to be achieved. Traditional villages had been replaced by expansive IDP camps inhabited by people from various clans and villages (Allen, 2006: 53-60; Finnstrom, 2007: 82). The IDP phenomenon led to both physical and cultural dislocation, reducing the level of social and cultural cohesion. Moreover, the ceremonies had less appeal for younger generation of Acholi who were unfamiliar with cultural practices. My research covering the Gulu, Amuru and Kitgum districts revealed that the majority of respondents in Acholi areas were unfamiliar with the traditional justice system. This made it difficult to perform ceremonies and

diminished the cultural significance and viability of such ceremonies (Charles Odwar).

A further reason challenging the capacity of *mato oput* to foster meaningful and effective reconciliation is that there was no clear policy framework on how the practice would include the Government which was actively involved in the conflict. As discussed in chapter three, 'Museveni's government allegedly targeted the Acholi people' (Lecturer in Gulu university, interview 10 March 2008). This implies that for any fruitful resolution of the war, 'all dimensions of and parties [involved in the war] have to be catered for' (Elder, interview 25 May 2008). In this case, for *mato oput* to be properly applicable it would require that Museveni and Kony participate in the ceremony as antagonistic parties in the conflict.

Insofar as *mato oput* focused only on the relationship between the Acholi community and the LRA, ignoring atrocities committed by the Government, it worked well for Museveni. According to Okello Lucima (2008), since the war in northern Uganda was portrayed as an Acholi problem, *mato oput*, as a form of reconciliation of Acholi among themselves, served to reinforce the propaganda that the LRA insurgency was indeed an internal Acholi affair. Judging from the various strategies adopted by the President, some of which have been mentioned earlier in this work, Museveni clearly considered the insurgencies in Acholiland to be result of the community's violent and irrational culture. In 1988, President Museveni established the 'Ministry of State for Pacification of Northern Uganda, Resident in Gulu' and appointed Betty Acan Bigombe, as the minister in charge (Nyakairu, 13 January 2008). Bigombe was tasked with convincing the LRA rebels to give up their struggle, following the failure of the NRA to defeat the rebels. The term 'pacification' was controversial in its connotations and denotation, which soon resulted in the revision of the title to 'Ministry of State in the Office of the Prime Minister, Resident in Northern Uganda' (Nyakairu, 13 January 2008). Either Bigombe overlooked the implications in the title of the ministry or she agreed to play into the hands of Museveni's *realpolitik*.

'Pacification' is an example of a political euphemism intended to mask notions like 'sanitise' and 'confer respectability' and to protect the user against being fully understood (Cohen, 2001: 107). According to George Orwell political speeches and

writings employ figurative language to mask what is truly meant by the conveyor and to defend politically motivated actions which are otherwise indefensible (Wesley, 1991). During the Vietnam War, American soldiers employed the term 'pacification' to refer to the forced evacuation of Vietnamese from their huts, the rounding up of all males, the shooting of those who resisted, the butchering of domestic animals and the burning of dwellings (Bosmajian, 1997). According to Staub (1995: 101-103) such terms, which have the effect of devaluing others and creating a sense of order, are common in societies with a history of marginalising a group of people, where violence is normalised and made acceptable, and with an ideology of antagonism. In Uganda, a legacy of violence and ethnic stereotyping was the result of colonialism and perpetuated by the post-independence leadership, as discussed in chapter three; it was characterised by such euphemistic references. These shaped the way people thought, devalued others and subordinated minority groups. In this respect, the term 'pacification', as used by President Museveni, was an example of euphemistic language which could have arisen out of the conventional conception that the Acholi people were war like. Elsewhere James Ojara Ratigo (2008: 89) claims that the president also referred to the Acholi and the LRA as grasshoppers in a bottle in which they would eat each other before they found their way out. In this respect *mato oput*, insofar it was between the Acholi and the LRA, was well suited to Museveni's matrix since it sought to reconcile criminals with their own community which they had victimised. The traditional practice placed the conflict further outside the national arena and in so doing absolved the state from playing any role with regard to the situation of the Acholi. This would mean that the LRA were not fighting the Ugandan state, but their own people. The Ugandan state, therefore, had no further responsibility vis-à-vis the rest of the war (Lucima, 2008). Given the above and the dynamics of the war in northern Uganda, *mato oput* is not an appropriate mechanism with which to handle the conflict in its broader aspects.

Considering these factors, *mato oput* might have had the capacity to achieve some level of psycho-social healing among the Acholi, as discussed above, but it would be inaccurate to maintain that the traditional system of justice held the key to solving the problem in northern Uganda as claimed by its supporters, despite its advocates' obvious fixation with it. As I have argued earlier, it is not accurate to regard the traditional practice as being the sum total of a peace-building process that would bring

the long conflict to an end. Such a view overlooks the importance of addressing the deeper issues underpinning the conflict in northern Uganda and does not take cognisance of the real fault-lines that might precipitate re-occurrences of similar conflicts in following years.

The foregoing discussion reveals that, although each of the mechanisms examined above has some merit, none of them is sufficient. Confining transitional justice processes within retributive justice and non-prosecutorial parameters has exposed limitations of these competing models. The two models do have a certain potential but they are not the only alternatives for transitional justice. These processes and debates have been based on a dichotomous approach to transitional justice. In the next section I seek to go beyond the dualist approach and to identify and discuss the dimensions of post-conflict societies that have been sidelined in the mainstream transitional justice processes and debates.

6.7 Beyond Dualism in Transitional Justice: Looking at a Bigger Picture

6.7.1 Raising Broader Issues

This research demonstrates that transitional justice in northern Uganda has been pursued and discussed within the mainstream frameworks of retributive and restorative justice. The ICC operates within a legal framework which defines transitional justice as that mode of justice which, according to Teitel (2003b: 893), '[...is] associated with periods of political change as reflected in the phenomenology of primarily legal responses that deal with the wrongdoing of repressive predecessor regime.' The legal approach focuses on re-establishing the rule of law, but pays little attention to the broader needs of transitional societies. Standing in opposition to the legal approach is restorative justice, which responds to massive violations of human rights by seeking to repair harm, heal the victims and community, and to reintegrate both the offender and the victim back to the community (Boraine, 2000: 152-153; Drumbl, 2000: 1258). This approach is exclusive and narrow in the sense that it ignores other pertinent issues which merit consideration at times of transition. The scholarly and institutional aspects of transitional justice have so far sidelined issues of economic inequality, structural violence, redistribution and development (Miller, 2009: 266). Although dealt with in transitional justice discourse and practices, cases of inequality and structural violence are viewed as contextual backgrounds while

economic concerns are reduced to discussions of reparation (Miller, 2009: 266). In contrast to such a limited approach to transitional justice, scholarship and practice, issues of inequality and structural violence should constitute the central object of transitional justice.

Framing transitional justice practice within a dichotomous approach led to a limited interpretation of violence and victimhood in northern Uganda. Violence in northern Uganda was understood to be limited to atrocities visited on the civilian population by the LRA. The violence should have been extended to include atrocities committed by both the LRA and the UPDF – historical grievances, extermination of the Acholi cattle by the UPDF, the dehumanising conditions of the IDP camps among a myriad of life threatening phenomena associated with the conflict. In the light of this, transitional justice in northern Uganda ought to have been conceived as encompassing processes that include negotiating to bring the conflict to an end, instituting criminal prosecutions and economic reconstruction, and focussing on gender-based grievances and broader structural transformation. This observation is important since it reinforces the thesis that limiting the transitional justice process in northern Uganda to a single mechanism ignores the multi-faceted nature of ethno-political conflict. Against the background of these observations, the focus shifts away from the dichotomous approach that has dominated transitional justice discourses on the situation of northern Uganda to broader issues that are pertinent to the subject.

6.7.2 Social Conditions of the Acholi Population as an Object of Transitional Justice

To highlight the nature of the social condition of the Acholi as an object of transitional justice it is important to reiterate what was said in earlier chapters. Chapters three and four exposed the multifarious nature of the conflict in northern Uganda. A significant element of the conflict was the colonial legacy which bred inequality among ethnic groups and ethnic stereotyping which countered the prospects of national cohesion. Chapter three exposed how these legacies were later exploited by post-colonial political leadership resulting in persistent instability in the country and northern Uganda in particular. This inequality led to prolonged socio-economic and political exclusion in the northern part of the country. According to many respondents in my research, the reason northern Uganda remained vulnerable to

insecurity was its marginalisation from other parts of the country (Ogwal, Interview 21 April 2009). A District Speaker of the Kitgum District, whose view I cited earlier in this discussion, corroborated the view that the prolonged war in northern Uganda had been considered to be an Acholi problem (District Speaker, Interview 10 April 2008). This attitude reinforced the marginalisation of the Acholi.

Apart from the atrocities caused by the LRA, the uprooting of the people from their homes and their transfer to IDP camps, discussed in chapter four, were in themselves extremely disempowering and created insecurity in the region (A Security Intelligence Officer, anonymous, Interview Gulu 22 April 2009). Even after the people had been moved to camps, the LRA followed them and in fact camps made it even easier for the LRA to attack and abduct people (Okiri, Interview 28 April 2008). The IDP dwellers were barred from accessing their farmland to work the land and produce food. But even if they were able to access their land for cultivation purposes, they still needed the protection of the UPDF to work on their farms. In most cases the UPDF failed to protect them (Odhiambo, Interview 5 May 2009; Oyella Margaret, Interview 18 April 2009). The squalid camp conditions raised both social and health concerns. The close proximity of shelters to one another fostered widespread malaria and cholera. This, combined with malnutrition, caused high child mortality in the camps (Agnes Achayo, 5 May 2009). Within this context, opportunities for education were remote. Moreover, the camp set-up destroyed the pre-existing family and communal structures together with their value systems. As a result some people resorted to unhealthy and unacceptable means of survival such as prostitution.

Accordingly, the social condition of the Acholi, resulting from violent conflict and structural violence should be included within the scope of transitional justice in northern Uganda. A transitional justice process that did not radically correct such discriminatory structures could not achieve sustainable peace. A relevant example is a case of West Nile region where the Government of Museveni signed an agreement with the Uganda National Rebel Front II (UNRF II) in 2002 after four years of negotiations. This agreement led to the rebels receiving amnesty in exchange for surrendering their struggle. Though the agreement survived, the local community continued to express their concern about what they considered to be a lack of justice and perpetual economic marginalisation (Refugee Law Project, 2004; Refugee Law

Project, 2007). Similarly, a number of respondents were sceptical about Museveni's commitment to peace in northern Uganda since most humanitarian activities had been undertaken by foreign non-governmental organisations, a sign of gross marginalisation (Kasirani, interview 7 June 2008). The need to initiate fundamental economic and political transformation remained key to realising sustainable peace in northern Uganda.

Transitional justice ought to grapple with political and economic deprivation because such deprivations are intricately tied to intra-state conflicts. A pattern of specific violations may, if left unchecked, gradually become a structural condition in itself and fuel further conflict (Parlevliet, 2009: 5) Experience shows that economically and politically stable countries with firm structures and institutions for the distribution of resources do not experience conflict. In countries which lack such structures, political power is violently contested as access to resources is usually tied to political power. In societies characterised by a lack of proper structures, a particular social group may, on the basis of its identity, be systematically barred from participating in the political processes. In most African societies for example, injustice, repression, and exploitation are built on the fundamental structures of society, with differential access to social resources. This is likely to result in deep social cleavages and rivalries, which are a recipe for conflict. According to Nherere and Ansah-Koi (1990) many conflicts are due to limited political participation, the pursuit of self-determination, limited access to resources, exploitation and discrimination. Such structures are likely to result in conflict because, once a section of society has been excluded, liberation is likely to be violent. The pursuit of economic and political liberation is likely to threaten the political and economic dominance of the ruling group leading to the counter response of systematic suppression and serious human rights violations.

In this respect structural discrimination is logically connected to human rights violations as captured by Parlevliet (2009: 5) who argues that the

[d]enial of human rights is embedded in the structures of society and governance, in terms of how the state is organised, how institutions operate and how society functions. For example, a state may be characterized by a consistent lack of development in those regions where the majority of citizens are members of a social group other than the politically dominant group.

Alternatively, a country's legislative and policy framework may be biased against certain identity groups resulting in their exclusion and marginalisation from political, economic and social spheres of life. Such conditions create structural fault lines in society that may be less visible at first sight, but provide fertile ground for the outbreak of violence.

It emerges therefore that there is a relation between social exclusion, human rights violations and conflicts. The denial of rights implies the frustration of needs related to identity, welfare, freedom and security, which are fundamental for human survival, subsistence and development. If human rights are denied and needs are subverted, the potential for violent conflict is greater as individuals or groups will seek to address their needs. In this regard, as long as disempowering structural conditions remain in place in a society and as long as these structures remain the matrix for power and economic distribution, then the prospects of violence persist (Nathan, 2000: 200-201; Eide, 1995: 193-195).

The point, therefore, is that transitional justice processes and discourse ought to be concerned with how to explore a range of options such as accountability, without compromising broader and deeper transformative objectives (Simpson, 2008). The pursuit of international justice and respect for human rights ought not to be seen as detached from the greater need for peace and human security in its broadest sense. The linkage between poverty reduction and post-conflict peace-building has not been adequately explored in the literature on transitional justice, and poverty reduction has not constituted a central part of transitional justice. Transitional justice should, therefore extend its scope beyond that of prosecution, reconciliation, psycho-social healing and related goals to grapple with the social and economic sources of the violation of economic, social and cultural rights. By broadening the scope of transitional justice to include violations of economic, social and cultural rights governments within transitional states would be obliged to deal with the conditions that brought such violations about. Such a process would also provide a platform for various actors, such as the aggrieved parties and international and national civil society with its legitimate demand to redress pertinent grievances. Failure to redress the socio-economic structures that underpin conflict means that sustainable peace cannot be realised. Within the framework of such a broadened approach, instruments such as commissions would be able to play the diagnostic role of exposing the extent

and nature of the social and economic causes of conflict and the ensuing human rights violations. From such a process would emerge recommendations that would shape national political agendas geared to addressing poverty and structural inequalities.

6.7.3 Place of Women in Transitional Justice in northern Uganda

Having argued that transitional justice processes have ignored important matters related to the human conditions of the Acholi population, it is important to interrogate the extent to which mainstream transitional justice mechanisms have responded to the gender question. Feminist analysts have raised questions regarding the place of women in peace and transitional justice processes (Bell and O'Rourke, 2007). This concern is not without justification. Scholarship on transitional justice shows that the underlying issues of discrimination, domination and improved physical, social and legal security, which pertain particularly to women, are often not given priority (Chinkin and Paradine, 2001: 127). Bell observes that, truth commission mandates, judicial options and policy proposals in transition have been pursued, interpreted and implemented with little regard for the distinct and complex injuries women experience in conflicts (Bell, 2007; Chinkin 2003). Martin argues that the processes that produce contemporary transitional justice mechanisms tend to be negotiated by state and non-state protagonists in the conflict and by international mediators who are dominantly male with the conspicuous absence of the voices of women (Martin, 2006: xi). Gender insensitivity in transitional justice initiatives, observes Hudson (2006: 9), has worked against sustainable peace since the approach fails to consider the specific effects of the conflict on women and men. This trend constitutes a barrier to women's attempts to overcome the systematic social exclusion of this section of the world's most marginalised people (Farr, 2004). Like other crises, violent conflict disrupts many social norms and structures, which in turn affects the roles and responsibilities of men and women in society (World Bank, 2006: 1). When male combatants are killed, women are left to shoulder the full burden of providing food, education and shelter for children. But women are more openly exposed to physical assaults during conflicts.

The gender indifference in transitional justice processes highlighted above was evident in northern Uganda. Although the focus on the grassroots as a viable means to transitional justice was stressed, my field research revealed that the shift to the

grassroots did not include women in peace processes. My research reveals that the transitional justice initiatives in northern Uganda, such as the ICC, the Acholi system of justice and even the Juba Peace initiative, did not pay attention to the condition of women. Referring to the Juba Peace Talks, respondents argued that their views about the talks had not been sought and that decisions reached in the peace accord ignored the suffering borne by women in the course of the conflict (Aber, Interview 23 June 2008). According to Aciro Janet, the impact of neglecting the voices of women and their lack of representation demonstrate that women's concerns would not be handled appropriately and that women may still be dissatisfied. As a result they might lose interest in implementing the agreements reached under the Talks (Aciro 10 June 2009). A narrower focus on the gender dimension of the conflict in northern Uganda revealed the vulnerable conditions of the Acholi women in particular. All Ugandans in one way or another were affected by the protracted war, but women and children in particular suffered brutal sexual and other forms of violence. Women and girls were the targets of violent acts such as abduction recalls Aciro Janet who was abducted at the age of 12, raped in 2004 and returned home after three years with a child resulting from the rape (Aciro, Interview Kitgum 10 June 2009).

Several narratives about women's experiences revealed the severe conditions borne by women as a result of the conflict in northern Uganda. Valeria Okello (Interview 8 April 2008), a resident of the Pabo IDP camp and a social worker, also narrated the problems encountered by women in the camps. According to her women, from girl children to the old women, bear the burden of war. In the first instance, the rebels and Government soldiers targeted men and killed them leading to the widowhood of many women. This, according to her narrative, left the woman with the burden of taking care of the family. During the raids men would run to hide in *lum*, (*lum* is Acholi name for bush or grass). Since the women could not leave their children behind they remained at home. When the rebels came they would beat the women to try and establish where the boys and men were hiding. According to Valeria Akello, the war also led to irresponsibility on the side of men. They did not work to bring food home, which remained the responsibility of the women. Men often became defensive as a result of their irresponsibility, resulting in family conflicts, quarrels and wife beating (Akello, Interview 8 April 2008). According to Christine Labogo (Interview 23 March 2008), women bear the burden of school fees, food and clothing since most men

abandon their wives and children. Many children had to be taken care of by their grandmothers. Similar sentiments were expressed by Betty Akello whose husband was crippled by the rebel's attacks and who was left with the burden of having to look for food and school fees, without the advantage of having any property (Akello, Interview 25 March 2008). As mentioned earlier the prevailing structures in northern Uganda exposed women to forms of suffering such as HIV/AIDS and the economic burden of having to shoulder family responsibilities.

The relation between structural realities in northern Uganda and the condition of women in that conflict-ridden zone could be explained with reference to Paul Farmer's conception of structural violence and suffering. In his work, *Pathologies of Power: Health, Human Rights, and the New War on the Poor*, Paul Farmer (2005: 30) draws the link between structural violence on the one hand and suffering and illness arising from exclusion on the other. Individual victims who suffer from the structural violence in which people are subjected to political and economic injustice, in effect suffer from the pathology of the powerless (Farmer, 2005: 30). Farmer argues that social phenomena such as racism and gender inequality can give rise to epidemic diseases such as HIV and tuberculosis leading to death. Social forces also work to constitute structured risks in the form of anything from hunger to torture and rape (Farmer, 2005: 30). Farmer's observations are to a large degree reflected in the condition of women in northern Uganda. Poverty, as a result of displacement and socio-economic marginalisation, forced many women to engage in humiliating behaviour such as exchanging sex for money or food. This exposed them to fatal diseases and often led to their subsequent death with the result that their children were orphaned (Akello, Interview 25 March 2008, Alilo, Interview 20 June 2008).

The structural conditions of women should not be viewed merely as background factors but should rather constitute the direct objects of transitional justice given that transitional justice should be aimed at achieving positive results for the majority of those bearing the brunt of violent conflicts. If stakeholders are to overcome traditional lacunae in debates on the security sector and its potential for reform, women have to be recognised so that their views constitute mainstream voices in transitional processes and debates (Farr, 2004: 2). Without dealing with these structural aspects of human suffering, argues Farmer, any process remains a case of managing social

inequality rather than addressing structural violence (Farmer, 2005: 30). In the case of northern Ugandan transitional justice processes, women should have been allowed to break the silence imposed on them, and perpetuated, by social structures so that their contribution to transitional justice debates and processes could be heard.

6.7.4 Reconceptualising Transitional Justice

Based on the above considerations, I am proposing that it is necessary to reconsider the manner in which transitional justice is conceptualised in contemporary transitional discourse and practice. Transitional justice practice and scholarship should seek to constitute transitional justice in terms of its moral, political and legal components. My research on the northern Uganda transitional situation reveals that such situations raise not only legal but also political and moral dilemmas. Such processes cannot be limited simply to exercising criminal justice or balancing politically contending interests, but must include reforming deep-rooted socio-economic, cultural, environmental, institutional and other structural causes that underlie the overt political symptoms of violent conflicts (Annan 2001; Barsalou, 2005).

This means that a reductionist approach to transitional justice may not be sufficient and effective enough. Since theory usually defines practice, narrow conceptualisation will limit the practical initiatives that may be constructed within a given conceptual framework. Transitional justice as a response to global insecurity cannot continue to be limited in its approach. Transitional justice needs, therefore, to shift towards a more holistic approach of transformative restoration such as protecting peace, security and the human rights of individuals. This would require understanding human rights in the broadest sense. Generally, in post-conflict society where serious crimes have been committed, most aspects of a social system, such the legal, the political, the economic, the moral and the social, have broken down as is evident in the situation of northern Uganda. Economic reconstruction is transformative on an economic plane and political reconstruction is transformative on the political plane. Judicial accountability is transformative on the legal plane. The same logic applies to psycho-social reconstruction. The ultimate starting point of transitional justice is that social order has broken down and that any transitional justice instrument would seek to transform this broken order into structures conducive to sustainable peace. Transitional justice should be therefore guided by certain ultimate goals of human

well-being. The important element in the twenty-year conflict in northern Uganda is to provide resources for development and more pertinently for socio-economic and political transformation.

6.8 Conclusion

This chapter has presented a critique of the appropriateness of the ICC intervention and alternative peace and justice systems applied to bring about sustainable peace in northern Uganda. My analysis reveals that as long as justice in transitional situations is reduced to prosecution and amnesty processes, peace and justice will remain in opposition to each other. The dichotomy between the two has its roots in a narrow conceptualisation of peace and justice in which the former is equated simply to the absence of direct or physical violence and the latter is equated with prosecution. None of these mechanisms is independently sufficient to produce a sustainable end to the conflict in northern Uganda. The chapter has proposed that transitional justice ought to recognise the potential for an array of mechanisms in which accountability mechanisms and peace negotiations are only constituent parts of an integrated system. In this framework, the ICC is but one mechanism among other possibilities. Since the problem in northern Uganda is quite complex with a myriad of causal factors, the proposed Acholi judicial system which stresses ritualistic forgiveness, reconciliation and reintegration is not sufficient since it is concerned with reconciliation between the predominantly Acholi LRA and the Acholi Population. It leaves out the injustices meted out to the Acholi by the Government. Transitional justice as a response to global insecurity, therefore, cannot be limited to such an approach. I, therefore, posit that the interests of transitional justice needs to shift towards a more holistic restorative approach in protecting peace, security and the human rights of individuals. A post-conflict society is one in which the social fabric has been ripped apart, and rebuilding trust and ensuring the potential for development are critical aspects of the what might be called transitional 'reconstruction'.

Chapter Seven Conclusion

7.1 Introduction

This study has examined competing instruments of peace and justice adopted in response to human rights violations committed by the LRA against the civilian population in northern Uganda. The study has been motivated in particular by the conundrum between the value of justice pursued by the ICC and the need for peace pursued through local initiatives in response to the protracted conflict in northern Uganda. The research has raised a significant question regarding the nexus between competing mechanisms and sustainable peace and stability. The preceding chapters have focused on issues and debates on the question. This conclusion draws together outstanding issues that have emerged in the debates and draws conclusions that are relevant to the discourse and practice of transitional justice in general and that of Uganda in particular.

7.2 Recapitulation

The LRA has committed serious atrocities against civilian population in northern Uganda since 1987. The crimes allegedly committed include mass murder, torture, rape, abductions, child soldiering and sex slavery. These actions constitute crimes against humanity punishable in accordance with international human rights standards. It is on the basis of the nature of the LRA atrocities that the ICC intervened when the Government of Uganda referred the situation to the International Court in 2003. But this judicial intervention, as I have already shown in this work, did not enjoy full support among Ugandans. The involvement of the ICC ignited debates about demands for peace and the goals of justice and brought to the fore the tension between local instruments for reconciliation and peace, on the one hand, and the objectives of international community to bring an end to impunity, on the other hand. To recapitulate, this research has identified certain key contentious issues in the shaping of the debates. First, given that the conflict was still ongoing, the ICC intervention was interpreted by a section of Ugandans as having the potential to exacerbate the conflict. Second, the perpetrators who had committed serious atrocities shared community or even family membership with their victims, and the prosecution of these perpetrators would endanger the victims. Third, some of the atrocities were perpetrated by persons associated with the very government which had referred the

case to the ICC. Yet the Court would have to rely, for its arrests and investigations, on that same Government, raising questions about the Court's impartiality. Fourth, if, in the form of a local response, amnesty were to be given to the violators of human rights, such a process would constitute a setback in the international fight against impunity. Fifth, a section of Ugandans argued that the nature of the conflict required local approaches. With these issues constituting its object, the study has focused its attention on transitional justice as a vortex in northern Uganda and examined the differing potentials of the competing goals of peace and justice.

The study was developed in seven successive chapters. Chapter one set out the design of the study by outlining the objectives, research questions, rationale, hypotheses, theoretical framework and research methodology of the study. A synoptic exposition has been given of various efforts towards the codifications of norms prescribing humanitarian accountability and the application of these norms in situations where these norms may have been violated. The Nuremberg trials, the International Criminal Tribunal for Yugoslavia and that of Rwanda were surveyed. This exposition was useful in providing a backdrop for understanding the innovation represented by the ICC vis-à-vis previous attempts as a transitional justice instrument.

In chapter two I surveyed theoretical elements and assumptions underpinning the various transitional justice mechanisms under consideration. I looked at the notions of rule of law, criminal justice and restorative justice and their applicability as strategies in transitional situations. Basic tenets of international criminal justice and restorative justice as distinct mechanisms for transitional justice have been exposed. This chapter set out the theoretical framework for evaluating the capacities of the ICC and the Acholi cleansing ceremonies as instruments for bringing about sustainable peace in northern Uganda. This allowed me to examine, on the one hand, the nexus between prosecutorial justice and sustainable peace and the nexus between forgiveness and justice, on the other hand.

Chapter three exposed the background factors related to the causality and intractable nature of the conflict in northern Uganda. One of the most important factors is the polarisation between northern and southern Uganda, a phenomenon which can be traced back to the divide-and-rule system of the British colonial administration and

perpetuated by successive post-colonial political leaderships. This arrangement created structures characterised by the socio-economic and political exclusion of the northerners and worked against national integration and stability. The second important causal factor identified in relation to the protracted conflict was the militarisation of politics and the politicisation of the military which proved instrumental in the acquisition and consolidation of political power in post-colonial Uganda (Karugire, 1988; Behrend 1999). Given these realities, I have argued that, notwithstanding the LRA's predatory nature, their insurgence and the persistence of their atrocities can be understood as the result of deeply rooted political engineering in which the use of violence became a key instrument in the acquisition and maintenance of political power. These historical realities have been useful when analysing the potential of the proposed transitional justice instruments under this study. I have also argued that the vulnerability of the northern population to the attacks from both the LRA and the UPDF and the persistence of these attacks were connected to the disempowering exclusion of the northern population.

In the fourth chapter, I undertook a deeper account of the extent and nature of the atrocities committed by the LRA in northern Uganda, the ICC's response and the local reactions elicited by the international Court's response. The chapter reveals the complex nature of the conflict, which in turn complicated the transitional justice processes. International prosecutorial standards, according to which the ICC operates, seem to stand in contrast to the traditional Acholi models of punishment. This is associated with the prevailing situation of northern Uganda, a situation characterised by radical disruption and an ever-changing social order. Given that the ICC operates on the basis of individual responsibility and that it was difficult to draw a clear distinction between victims and perpetrators in northern Uganda, the situation and impact of the Court was complex. LRA fighters who committed atrocities were themselves victims of abduction and so victims turned into perpetrators. There was also the problem of Government complicity in the conflict since Government soldiers were also accused of human rights abuse against the Acholi population. Finally, the protracted nature of the conflict and the suffering to which the people were subjected led to a compelling and urgent need for settlement. This caused a section of the local population to portray the ICC intervention as counterproductive. There was, however, no indication that the Court was universally rejected. Indeed, the research reveals that

the general response to the ICC interventions was ambiguous. This made it possible to demystify any outright rejection of the ICC or its uncritical acceptance.

Chapter five shifted its focus to the alternative responses to the ICC prosecutorial approach. This chapter paid particular attention to *mato oput*, the traditional Acholi system of justice. The chapter reveals that, given the longevity of the war and its extra-ordinary nature, the people had recourse to traditional reconciliatory approaches to promote social healing among victims of grave abuses. This is what prompted civil society to advocate truth and reconciliation, intended to foster mutual understanding and provide assistance to victims and their communities. But due to the complex nature of the conflict in northern Uganda, the local peace initiatives were neither comprehensive enough nor appropriate and adequate. It is clear from the research carried out that the victims were not unanimous with regard to the mechanism they would wish to be applied. Some victims and survivors displayed interest in having the LRA punished whereas others appeared to be interested in forgiveness and reconciliation with the LRA. Views elicited in the field research reflect varying aspirations and needs depending on the how the war had personally affected the people. For instance, a victim focusing on the dimension of the war that pitted the Acholi community against the central Government would call for accountability or compensation from the Government.

Chapter six turned its attention to a critical appraisal of the potential of the contending transitional justice instruments considered in the study. The chapter also highlighted the dimensions of transitional justice ignored in the mainstream peace-versus-justice discourse and practice in northern Uganda. The analysis revealed that, although the mechanisms of transitional justice could play a role towards peace and stability in northern Uganda, they were not adequate. The ICC, because of its limited focus on the legal dimension of the conflict was not well equipped to deal with the politicised and complex nature of the conflict, and the Acholi system of justice, *mato oput* was not comprehensive enough to deal with the complex nature of the conflict.

7.3 Emerging Issues

7.3.1 Role of International Criminal Justice in Sustainable Peace-building

From this study, it emerged that international criminal justice can attempt to bring about peace by dispensing justice and re-establishing the rule of law. The involvement of the International Court in northern Uganda was based on the assumption that, when effectively applied, judicial accountability could lead to reconciliation and the restoration and maintenance of peace in the conflict-ridden region. Indictment of the LRA leadership by the ICC was envisaged not only to bring justice to the victims but also to accomplish a preventive goal and contribute to sustainable peace. As mentioned earlier, the ICC is a judicial instrument designed to 'put an end to impunity' and to contribute to the prevention of 'grave crimes [that] threaten the peace, security and well-being of the world' (Preamble to the Rome Statute, 1998). Thus prosecuting the LRA would not only have the impact of stamping out the culture of impunity with regard to the protracted conflict, but with regard to the whole country. A focus on individual accountability can play an important role in this regard. In violent conflicts characterised by mass atrocities, those who actually commit such atrocities are not abstract entities, but real individuals who are personally responsible for their conduct.

Focusing on individuals could have the effect of discouraging impunity in Uganda, which, following independence, had witnessed constant conflict without a sense of accountability. The resulting impunity in turn encouraged the commission of further human rights violations. The culture of impunity generated revenge and counter-revenge as victims of atrocities saw no reason not to have recourse to violence. This situation frustrated the reconstruction of a conflict-ridden society and bred a vicious cycle of violence. International justice would in principle break this cycle. The preventive potential of criminal prosecution operated both directly and indirectly as the threat of prosecution drove the LRA and Government forces to the Juba negotiation table. Northern Uganda is a society plagued by a legacy of human rights violations, resulting in lack of trust of both Government and rebels. International criminal justice would have restored confidence and trust in the people if the prosecutor had focused attention on both the LRA and the UPDF. Through the punishment of perpetrators, criminal justice acknowledges the dignity and suffering of victims and helps to restore dignity. Thus, at some level, the ICC would have the

impact of transforming northern Uganda from conflict to stability. Nonetheless certain limitations with regard to the ICC's goals were identified.

7.3.2 The problem of politicised prosecution in northern Uganda

The real problem with the ICC intervention in northern Uganda was that the referrals, investigations and indictment appeared to have been politicised, thereby undermining the impartiality of the process. As the research has demonstrated, an apparently partial prosecutorial strategy was likely to undermine the goal of post-conflict recovery. One of the reasons the ICC encountered difficulties in its investigations in northern Uganda was a result of the politically motivated and morally complicated nature of the conflict. In this respect the ICC's reliance on the support of the state within which it was conducting investigations could not escape being interpreted along political lines. Thus public expectations for equal justice were thwarted by the apparent privileging of Government forces: whereas the highest level of the LRA was targeted for prosecution, the other party to the conflict, Government forces, were spared. This led to the perception that the process was arbitrary or discriminatory and generated further distrust in the judicial process.

The Court's failure to clarify the grounds on which it targeted individual members of the LRA while ignoring members of the Government forces, who had apparently committed crimes of equal weight, did not help matters. In the face of conflicts in which atrocities had been committed by a number of warring parties, targeting certain factions while ignoring others is likely to shape opinions about the intervention. Given that the ICC deals with highly political cases, it needs to build its legitimacy in respect of international justice issues and to be seen to be a neutral and independent body. This can be achieved by ensuring that cases are selected on the basis of objectivity and impartiality. In the Ugandan case, the ICC therefore needed to have investigated all the actors in the conflict, including Government forces and other actors associated with the Government. Moreover, as presently constituted, the ICC does not have the capacity within its institutional framework to deal with economic injustices, a limitation that undermines its efficacy in transitional situations characterised by structural injustices.

7.3.3 Viability of Alternative Systems of Justice

It emerged that the call for restorative justice was motivated by the protracted nature of the conflict and the suffering that the people had endured, which led to a compelling and urgent need for peace. The conflict was still ongoing, Government efforts had come to naught, and people had suffered immeasurably. It was the dehumanising and bitter experiences that resulted from the conflict that motivated political leaders, religious and traditional leaders to re-examine how they could bring about peace in the region. For this reason, the leaders proposed alternative local systems of peace and justice, particularly *mato oput*, which they envisaged could play some role in conflict transformation in northern Uganda.

It has emerged from the study that, from a psychological standpoint, the Acholi cleansing ceremony, *mato oput*, could provide procedures for healing post-traumatic stress. The principle of *mato oput* emphasises the fostering of reconciliation after someone has committed murder and thus fosters the rebuilding of friendly relations. The process of *mato oput* transcends the simple appeasement of the dead spirit and includes the promotion of peaceful co-existence among the community members torn asunder by the conflict. Thus *mato oput*, in its original setting, could contribute to psycho-social healing and to the reduction of tension and the propensity for revenge.

Although *mato oput* might have been an instrument for conflict resolution and the restoration of social harmony, its substantial relevance in the context of the northern Uganda conflict remains highly questionable, as is clear from this research. The ritual had not been practised for some time and massive displacement meant that it was not possible to meet the various requirements for the practice *mato oput*. It was also clear that the cultural identity of the Acholi people had been subtly shaped by a myriad of factors such as western education, modernity and Christianity. These affected peoples' attitudes, beliefs and practices, which in turn affected the way people viewed conflict resolution, reconciliation, and peace-building. Colonialism upset African social systems and practices, and the Acholi practices were not spared. They had to be adapted to current circumstances. Given the encounter with western systems of justice, Ugandans had already been influenced by the western prosecutorial system, which is why some people agreed with the prosecution of the LRA under the Rome Statute.

The Juba Peace Talks were successful to some degree, or at least in the short term, in that they managed to introduce an element of calm, even though the peace deal was not conclusive. The talks, however, sidelined one key component, namely, the real parties to the conflict. It included the LRA and the Government, sidelining the Acholi population. By doing this, it not only sidelined the victims but also failed to consider the root causes of the conflict. As Odwar explains, as mentioned earlier, the problem in northern Uganda is not that there is a war; the problem is that there are historical factors sustaining the war (Odwar, Interview 16 March 2008). These historical factors overwhelmingly influenced the social conditions of the Acholi population and it is important, in this regard, to highlight the impoverished conditions of the grassroots Acholi population.

7.3.4 Transitional Justice and Socio-economic Transformation

Achieving social and economic justice in post-conflict societies requires an examination of the structural inequalities that existed prior to and during the conflict. Transitional justice so far has not grappled with the central issues of structural inequalities and discrimination as the root causes of conflict. Regardless of the fact that serious violations of socio-economic rights have a fundamental impact on rights to life and liberty, such rights have not been given the attention that they deserve in transitional justice discourse and practice.

I have therefore asserted in this work that the transitional justice debate should move beyond the peace-versus-justice dichotomy to interrogate how transitional justice instruments can alleviate the material disadvantages, exclusion and vulnerability of individuals. An effective transitional justice strategy is important in ensuring the political, social and economic conditions that are necessary to achieve poverty reduction. There should be deliberate efforts to deal with the broader spectrum of human rights violations committed in the past by all parties to the conflict so as to realise a sustainable peaceful settlement. In this case the predicaments of ordinary people in the larger conflict zone should constitute the object of transitional justice.

Transitional justice processes in northern Uganda, therefore, should be constituted by the robust structural transformation of the economy through the pursuit of deliberate developmental efforts to bring the north into the social and economic mainstream.

Unless robust transformation is undertaken, a large section of the population in northern Uganda will not be able to participate in economic activities due to the injuries and losses suffered by them as a result of the war and perennial marginalisation. They would consequently remain marginalised, vulnerable and traumatised.

This means that the transitional justice process should incorporate the perspective of poverty reduction. Attention should be given to identifying determining strategies for transitional justice which respond to the economic consequences of sustaining structural injustices. Greater emphasis should be given to forms of justice that bring individuals back into the economic mainstream. An approach to transitional justice that includes the goal of poverty reduction calls for particular attention to be paid to the perspectives of victims. It requires examination of the linkages between poverty and human rights violations and structural inequalities as root causes of the conflict. Greater emphasis should be placed on the vulnerable groups that constitute the bulk of the world's poor, including women, children, the elderly and the displaced.

Although issues of economic transformation lie outside its purview, international criminal justice should go beyond its current scope and institute sanctions against perpetrators for their deliberate discrimination in the allocation of resources or for the deliberate failure to provide essential services to individuals or communities. Provision for criminal charges of this kind may be made within the framework of international criminal law by categorising the deliberate deprivation of food or healthcare during times of conflict as conscious and deliberate acts directed at individuals or groups with the intention of causing suffering or serious injury to body or to mental or physical health. These can be conceptualised as acts that may constitute crimes against humanity when committed as part of a widespread, systematic attack against a civilian population.

In the final analysis, a bipolarised approach will not provide an answer to the conundrum of peace versus justice. In this respect, I have proposed a reformulation of the notion of transitional justice. I submit that, given the complex nature of the conflict in northern Uganda, there is a need for a multidimensional strategy that would promote justice, peace-building, socio-economic development and poverty reduction

in the north. As revealed in my field research, issues such as health, education, food security and land are crucial to sustainable peace. That means that building sustainable peace necessitated the elimination of the LRA's threat to security as well as dealing with the structural inequalities that foster incessant conflicts. A narrow focus on the reintegration of the LRA would serve to obscure the multitude of challenges facing northern Ugandans, including long-standing economic and political marginalisation, abuses committed by the military, gender-based violence, banditry and cattle-raiding. There was a need for long-term development initiatives, inclusion in political participation, resettlement, a land-tenure programme, and consideration of the underlying social and political issues contributing to instability. Moreover, simply returning the IDPs to their homelands and the villages would not be enough without social facilities such as hospitals, schools, clean water and infrastructures. In the section that follows, I give an elaboration of these suggestions in form recommendations.

7.4 Recommendations

In relation to the foregoing, I make the following recommendations as strategies for sustainable peace in northern Uganda in particular and the whole of Uganda in general.

First, there should be serious initiatives geared to levelling up development gap that has existed since colonialism between the northern and southern Uganda in order to foster national unity. Redressing the gap of development requires undertaking robust economic reconstruction in northern Uganda to bring the region to a level of development more or less similar to the southern region. Economic reconstruction should involve, among other strategies, initiating infrastructural development in northern Uganda so as to open up the region for commercial and industrial activities and lay ground for both local and foreign investments in the region. The international community should support the Ugandan government in mobilising funds and other developmental resources for economic reconstruction of the north. A comprehensive development package if well directed towards the reconstruction of the north can itself be an incentive for stability. Since a key grievance of the northern region is the underdevelopment of the region, developmental initiatives will be an encouragement to work hard to consolidate peace efforts in the region.

Secondly, resettlement must be meaningfully undertaken in northern Uganda. In this regard, the government should dismantle the IDP camps in northern Uganda and facilitate resettling the internally displaced persons to their homelands. As part of the broader strategy for stability in northern Uganda, resettlement programme needs to deal with the question of land. Land question is quite emotive in northern Uganda as it is elsewhere in Africa and thus it is tied to the people's peace and stability. Since the prolonged displacement and camp life have interfered with land tenure in Acholiland, there should be a conscious and deliberate programme to deal with land question. The government should institute a commission of persons with high integrity to deal with the land question in northern Uganda so that those families who may find difficulties in accessing their original homelands due to disputes find resolutions. This is crucial. As mentioned earlier in this research, most families have lived in the camps for over twenty years which implies that there are those who went to IDP camps while young or born in the camps. There are those whose parents or husbands may have died while in camps. Child-headed households and widows are prone to exploitation when dealing with issues of land. Such predicaments will make it difficult for people to determine their rightful land. Original land ownership as a necessity needs to be reinstated. Thus, fair and independent adjudication of claims to land will be necessary for economic recovery and stability. An equitable adjudication of land disputes will be key to the success of any future peace as well. To do this, a commission comprising eminent clan elders, religious leaders, community representatives, government officials of high integrity would be significant in mitigating the problem which, if not solved, would lead to a new form of instability.

An integral part of resettlement is DDR programmes. As indicated earlier, DDR programmes have focused on providing psychosocial healing and re-uniting families devastated by social dislocation. These programmes, however, have not adequately dealt with economic and educational dimensions of the conflict. DDR programmes need to go beyond reception of children and youth escaping from abduction to include schooling, employment and enterprise development in a robust, comprehensive and sustainable manner. Education was seriously affected either through abduction and displacement, which is why there is a need for special attention to be paid to initiating a robust programme to improve education in the region to enhance literacy and skills

development. These educational goals are essentially tied to economic development. Initiatives for economic development should incorporate cash-crops, subsistence farming, and livestock keeping. These are economic activities which the people were familiar with before the dislocation. Moreover, targeting programmes to all war affected youth should be grounded on well-identified need rather than focusing on ex-combatants. This means that all war-affected youth should be targeted for appropriate empowerment. Unless the entire IDP camp generation is targeted for education and development they can possibly become another rebel force or security threat and can possibly frustrate prospects for peace in the region and destabilise the whole country.

Third, since the conflict in northern Uganda is indeed a significant threat to regional and international security, the international community should ensure that peace and stability prevails in northern Uganda, the DRC and Sudan. International observers should monitor peace agreements being initiated by the parties to the various conflict situations in the Great Lakes region. There is need to ensure stability in southern Sudan so that the peoples of Uganda and Sudan can live in peace, enjoy their fundamental rights and developments. The international community should also monitor the strategies applied by the Ugandan Government against the LRA so as to guard against the possibility that counterinsurgency enshrines human rights abuse against the civilians as revealed in this research.

Fourth, alongside other initiatives the pursuit of criminal justice for those responsible for serious human rights violations must be upheld. Thus the ICC's intervention to end impunity must not be excluded in favour of alternative options. Realising sustainable peace in northern Uganda also requires international criminal justice. In this respect, there is a need to pursue holistic justice which ensures that the interest of all aggrieved persons, families and communities is fully taken into consideration in any legal system that seeks to address the atrocities suffered by the people of northern Uganda. There is practical, legal and moral justification for dealing with the LRA and government members through criminal accountability. Those persons who bare the highest responsibility for hundreds of thousands of deaths need to be punished to uphold basic values of justice and to deter commission of further crimes. Actions by persons associated with the government must also be subjected to international criminal justice and the ICC should not ignore such persons.

An international order seeking to protect human rights against abuses of state power can only be achieved by making state sovereignty responsible and accountable towards its citizens. States authorities must have the obligation of protecting the safety and lives of citizens and promotion of their welfare. National political authorities are responsible to their own citizens and to the international community. That means the agents of state are responsible for their actions and are accountable for their acts of omission or commission. In this respect and based on the revelations in this research, ending impunity in Uganda as a serious goal of the international community, requires that the ICC must consider investigating and prosecuting crimes committed by the persons associated with the government and the UPDF alongside the LRA. For the pursuit of peace and justice in northern Uganda to be holistically accomplished, both parties to the conflict would have to be made to account for their actions. Pablo De Greiff (2006) asserts that pursuit of justice for massive abuses of human rights goes beyond redressing particular harm to individuals to serve the purpose of collective healing of the affected society.

Finally, there is a need for national reconciliation. As already highlighted in this research, historical legacies and social engineering have engendered ethnic and regional cleavages within the country. Northern Uganda, as this research revealed, harbours an acute distrust towards President Museveni's regime. The regime also views the northerners with distrust and disdain. The northern region has been marginalised as a result of the conflict and historical legacies. For these reasons and as part of the broader strategies for peace and stability, there should be a comprehensive national healing and reconciliation process which should aim at fostering national unity and lasting peace.

A broad-based truth and reconciliation process would be a valuable supplement to the ICC investigation. A truth and reconciliation commission could focus on the atrocities committed in the Luwero Triangle, those committed by both the NRA and the LRA in northern Uganda. That means such a truth and reconciliation commission would have to investigate persons who may have been responsible for the massacres at the Luwero Triangle when Obote launched counter-insurgency in the mid-1980s. The commission would also examine crimes committed by the NRA during the pursuit of fleeing Obote's army into the Acholi sub-region in 1986. As this research reveals the

NRA operation in northern Uganda following the fall of Obote's regime is locally perceived as revenge mission which turned into gross human rights violation against northern Uganda civilians. According to local accounts that have been highlighted in this research, the gross human rights abuses by the Museveni forces against northern Uganda civilians are traceable to this period. Thus truth and reconciliation process would give people in northern Uganda a forum in which they could raise human rights abuses that occurred in the conflict that had already taken two decades. This would constitute a logical part of addressing the Acholi grievances.

National reconciliation should also involve the inclusion of the Acholi in political mainstream of the country. As highlighted in this research, many Acholi people feel they have been marginalized by the current government and have the perception that Museveni has no interest in bringing an end to the war since the suffering of the Acholi fits in his political calculation. In this respect full representation and involvement of the Acholi in their diversity at local and national levels will be vital to ensuring a future peace and stability.

As a corollary, for possible success of these proposals, there must be a political goodwill on the side of the Ugandan government and President Museveni in particular. The president should stop victimising and demonising the Acholi people and instead understand and appreciate that equal political and economic inclusion of Acholi in the political and economic mainstream is a significant variable in ending the conflict. As a gesture of political goodwill and reparative measure, President Museveni must admit and apologise to the north for the atrocities committed by his soldiers and for stigmatising the entire Acholi population since, as revealed in this research, the Acholi population as such were in no way connected to the atrocities which may have been committed by a section of Acholi soldiers who dominated Obote's army. A public apology serves as a collective reparation measure because it constitutes recognition of the dignity of victims and reaffirmation of the validity of general norms that were transgressed (de Greiff, 2007). In this respect, public apology re-affirms the significance of rights of victims and strengthens their status not just as victims but holders of rights (de Greiff, 2007). It has been insinuated in this research that the Acholi suffering seems justified in the eyes of Museveni as a punishment for the atrocities the Acholi soldiers committed during the previous regime. An act of

political goodwill shall go so far to avoid additional death, destruction, and turmoil not only in Acholiland, but also the entire Uganda and the region.

7.5 Conclusion

The moral imperative of stamping out impunity, discouraging future human rights violations and pursuing forgiveness and reconciliation is compelling. The problem arises when either the ICC intervention or the local justice systems are presented as being sufficient unto themselves in dealing with the complex nature of the conflict in northern Uganda. In as much as there are very convincing arguments on each side of the peace-justice divide, none of these present strong enough arguments to exclude the other. Without broad-based forms of justice, such as the redistribution of resources and the reversal of discrimination patterns, transitional justice initiatives may not lead to sustainable peace. Structural violence requires structural transformation. A reflection on the Acholi peace and justice system within broader parameters leads to the realisation that peace deals that sacrifice justice in order to achieve their objectives exclude many pertinent issues that could undermine the sustainability of the very peace that is sought by them. In the context of broader justice issues, traditional rituals are unworkable and cannot respond to all the dimensions of human rights abuse in Uganda. From the present analysis of transitional justice initiatives, discussed against the background of the long and complex dimensions of the northern Uganda conflict, we can conclude that a robust and transitional justice programme in Uganda has yet to be achieved. The transitional justice instruments that have been considered here should be taken as constitutive elements of transitional justice in its broadest sense and their goals should be considered as mutually reinforcing.

Appendix

Field Research Summaries

1. Date: 10 January 2008; Place: Gulu; Participant: Callisto Otim a retired secondary school teacher, 68 years old; Objective: To understand the notion of peace and reconciliation in traditional Acholi community.

Callisto Otim informed me that the Acholi people believed in spiritual world to foster peaceful co-existence between the living and the living dead and among the living. The people believed that bad spirit of a deceased person would live inside the child of a killer if no cleansing was done and compensation made to appease the deceased. Values such as reconciliation and acceptance of responsibility; repentance, forgiveness and compensation for the restoration of the social fabric were fundamental for social fabric of the Acholi community.

Callisto further pointed out that the crime of murder breaks the social fabric of the Acholi community. As such in the event that a member of a family committed the crime of murder, the person's whole clan bore the guilt as a community. Any member from the offender's clan or community had to cut off any social intercourse with the victim's clan or community. Thus fellowship and communion is not possible until the process of reconciliation is satisfactorily completed. The quest for peace and reconciliation compelled the offender's community to accept collective responsibility which was followed by collective repentance and remorse for the murder committed, compensation and forgiveness. The measure of compensation was ten cows for accidental murder and a girl child for intentional murder. Forgiveness was an essential element of reconciliation. The assurance of forgiveness was a great relief and gave high hope for peace to the offender's clan and community.

2. Date: 10 January 2008; Place: Gulu; Participant: Okot Okumu, an ex-soldier during Obote's reign, early 60s; Objective: To understand the notion of peace and reconciliation in traditional Acholi community

According to Okot Okumu, conflict resolution was an integral part of general patterns of healing in the Acholi community. There were healings from diseases and fears associated with killing of a human being. There was high level of communal involvement in the predicaments of an individual since anything that happens to an individual was a problem that concerns the whole community. The supernatural in this society was revered. This is because traditional ways of dealing with challenges

extended beyond the world of the living to require consultation and reconciliation with the spiritual world.

Among the Acholi, taking away of one's life automatically placed a stigma on the killer, even if one killed during war or in self-defence. A person who killed had to inform the community about the incident to enable the community to arrange for proper cleansing rituals to ward off spirit-related consequences that might result out of the killing. This is because the killer immediately became ritually unclean and was cut off from all ties of social interaction with the immediate family unit, the whole clan and tribal community. The killer could not even go through the entrance of the fenced village. This called for a ritual cleaning ceremony in order to be allowed to be reintegrated into the community and to keep off the vengeful spirit of the dead person (*cen*) that would haunt the killer and his entire family.

3. Date: 11 January 2008; Place: Gulu; Participant: Samuel Odong, a cultural leader, 72 years old; Objective: To understand Acholi's conception of killing and cleansing rituals

According to Samuel Odong, cleansing ceremonies were meant to reconcile two families or clans that were separated by killings, and to appease the spirit of the dead in order to prevent them from being haunted by the dead person's spirit, known as *cen*. This was informed by the fact that when one killed a member of another clan, the killing automatically severs the relationship between the clans. Thus they cannot participate in any activities like hunting, marrying, trading, or worship or even shaking hands. The killer would also not share meals or any other activities with the members of his own family or clan because he was considered ritually impure otherwise, the spirit of the dead person, *cen*, would befall the entire community by sending calamities. This made cleansing rituals very crucial to restore the broken relationship between the two clans or families and to cleanse the community of the killer.

Mato oput was one of the cleansing rituals in the Acholi community. Literally it means drinking bitter herbs. The ritual was carried out after a long process of mediation between the two parties involved and only when the offender is willing to take responsibility. Samuel Odong said that *mato oput* traditionally was not used to

cleanse a killing that occurred in war, but between clans whose relationship had been broken on account of killing.

4. Date: 11 January 2008; Place: Gulu; Participant: Quirine Ongom, a Catholic Priest, 45 years old; Objective: Understanding the relevance of Mato Oput in solving the conflict in northern Uganda

According to Fr. Quirine Ongom, one of the challenges as far as *mato oput* was concerned was that it was a practice of the past. Fr. Ongom said that it had not been in practice for a long time due to poverty and dislocation. He added that we must be careful when talking about the Acholi since the society had undergone change due to effects of war. That means so much had changed in terms of education, morality, religion and even culture. Because of these changes, *mato oput* had become outdated.

Fr. Ongom said that *Mato oput* could not solve conflict in northern Uganda. *Mato oput* was meant to resolve low intensity conflicts in order to prevent inter-clan revenge. Moreover, the cultural identity of the Acholi people today has become very dynamic and is being reshaped by factors such as Christianity and modernity. Younger people who grew up during the time of war did not experience or participate in traditional practices. Some Acholis had grown up in towns while others in the Diasporas as refugees. Over the colonial and post-colonial period and particularly in the past 20 years of the war, many traditional beliefs and practices have declined, while those that rejuvenated have seen their relevance adjusted to the current circumstances.

5. Date: 6 March 2008; Place: Gulu; Participants: Apola, Jacinta a community worker, 45 years; Objective: To gather views from civilians on ICC intervention to prosecute the LRA

Jacinta was a social worker who had been working with the internally displaced persons since 2002. I asked her about her view regarding the situation in northern Uganda. She responded that, Kony has caused a lot of pain to the population. It is important that he comes out and see how much pain he has caused the people. If Kony is arrested and taken to The Hague, he will probably be jailed for life and in this case he will live in a comfort not comparable to the pain he has caused to the people. Even if he were to hang, he would not have had a personal experience of the pain he has caused the people. At the time of the interview, it was expected that Kony would sign the Juba Peace deal on the 4th of April. In regard to this, Jacinta suggested that if

the Juba Peace talk succeeded Kony should come out and go to the camps and meet the people whom he has caused immense suffering. He must meet the people whose hands and lips have been chopped off or maimed in all other manners. Prison life in The Hague, were he to be arrested and jailed, would be too soft for a person who has caused so much suffering to the people. According to Jacinta, the kind of prison life in The Hague would be a kind of reward compared to the pain Kony has caused the Acholi population.

Regarding the impact of conflict, she strongly pointed out that social structures have been destroyed as a result of the war. She also said that there are people who would still like to remain in camps because of the carefree kind of life in the camps since many have despaired and lost sense of responsibility resulting from life of dependency in camps. Another problem is that some returnees do not have parents or relatives at all. And they cannot be easily accepted by the society since they have killed their own parents and caused havoc to the general population. Moreover the lives they lived while in the bush cannot allow them to readjust easily to normal life.

6. Date: 8 March 2008; Place: Gulu District; Participant: Cultural leader who sought to be anonymous, 65 years old; Objective: To gather views from civilians on ICC intervention to prosecute the LRA

The cultural leader argued that arresting Kony and taking him to The Hague would not be the best option. He said people would like to be part of the justice process. Since Kony and his actions have been mysterious, taking him to The Hague would simply perpetuate the mystery of the LRA. The people would like to know the truth about what was happening. Moreover, Kony needs to be part of the community he helped to destroy and not just being taken to The Hague where he would be enjoying the luxury. This would not be a punishment for a culprit who has ordered killing raping, maiming of innocent people. In The Hague, Kony would be allowed to watch TV in the prison, each morning he would read newspapers; doctors would examine and monitor his health regularly unlike in the bush where there are no hospitals. In The Hague there would good and regular meals. That life would even be more comfortable than being in the *lum* (bush) where he is constantly running away from the UPDF.

7. Date: 8 March 2008; Place: Lacor IDP camp Gulu; Participant: Jennifer; Objective of interview: To gather views from civilians on ICC intervention to prosecute the LRA

Jennifer reasoned that LRA should be forgiven and that ICC should drop charges. This is informed by the fact that the victims and perpetrators are members from the same community such that even if the top LRA commanders would be prosecuted and jailed in The Hague, the majority of the LRA would still come back to the community. She went ahead to reason that given the complex nature of the war in northern Uganda, merely arresting the five top LRA commanders would not solve the problem. It would be more important to deal with the bigger problem of bringing back the abducted children into the community and resettling the people back to their homelands to enable them start life anew. One of the ways of bring the LRA back to the community is by following the traditional peace and reconciliation mechanism process.

8. Date: 10 March 2008; Place: Gulu University; Participant: University Lecturer, anonymity, 47 year old; Objective: To gather views about the ICC in relation to alternative mechanisms of peace and justice

The lecturer had the opinion that although some people especially in the civil society are so excited about the traditional Acholi systems of justice; he was not convinced that the practice would bring about the really needed transformation in northern Uganda. He said that there existed many reasons as to why *mato oput* cannot meet the task of conflict transformation in northern Uganda. One reason is that, apart from ‘sentimental excitement that the practice generates among the people who resuscitate it, those who advocate it have not designed a clear policy framework on how the practice can respond to the whole situation in northern Uganda. There is no clear programme on how *mato oput* would include the government which has also been accused of human rights violations in the region. He stated that even the people advocating *mato oput* are aware of the dynamics of the conflict in northern Uganda. Civil society knows that the people hold grudges against the government and the government especially President Museveni does not like the Acholi community which he has worked so hard to marginalise and exterminate. He asked a question ‘how will Acholis dancing among themselves and drinking a bitter herb alter the social condition of the people?’

9. Date: 11 March 2008; Place: Gulu District; Participant: Group of Elders; Objective: Follow-up interview on perceptions about the ICC and its ability to arrest Kony

During a group discussion with local community leaders (elders), the elders reasoned that it would be very difficult for the ICC to arrest Kony. They wondered if the ICC had its own army and they were quite aware that the International court would have to rely on states. They wondered how the Ugandan state would succeed in helping the ICC to arrest the indicted LRA leadership when the government soldiers had failed to capture Kony for years.

10. Date: 12 March 2008; Place: Lacor IDP, Camp Amuru District; Participant: A woman, anonymous, middle aged; Objective: Follow-up interview on perceptions about the capacity of *mato oput* in conflict resolution

According to a woman who sought anonymity because she considered her views not agreeing with popular views about *mato oput*, the practice was 'impractical if not irrelevant'. She questioned how compensation would be done in northern Uganda situation, reasoning that the practice as it was in the olden days would not be possible given the prevailing circumstances emerging from the conflict. She pointed out that, it was not easy to tell which perpetrator was responsible for the condition of a particular victim hence making it not easy to perform compensation. She observed that although victims of mutilation, torture, rape or murder were known, their perpetrators acted in masses. This would make the process difficult because it was not easy to determine who would compensate whom. The woman further argued that in certain cases, perpetrators were forced to kill their own parents. In such a situation it would be very complex to do offer compensation. And in certain cases a person killed ten people how is the person going to compensate all the ten people when he even does not have food.

11. Date: 13 March 2008; Place: Gulu District; Name: Peter Onega, 56 years old; Objective: To gather views on the ICC in relation to alternative mechanisms of transitional justice

Peter Onega reasoned that people of northern Uganda understand that the ICC does not pass death sentence and that the LRA leaders if convicted will not be condemned to hang. The kind of punishment if Kony were arrested and handed over to the ICC, would be a life sentence if found guilty. But given the kind of prison conditions in The Hague, Kony would receive very nice and lenient treatment. Kony would be enjoying life while his victims are suffering in IDP camps. He remarked that it is

better for Kony to come and share the situation of the people in the camps and in this case he would be staring the situation in the face. According to Onega, may be this would be the best punishment to Kony.

12. Date: 16 March 2008; Place: Gulu District; Participant: Charles Odwar, a Catholic Priest, 42 years old; Objective: To understand people views about the genesis, longevity and impact of the war in relation to its resolution

According Fr. Charles Odwar, the war has destroyed certain social values highly upheld in the traditional Acholi society: The value of life—life has become meaningless. Life in the bush and that in the camps has destroyed social order, and anything else that reinforced a harmonious social order like forgiveness, respect for human life (the sanctity of human life), respect for elders, social responsibility, etc. Against the backdrop of this social disruption, proper peace and reconciliation can only be realised by restoring these values. Moral rehabilitation, constant re-education regarding community rights and individual rights are necessary as requisites. It is then only in these that proper peace can take root. Apart fro the above dilemma, it is believed that people are being haunted by evil spirit, *cen* which requires that some form of cleansing has to take place. The Acholi people believe in evil spirit and also believe in cleansing rituals for proper healing to be complete.

Fr. Odwar says that, the previous governments had oppressed the Southern people. Thus the northerners feared for an impending revenge when Museveni took power and making the people to stand against Museveni. It was also triggered by government soldiers who started torturing people in the north after Museveni assumed power in 1986. He said that there was the infamous three-piece: tying of legs, hand and chest to suffocate and die naturally. Due to these, those who had not handed over their guns went to the bush. Regarding its longevity, Fr. Odwar said that given its extensive machinery and intelligence, people questioned the inability of the government to put down the war in the north as it had done in Western Uganda. This apparent inability on the side of the government led to speculation that fostered radical opinions in interpreting the role of the government in the war. According to Odwar some people understood the inability as lack of good will; revenge factor, northerners perceived as paying for what they had in the south and political usefulness of death or suffering of the people in that the people were let to suffer and die so that they do not rise against an establishment of Museveni's regime.

13. Date: 17 March, 2008; Place: Lacor IDP camp, Amuru District; Participant: Group interview with three returnees: Objective: To understand the experiences of former abductees

David Okwera one of the participants said that he was abducted in 1997. In his narrative, many people used to run from homes and hide in the bush. This was the high peak of abductions. When the LRA abductors invaded the homes, they forced those who remained in homes to show them where people were hiding and those who had been hiding were found and were abducted.

About their experience in the bush, the three returnees were all in agreement that the experience in the bush is not good. According to Okwera, the experience in the bush is terrible. There are overloading, carrying heavy guns, indoctrination, beating, hunger and lack of water to the extent of forcing them to drink their urine and people end up eating anything including leaves and even lizards and some end up dying. These are done in order to be part of the team.

They were forced to lay ambush on a UPDF army truck. Okwera himself had gun shots in his right hand. He further said that when you are wounded in the bush, there is no treatment. The only treatment is keeping the wound clean by washing with hot water. When Okwera was wounded, the two friends operated and removed the bullets by using an improvised short metallic object which they used to cut the wound to remove the object. Michael Okwera said that, the policy of the LRA is to cause fear. Killing can be as a punishment or by being placed in the front line. We once met an injured government soldier and every one had to step on the person until he died. He said that the reason why the LRA fight is that Museveni has despised Acholi people as stupid; has marginalised the Acholi, they are not represented in the cabinet and in the army which the LRA believes are injustices to the Acholi community.

Albino of the abductees said that, life in the bush is bitter and harsh. According to him, he was once sent to collect cassava when government soldiers engaged the LRA. As a result of this encounter with the soldiers, he was hit by a bullet on the forehead and at the back by government soldiers. To make even matters worse, when in the bush, they are sometimes asked to beat each other. One reason why most abducted LRA soldiers do not escape is the fear of being caught and if one is caught the penalty

is dead which is very slow and painful. They are also warned of any attempt to escape. He said that at one moment one of them escaped, but the one whose brother had escaped was tied and killed. He said he did the actual beating of a relative. When they do the beating and killing, one is not supposed to spit out saliva then you are forced to leak the brain of the victim so that you are not haunted by the spirit of the victim.

14. Date: 18 March 2008; Place: Lacor, Amuru District; Participant: A former Secretary General of the Acholi Religious, Leader Peace Initiative, 62 years old; Objective: To gather views about Acholi Conflict resolution mechanism

According to the interviewee, things that brought conflicts included killing of a brother; a relative or a clan member; taking the wife of another person; cattle rustling; land dispute between clans; rivalry over water; rivalry over fighting ground; raping a woman of a clan (meant undermining the power of that clan). When any of these happened, the whole clan got involved. He said that conflicts had to be solved; the impact of conflict is that it bounces back with consequences. These consequences further affect or haunt the children. In this case, it is not only the two to be affected but the entire lineage of that family. They see it as bringing sickness to the children and other calamities hence reconciliation is a must. The people must come to discuss the issue and press those involved to agree to pave way for reconciliation. When there is a conflict in the family, there must be reconciliation. When a conflict arises between two clans and there is a killing there must be abstinence from eating together because death does not allow you to eat together. Since the whole clan is involved food becomes a source of union in this community. Disunity has been created, but unity is essential since people in this community would ordinarily beg millet from the other clan/community so that in the event that we have a killing, then this has to stop. Since people have to interact, reconciliation is necessary to allow people to interact normally.

On complexity of the conflict and limitation of the ICC, he said that the Court cannot help. The ICC stresses on punishing the individual. You punish the individual but what about the clan. On the other hand, the traditional mechanisms involve the clan which ensures that everyone is reconciled. The whole clan won't be happy until reconciliation takes a communal dimension. For instance, the death of Slobodan Milosevic did not reconcile all people in the country. With the tribe, there is a

spiritual separation; hence societal reconciliation is more important than legal. But he acknowledged the Problem with traditional system. He observed that if compensation were to be done who would pay for what. Many families have been affected, son and father; brother and brother. Things have been meshed up. Victims and perpetrators are members of the same families. Victims are perpetrators at the same time. Who actually is afflicted by the atrocities is difficult to tell. He also observed that, the case in northern Uganda involves killing hence it is a larger conflict than what the society understands. According to this interviewee, the actual war is between the government and the rebels. In this case then actual *mato oput* should be between the rebels and the government.

15. Date: 18 March 2008; Place: Amuru District; Participant: Thomas Odong, 52 years; Objective of the Interview: To gather views about Acholi Conflict resolution mechanism

Thomas Odong questioned the popular perception that *mato oput* would be effective in dealing with the conflict in northern Uganda. He remarked the conflict in northern Uganda is so complex. Victims are so many both Acholi and non-Acholi. Thus to think that the Acholi traditional practice which used to be applied to in very small scale and to think that the practice could respond to the conflict would amount to giving the practice too much credit than what it deserves. The practice used to be applied among traditional Acholi people to re-establish close relationships which had been broken on account of either intentional or accidental killing. But the situation and circumstances that emerged in the 20 year conflict was completely a different scenario that could not be adequately catered for by *mato oput*.

16. Date: 20 March 2008; Place: Lacor IDP camp, Amuru District; Participant: Otto Benson, camp resident, 46 years old. Objective: To get people experiences about IDP camp life in relation to peace and processes

Otto came to the camp in 1997 when they were driven by the government to the camp where they were told they would get maximum protection. But still rebels attacked and abducted children and took food. Starting new life is difficult after having left everything behind. All they have are donations from NGO's. They used to be comfortable when the World Food Programme used to bring the food. Now they are being encouraged to go back and resettle since there is relative peace. A few have gone back to their villages, but many are still around because they feel that they are not yet safe. He said that there was need for peace and that was the reason the ICC

should have listened to the will of the people and drop charges against the LRA and let the LRA come back home. The people have forgiven them. The war has affected the Acholi land and the Lango. According to him rebels are children born in Acholi and they should adopt the traditional ways of solving the problem rather than relying on ICC. This is also related to the fact that the government has failed to offer protection. What the people want is simply peace since they have pardoned the rebels. They want to forget the past and start a new life. Many people have lost their properties and relatives. The government does not have the capacity to bring the war to an end except through negotiations. This is because the war has been on for over twenty years. The civilians are the ones suffering.

17. Date: 23 March 2008; Place: Lacor IDP camp, Amuru District; Participant: Group interview; Objective: To seek views on compensation as a component of mato oput in relation to its applicability in northern Uganda conflict

I asked the group specifically about compensation in terms of offering a girl child from the perpetrator's family to the victim's family. Some of the group members argued that it was not meant to punish the offender's family, but to heal and cement further the relationship since this act meant sharing life through the girl child. The practice enhanced interaction between the aggrieved and the offender's family. According to some members of the group this offering also meant recreating life that had been lost. I put a question to the group and asked them if they would prefer to give their own daughters as compensations in case such a situation occurred. Almost every member of the group responded with a no answer. Some said that it was applicable long ago but now not possible. Some said they would not wish to envisage such a situation.

18. Date: 23 March 2008; Place: Lacor IDP camp, Amuru District; Participant: Christine Labogo, 35 years old; Secretary for Women and Children Affairs, care giver for those who are on ARV; Objective: To information on IDP camp life from a gender perspective in relation to conflict resolution initiatives

There is no peace. People are confined and movement restricted. There are sicknesses since people are congested and confined. HIV/AIDS is a major problem because people are really messing up; there is poor education, people generally are very poor. Women and children have unique experiences because most men abandon their wives and children. Women bear the burden of school fees, food and clothing. The abandoned women begin looking for husbands and in the long run they acquire

HIV/AIDS. Most children are now being kept by their grand mothers and grand fathers.

According to Christine the government is not interested in peace because it is the civilian who are suffering. She also said that Kony is not fighting for the Acholi because the LRA is not one tribe and for that reason he should be arrested and charged. She also said that there should be fairness. Both the LRA and UPDF should face the justice in equal measure. The warrants should not be lifted. Both sides have caused suffering. Both sides should face justice. How can the government be accused while it is the accuser? The government killed civilians; looted civilians' property, raped women, and looted cows. The people through the paramount chief have asked the government to compensate them for the losses.

19. Date: 24 March 2008; Place: Lacor IDP Amuru District; Participant: A man who sought anonymity; Objective: To seek views on compensation as a component of *mato oput* in relation to conflict resolution in northern Uganda

A respondent who sought to remain anonymous expressed his concern about the capacity of *mato oput* to respond to the nature of conflict in northern Uganda. His particular concern was that the practice as applied among Acholi victims and Acholi perpetrators did not include all parties to the conflict. It meant that the conflict was being reduced to that between Acholi LRA and Acholi population while ignoring the government and its forces. *Mato oput* ignored atrocities caused by the government, which took away cows of Acholi people and burnt homes to force them into IDP camps.

20. Date: 25 March 2008; Place: Lacor Amuru District; Name of the Respondent: Betty Akello camp resident, 40 years old; Objective: To understand the conflict and IDP camp life from a gender perspective

We came to the camp because we could bear no more the situation of rebel abductions and looting food. But camp life is not any better. We have no food; no source of income, paying fees is a problem, buying clothes and other needs for the family. Betty said that as a woman, she had a problem looking for food and school fees. She had a sick husband who got injured as a result of the war when he was attacked by the rebels. She planed to resettle back to her homeland but she did not have a hut to live in. she hoped the peace initiatives would succeed. She said that because the people need peace badly, the ICC should have withdrawn the warrants of arrests because it

would derail peace processes. But she expressed fears that the peace deal may not handle the question of property and this would bring more problems again.

21. Date: 25 March 2008; Place: Amuru District; participant: Alice Akello; Objective: To understand the conflict and IDP camp life from a gender perspective

Alice Akello observed that camp life was very bad and that the level of poverty in the camp had escalated which made many women to get involved in acts of prostitution to get money. Alice Akello said that prostitution exposed women to contracting diseases such HIV/AIDS. It is for this reason, she argued, that the people had decided that all they wanted was peace and not anything that would make them continue staying in camps. She told me, 'I know that they [the ICC]' have released warrants of arrest for Kony and the LRA commanders. But that should be withdrawn because it will derail peace processes. The war is enough and no one would wish to go back to the bush. What the people are for is peace no matter what it costs.

22. Date: 27 March 2008; Place: Lacor Seminary; Participant: Mathew Odong, the Secretary General of ARLPI; Objective: To find out from civil society why they pursued forgiveness and reconciliation at the cost of justice for the victims

Mathew Odong said that the Acholi Religious Leaders Peace Initiative ARLPI is an interfaith organisation combining the Catholics, Anglicans Muslims and orthodox from Acholi Sub-region whose visions and goals were peace. ARPI came into existence in 1997 to respond to the conflict between the government and the LRA. They wanted to be part of the solution to the problem and to contribute towards ending the conflict. To provide an alternative to the parties who believes in military option. As a consortium of religious organisation they sought to promote the interest of God, dignity of human life—joy, happiness, sanctity of human life. The question of justice: as far as justice was concerned, they asked: what is justice traditionally and in modern terms. In modern terms justice means prosecution and jailing if found guilty, but this cannot be the appropriate mechanism regarding the northern Uganda situation and cannot reach the goal. According to the Acholi traditional way of life, when a member of the community commits a crime against the other reconciliation must take place to restore the broken relationship. The ARLPI sought to make the world know that mato oput is the way forward.

The ARPI had lobbied that the parliament grant amnesty to the LRA. They do not recognise the LRA, they recognise that their activities destroyed life and what they want is a means to stop these activities. The ICC is the biggest obstacle. It does not admit that traditional rituals are legitimate and effective. They questioned the ability of the ICC to bring the LRA to justice while observing that it had taken the government of Uganda 21 years to do away with Kony but to no avail. How will the ICC arrest them? Does it have its own military or is it going to rely on the UPDF which has failed to defeat the LRA, protect the people against the LRA and the government itself has caused atrocities comparable to those of the LRA. In the case where the ICC sits on the way of dialogue with the LRA it is merely perpetuating the conflict. The best way is to allow the LRA back.

23. Date: 30 March 2008; Place: Pabo IDPs Camp, Amuru District; Participant: Patrick Okulu, a former abductee, 23 years old, working with Kolping Organisation, Uganda; Objective: To get views of an ex-abductee regarding peace processes

Patrick Okulu was an Ex-LRA abductee who had his lips chopped off as a punishment by the LRA so that he may not reveal any information to the government. He had been suspected of being a government spy. The war should not be considered as an act of illiterate bandits. Kony is illiterate but has good advisors and even very good lawyers. Some are in the Diasporas. Kony will not agree to sign the final agreement being negotiated in Juba. He knows that there is a possibility of being arrested if he comes out of the bush.

24. Date: 31 March 2008; Place: Amuru District; Participant: ARLPI Delegate in Juba Peace Talks; Objective: To get view of members of the civil society present at the Juba Peace Talks

According to the delegate who was present at some of the Juba peace talks the LRA representative presented the rebels not as a group who had been killed maimed own people but as voices of the Acholi population. They presented Acholi grievances and they were being considered advocates of Acholi plight. During the talks, said the delegate, the LRA demanded an end to the marginalization of the Acholi, inclusion of the Acholi in government, political and economic processes, the development of the north and an end to the targeting of the Acholi for extermination.

25. Date: 2 April 2008; Place: Pabo IDP camp Amuru District; Name of the Respondent: Group Interview with 8 Local Elders (camp residents); Objective: To seek their view of elders regarding the peace and justice initiatives

One member of the group Wilbert Okema reasoned that taking the case to the ICC was not the will of the people since Museveni did not consult the people. It is for this reason that, according to Wilbert, the people wanted the charges to be dropped. He added that even though the government seemed to be ready to offer the LRA commanders amnesty, the government had not approached the ICC to drop the case in order to give the LRA a soft landing. He questioned the reluctance on the side of the government.

Kidega Robert, another participant reasoned that whatever happened had already happened and that people were very bitter to talk about what already happened and they would not wish to bring back those memories. He said there was no need of going to the past, instead focus on the future and forgiveness was the most viable option. He added that in Uganda you could not speak the truth and think that you will escape with it. Kidega said that there were many bad things that had happened but people could speak about them.

Justice Achola, another member of the group said that, true patriotism was lacking both among the government and the LRA leadership and neither the LRA nor the government loved Uganda as a nation. He said ‘Look at the kind of atrocities the LRA and UPDF have committed against the people. Look at the level and pattern of development, how skewed it is. Particular sections are suffering. The manner in which some government programmes are implemented is much skewed. For instance, the universal primary education, where there are 200 pupils in one class. Education has really degenerated.’

According to Joseph Okwera another member of the group, the only hope that the people had was the Juba peace talks and the government had to accept and put pressure on the ICC to withdraw the case. He reasoned that from his experience armed solution cannot solve the problem in northern Uganda and taking the case to the ICC was not a popular will. He pointed out that already there fruits of the talks (Juba Peace talks) compared to that of the guns that has been fought for the last 20 years.

26. Date: 3 April 2008; Place: Christ the King Parish, Pabo Amor District; Participant: Fr. Charles Olweny, a Catholic priest, 30 years old; Objective: To find out views on peace and justice initiative in northern Uganda

Patrick Olweny said that he was of the view that peace initiatives must take into consideration facts associated with the conflict since there are historical facts about the conflict such as skewed resource allocation. He said that, 'the current government, a government of the Southerners has not developed the north since all development goes to the South; Government positions go to the South. The government looks at the LRA and the Northerners as one, as government enemy, that the LRA and Northerners are birds of the same feathers.' Olweny added that, while this was the perception of the government 'the LRA on the other hand the LRA does not look at the northerners as one of them, since the northerners have rejected them. The northern population is rejected by both parties which is why the local population is not safe. Thus there are two dimensions of the conflict, namely the LRA vis-à-vis the Acholi and the government against the Acholi. That means the Acholi population finds itself at the centre.'

Fr. Olweny stressed that for there to be true healing the government of Museveni must come out and admit its activities that have injured northern population. Concerning trials, he reasoned that, if a balanced trial were to be realised then both the LRA and the UPDF must be tried for their atrocities. Fr. Olweny remarked that, while it was clear that the LRA had committed serious atrocities, there was equally enough evidence that the UPDF had committed atrocities. Even regarding reconciliation, the government is not willing to reconcile.

27. Date: 4 April 2008; Place: Pabo IDP camp Amuru District; Participant: five victims who sought anonymity; Objective: To find out views on peace and justice initiative in northern Uganda

In an interview with a group of victims, I sought to know their views regarding peace and justice debates that were going. Initially some were quick to say that they had forgiven the LRA, and preferred the traditional mechanism of reconciliation and forgiveness. But in the course of the discussion, some were categorical that they would not to reconcile with LRA. They said that Kony and fellow LRA leaders deserved to be prosecuted. I asked them if they would wish their kids to be prosecuted for having tortured or killed people. Some of the responses were that the children who

committed atrocities were forced to do so therefore, they should be forgiven but some maintained that they would want to share neighbourhood with those who had murdered their relatives. But I asked if they would wish it were their own children. Some responded that they would forgive.

28. Date: 4 April 2008; Place: Pabo IDP camp Amuru District; Name of the Respondent: John Bosco, Government representative, Council Leader of Pabosub County and a resident of Pabo IDP Camp, 40 years old; Objective of Interview: To find out views on peace and justice initiative in northern Uganda

John Boaco informed me that, at the time of the interview, the population of Pabo IDP camp was 75, 379 people and still increasing day and night. But he also noted that mortality rate is very high. Food, health care, education and land were lacking in the camp. And it is for this reason that people pray that peace comes. He said that people were ready to forgive both the LRA and the UPDF. He said that Kony should be considered as an errant boy. Analogically, he observed that ‘if you have ten children and one of them is bad you cannot throw him away, when he comes back you forgive him. This is how Kony should be treated.’

But he added that in a community people don’t have same feelings. Some, especially those who have been hurt, physically disabled or maimed by the LRA, found it very difficult to forgive. He also noted that, there were so many problems in northern Uganda and not just about the ICC. There was a problem regarding resettlement, landmines, poverty, land disputes; the difficulty of reintegrating ex-rebels. He also said that the ICC was not the main problem for Kony not to come out. It is because he knew the grave sins he had committed such as cutting people’s ears, legs, hands, mouth, etc. In a manner that contradicted his earlier statement, John Bosco said that the ICC was performing its duty and it was free to go ahead.

29. Date: 5 April 2008; Place: Amuru District; participant: A mother of abducted girl; Objective: To find out views on peace and justice initiative in northern Uganda

I interviewed a woman whose daughter had been abducted by the LRA and asked her what she would wish to be done to Kony and the top LRA leadership. Her response was that the LRA had done very bad things and they should also feel the pain of those whom they have made to suffer. She said ‘I hear that when the criminals are taken to Europe they just enjoy good life because jails in Europe are just like homes where one

is provided with everything' She wondered if that is real punishment. In her view Kony should have been brought to live in the camps to see how people are suffering because of what he has done.

30. Date: 8 April 2008; Place: Pabo IDP camp Amuru District; Participant: Valeria Okello, 60 years old, camp resident and social worker; Objective: To find out how the conflict has impacted on the condition of women and how this would relate to the transitional justice processes which were being initiated

Valeria Akelo remarked that women bear the burden of war, beginning with the girl child to the old women. Rebels and government soldiers have been targeting men killing them leading to widowhood. When this happens, it is the women who would be left with the burden of taking care of the family. In most case, during the raids men ran to hide in the bush (lum) and leave the women at home. This has several repercussions on the women. Whenever the rebels would come they would beat the women to tell them where the boys are hiding. Since the women could not leave their children behind they remained at home. There is lack of capacity to earn livelihood. And when men become irresponsible, there are resultant family conflicts, quarrels and wife beating. There is also high rate of moral degradation; girls can be easily lured by money due to poverty leading to high dropouts from school and high rate of early pregnancy. And these girls end up giving birth to children they are not able to take care of. Moral degradation: sexual irresponsibility is contributed to by the kind of set-up in the camps. People stay too close to one another. This sexual irresponsibility has led to very high rate of HIV/AIDS and other STDs. Other diseases are due to poor sanitation, like cholera. Valeria argued that given the fact that women bear the greatest burden, they should be at the forefront of any peace and justice processes and initiatives. But these peace initiatives and processes have sidelined women. The calibre of women who are directly involved are those who do not at all have direct experience with the situation and camp life.

Concerning forgiveness and reconciliation, she remarked that there is no way Kony can be forgiven especially by those who have born direct impact of his atrocities. If you know that somebody killed your parent, sister, brother or child, it is very difficult to forgive as things never happened. This person cannot come and stay next to you happily. How really can you forgive such a person? She categorically stated that, the perception that people have forgiven the LRA is not fundamental; or rather it has not

come from within. People have been told to forgive. It is not the people's initiative, it is the leaders who have been telling the people to forgive, otherwise deep in their hearts they have not forgiven the LRA and they are not going to forgive them. She remarked: there is the popular perception that that the people of northern Uganda, have decided to forgive, but deep in their hearts they want them to be prosecuted.

31. Date: 10 April 2008; Place: Kitgum District; Participant: District Speaker for Kitgum District; Objective: To find out views about the preferred mechanism for conflict transformation

I talked to the District Speaker of Kitgum District regarding which process, in her opinion, would be the more relevant for conflict transformation in northern Uganda. She reasoned that there can be no straight forward way of solving the conflict except through initiating development projects that would empower the people. She also said that the war has been persistent because of government negligence since the prolonged war in northern Uganda had been considered as an Acholi problem. The squalid conditions in the IDP camps were part of the wider scheme to destroy the people. The phenomenal uprooting of the people was basically a government programme.

32. Date: 12 April 2008; Place: Pabo IDP camp; Participant: Matthew Odida, a resident of Pabo IDP camp, a retired civil servant, 84 years old; Objective: To find out views on peace and justice initiative in northern Uganda

Matthew Odida said that both sides of the conflict are culpable. Since each side has done something wrong the best way out to peace is dialogue. The government has impoverished people through the IDP programme. So those in the bush should be forgiven since what has happened has happened. Let the ICC warrants of arrest be removed since Kony would not come out if they are still in place.

He added that, Museveni had never wanted peace in northern Uganda which is why he did not want to honour the Nairobi Peace Accord since he had all the way set his eyes on presidency. Odida added that Museveni did not believe in peace and was only playing politics, noting that the government had not boldly approached the ICC to drop the charges. Moreover, the president had maintained the agreements with the SPLA and DRC to surround Kony. Moreover, Kony knew what had happened to Acholis when Amin commanded the Acholis to report to the Barracks only to be massacred. He also said that there were questions which people were not talking about

such as land, houses, property and complete restoration of damages caused by marginalisation and displacement.

33. Date: 15 April 2008; Place: Pabo, Amuru District; Participant: A man (a); Objective: A follow-up interview about preferred mechanism for conflict transformation in northern Uganda

A resident of Pabo IDP camp in Amuru district narrated a story of mass murder by government soldiers in Pabo, Amuru District. According to him, over 30 people were killed in Pabo. According to him, since the government forces had committed mass murder, it was necessary that any justice administered covered all parties. He said he had no problem with Kony being prosecuted as long as government forces were prosecuted as well. He reasoned that the ICC did wrong for dealing with the government. For him, there was no way the government could be accuser and at the same time the accused. He stated that it is not the case that Acholi people do not want the ICC to intervene in the situation of northern Uganda, but it is because of what the people consider as one sided treatment of the problem.

34. Date: 23 April 2008; Place: Kitgum camp, Amuru District; Participant: Charles Abok; Objective: To get views about the dynamics of the conflict in northern Uganda

According to Charles Abok, the conflict in northern Uganda is so complex that it is difficult to know who the perpetrators are and who the victims are. The government claims to be defending the people yet it is the same government that is making people to suffer. The LRA claim to be fighting for the people yet they torture and kill the very people they claim to be fighting for. Even the civilians are quietly cooperating with the LRA regardless of what they have done to the community. Although people living in Acholiland do not say openly that they support the LRA, they are quietly working with the rebels. That is the reason why Kony has been getting information about government operations. Even things which are looted from us are sold for the LRA in Gulu.

35. Date: 28 April 2008; Place: Kitgum; Participant: John Okiri 58, years old; Objective: To interview respondents on the situation in the IDP camps in relation to the conflict in northern Uganda

John Okiri said that moving the people to the protected camps was not a good decision by the government because apart from humanitarian conditions in the camps, security in the camps was very poor. The camps made it easier for the LRA to abduct since people were already collected together. Okiri said that before the LRA had to

attack homes, but they could not get many people at once. But in the IDP camps all they needed is to surround the camps then abduct as many as they wanted while the UPDF and LDU remained helpless or escaped for their own lives. He also said that it was a bad decision on the side of the government to refuse the people from working on their farms without providing alternative means of living and if the government was sincere; its forces should have protected the people in the camps as well as on their farms.

36. Date: 16 May 2008; Place: Kitgum; Participant: Abel Ojara. Objective: To find views regarding the ICC's intervention in relation to prospects of peace in northern Uganda

Abel Ojara, an ex-rebel soldier reasoned that the ICC indictments complicated issues about negotiations to bring about peace. Now that ICC prosecutor has insisted that the LRA must be prosecuted, there is no hope for peace. Ojara said that any rebel leader aware that he was being pursued for crimes he knows he has committed cannot surrender his weapons. People think that Kony is stupid because of what he has done. But he is very well advised. Moreover, Kony knows the insincerity of President Museveni and that Museveni may only be trying to trap him into signing peace agreement and come out of the bush. Kony knows that Museveni will kill him if he comes out of the bush. So he will not sign that peace accord. Kony may have taken opportunity of the ceasefire to rearm his group and to get funding from donors. But Kony trusts no one.

37. Date: 17 May 2008; Place: Kitgum; Participant: Patrick Okidi, 26 years old; Objective: Gather information about experiences of ex-abductees as members of the LRA

Patrick Okid informed me that the LRA way of life is completely the opposite of what the case of ordinary life. He gave an example of forced sexual conduct with female abductees who are forced to sleep with LRA commanders against their will. He observed that, ordinarily, a girl must give in to a man. But this is not the case in the bush since the girls are simply assigned to the commanders who are considered to have qualified to sleep with a woman. Commanders are rewarded by being given girls to sleep with. Okid added that girls are also sexually mistreated since the LRA use sex as a punishment. When a girl makes a mistake, like trying to escape, the girl is gang raped.

38. Date: 17 May 2008; Place: Kitgum; Participant: Ex-abductee, anonymous, 23 years old; Objective: A Follow-up interview on the question of gang-rape and sexual conduct of LRA

According to the ex-abductee, the LRA used gang-rape as a way of punishing girls who made mistakes, showed insubordination, or tried to escape. Male combatants would be asked to sleep with a girl in turns so that she would learn not to make such a mistake once again. He added that although the LRA commanded that girls be raped, sex was not just an open act that anybody could engage in. Sex was very tightly controlled by Kony because Kony said that sex when not allowed by the leadership was evil. Kony commanded his followers that they should keep themselves sexually pure if they wanted to win the war. Kony advised the LRA soldiers not to sleep with old women because they had been contaminated by the UPDF.

39. Date: 18 May 2008; Place: Kitgum; Participant: (JB an ex-abductee); Objective: A Follow-up interview on LRA mode of conduct

According to an ex-abductee who chose to remain anonymous and who chose to be referred to as JB, discipline among the LRA was very strict. If any body failed to follow the strict commands of the LRA, he would be punished through execution. Some times Kony would command that body parts be chopped off as a lesson to you and to others. One would be forced to kill others as a punishment. JB said that Kony commanded that any part of the body that leads one to sin must be chopped off.

40. Date: 18 May 2008; Place: Kitgum; Participant: Anonymous Woman Ex-abductee; Objective: A Follow-up interview on LRA mode of conduct

An anonymous woman said that she witnessed a case where a girl tried to escape. This girl was captured and beaten to death. She said that this beating was meant to warn others that trying to escape would mean punishment by execution.

41. Date: 24 May 2008; Place: Kitgum District; Participant: Anonymous Man (b); interview an IDP camp resident on the perception toward the ICC intervention

A man who chose to remain anonymous said the people of northern Uganda believe that the war in northern Uganda is a problem with a long history beginning with the colonial period. He said that many people have contributed to the continuation of the conflict including the regime of Museveni. This means that targeting the LRA alone is both unfair and ineffective.

42. Date: 25 May 2008; Place: Labuje IDP camp, Kitgum; Participant: An old man, 68 years old; Objective: A follow up-interview on perceptions about peace and justice initiatives

According to a respondent who chose to remain anonymous, the ICC was not balanced because it was only pursuing the LRA and not the UPDF. He said that there was no justice in that case because both the LRA and the UPDF killed people and did other bad things. Both UPDF and the LRA destroyed and took property and killed. How comes the ICC is only investigating the LRA and not the UPDF. He added that, even when it comes to reconciliation, the whole country should be reconciled, because people coming from the southern part of the country and those coming from the north hate one another.

43. Date: 25 May 2008; Place: Labuje IDP camp, Kitgum; Participant: A young man; anonymous, 26 years old; Objective: A follow up-interview on perceptions about peace and justice initiatives

A young man who sought to be anonymous reasoned that the ICC should have begun by pursuing people in Museveni's government including Museveni himself because the president was the chief commander of the NRA soldiers who killed and buried people alive in Acholiland. He wondered why the ICC would decide to ignore the people buried alive by Museveni's forces. He added that if the ICC wants to bring about justice then he should do justice to the victims of NRA as well as victims of LRA.

44. Date: 29 May 2008; Place: Kitgum; Participant: Crispin Opio, a counsellor of ex-abductees, 48 years old; Objective: To understand psychosocial condition of ex-abductees from the standpoint of a counsellor

Crispin Opio said that formerly abducted boys and girls found it difficult to reintegrate back to the society after their lives as LRA combatants or LRA wives. He said that the boys and girls lived constantly under fear, suspicion and distrust. Opio reasoned that this could be attributed to torture and acts which they had been exposed to while in the bush. In this regard Opio wondered how the traditional Acholi healing processes could impact on such boys and girls whose psychological wellbeing had been fundamentally destabilised. He added that *mato oput* could impact on the elderly victims who understood its meaning, and this would help them to get reconciled with their abducted children who may have tortured them or destroyed their property. But it would be difficult for the cleansing ritual to impact on the children whose lives had been transformed from very young age through indoctrination.

45. Date: 31 May 2008; Place: Lapuje, Kitgum; Participant: Caroline Auma, 50 years old, camp resident; Objective: A follow-up interview on perceptions about the ICC's pursuit of the LRA

Auma reasoned that there was nothing wrong with punishing the LRA. The only problem is that the ICC did not consider the crimes committed by the government. She said that government soldiers raped women and tortured civilians accusing them of collaborating with and leaking information to the LRA. She reasoned that the crimes of the LRA could not be denied since they abducted children, tortured and killed people for this reason they deserved to be prosecuted. But she added that government soldiers, UPDF, also did very bad things to the innocent civilians and justice could be meaningless if the UPDF were ignored and the whole thing would appear as if it was called by president Museveni to help him fight the rebels.

46. Date: 2 June 2008; Place: Gulu; Participant: Ochola 24, years old, Objective: A follow-up interview on views about human rights violations committed by government forces in relation to peace and justice initiatives

Achola said that his father was a victim of human rights violation by government forces. He said that his father who was a public transport driver in Gulu was killed by UPDF soldiers when the soldiers blocked the road and separated the people from the northern part of Uganda from those from the South. Those from the north disappeared and that is how his father died. He believed that his father was killed by government soldiers as it had happened to many people from Acholiland. He reasoned that it would be important to know what happened to his father and added that the ICC would appeal to the people if it also sought to find out those who died in the hands of government forces.

47. Date: 3 June 2008; Place: Gulu; Participant: Dominic Ochar, 54 years old; Objective: A follow-up interview on views about the IDP Camps situation in relation of the Conflict in northern Uganda

Dominic Ochar said that their understanding of the IDP camps was an opportunity for Museveni to finish the Acholi. He said that Museveni knew that forcing people to congested camps meant that people would not have food, hospitals and schools for their children which meant destroying the people. Ochar said that the government burnt all their crops and took all cattle with a promise that this would not last for long and that their animals would soon be brought back from where they were to be kept safely from the LRA. This action for Ochar was not merely to deny the LRA means

but also targeted the Acholi as the president knew that the animals were the source of the income.

48. Date: 7 June 2008; Place: Gulu; Participant: John Mundua Kasirani, 27 years old; Objective: To understand the people's view on government commitment to bring peace in northern Uganda

John Mundua said that he was not sure if the government was really committed to peace and stability in northern Uganda. He observed that the conflict had taken too long and if the government really wanted it to end it would have stopped. Moreover, the government had ignored the situation of the people. The region operates as if it is not part of Uganda and even other Ugandans do not really know the situation in northern part of the country. He said that the government never took any initiative to improve the condition of life. Social needs are availed through NGOs while in other parts of the country, government programmes such as schools and hospitals run as normal.

49. Date: 23 June 2008; Place: Amuru; Participant: Lucy Aber, 38 years old; Objective: A follow-up interviews on women's views on peace initiatives in northern Uganda

Lucy Aber thought that all the peace initiatives in northern Uganda were not particularly concerned about issues that pertained to women in that conflict situation. She said that the ICC, Acholi peace and justice systems and Juba Peace initiative had not been concerned about the condition of women. Lucy observed that women's views had not been sought so that they could also give their opinion on how peace could be realised in the region even though women suffered most during the conflict.

50. Date: 15 April 2009; Place: Gulu; Participant: Ben Ladit, about 68 years old, Objective: A follow-up interview on views about human rights violations committed by government forces in relation to peace and justice initiatives

Ben Ladit reasoned that the conditions in northern Uganda were perpetuated by the government to cut the lifeline of the Acholi people because the president considered the Acholi people as the threat to his power. Ben said that the President did this by destroying their cows which was a source of their livelihood. Because of this, they could not feed themselves; take their children to school or hospital. He said that President Museveni knew that the only opposition to his throne came from the northern Uganda and destroying this opposition meant destroying their economic power.

51. Date: 18 April 2009; Place: Gulu; Participant: Margarette Oyella, mid 50s of age, Objective: A follow-up interview on views about IDP camps situation

Oyella Margarette said that being in the camps made life very difficult. The government soldiers did not allow them to go out to work on their farms and produced the food they needed. They also kept their animal for milk and meat. They also needed protection while in their farms. The UPDF could not offer this protection. Being in the camps reduced them to relying on food ration from WFO. She added that Acholis used not to be beggars. They were proud people who used to rely on their labour to earn a living. Relying on donation has made them be like children. It has also made the people to depend without struggling to work to earn a living.

52. Date: 21 April 2009; Place: Gulu; Participant: Justine Ogwal, mid-forties; Objective: A follow-up interview on the people's view on government commitment to bring peace in northern Uganda

Justine Ogwal said that he doubted government commitment to bring about peace in northern Uganda. In his opinion if the government want peace to come to the northern part of the country, the government must first bring about development in that part of the country, include the people in the government, build roads, hospitals and stop viewing the people as enemies of the government. Museveni must also pay back their cows that were confiscated by government forces.

53. Date: 22 April 2009; Place: Gulu; Participant: Security Intelligence officer who sought strict anonymity; Objective: A follow-up interview on the people's view on government commitment to bring peace in northern Uganda

According to a Security Intelligence Officer whom I interviewed on condition of strict anonymity, the LRA is not only the problem in northern Uganda and it is not certain that if the LRA downed their weapons then peace will automatically return to northern Uganda. He pointed out that the main problem in northern Uganda is that it has been marginalised for long, making it a conducive ground for guerrilla fight to emerge. He further said that unless the region was developed even in the future, there was a possibility that rebels will exist. The security officer also said that due to poverty that has been brought about by the war, young people will turn to be thieves and robbers and pose security threat to the entire region since they have not been empowered.

54. Date: 5 May 2009; Place: Kitgum; Participant: Odhiambo Kizito; Objective: A follow-up interview in the Acholi Perception towards Museveni's regime

According to Odhiambo Kizito, various governments since colonial period did not bring about development in northern Uganda. But Acholi lived by keeping cattle and trading on milk, ghee, skin and hides. Odhiambo said the Acholi people relied on cattle for manure for their farms and once the cattle were taken away by UPDF, the people were left very poor and in great suffering. Because of this, there is a lot of resentment towards President Museveni and that is why people from the north have been voting for the opposition. For there to be true reconciliation in northern Uganda, the government must pay back the animals which the UPDF soldiers used to enrich themselves.

55. Date: 5 May 2009; Place: Kitgum; Participant: Ajayo Agnes; Objective: A follow-up interview regarding condition of women in relation to the protracted conflict in northern Uganda

According to Agnes Achoyo, the conditions of the war brought about breakdown in social norms and morality. People sitting in camps doing nothing but without money or any source of earning a living made girls and women to engage in acts like prostitution which were contrary to traditional dictates. Government soldiers guarding the camps used this opportunity to lure young girls with their money. This exposed people to the spread of HIV/AIDS. Other diseases such as malaria, typhoid, and cholera spread easily because the houses are too close with very poor sanitation.

56. Date: 10 June 2009; Place: Kitgum; Participant: Aciro Janet; Objective: A follow-up interview regarding condition of women in relation to the protracted conflict in northern Uganda

According to Aciro Janet, women have suffered much compared to men since women were targets of rape and girls were targets of abduction to be used as wives of the soldiers in the bush. Because of this dislocation, families have broken and women are the ones suffering since they have to bare the burden of caring for their families. Domestic violence has also increased because camp life has made men irresponsible which brings quarrels in families.

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List of Interviews

10 January 2008: Callisto Otim a retired secondary school teacher, 68 years old; Gulu.

10 January 2008: Okot Okumu, an ex-soldier during Obote's reign, early 60s; Gulu District.

11 January 2008: Samuel Odong, a cultural leader, 72 years old; Gulu District.

11 January 2008: Quirine Ongom, a Catholic Priest, 45 years old; Gulu District.

6 March 2008: Apola Jacinta a community worker, 45 years; Gulu District.

8 March 2008: Cultural leader who sought to be anonymous, 65 years old; Gulu District.

8 March 2008: Jennifer, Lacor IDP camp Amuru District.

10 March 2008: University Lecturer, anonymity, 47 year old, Gulu University.

11 March 2008: Group of Elders; Gulu District.

12 March 2008: A woman, anonymous, middle aged, Lacor IDP, Camp Amuru District.

13 March 2008: Peter Onega, 56 years old; Gulu District.

16 March 2008: Charles Odwar, a Catholic Priest, 42 years old; Amuru District.

17 March, 2008: Group interview with three returnees, Lacor IDP camp, Amuru District.

18 March 2008: A former Secretary General of the Acholi Religious, Leader Peace Initiative, 62 years old; Lacor, Amuru District.

18 March 2008: Thomas Odong, 52 years, Amuru District.

20 March 2008: Otto Benson, camp resident, 46 years old; Lacor IDP camp, Amuru District.

23 March 2008: Group interview, Lacor IDP camp, Amuru District.

23 March 2008: Christine Labogo, 35 years old; Secretary for Women and Children Affairs, care giver for those who are on ARV; Lacor IDP camp, Amuru District.

24 March 2008: A man who sought anonymity; Lacor IDP Amuru District.

25 March 2008: Bettey Akello camp resident, 40 years old; Lacor Amuru District.

25 March 2008: Alice Akello; Amuru District.

27 March 2008: Matthew Odong, the Secretary General of ARLPI; Lacor Seminary, Amuru District.

30 March 2008: Patrick Okulu, a former abductee, 23 years old, Pabo IDP Camp, Amuru District.

31 March 2008: Amuru District, ARLPI Delegate in Juba Peace Talks

2 April 2008: Group Interview with 8 Local Elders (camp residents), Pabo IDP camp Amuru District.

3 April 2008: Fr. Charles Olweny, a Catholic priest, 30 years old, Christ the King Parish, Pabo Amuru District.

4 April 2008: five victims who sought anonymity; Pabo IDP camp Amuru District.

4 April 2008: John Bosco, Government representative, Council Leader of Pabo-sub County and a resident of Pabo IDP Camp, 40 years old; Pabo IDP camp Amuru District.

5 April 2008: A mother of abducted girl, Amuru District.

8 April 2008: Valeria Okello, 60 years old, camp resident and social worker, Pabo IDP camp Amuru District.

10 April 2008: District Speaker for Amuru District; Amuru

12 April 2008: Matthew Odida, a resident of Pabo IDP camp, a retired civil servant, 84 years old, Pabo IDP camp, Amuru District.

15 April 2008: Place Amuru District Man (a) Interview

23 April 2008: Place: Charles Abok Kitgum; Participant.

28 April 2008: John Okiri 58, years old, Kitgum District.

16 May 2008: Abel Ojara, Kitgum District.

17 May 2008: Patrick Okidi, 26 years old, Kitgum District.

17 May 2008: Ex-abductee, anonymous, 23 years old, Kitgum.

18 May 2008: JB an ex-abductee, Kitgum District.

18 May 2008: Anonymous Woman Ex-abductee, Kitgum.

24 May 2008: Anonymous Man (b), Kitgum District

25 May 2008: An old man, 68 years old; Labuje IDP camp, Kitgum.

25 May 2008: A young man; anonymous, 26 years old; Labuje IDP camp, Kitgum.

29 May 2008: Crispin Opio, a counsellor working with ex-abductees, 48 years old; Kitgum.

31 May 2008: Caroline Auma, 50 years old, camp resident; Lapuje, Kitgum.

2 June 2008: Ochola 24, years old; Gulu.

3 June 2008: Dominic Ochar, 54 years old, Gulu District.

7 June 2008: John Mundua Kasirani, 27 years old; Gulu District.

23 June 2008: Lucy Aber, 38 years old, Amuru District.

15 April 2009: Ben Ladit, about 68 years old; Gulu District.

18 April 2009: Margarete Oyella, 50 years old; Gulu

21 April 2009: Justine Ogwal, mid-forties; Gulu District.

22 April 2009: Security Intelligence officer who sought strict anonymity; Gulu district.

5 May 2009: Kizito Odhiambo, Kitgum District.

5 May 2009: Agnes Achayo, Kitgum.

10 June 2009: Janet Aciro, Kitgum District.