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ENGAGING SURVIVORS IN TRANSNATIONAL JUSTICE GOVERNANCE:  
GLOBAL, NATIONAL AND LOCAL PERSPECTIVES FROM UGANDA'S POST  
LRA INSURGENCY

A Dissertation Presented

by

DENNIS JJUUKO

Submitted to the Office of Graduate Studies,  
University of Massachusetts Boston,  
in partial fulfillment of the requirements for the degree of

DOCTOR OF PHILOSOPHY

August 2024

Global Governance and Human Security Program

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## ABSTRACT

### ENGAGING SURVIVORS IN TRANSNATIONAL JUSTICE GOVERNANCE: GLOBAL, NATIONAL AND LOCAL PERSPECTIVES FROM UGANDA'S POST LRA INSURGENCY

August 2024

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The end of the Second World War established the Nuremberg trials and the Tokyo tribunal while the United Nations (UN) system established ad-hoc tribunals in the former Yugoslavia and Rwanda, and multilateralism facilitated the creation of the present-day International Criminal Court (ICC). These trials and tribunals established liberal approaches to transnational justice governance. Despite the dominance of a liberal universalist justice framework, non-liberal justice approaches have also emerged. Considered as alternative customized justice structures, including South Africa's Truth and Reconciliation Commission (TRC) and Rwanda's Gacaca Courts, these community emergent approaches emphasize a transformative approach to addressing legacies of civil conflict and war. Key to these customized justice processes are survivors whose agency in universal transnational justice adjudication models has not been adequately acknowledged. Within these models, a role for survivors is critical in addressing systemic

social conflict challenges and achieving greater survivor participation using more expansive grassroots mechanisms.

Motivated by these trends in customized transformative justice approaches, this dissertation study reveals how the agency of survivors espoused by justice frameworks from the Global South is significantly missing in the global governance of transnational justice. Using the Ugandan post Lord's Resistance Army (LRA) conflict era and experiences as a case study, the current dissertation compares the agency of survivors of atrocities as they are presented by liberal internationalist justice governance frameworks as well as by the emerging customized justice frameworks through three perspectives: (a) the process through which they deliver justice, (b) the justice results of those approaches, and (c) the contributions they make to the global governance of transnational justice.

The dissertation's distinctive research questions rely on postcolonial international relations and Third World Approaches to International Law theoretical framework to examine the critical role that African justice governors and survivors of conflict in the continent play in customizing Western transnational justice to the unique contexts of their transitioning postcolonial states and societies. To support the dissertation's research objective, the study applies qualitative multi-methods, including on-site, in-country field and archival research to three judicial or extra-judicial case studies of transnational justice adjudication processes emerging from the LRA conflict in Uganda. The first case is the *Dominic Ongwen versus The Office of the Prosecutor*, adjudicated by the International Criminal Court (ICC). The second case is the *Thomas Kwoyelo versus the Government of Uganda* under the auspices of Uganda's International Crimes Division (ICD) of the High

Court. The third case draws from community level alternative justice process of reconciliation and reintegration based on the Acholi tradition of *Mato-Oput*.

The research emanating from this dissertation reveals a main finding supporting the study's thesis that a liberal teleology of transnational justice used by the ICC and Uganda's government (ICD) represent top-down approaches, and they are mostly conducted indirectly through intermediaries. These two approaches engage survivors as objects of the justice processes in ways that limit their contributions to the governance of justice. On the other hand, the local, customized approaches, such as the Mato-Oput, bring survivors back to the center of justice and make them the subjects of an inclusive restorative justice process. To this end, the dissertation concludes that customized justice models may reflect the expectations of local communities in post-conflict transition since they bear their survivors' vision of justice and allow for their full exercise of agency.

## ACKNOWLEDGMENTS

This doctoral journey was motivated by the need to further the debate I started during my master's studies at King's College London. This debate sought to find the space for survivors in the international justice discourse. This broad question motivated me to engage the element of survivors' agency in the global governance of transnational justice that is missing in the general literature, and indeed the practice, on transnational justice governance, yet survivors are the beneficiaries of this justice. There are many who have nurtured this dream, and supported the process of achieving it.

To my dissertation committee, I will forever be indebted for your generous comments, knowledge, and expertise that has aided this dissertation project. To my dissertation committee chair, Professor Rita Kiki Edozie, you accepted to mentor me from the time I stepped at UMass Boston, you have challenged me to think beyond my imagination, and the skills you have unreservedly shared with me have made this project a reality. You gave me several opportunities to teach with you as part of building my confidence in this work. You sharpened my research skills by according me the opportunity to be your research assistant on the project whose outcome was the book titled "Africa's New Global Politics: Regionalism in International Relations". Thank you for sharing your insights that helped me locate myself in the grand discussions on my topic of research, and carving out a niche that has enabled me contribute my scholarship through scholarly work that I have already published, together with one that is yet to come. I will forever be indebted to your generous knowledge and expertise.



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To the noble Department of Conflict Resolution, Human Security, and Global Governance, you have put resources to my disposal throughout the five (5) years of my

doctoral program. It would not be possible without the knowledge shared by professors in this department, the administrators that have helped me navigate through the doctoral program with the required ease. It would also not be possible to receive peer feedback on my research without the funding support to attend and discuss my ideas in the different regional and international conferences. Thank you for facilitating this process of my intellectual growth. I am equally indebted to both the department's grants and those by UMass Boston that facilitated the development of my research project and collect field data. These resources have been effective in supporting this dissertation agenda. To professors Stacy Vandever and Rita Kiki Edozie, thank you for pointing me to adjunct positions that have not only sharpened my teaching skills, but also been a source of my sustenance.

Lastly, to my friends with whom we started this doctoral journey, you have been my home away from home. Your wise counsel, support and company made this journey worthwhile. To my partner Miriam and my daughter Eliana, my absence has been too tough to endure but I thank you for your prayers... 'the storm is over' ...and onto the next years of joy together as a family. To my mum and siblings, I am appreciative for what you have nurtured in me. Thank you for supporting my dream in immeasurable ways, your unreserved trust in my judgment has pushed me miles. To aunties Berny, Julie and Jane, you have made my stay in Boston smooth. Thank you for opening your doors for me whenever in need of your support. Uncle Richard Kayondo, weebale nnyo okuyiwawo omubiri by stepping in that gap. Thank you for mentoring and guiding me into a man I have become. You will be part of my journey always.

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## LIST OF ACRONYMS

ARLPI	Acholi Religious Leaders Peace Initiative
CAR	Central African Republic
CSOs	Civil Society Organizations
CID	Criminal Investigations Department
DDR	Demobilization, Disarmament, Reintegration
DPP	Directorate of Public Prosecutions
DRC	Democratic Republic of Congo
EAC	Extraordinary African Chambers
FAPs	Formerly Abducted Persons
FEDEMO	Federal Democratic Movement
FGDs	Focus Group Discussions
FJDI	Foundation for Justice and Development Initiative
GoU	Government of Uganda
HRW	Human Rights Watch
HSM	Holy Spirit Movement
ICC	International Criminal Court
ICD	International Crimes Division
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDPs	Internally Displaced Persons
IGOs	Inter-Governmental Organizations
IOs	International Organizations
IR	International Relations
IRB	Institutional Review Board
JLOS	Justice, Law and Order Sector
JRP	Justice and Reconciliation Project
JSC	Judicial Service Commission
KKA	Ker Kwaro Acholi
LRA	Lord's Resistance Army
NMPDC	National Memory and Peace Documentation Center
NGOs	Non-Governmental Organizations
NRA	National Resistance Army
NRM	National Resistance Movement
NUSAF	Northern Uganda Social Action Fund
OHCHR	Office of the High Commissioner for Human Rights
OPM	Office of the Prime Minister
OSA	Open Society Africa
OSF	Open Society Foundation
OTP	Office of the Prosecutor
PRDP	Peace Recovery and Development Program
RLP	Refugee Law Project

SDHC	Special Division of the High Court
SPLA	Sudan People's Liberation Army
TRC	Truth and Reconciliation Commission
TWAIL	Third World Approaches to International Law
UGLR	Uganda Law Reform Commission
UPA	Uganda People's Army
UPDF	Uganda People's Defence Forces
UPF	Uganda Police Force
UVF	Uganda Victims' Foundation
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNGA	United Nations General Assembly
UBOS	Uganda Bureau of Statistics
UNLA	Uganda National Liberation Army
UNSC	United Nations Security Council
VTF	Victims' Trust Fund
WCC	War Crimes Court
WWI	First World War
WWII	Second World W



## CHAPTER 1

### SURVIVORS IN TRANSNATIONAL JUSTICE IN AFRICA

The Nuremberg Principles of transnational justice inform a liberal criminal justice framework. This framework advances Euro-centric justice norms, identities, and the process of their formation as universal values, with little accommodation of alternative views of justice from the Global South (Betts 2005; Blumenson 2006). The popularity of tribunals in the governance of transnational justice has been on the rise. This is in response to violations of world peace as they engage with survivors of atrocities. These tribunals are marked by mechanisms of holding accountable those who commit crimes on a large or systematic scale on behalf of justice for survivors (Branch 2007 and 2017; Nielsen 2008; Orentlicher 2010; Mamdani 2015; Roach 2013; Mieth 2016). Their mechanisms include investigation and prosecution of international crimes – including genocide, crimes against humanity and war crimes – as fundamental components of transnational justice (ICTJ 2021). The dominant liberal justice teleology advances the norm of individual culpability that looks at justice as an individualized endeavor, away from the perception of justice as a collective enterprise by all affected by violence.

The conceptualization of justice and how it is being governed is also a major challenge for survivors. It invokes inquiry around leadership in articulating justice goals and how that leadership sees justice in distinct contexts. Leaving the responsibility of defining justice to societies in transition is more transformative because justice is uniquely conceived in response to contextualized injustices. Societies in transition have

a mandate of conceptualizing justice but they are often swayed by the dominant definitions that conceptualize justice from a Eurocentric view (Vinck and Pham 2008; Waldorf 2010; Mieth 2016). The existential challenge is the reality that a liberal and neoliberal approach to governing justice has not worked to address the unique needs of survivors in transitioning societies.

Examining the different approaches to governing transnational justice engages a conventional approach that assumes justice and accountability are satisfied by ensuring prosecution of those most accountable for the crimes committed, and when they are convicted and sentenced, society is fine. The challenge with the conceptualization of justice and how it is being administered is a major challenge to survivors. It invokes inquiry around leadership in the conceptualization of justice and how that leadership sees justice in distinct contexts. Giving the responsibility to societies in transition is more transformative because justice is uniquely conceived in response to contextualized injustices.

This dissertation examines the search for justice in Northern Uganda in the aftermath of the Lord's Resistance Army (LRA) insurgency. Adjudication as an international conflict management mechanism is used to compare three justice models implemented to address the legacies of the LRA insurgency. The three approaches include (a) the Dominic Ongwen case, adjudicated at the International Criminal Court (ICC), (b) the Thomas Kwoyelo case, adjudicated at the International Crimes Division (ICD) of the High Court of Uganda, and (c) the customized process of Mato-Oput among the Acholi community, with more reference to the case of Evelyn Amony, a formerly abducted person.

The dissertation presents a thesis about the role of survivors in the governance of transnational justice. It argues that the global governance of transnational justice is top-down, relying on a liberal criminal justice approach that positions survivors as objects in prosecutorial processes without agency (Wemmers 2006; Glasius 2009; Arbia 2010; Van Dijk and Wemmers 2011). This liberal justice approach equally suggests a one-size-fits-all retributive justice framework in distinct conflict contexts. It stresses a conventional justice approach of individual culpability through prosecution whose justice outcomes promote individual benefits in societies that see justice as a collective effort with justice outcomes as a collective benefit. Alternatively, through the dissertation research, the study contends that justice frameworks from the Global South espouse a more pronounced and elaborate role for survivors' agency that is lacking in the global governance of transnational justice in significant ways (Schulz 2019; Schulz and Ngomokwe 2021). These alternative approaches suggest a transformative justice with a bottom-up approach that views survivors not as passive actors in form of witnesses, but as critical and active players in restoring societal harmony, rebuilding relationships, and contributing strategies for a non-relapse into violence.

The liberal approach to justice tends to focus on individual perpetrators and justice outcomes are tailored to individual survivors or victims. However, communities in the Global South tend to consider justice as a collective endeavor rooted in their communitarian spirit (Szy 2018). They thus see the administration of justice through adjudication as a collective effort where both perpetrator and survivor or victim communities are in the constant process of finding a mutual response that can transform their conflict situation (Szy 2018; Tamayo 2022). In comparing these justice models,

findings of this dissertation reveal a customized teleology that demonstrates the collective utility of justice, away from justice as an individual endeavor.

This dissertation compares justice models from the perspective of survivors, an area that the scholarship, practice, and advocacy for international justice has not balanced well. Survivors remain the forgotten component of a criminal trial, especially where there is no conviction for the crimes they suffered. This is due to the dilemma of criminal liability whereby survivors need to see and feel justice. Yet, the administration of a liberal justice framework has remained out of touch with survivors, especially in the Global South, who perceive justice differently. These are the nuances that challenge the administration of a dominant retributive fashion of justice that is often sought in international court systems. African countries in conflict have faced numerous challenges on how to heal the wounds of the past and provide a remedy for past injustices. They have sought to respond to such challenges and have turned to transitional justice (Dolan 2009, 41). It has been a response with multiple approaches. Whereas some are purely prosecutorial/retributive, others have been restorative and transformative, and a mix of both approaches, with an element of survivors' agency as a common denominator.

This dissertation thus pushes the frontiers of approaches and perspectives on transnational justice by examining how survivors are considered in the process of administering international criminal accountability and justice. It interrogates the potential need for some level of restitution, some compensation, and the approaches to ensuring that this happens, and how customized justice approaches ensure that survivors' restitution is considered. Therefore, the question of how survivors can be part of the criminal justice process is something scholarship needs to examine. This study engages

survivors' views on these questions which inform a unique contribution of this dissertation.

The site of analysis selected for research is the Acholi community in Northern Uganda as it interrogates the critical role and engagement of survivors of large-scale conflict and war in that region of the country. Survivors roles around whether their ideas and participation matter are examined. The dynamics of agency that survivors have in the global governance of liberal internationalist justice frameworks as well as the emerging customized justice frameworks are also comparatively examined. To this end, this dissertation engages the understudied trends toward customized transformative justice approaches, sometimes contending and other times co-existing with a universalized liberal justice approach. There is a focus on the various mechanisms used to customize justice, especially in the Global South while engaging the dominance of a liberal universalist framework that exists in institutions like the ICC.

The challenge in the global governance of transnational justice that scholarship does not effectively address is the liberal and uncritical adoption of justice models derived from universal models that may not be fully responsive to Africa's distinct justice needs. The dissertation explores the question of whether customized justice frameworks address justice aspirations of transitioning societies better than the dominant universalist criminal justice approach. Focusing on survivors' agency, three approaches are examined as they are applied and emerge in Africa. First is the consideration of how both transnational justice approaches engage survivors of conflict (process). Secondly, the justice outcomes that survivors co- produce with justice governors is examined (results); and lastly, the

contributions of customized justice approaches to the global governance of transnational justice are identified, emphasized, and revealed.

For a theoretical framework, the dissertation draws from published literature on transnational justice theories and models, as well as on adjudication models in international conflict management studies. It equally applies distinctive research questions drawn from postcolonial international relations theory to explore the critical role that postcolonial Africans (justice governors and survivors) play in customizing western transnational justice to the unique contexts of their own, transitioning postcolonial states and societies. The study of the global governance of transnational justice is examined as part of a decolonizing transnational justice movement, as opposed to liberal universal, one-size-fits-all criminal justice approaches usually imposed on Africa.

In doing so, the dissertation study interrogates the extent to which customized approaches engage the root causes of conflict and explores what about these approaches reveal distinctive factors that drive and sustain conflict resolution. Research questions considered are: How do universalist, national, and customized justice frameworks vary in their approaches to engaging survivors in the adjudication of African conflicts? What are the justice outcomes of customized justice approaches for survivors in Africa? What do customizing justice approaches vis a vis survivors contribute to the global governance of transnational justice? These distinctive research questions are drawn from a postcolonial international relations and Third World Approaches to International Law (TWAIL) theoretical framework. Such an approach examines the critical role that African justice governors and survivors of conflict in the continent play in customizing western

transnational justice to the unique contexts of their transitioning postcolonial states and societies.

To support this dissertation research objective, the study applies qualitative multi-methods including on-site, in-country field and archival research to a multiple case study method of three transnational justice adjudication processes implemented in Northern Uganda in the aftermath of the Lord's Resistance Army (LRA) versus Government of Uganda (GoU) conflict. The first case is the *Dominic Ongwen versus The Office of the Prosecutor* prosecuted by the International Criminal Court (ICC). The second case is the *Thomas Kwoyelo versus the Government of Uganda* prosecuted under the auspices of Uganda's International Crimes Division (ICD) of the High Court. Finally, the third case will draw from an Acholi reconciliation and reintegration, traditional justice mechanism of *Mato-Oput* to represent a community level adjudication process.

The purpose of this dissertation is not to diminish the objectification of people recovering from the LRA conflict in northern Uganda, but rather to give them the voice they have claimed over time. It is to acknowledge the progress they have made since the end of this war in 2006. Respondents are categorized in this study as people who must be subjects of the governance of transnational justice, hence their assumed agency over time. This study is focused on those who lived through the LRA war in northern Uganda, with vast experiences of this war and therefore referred to here as survivors as summarized in the matrix below:

**Figure 1: Matrix of survivors of the LRA conflict in northern Uganda**

<b>Matrix of survivors engaged</b>		
<b>Nature of survivor</b>	<b>Type of violation</b>	<b>Contribution to this study</b>
Ex-combatants	Abduction, forced killing	Their experiences of life after war and their insights on the justice processes in which they participate.
Ex-wives to the rebels	Sexual slavery, forced marriage, defilement	Their experiences of life after war and their insights on the justice processes in which they participate.
Former IDPs	Hunger, random attacks	Their experiences of life after war and their insights on the justice processes in which they participate.
Sexual violence survivors	Rape, defilement	Their experiences of life after war and their insights on the justice processes in which they participate.
Amputees	Lost a body part as a result of war	Their experiences of life after war and their insights on the justice processes in which they participate.
Children born in captivity	Denied decent parenthood, and citizenship	Their experiences of life after war and their insights on the justice processes in which they participate.

There is a marked difference among survivors of the LRA conflict which necessitates a nuanced understanding of their diverse justice interests that keep shifting across time and space. Acknowledging these differences therefore contributes to diverse views of justice by survivors as opposed to a linear view.

### **Purpose and Significance**

Transnationalism has grown in scope and purpose especially around multilateral governance. The 1998 Rome Statute of the International Criminal Court (ICC) committed states to exercise criminal jurisdiction over those responsible for international crimes. Borrowing from this Statute, important to this study is the understanding of transnationalism for the purpose of appreciating the concept of transnational justice governance. Transnationalism in the Rome Statute is four-fold: (1) involving crimes committed in more than one state; (2) involving crimes committed in one state but have a substantial part of their preparation, planning, direction or control taking place in another state; (3) committed in one state but involves an organized group that engages in



activities in more than one state; and (4) committed in one state but has substantial effects in another state. Most importantly, a member state may not be part of any of the four dimensions of crimes but has the mandate to enforce the statute under the principle of complementarity.

The study of transnational justice governance targets crimes that have the same ingredients and so attracts actors beyond the primary state where these crimes were committed. Whereas the crimes in question were committed mainly in Uganda, the violations by the LRA in neighboring countries like South Sudan, the Democratic Republic of Congo (DRC) and Central African Republic (CAR) makes the cases trans-boundary and therefore transnational. Of specific importance to this dissertation study are the LRA war crimes and crimes against humanity under prosecution that commit different States, under the 1998 Rome Statute's principle of complementarity, to aid the ICC's work in prosecuting and enforcement of The Court's resolutions. The implementation of ICC's resolution including enforcement of the 2003 arrest warrants against the LRA's top leadership, evident in Dominic Ongwen who was arrested in CAR and handed over to the ICC for prosecution, is a classic case in point.

While engaging the differences between a liberal criminal justice approach and customized mechanisms of transnational justice (a national case and a local community case), this dissertation examined three transnational justice mechanisms used in adjudicating LRA conflict perpetrators. The first case is that adjudicated at the ICC, with reference to *Dominic Ongwen versus Office of the Prosecutor*. The crimes under prosecution (genocide, war crimes and crimes against humanity) and the criminal justice protocols that guided this prosecution process have attracted local, regional and

international participation due to the complementarity and subsidiarity principles, thereby making the case transnational. The study also examines LRA cases under Uganda's ICD, a hybrid national court process of Uganda that includes a blend of international justice protocols and national justice aspirations. Lastly, this dissertation uses Mato-Oput, as a case that captures the community-led justice processes implemented in northern Uganda in the aftermath of the LRA conflict. These three justice perspectives were examined to tease out the treatment of survivors as either subjects or objects in the justice process.

The dissertation's study of the role of survivors in transnational justice is critical to understanding the legacies of Nuremberg's criminal justice and South Africa's TRC, towards survivors' agency. This was done in the context of the LRA cases at the ICC, Uganda's ICD of the High Court, and Northern Uganda's community-led transitional justice processes. To this end, this dissertation contextualized the discussion around how survivors feature in universalist vis-à-vis customized justice approaches, how those processes administer justice, and their justice outcomes. Doing so examines the ability of transnational justice governance to respond to contextual justice challenges from the perspective of survivors, especially in Africa, and contributes to understanding the implications of survivors' agency in governing global justice.

This study is significant for several reasons. International law protocols for governing transnational justice are important in addressing legacies of conflict in different parts of the world since they offer a unique approach of trying those found exceedingly responsible for different crimes. However, frameworks of providing justice would be more transformative when anchored in the unique context of the societies where the violence happened. Using a postcolonial approach to the global governance of

transnational justice, this study contributes scholarship on the agency of survivors in customized justice mechanisms and advances a plurilateral universal transnational justice framework.

Anchoring this project in postcolonial studies is critical to examining the power of concepts, ideas, frameworks and survivors as actors in the global governance of transnational justice. This serves to challenge assumptions, values and power relations, and offer alternative visions and situations of international law, implying practical and epistemological ruptures with dominant liberal legal protocols of transnational justice and a reconstruction of relations, cultures and institutions.

### **Conclusion: Chapter Overview**

This introductory chapter has introduced the concept of justice as a diverse and multi-dimensional concept that is based on what societies in transition seek to confront in the aftermath of violations. It exposes the missing links of a liberal dominant transnational approach that considers purely punitive approaches through Court processes and ignores the dimensions of reparations and restitution. There is a growing trend of customizing justice, especially by the Global South evident in South Africa's TRC, Rwanda's Gacaca and northern Uganda's Mato-Oput. This trend disengages a one-size-fits-all approach in the administration of post-conflict justice, and places inclusivity at the center of approaches that engage justice from the bottom. It is solutions that emanate from below that also position survivors of atrocities as key actors in the governance of justice, opposed to a liberal approach that considers them victims without agency waiting for solutions from other actors.

The remainder of the dissertation research is presented in seven additional chapters. Chapter two situates the study in the available literature about survivors' agency in transnational justice governance, while providing context and perspective to the study. Chapter three provides background on the context of the LRA insurgency in northern Uganda in tandem with the justice processes implemented to address the LRA conflict legacies. Chapter four describes the approaches used to collecting data regarding the three justice processes implemented in northern Uganda. This chapter also discusses the ethical challenges encountered in data collection and the remedies applied.

Chapter five presents findings from ICC's engagement with survivors in the aftermath of the LRA insurgency in northern Uganda. It accounts for survivors' perceptions on ICC's justice process and the outcomes it produced. Chapter six engages the ICD as a domesticated process of international criminal liability in Uganda. It discusses ICD's mode of engagement with survivors of the LRA insurgency and engages its justice outcomes vis-à-vis the expectations of survivors. Chapter seven engages the Acholi community justice process of Mato-Oput and its unique approach to justice based on responses from survivors of the LRA insurgency. As the final concluding chapter, chapter eight compares the three justice processes implemented in the Acholi sub-region. It compares them against their processes of engagement with survivors of the LRA insurgency, how the justice outcomes of the three processes reflect the justice expectations of survivors, and lastly what the customization of justice contributes to the global governance of transnational justice.

## CHAPTER 2

### LITERATURE REVIEW

The literature on survivors is especially ambiguous. At times, scholars and practitioners of transnational justice talk past each other when engaging the topic of survivors' agency in transnational justice frameworks and justice outcomes. While some scholars engage survivors as objects by considering them as mere witnesses in the Nuremberg-inspired criminal justice processes, others advance the need to treat them as subjects in justice processes. Additionally, some schools of thought are based on the utility of liberal universal criminal justice processes in delivering verdicts that deter future human rights violations while others tend towards customized justice processes that advance the need for context-specific justice processes. Variations like this cause scholars such as Lundy and McGovern to question justice in terms of ownership (whose justice) and agency (how much participation do survivors have in governing justice/adjudication). In this respect, these scholars advance the need to rethink transitional justice governance from the bottom-up (Lundy and McGovern 2008, 265). This then invites discussions on the relativity and universality of justice as a concept, together with when and how it becomes transnational.

Despite the reality of contending theoretical perspectives on approaches, the scholarship and practice on survivors' agency in transnational justice processes is

evolving and increasingly taking center stage in the adjudication of justice at both the global and local levels (*See Steale 2005; Wemmers 2006; Trumbull 2008*). Central to the practice and scholarship of the discipline is how justice is governed, for whom it is governed and what outcomes it produces at a range of spatial levels.

### **The Concept of Justice: Universal, Relative or Transnational?**

Kathryn Sikkink's justice cascades have formulated a globalist, values-based trend in international criminal law that are underlay by concepts of responsible sovereignty (a state's obligations and duties to one's own citizens and other sovereign states). Added to this is the notion of universality. This occurs when international justice is promoted as a common legal order for mankind as a whole whose features include the establishment of a hierarchy of norms, a value-oriented approach, a de-emphasis of national consent in the international law-making process, and the creation of a body of international criminal law (Sikkink 2011, in Edozie and Khisa 160-161, 2022).

Rama Mani (2008) argues that there are severe philosophical and conceptual shortcomings to the way justice tends to be understood by transitional policymakers and practitioners, with significant practical consequences. National and international 'peace-builders', Lundy and McGovern (2008, 273) suggest, fail to recognize and respond to the complexities of restoring the multi-faceted dimensions of justice in low-income, war-torn societies. Rather, Mani (2008) proposes an alternative, holistic, and integrated approach to conceptualizing justice in transition, with three distinct, but interrelated dimensions: legal, rectificatory, and distributive. While the first dimension is concerned with the restoration of the rule of law, and the second with direct human rights abuses suffered by individuals, the third is designed to address structural and systematic injustices resulting

from political and economic discrimination and inequalities of resource distribution (Mani 2008 in Lundy and McGovern 2008, 274). For Mani therefore, the focus on the rectificatory can lead to a neglect of the other dimensions of justice.

On the customization of justice, Mamdani notes that the human rights movement has tended to exceptionalize the South African transition from apartheid by center-staging the process known as “truth and reconciliation” and sidelining the political process that led to the larger agreement of which the decision to constitute a Truth and Reconciliation Commission was but one part (2015, 62), as a move beyond the Nuremberg logic. Truth Commissions are bodies established to investigate and report on human rights abuses over a certain period in a particular country or in relation to a particular conflict (Kritz 1995 cited in Wachira, Kamungi and Sillah 2014, 3).

Truth commissions are formed to provide a formal forum for victims, their relatives, and perpetrators to give evidence of human rights abuses, and make recommendations on steps to redress victims and guarantee non-repetition of abuse (Hyaner 2002 cited in Wachira, Kamungi and Sillah 2014, 3-4). Lerche points to five ultimate goals sought by each TRC’s internal organizational structures, processes and procedures, which he lists to include: ending and accounting for past violations, promoting cathartic healing of victims and perpetrators, enhancing national reconciliation, strengthening a new democratic political order, and legitimizing new policies (Lerche 2002, 2). For Blumenson, South Africa’s TRC was intended to achieve, by means of testimony and reparations, “the restoration of human and civil dignity of victims of gross human rights violations” (South Africa’s TRC Final Report 1998 cited in Blumenson 2006, 836).

Blumenson also accounts for transitional situations where states have sometimes tried to impose accountability through truth commissions, reparations, traditional confession and reintegration rituals, or other non-penal means (ibid). He retorts that if some methods impose a sufficient degree of accountability and justice, it may be possible for the ICC to avoid a forced choice between peace without justice and justice without peace. Inversely, South African TRC critics such as Mamdani (2002), Soyinka (1999) and Madlingozi (2007) have argued that while it created space for the public hearing of victims' stories, it neither addressed the questions of asymmetric injustices nor follow up the process in a manner that would have advanced reconciliation between victims and perpetrators, or in society as a whole (Wachira, Kamungi and Sillah 2014, 5). Kriesberg (1998) and Auerbach (2009) see reconciliation as encompassing the restructuring of conflictual and unjust relationships so as to realize just, peaceful and equitable ones. Lederach (1997) suggests that reconciling society requires embracing the complexity of dealing with the past through establishing the truth and ensuring justice; this quest is, however, tempered by a concern for peace and unity.

Therefore, A justice concept that views survivors as tools to establish the criminality or responsibility or otherwise of the accused persons may not sufficiently serve justice to survivors (Haslam 2011, 229). In a traditional neoliberal approach, hardly would a survivor participate in designing the process of administering justice or else they are given the opportunity to take the law into their hands thereby defeating the question of "balance of justice" which is a deprivation of a right to a fair process. Secondly, survivors' participation would be from the angle of making sure they are informed about the process. Also, where a life is in danger within the conventional criminal justice



system, there is need for protection. In unconventional approaches devised by some transitioning societies, like Rwanda's Gacaca, it is not just an issue that a prosecutor uses them as witnesses. This becomes a community-wide inquiry where everyone is involved (Branch 2004, 25; Clark 2010 and 2018). There is a facilitator, and the survivors can participate by asking questions accounting for what happened to them in a manner that is outside the adversarial judicial system where the prosecutor is in charge.

Whether this would make for better peace or reconciliation is subject to examination. Unfortunately, in a prosecutorial system where survivors are mere witnesses, there is nothing much for them in the justice outcomes it produces because their agency to contribute what they need is minimized (Mutua 2001; Trumbull 2007; Van Dijk and Wemmers 2011; Wemmers and Brouwer 2011; Sajjad 2016; Jamar 2018). Also challenging is the success of the case that is not only dependent on the facts that one provides as evidence but also the process through which that is done. If witnesses are not able to come out and express themselves freely, it is a challenge to the pursuit of justice. Transitioning societies must therefore confront the challenge of conceptualizing justice outside the conventional definitions and tailor it to their unique understanding guided by values and customs akin to their view of the world. The local context is critical to effectively administering justice from the perspective of survivors.

A one-size-fits-all framework of justice may not be applicable in all contexts. Context-specific justice is therefore inevitable if the outcomes are to transform the intended beneficiaries. The context must be defined by the intention or motive; nature of the system, which is the *modus operandi*; and the intended outcomes. Possible explanations for a pushback from a dominant liberal universalist form of justice by the

Global South can be resistance as a form of agency in global governance. Nonetheless, the increasing customization of justice can as well be interpreted as not rejection, but broadening existing justice theories to what Acharya and Buzan in 2019 called “pluralistic universalism” as diversity and identity without exceptionalism embracing regions and area studies in transnational justice. Therefore, a congruity between negotiators’ choices at the transition point and the people’s needs and expectations for justice and reconciliation is presumed (Wachira, Kamungi and Sillah 2014, 8).

Patel (2010) views transnational justice as forms of addressing large-scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response. This implies mechanisms beyond the conventional judicial mechanisms that are focused on redress and a guarantee for non-repetition of violations. While contextual customized justice approaches rely on localized (community, national, regional) contexts to govern local conflicts; in the developing world and in Africa, local, customized approaches are integrated in global conflict management processes.

### **Individual vis-à-vis Collective Justice**

Another dichotomy advanced by a liberal teleology of justice vis-à-vis the emerging and rising customization of justice in the Global South is the norm of individual culpability versus perceptions of justice as a collective effort (Finnegan 2010; Drumbi 2011; Szy 2018; and Tamayo 2022). Whereas the 1998 Rome Statute advances the approach of holding perpetrators of crime in their individual capacity and justice outcomes tailored towards individual survivors or victims, the Acholi community in Northern Uganda views justice as a collective effort due to its communitarian spirit

(Finnegan 2010; Schulz 2019; Tom 2022). The societal aspects that shape the Acholi community are based on communitarianism as a foundation of their existence (Nabudere, Wadada, and Velthuzien, 2013). Whereas they view the prosecution of Dominic Ongwen at the ICC and Thomas Kwoyelo at the ICD as an accountability measure, they believe the two perpetrators in question should be accountable to the survivors and victims and not to these Courts. In the aftermath of the LRA insurgency, the Acholi community engaged in constant efforts to foster healing through restorative and transformative justice approaches that build relationships (Wasonga 2019). Because their interest is in ensuring a non-repetition of violence to that magnitude, they are constantly investing in efforts that promote a collective identification of crime and address harms, needs and obligations to foster healing. They use memory and memorialization to call for changes in the material and social conditions that perpetuate harm by bringing people together to tell their stories and work towards accountability and repair to collectively guarantee their safety now and in the future (ibid). The answer is in building lasting relationships among the survivors or victims communities and those of the perpetrators. This view of justice is different from approaches that seek solutions from Court processes which do not invest in guaranteeing non-repetition of violence, and tailored towards individuals that are directly tied to the crimes under prosecution instead of the community as a whole (Magu 2023). This thus advances a critic on individualized justice in this part of the world that views justice as a collective good.

As such, even local approaches to justice are hybrid, incorporating both local and global justice norms and approaches. Whereas the intended justice outcomes are complex, emerging customized approaches especially in the Global South espouse components

emphasizing restoring community relationships, preserve human dignity, and achieve harmony. Different scholars have referred to this dimension of justice as ‘restorative justice’.

### **Restorative Justice**

Away from a punitive approach that squarely focuses on perpetrators of crime, societies emerging from violence of different forms are increasingly adopting an approach for repairing the damage that occurs when crime or wrongdoing occurs (Nabudere and Velthuisen 2013, 3). Besides punishments for perpetrators advanced by retributive justice, communities in transition are also responding to the need to restore broken relationships in the community marked by apologies by perpetrators to the survivors and the wider community.

Restorative justice shifts the paradigm to a new approach of posing questions. This epistemological shift moves away from the old classic approach that posed three kinds of questions in adversarial justice: (i) what laws have been broken? (ii) who committed the crimes? (iii) what is the appropriate punishment? On the contrary, the restorative paradigm advances a different set of questions: (i) who has been hurt? (ii) who is responsible? (iii) what is the root under-lying cause? (iv) how can the damage be repaired? (Capital Restorative Justice Project 2008, in Nabudere and Velthuisen 2013, 3).

Restorative justice emerged from a range of alternative dispute resolution practices such as the use of indigenous courts and systems of justice; juvenile justice programs around the world dealing with wrongdoing among children and young people; commercial disputes and crimes and any other forms of disputes (Nabudere and Velthuisen 2013, 4; Schoeman 2016; Mangena 2015). This approach goes beyond court

processes and recognizes that prosecution is not the only way, or the best, means to attain reconciliation. It is restorative justice that brings survivors back to the center of justice as subjects that are part of the justice process, together with perpetrators and the entire community, through dialogue that identifies and addresses the underlying social and political causes of crimes and wrongdoing.

Schoeman engages the interlinked African concepts of Ubuntu, community, indigenous justice and restoration, aimed at restoration of victims and the reintegration of offenders back into the community (Schoeman 2016, 291). This link around these concepts emphasizes the benefits of the restorative justice philosophy to both survivors and the offender as Zehr points to its utility in enabling both the survivors and offender to take responsibility in righting wrongs or repairing harm caused by violence (Zehr 1985 in Nabudere and Velthuisen 2013, 4). This approach to justice rests on ideas that include restoration of human dignity, injury to person or health, damage to human relations, damage to relations in communities and emotional restoration. To restorative justice, Nabudere also adds the ideas of restoration of freedom, compassion, care, peace, empowerment, self-determination, sense of duty as a citizen, values of mercy and of forgiveness (Nabudere 2008, 156).

Wielenga, Batley and Murambadoro use African perspectives of justice that prioritize social harmony and the interconnectedness of the community to buttress the utility of restorative justice in African contexts. Away from individual accountability and the relationship between an individual and the state, Wielenga et al., suggest that justice in most African contexts is centered around restoring and balancing the relationship between the physical and metaphysical worlds (the relationship between the ‘not yet

living, the living, and the living dead’) (Wielenga, Batley and Murambadoro 2020, 45). In their study, they emphasize the importance of the relational dimension, the victim’s voice, the community voice, and creating spaces for encounter and dialogue that are embedded in African restorative justice (Wielenga, Batley and Murambadoro 2020, 48).

However, the restorative ideals of justice have suffered serious setbacks because of the globalization of the idea of a Westphalian style of a centralized state that takes control of justice and rationalizes into a punitive legal regime (Nabudere and Velthuisen 2013, 7). Nabudere and Velthuisen emphasize that modern polities strengthened themselves by taking control of the legal process, which they coupled with a punishment regime as part of socializing people within the centralized nation-state system and strengthened the power and legitimacy of modern rulers (Nabudere and Velthuisen 2013, 7). The key elements of the European and North Atlantic criminal justice that have globalized almost totally during the past two centuries is the idea that crimes are committed against the state, which has the power to punish the infringers (ibid). This undermined the older ideas that crimes were committed against the victims in the community, implying the need for reparations (Nabudere 2008, 155 in Nabudere and Velthuisen 2013, 7). Restorative justice theorists challenge this version of centralized power as retrograde, and emphasize the importance of restoring relationships and social harmony undermined by conflict (Schoeman 2016, 294; Mangena 2015, 5; Wielenga, Batley and Murambadoro 2020). However, restorative justice sees the need for the preservation and transformation of the state as a watchdog of rights and concedes that the state should be able to impose some form of retributive justice for serious crimes (Nabudere and Velthuisen 2013, 7).

Restorative justice is an alternative to the penal system of punishment where the parties to a conflict would themselves play a part in finding a solution to the problem before them that would be oriented towards the victims and their needs and wishes (ibid). It is a strategy to revitalize and strengthen local communities through an alternative way of dealing with conflict resolution, with potential to make possible reconciliation and reparation between the parties (Nabudere 2008, 156). This is because the restorative view holds that balance and harmony cannot be restored through the imposition of pain and suffering on the offender, but rather through acknowledgement of responsibility on the part of the offender and a willingness to repair the harm that the victim suffered (Wielenga, Batley and Murambadoro 2020, 48). African restorative justice further seeks to address the underlying causes of the incident, which includes the offender's own impaired personhood and needs (ibid). The discourse to human dignity is prioritized over a human rights discourse, although not at the expense of human rights, with the intended outcome being to restore the relationship between people, whether understood in the language of 'forgiveness' or in other ways (ibid).

With African restorative justice, people also experience the need to engage in a cleansing ritual which would acknowledge not only the parties to the conflict but the web of relationships between the living, the not yet living, and the living dead due to local communities' composition of complex networks of relationships (ibid). Justice is thus not about individual accountability, nor about any kind of social contract between an individual and the state (ibid). It is not about the rights and duties of a citizen (as in the case of the continental European civilian law system), or to protect an individual from the state (as in the case of British common law system). It is about restoring social harmony

and the balance in the web of relationships that are integral to the survival of the community (Wielenga, Batley and Murambadoro 2020, 50). Beyond the European civilian law and the British common law tradition, Madlingozi describes the African philosophy of Ubuntu, captured in the restorative justice concept. It is “the ontological and epistemological philosophy that demands the affirmation of the dignity and humanity of every being as way of ensuring being; becoming and communal harmony (Madlingozi 2018). The restorative justice framework relies on a transformatory and emancipatory logic of “intentional social, political and intellectual thought of planned change aimed at addressing historical globalization challenges, inequities, and serious structural dysfunctions” (Aina 2010). Hence, the study goes beyond legal retributive justice approaches to engage the right to know, right to justice, right to reparation, and guarantee of non-recurrence as pillars for ending impunity, and restoring the rule of law to achieve reconciliation, prevention and conflict transformation.

**Figure 1: Transformative Justice Framework**



### **Survivors in Transnational Justice**

In the grand scheme of transnational justice governance are survivors’ centrality to the administration of justice in any form, given their understanding of violence and their unique justice aspirations. The contemporary guise of transnational justice is most often



traced to the post-conflict accountability processes of WWII, most notably the Nuremberg trials. However, the objectives for the governance of transnational justice have further expanded to include the elimination of authoritarianism and the entrenchment of the rule of law, cultivation of social cohesion and nation building, the adoption of survivor-centered and more holistic justice processes and, ultimately, the promotion of democratic practices (Onegi 2012, 1). Key to these novel approaches to justice are survivors who are treated as critical in addressing and repairing harm.

Scholarship that equally challenges international criminal justice has emerged with scholars like Suchman (1995), Tallgren (2004), and Mégret (2004) raising a variety of questions ranging from: who is international criminal justice rendered for? Who are the beneficiaries or recipients of its work? And relatedly, who is the ‘we’ in international criminal justice? specifically, who is imagined as being the symbolic authority behind ICC’s work? Is the authority behind the ICC the same as its beneficiaries, or are they distinct? For Mégret (2004, 24), constituency building and invocation is a key part of the Court’s search for legitimacy, and therefore must be responsive to the populations whose decisions they affect. Mégret postulates that the ability to ‘speak in the name of’ is not the same thing as ‘speaking with a mandate from’ or even ‘having spoken to’.

‘Speaking in the name of’ may be the exact opposite of these things in that one is not specifically authorized to do so by those involved, and one may even speak for them without ever having meaningfully interacted with them. Haslam (2011), Haslam and Edmunds (2017) equally underscore the ICC’s treatment of NGOs as serious constituency, hosting, for example, regular meetings with civil society representatives in The Hague. This reliance on civil society is also a feature of some well-known critiques

of the Court, as Haslam argues that the reliance on formal transnational advocacy networks loosely representing ‘victims’ has, in addition to objectively benefitting the ICC, ironically helped to muzzle the voices of actual victims (2011, 221). For Mégret, societies, communities and victims may have or develop the ability to speak in their own name. Indeed, they will occasionally protest ICC interventions, belying the idea that such interventions are being carried out for their sake (Mégret 2004, 42). As Laurel Fletcher argues, the practice of international criminal justice constantly exposes the gap between ‘real’ and ‘imagined’ victims, the latter being used to implicitly exclude the former (Fletcher 2004). At the very least, they will routinely complain about the partiality, slowness and insensitivity to local needs of international prosecutions.

There is a larger approach that was used by the Special Courts of Sierra Leone when trying to reach out to the survivors. There was a clear outreach arm to inform the community on what was being done, with emphasis on the question of balancing justice (Schabas 2003; Jalloh 2010). This is because criminals were “alleged criminals” that were also entitled to a fair hearing until proven guilty, while acknowledging what the survivors suffered. It was in the interest of the Special Court and the survivors that those who suffered the atrocities are rehabilitated and ensuring the atrocities do not happen again to create more survivors (Jalloh 2010, 398). This criminal justice framework is the foundation for transnational justice governance as it inspired several International Criminal Tribunals and the present-day International Criminal Court (ICC), whose justice protocols have been universalized.

Ogola cites Uganda as a case in point where some victim communities tended to act as arbiters of international justice, faulting it for being too focused on the LRA rather

than the Ugandan military, in effect being too committed to a sovereign constituency (Ogola 2010 in Mégret 2004, 42). This is a difficult strategy to execute in conditions where victims' aspirations may be quite at odds with those of the Court (Mégret 2004, 26). Ultimately, the claim to represent societies, communities, and victims' aspirations, even against their clearly stated frustrations (or straightforward opposition), will end up weakening the ICC's own quasi-democratic ethos. It will drive the Court into a posture of paternalism in which it claims to know better what is good for victims than they do; into a flight of abstraction, invoking 'justice' and 'humanity'; or a descent into concreteness, invoking the mandate given by referring states (ibid, 42).

Over the past ten years, legal scholars and activists have contributed to the consolidation of survivors' rights to truth, justice, reparations and non- relapse into violence (Orentlicher 1994; United Nations Security Council 1997), ultimately reaching a consensus that institutional transitional justice processes should be 'survivor-centered' (Méndez 2016). Lundy and McGovern advance an argument of transnational justice adopting a participatory approach to achieve longer-term sustainability, shifting away from the top-down one-size-fits-all approach to allow voices from below to be heard and heeded.

A liberal universalist justice framework focused on identified perpetrators of violence limits attention to the justice interests of survivors (Podgor and Clark 2013; Kamari and Goodale 2010, 251). This framework, not designed for survivors equally negates survivors' justice aspirations and an opportunity to respond to the unique justice needs of survivors is lost. The Nuremberg Trials, Tokyo Tribunal, ICTY and ICTR were motivated by the overarching need to promote justice for the war crimes committed in

their contexts (Orentlicher 2010). Lessons from the Nuremberg Trials and Tokyo Tribunal informed ICTY, while ICTY conditioned the design of ICTR, but not contextual realities of Rwanda after the 1994 genocide, for instance. In effect, the prioritization of cosmopolitan ambitions over local demands is easily faulted for being disconnected from where the true locus of justice should be (Mégret 2004, 29). Branch (2004) further posits that “when international prosecution is not in solidarity with local demands, then the idea that any part of humanity is entitled to punish those guilty of ‘crimes against humanity’ necessarily entails a rejection of others’ autonomy and self-determination.

The decision, on the one hand, to seek justice through punishment or, on the other, to forgo punishment in favor of justice through reconciliation, is a decision that must be made by the concrete community that is the victim of the crimes and that will have to live with the consequences of the decision. ‘Humanity’ is too thin a community upon which to base the universal right to punish” (Branch 2004, 22). However, in this case, survivors’ trajectories may as well have been part of the justice equation, in tandem with the trials.

Browne-Marshall argues that ICTR was largely based on the ICTY sharing Appeals Chamber and the Chief Prosecutor with ICTY (2011, 353). Unlike the ICTY, tens of thousands of civilians committed brutal acts led by members of the military, and those military defenders were tried separately (ibid). This narrow focus on criminals at the expense of survivors is characteristic of previous tribunals, and so the ICC today. ICTY and ICTR were blamed for failing to sufficiently account for the interests of survivors, including the distance of these tribunals from survivors and the places where the crimes were committed (WRCO Report, 11-19 in Wyngaert 2011, 477). For Mieth (2016, 6), this distance is the result of the traditional dominance of legalism in the international justice

field, with courts and tribunals developed and understood as state-like institutions that are often not equipped to include local customs or directly engage with the population. This may lead to grassroots resistance, as people feel overlooked. The difficulty is that when “actors in such institutions develop a self-image of serving higher goals such as ‘re-establishing the rule of law’”, they may view victims and affected communities merely as “constituencies which must be managed”, instead of citizens to whom they are actually accountable (McEvoy 2007, 424). The nature of these liberal justice frameworks reduces survivors to ‘instrumentalized witnesses’ (Jorda and Hemptinne in Antonio Cassese et al. 2006 in Wyngaert 2011, 477).

However, a conscious effort was made to integrate survivors’ rights in the several key provisions of the Rome Statute of the ICC and the Rules of Evidence and Procedure. The role of survivors at the ICC is thus seen as a ‘landmark development’ (Lee 2005 in Trumbull 2008, 778) a ‘major innovation’ (Victims’ Rights Working Group 2003 Trumbull 2008, 778), a ‘significant step forward’ (Giovanni 2006 in Trumbull (2008), 778), and a ‘major structural achievement’ (Stahn et al in Trumbull 2008, 778). This thus contributed a more expansive model of international criminal law that encompasses social welfare and restorative justice, and not just retribution and deterrence (Trumbull 2008, 789), as it enables projection of the actual voices of survivors (Garbett 2013). Nonetheless, survivors’ agency is also only one of the more controversial aspects of the ICC Statute (Wyngaert 2011, 476), despite it being an indicator of a shift away from a purely retributive judicial system to a more restorative, justice-oriented model (Wyngaert 2011, 476).

Lundy and McGovern (2008, 266) point to the tendency to exclude local communities as active participants in transnational justice measures as a primary flaw, raising fundamental questions of not only legitimacy, but also local ownership and participation. The duo argues that simply involving local people at the implementation stage of these initiatives is not enough. They emphasize that for a fully participatory, process locals should also take part, at every stage, in the process including: conception, design, decision-making, and management. Mégret (2004, 38) advances that the emphasis currently placed on victims at the ICC can be partly explained by the weaknesses and precariousness of other constituencies. Kendall and Nouwen have also shown the ICC's near obsession with 'victims and the justice they deserve' as the 'sole raison d'être of the ICC' (Kendall and Nouwen 2013, 239). They suggest that whilst 'juridified' victims have become an ever-narrower category, the 'abstract' victim has become an almost defied entity, which they boldly describe as the 'absent "sovereign" of international criminal law (ibid).

The invocation of victims serves to silence dissent and to make international criminal justice unimpeachable (who, after all, will dare being against victims?) (ibid, 255). The emphasis on victims is evident both in what has become a historically relatively generous victims' participation regime, and in the increasing focus on reparations as the ultimate outcome of the trial (Mégret 2004, 39). Mégret further argues that ICC authorities have undertaken explicit efforts to court victims' communities, engaging in significant outreach activities and touring affected regions, all in an attempt to obtain the sort of local support that is seen as indispensable to the enterprise's success (ibid).

Growing scholarship on truth commissions argues that these justice models can foster closure, healing, reconciliation and may assist societies, in general, to move forward by working through a violent past (Lundy and McGovern 2008, 270). Central to this is the importance of giving voice or enabling survivors to tell their story, coupled with providing reparations for survivors and restorative rather than the retributive conception of justice (Biggar 2003; Kritz 2002; Mani 2002; Seils 2002; Wilson 2001).

There are also numerous criticisms of truth commissions, not least, that they reopen old wounds and may generate further polarization; 'the truth' delivered is often partial and limited; their 'top-down' nature can marginalize survivors, and there are often unpalatable trade-offs between truth and justice, on the one hand, and stability and pragmatic politics on the other (Lundy and McGovern 2008, 270-271). However, truth-telling processes are central to giving voice to survivors, exposing past abuses, identifying and bringing perpetrators to justice, and promoting real progressive social change.

### **Survivors' Agency**

Survivor agency is a concept that lacks conceptual clarity (Jamar 2018, 1) in the literature on transnational justice. The concept implies the involvement of survivors at all stages of dispensing justice (Trumbull 2007; Wyngaert 2011; Soueid, Willhoite and Sovcik 2017). These include the framing of justice that involves defining the aim, objectives, terms, and choice of presiding officers to ensuring impartiality, as well as agreeing to the environment, modus operandi and the form and structure of administering justice (Van Dijk and Wemmers 2011, 36). When justice frameworks are designed within the value system of the contexts in which they are implemented, survivor agency is easily

achieved since the protocols are within unique cultural, political, and social contexts relatable to survivors.

Most literature on transnational or transitional justice uses the words survivor and victim interchangeably referring to the same category of people (SAKI 2015; KMD Law 2022). However, the term victims encompass both the dead and living in the aftermath of war or any other conflict a society is transitioning from. Survivors on the other hand are mostly the category whose lives were not lost during the war, lived through the war and witnessed, either directly or indirectly, the wrath of violence. Brianne Benness (2017) distinguishes between the two terms to imply: a victim is mostly defined by the harm that has come to them; a survivor is defined by their life afterwards.

A victim has been destroyed and mistreated; a survivor has continued to live and prosper despite having been victimized. A victim is powerless, at the mercy of others; a survivor has reclaimed their power. Benness' description above indicates that the language used has a significant impact on how a category of people is viewed. Using the word "victim" to describe someone diminishes their strength and resilience, because it makes survivors feel powerless or weak (KMD Law 2022). It keeps focus on their traumatic experiences instead of everything they have accomplished since then. Therefore, "using the term 'survivor' emphasizes their strength and resilience in the face of adversity rather than focusing of their status as victims of a traumatic event" (KMD Law 2022). Using the term survivors equally encourages others to see survivors as strong and capable individuals rather than victims of a crime (ibid).

Whereas the literature positions survivors as a vulnerable group that needs solutions from interveners at different levels of justice administration; scholarship on survivors'



agency views survivors as central actors with adequate knowledge of violations and how to address them. The liberal universalist approach to justice restricts them to the role of witnesses in prosecutions, thereby treating them as objects in the administration of justice. Customized justice processes, on the other hand, present them as part of the process of framing, designing and the delivery of inclusive justice outcomes. Survivors are central actors in the administration and dispensation of justice at the global, regional and country level, thus forming the crux of justice. Survivors' agency equally has potential to determine justice outcomes. The academic debate provides a broad spectrum of positions in relation to survivors' agency.

### **Survivors and Justice Outcomes**

Survivors engage in the governance of transnational justice with their aspirations that influence their view of justice, and so the frameworks of delivering that justice. It is expected that justice outcomes may be highly agreeable and binding to all parties once survivors are involved as subjects rather than objects in the justice equation. The justice system must be able to satisfy the justice needs of all parties involved as agreed in the early stages of designing and framing the system of justice they need.

Whereas survivors had become the forgotten third party of the criminal trial process (Dijk and Wemmers 2011, 33), the United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power; the United Nations basic principles and guidelines on the right to a remedy and reparation for survivors of gross violations of international human rights law and serious violations of humanitarian law – the “Van Boven / Bassiouni Principles”; and lastly the United Nations principles for the protection and promotion of human rights through action to combat impunity – the “Joinet /

Orentlicher Principles” (ibid), are the three core international instruments that brought survivors back into the equation of justice.

The United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power (UN Declaration on Justice for Victims) that was adopted by the UN General Assembly on November 29 1985 (OHCHR Resolution 40/34) marked the beginning of survivors’ rights recognition in principle four (4) which indicates, “survivors . . . are entitled to access to the mechanisms of justice and to prompt redress . . . for the harm that they have suffered” (Principle 4 of the UN Declaration on Justice for Victims 1985). This declaration aims at ensuring access to justice by all survivors as well as support throughout the justice processes. The debate of survivors’ justice continued into the “*Van Boven/ Bassiouni Principles*” which were adopted by the UN Commission on Human Rights (UNCHR) and by the General Assembly in 2005.

They set out the rights of survivors of gross violations of human rights or serious violations of international humanitarian law to an effective judicial remedy and reparations, and the duties of states to prevent violations, investigate, prosecute and punish perpetrators, provide effective access to justice to survivors and afford full reparation (Van Boven / Bassiouni Principle 3). This has attracted the interest of victimologists in the needs of survivors of international crimes and violations of human rights, coupled with the needs of indirect survivors such as family members and witnesses (Wemmers et al 2010 in Djik and Wemmers 2011, 34).

The Kampala Review Conference of 2010 is considered a turning of ‘the lens’ on victims and affected communities in the context of its stocktaking exercise (ICC 2010a,b). But this review was centered on narrow institutional dimensions and is at best still in its

infancy. Domestic societal concerns are reflected indirectly, namely through the filter of specific institutional goals, such as complementarity (Nouwen 2013; Stahn 2011), completion (Heller 2012) or procedural mechanisms (victim participation and reparation) (Kendall and Nouwen 2014; Sagan 2010).

There are feelings of imposed justice that seem particularly critical in contexts where international justice mechanisms threaten to jeopardize peace in a certain region (Mieth 2016, 4). It has been claimed that when victims of war crimes and other affected groups feel that their immediate need for peace is not mirrored by actions of an international body such as the ICC, the latter will not be appreciated (Allen 2006; Apuuli 2006; Branch 2007; and O'Brien 2007 for Uganda; and ICG 2009; and Oola 2008 for Darfur). Those affected by violence may also debate whether criminal justice should be pursued at all, and the availability or feasibility of other options like amnesty may influence the acceptance of international criminal justice. Birjandian (2020, 1) uses the case of Uganda's Transitional Justice Policy to demonstrate the ICC's intervention to implicitly establish the liberal peace as the teleology, that is the assumed purpose, of this policy. The liberal peace framework referred to here assumes that increasing the number of societies that promote human rights, rule of law, democratic governance, and market-driven development also increases the likelihood of finding peaceful solutions to domestic and international conflicts (Richmond and Franks 2009, 3-4). Birjandian emphasizes that consequently these parameters unjustifiably relegated certain conflict-related problems of crucial concern to many Ugandans beyond the scope of transitional justice (Birjandian 2020, 1).

In the lens of Uganda's victims' communities in Northern Uganda, justice meant the silence of guns and a return home from internally displaced peoples (IDP) camps and every measure that would contextually grant and guarantee this aspiration was the best approach to addressing legacies of the LRA conflict. The initial blanket amnesty program offered any Ugandan citizen that has participated in or waged an armed rebellion since January 16, 1986, the chance to voluntarily turn in their weapons and renounce their participation in such activities (ibid, 3). In return, they are freed from the threat of prosecution and given a small resource package to help integrate back into the community (Amnesty Act 2000; Clark 2018, 193).

While there is agreement that survivors benefit from participating in criminal proceedings (Steale 2005; Wemmers 2006), their participation in international criminal trials needs to reflect their best interests (Trumbull 2008; Wemmers and Brouwer 2011). Whereas survivors' justice needs vary, they may lie in domestic challenges that are rooted in the systemic causes of violence which may equally be historically contextual (Mueller 2014; Trumbull 2008). Survivor-focused justice outcomes implies, according to Jamar, approaches that challenge the image of hapless vulnerable survivors that require assistance, accepting the political identity of individual survivors and the groups representing them, and work to enhance their empowerment and emphasize their agency (rather than to expect survivors' organizations to be apolitical in nature).

Added to this is encouraging a definition of survivors that includes efforts to address structural oppression and not just physical abuses, and encouraging intersectional approaches to survivor identities that understand how gender and socio-economic background, as well as the political positions of individuals, affect survivors' agency.

Jamar (2018, 4) equally emphasizes thinking creatively as regards how both survivor and perpetrator definitions are provided for, including leaving the door open for different forms of participation and a range of narratives to emerge. Definitions of survivors and rules for their participation inevitably exclude certain groups of individuals who are affected by violence. Acknowledgement, anticipation and readiness to deal with the observed side-effects of these rules and processes can limit their distorting effects (ibid, 5).

### **Survivors and Justice Contributions**

In a transformative justice framework, the interests of all parties involved must be served. Participation in international justice should not be by invitation, or only left to those involved, but also those that have an interest based on the nature of violence they suffered. Survivors must be able to face the perpetrator, exchange influence in a way they are comfortable with provided it is void of more victimization that may manifest in either physical or psychological forms. What motivates survivors to participate is therefore their right to engage in different transnational justice frameworks. Survivors' needs transcend criminal justice, like in the case of Nepal, to include the problems they suffer both during and after the turmoil (Simon Robins in Wemmers et al 2010). This is because indictment and conviction does not transform them.

Uganda's cases at the ICC demonstrate a conflict between peace and prosecution in the global governance of transnational justice. Blumenson (2006, 827) considers how the claims of retributive justice should apply, for instance, in a case where an ICC prosecution would have a dire impact on third parties. The Acholi's warning that the ICC charges against the LRA leaders would prolong the war is just the latest in a long line of

such claims (ibid). This indicates that in the global governance of transnational justice, the prospect of genuine “peace versus punishment” dilemmas should never be underestimated. The ICC is not likely to be fortunate enough to escape daunting dilemmas of this kind (ibid). Indeed, two of the three ICC referrals from Uganda accepted thus far involved defendants who are still at large, and prosecutorial decisions fundamentally affect what happens on the ground (ibid). Thus, a major aim of the ICC should be cessation – intervening in ways that can help end a conflict (Gallon 2000). Consequentialists have two answers regarding what should happen when ICC non-intervention is important in ending a conflict, as for the case of the Acholi community in Northern Uganda.

Consequentialists turn to the global, long-term results. Blumenson points to the retributivist view, that justice must be done for justice’s sake, which some believe implies a duty to prosecute and punish by the state or the ICC despite the results of doing so (2006, 797). This is for two reasons: first, this obligation to do justice is not identical to, and does not always entail a simple duty to prosecute and punish. In the aftermath of crime, the essential duty of a state (or upon its default, the ICC) is to recognize and repudiate the crime, and stand in solidarity with the survivor (ibid). Criminal punishment is ordinarily an effective means of achieving this, but sometimes other instruments may be as well, as it was with South Africa’s TRC. Second, even if we assume that retributive justice entails a specific obligation to prosecute and punish, that obligation may not be absolute - not “at any price” (ibid). Both arguments suggest that there are some broader and more nuanced options available to the prosecutor who fears extreme consequences would result from a prosecution.

Justice does not always demand prosecution. Strict retributivists believe that the affirmative duty to prosecute and punish criminals is the essence of retributivism, but another school – call it *limiting retributivism* – does not include a duty to punish in the theory. It holds that only the blameworthy may be punished, not that they must be; retribution is therefore necessary but not sufficient condition for punishment (Quinton 1954; Packer 1968; Norval 1974; and Frase 1997). Limiting retributivism jettisons the most questionable aspects of both strict retributivism (which mandates suffering even when socially useless) and consequentialism (which may authorize scapegoating of the innocent if socially useful) (Blumenson 2006, 829).

An alternative customized transnational justice contributes to pluralism in governing transnational justice by broadening the options available to a retributive approach to justice because: institutions such as South Africa's TRC do not necessarily compromise justice since there are times when they may be a principled societal response to crimes of collective violence (Blumenson 2006, 847). Second, whatever the requirements of justice, they are not absolute and therefore the prosecutor should include the political and human costs of a prosecution in his deliberation (*ibid*). The ICC can move in a hegemonic direction because all state parties to the Rome Statute have consented to be bound by the Court and to relinquish whatever degree of sovereignty that implies (Franz 1993). However, this legal fact does not dissolve the extensive diversity among states and conceptions of justice, and a global institution would be wise to respect these differences to the fullest extent compatible with its mission (Blumenson 2006, 848).

Besides impartiality and democratic legitimacy, there remains a substantive objection to imposing a single solution on constituent states: the possibility that there is

*no one best solution*, but rather a number of reasonable ways a country may confront its past (Blumenson 2006, 850). The inescapable epistemological weaknesses necessitate a pluralist approach (Gray 2000). Perhaps some moral questions are so contextual or complex that reason is too feeble to discern the best answer, or perhaps one's unique upbringing generates biases or blinders that one can never sufficiently overcome (Rawls in Blumenson 2006, 850).

### **Postcolonial IR Theory and Third World Approaches to International Law**

Much of the current transnational justice governance theorizing is in the post-Second World War (WWII) Euro-American world, and this means the preoccupation and priorities of much of the discipline as inadequately accounting for the conditions and perspectives of the non-Western societies (Biswas in Dunne et al 2016, 219). Third World Approaches to International Law (TWAIL) scholars view the dominant liberal approach to justice as imposed international justice. Orentlicher (2004), for instance, notes that when justice is delivered from a court or tribunal that feels 'imposed' from the outside, then its potential contribution to a post-conflict transformation is limited. This is poignantly the case in some of the ICC situation countries where initiatives to open investigations were based on a referral from national governments, like in DRC and Uganda, that are perceived to be far away from the actual scene of conflict. This has facilitated repeated debates about how the referral to the ICC by a distant government can actually help the local population affected by the violence (Laborde- Barbanègre & Cassehgari, 2014).

There are marked traces of colonial history in many of the contemporary institutions and practices of justice governance (Biswas in Dunne et al 2016, 219). At its



basic level, post-colonialism helps us understand what has made our world so profoundly and recalcitrantly hierarchical, despite so many brave attempts at political change and transformation (ibid). Postcolonialism equally draws attention to some of the absences and erasures in this history of IR discipline, with particular attention to the stories of those who were left out of the telling of this dominant narrative (ibid). Postcolonialism also illuminates the damage wrought by the telling of a narrative that has profoundly shaped the infrastructure and dynamics of world politics, and opens up space to see and hear IR from other, more marginal perspectives revealing new concerns, different priorities, and alternative lifeworlds and practices (ibid). In thus pluralizing the discipline, post-colonial approaches to transnational justice governance enrich and complicate our understanding of how the world works, suggest new approaches to solve existing problems, and reveal a whole set of new problems worthy of our scholarly attention (ibid).

Postcolonialism is rooted in foregrounding the history and politics of colonialism in making sense of our present reality (Agathangelou 2009; Biswas 2016; Acharya and Buzan 2019). It challenges a history of conquest, domination, subjugation, and exploitation of primarily non-Western people and lands by European powers (Agathangelou 2009). It equally challenges the categorizations in form of North and South or First World and Third World or Developed and Underdeveloped since they are not innocent descriptors of geographical regions or facts of economic well-being, but as signifiers of worth and valuation with grave consequences for inhabitants of those groups (Biswas in Dunne et al 2016, 223). The historical causes and the contemporary mechanisms of domination and exploitation, as well as the aspirations and imaginations for global politics that continue to exist in non-Western regions of the world have seldom

had a place in the study of international relations (Agathangelou 2009; Biswas 2016; Acharya and Buzan 2019). This neglect, which postcolonial IR draws attention to and attempts to redress, has much to do with the dominance of political realism and political liberalism within the discipline.

The liberal policies of transnational justice governance require the Third World to emulate Western values and institutions in the path to progress. Yet, these preconceptions and policies are Eurocentric in their foundations and their effects where Europe and North America represent the normative referent that defines what lacks need to be remedied. Added to this is Europe and North America's influence on the form of the universality to which all states and cultures aspire (Grovoqui 2002; Hobson 2013; Seth 2013 in Biswas 2016), including frameworks of justice. Branch (2017) compares a liberal justice approach of establishing and punishing crimes to customized justice approaches that question why crimes happened. He uses Uganda's LRA example to argue that the LRA's agenda developed from the grievances of the Acholi population from which the LRA came, grievances arising from the history of violent repression of the northern population since the National Resistance Movement (NRM) takeover in 1986 (Branch 2017, 47).

But the prosecution cannot admit this resonance because such an admission would call into question the narrative of government innocence and good-faith cooperation that is required if the prosecution's strategy towards Uganda and towards Ongwen's trial is to be seen as legitimate (ibid). Branch complements his view to say that individual victims could raise episodes of state violence, but it seems there would be little opportunity for these to cohere into oppositional narratives. For Branch, it seems equally difficult for effective counter-narratives put forth outside the courtroom to have much impact (Branch

2017, 48). Therefore, a conviction brings some satisfaction to those among Ongwen's victims who wish to see him punished, but would amount to little more than an ad hoc act of vengeance, purchased at a steep price (ibid).

A group of scholars studying the colonial foundations of international law – now called 'Third World Approaches to International Law,' has shown how the apparatus of contemporary international law serves to manage and subordinate Third World countries and people (Anghie 2005; Chimni 2006 in Biswas 2016). This causes alternative IR scholarship to question the universality of human rights and the legitimacy of international justice. Branch uses the ICC to illuminate how it is, as an international justice institution, prone to constructing moral narratives about conflict in Africa and then imposing those narratives by supporting states or armed groups that wish to use them to legitimize their own force (Branch 2017, 36).

Branch adds "when the ICC first intervened in Northern Uganda at the height of the war in 2004, it deployed a specific narrative, one that reflected the long-dominant international portrayal of the conflict. A Western favorite for its embrace of neoliberal structural adjustment and its enthusiastic participation in the war on terror, the Ugandan government was portrayed as waging a desperate counterinsurgency against the LRA in a well-intentioned, if shorthanded, effort to protect civilians" (Branch 2017, 37). This is why benign and progressive impulses and effects of developmental or humanitarian missions appear questionable when one considers the infliction of harsh conditions for aid, the imposition of universalist visions of good life by demolishing existing social networks and valued traditions. And the aggrandizement of the power, wealth, and standing of the benefactors while rendering the receivers, in this context survivors, as

abject and pitiable figures of charity (Biswas in Dunne et al 2016, 227). The prosecution of top LRA commanders was expected to be welcomed with open arms in Northern Uganda – ‘I am doing justice for you,’ Moreno Ocampo reassured the Acholi victims, and hyperbolic statements of a rapid return to peace were common as Branch (2017, 38) reiterates. Branch adds that, however to the apparent shock of the Court, its intervention was met with deep opposition from many of the very people and human rights activists it thought would be its champions (Branch 2017, 38).

Fears that the arrest warrants would undo the hard-won amnesty and be used by the Ugandan government to pursue a ‘military solution,’ were combined with accusations that the ICC was undermining justice by taking the government’s side or even that the ICC’s punitive justice was inapplicable to Acholi culture (ibid). Still on amnesty, Hayner and others argue truth-for-amnesty is defensible in certain circumstances, such as: where the TRC (as the mandated amnesty-granting body) is democratically established; where amnesty is granted on an individual rather than a class (or group), basis; where there is a form of public procedure imposed on its recipients; where victims are given opportunity to question or to challenge an individual’s amnesty claim; and where reparation payments are made to victims (Freeman and Hayner 2003).

The primary focus on prosecuting individuals in its capacity is another limit to the Western-based models of international justice (Fletcher and Weinstein 2002). Villa-Vicencio (2010) stresses that in many African societies there is often an additional communal dimension of culpability which points more to the necessity of reconciliation rather than punishment. Victims also experience the trials as only scratching the surface of a wider collective dimension of guilt. This is not limited to African societies as Clark

(2009, 472) cites Bosnian victims to have reported that there is a collective dimension of guilt that was not on trial before ICTY. They argued that those members of other ethnic groups who did not do anything to prevent violence, or to offer help or shelter to those being persecuted, were also partly culpable for the atrocities (ibid). As international courts and tribunals only perform retributive justice, they are seldom able to tackle or even point out structural causes of war and conflict.

Therefore, individual trials are particularly ill-suited to deal with community-based conflicts characterized by the collapses of entire systems (Fletcher and Weinstein 2002). On the level of the affected populations, however, it is less about the theoretical argument and more about the acknowledgement that injustice often has greater dimensions (Mieth 2016, 7). International justice does therefore make less sense for populations for whom justice would include the tackling of socio-economic inequality (Carranza 2008; Mani 2002; Miller 2008). This points to how justice is defined in situation countries, and what the expectations of different stakeholders are of international criminal justice institutions (Mieth 2016, 7). Mani emphasizes that “if ideas and institutions about as fundamental and personal a value as justice are imposed from outside without internal resonance, they may flounder, notwithstanding their assertion of universality” (Mani 2002, 49).

Another pushback against a neoliberal justice approach through international courts is that advanced by the work of David Chandler and Meera Sabaratnam (2011) in Adam Branch’s chapter on “Neither Liberal nor Peaceful? Practices of Global Justice by the ICC.” According to the view presented by Branch in this work, the primary route through which the ICC fulfils its role is not through its own occasional prosecutions, but by catalyzing the emergence of a transnational network of institutions at the international,

national and local levels, at the pinnacle of which is the ICC, that promotes and enforces international criminal law (Branch 2011, 1).

International criminal law as part of transitional justice has risen to the fore of the so-called ‘liberal peacebuilding’ agenda as part of the ideological framework for remaking societies (Sriram 2007). This institutionalist understanding of the ICC as an instrument of global liberal peace depends upon seeing the Court through the lens of the *domestic analogy* (Branch 2011, 1). According to the domestic analogy, the ICC is the key judicial body for a global liberal rule of law that represents a scaled up domestic liberal rule of law (ibid). However, starting with the facts and not the ideology, however, leads instead to the conclusion that the liberal traits of domestic criminal law simply do not scale up, and that in fact there is little that is liberal about the ICC’s practice or consequences (ibid, 4).

The victim of mass violence who is to be redeemed through international criminal prosecution is also qualitatively different to the liberal rights-bearing individual who is the subject of domestic criminal legal regimes (ibid, 4-5). While the perpetrator targeted by international prosecution ends up being burdened individually with what is in fact a vast collective and structural responsibility, the victim under the domestic analogy is conversely reduced to a highly attenuated subject possessing a restricted set of rights (ibid). Also important to note is the ICC’s limited jurisdiction. Branch advances that given that the LRA conflict reaches back to 1986, the ICC’s limited temporal jurisdiction makes the Court a highly inappropriate vehicle for finding justice in response to this legacy of violence, especially since much of the most atrocious violence took place before 2002. Indeed, this time limit, while legally unassailable, has been criticized by a number of

Acholi leaders and activists for establishing an arbitrary barrier that leaves the bulk of the war beyond the reach of justice (Branch 2007, 186).

More important than which rights are granted is the manner in which those rights are conceived of as being fulfilled: individuals who have experienced mass violence are represented as “victims” with a certain set of “victims’ rights,” in particular the rights to reparation and justice, fulfilled through criminal prosecution. When the ICC is put forth as the chosen agent for fulfilling these rights, the rights-bearing, active subject displaced by a “subject” whose rights implies only endless appeals to the international community and the privilege of waiting for international intervention (Chandler 2006). A process of depoliticization can occur through international law enforcement as those denominated victims are told to wait for the ICC to intervene for their sake to realize justice (De Waal 1997). Those who suffered violence are individualized into “witnesses,” and the judgement as to whether an individual’s experience of suffering deserves reparation is removed from that individual and from there the community, not to be arrived at through collective reflection, deliberation, and organization but through the ICC’s non-transparent decision-making process (Branch 2011, 5).

This general depoliticization is consolidated through the mechanisms that promote victim “participation,” through “outreach” by the ICC and its allied organizations, and through the work of international human rights organizations, as human rights practice becomes a practice of individual testimony (ibid). These testimonies, made to investigators or human rights monitors, do not lead to the articulation and realization of common grievances, interests, and demands, but are divested of their capacity to produce meaningful collective action and become the raw material for the production of

international law for international elite consumption (Koskenniemi 2002). This model of international human rights advocacy reduces the victim of violence to a natural resource, grist for the advocacy mills, in the form of testimony and images, to be exported and processed abroad by Western human rights organizations into human rights reports (Branch 2011, 5). What the spread of global law does is to separate the population from decision-making instances so that the location the population addresses through law is not the location where decisions affecting them are being made; the people are subject to decisions they did not consent to and must obey a law they did not make (ibid). At the same time, people translate their political demands into human rights claims made into a vacuum (ibid). Legal action on the part of the subjects of global law becomes merely the affirmation of their incapacity to act (ibid).

Societies in the Global South have also customized justice approaches by applying a mix of different frameworks to achieve contextualized justice. For instance, Uganda and Sierra Leone have domesticated criminal justice by hybridization with a blend of criminal justice and communal justice aspirations. Uganda has achieved this through the International Crimes Division (ICD) of the country's High Court, with traditional approaches like Mato-Oput, while the Special Courts of Sierra Leone engaged its outreach arm (Schabas 2003; Jalloh 2010; Nouwen 2013; Freeland 2015).

Such a shift in perspectives of transnational justice from the Global North to the Global South can reveal the Third World as an active, articulate, even formidable agent with alternative visions and distinct aspirations (ibid 228). This might yield not just a different narrative of IR, but also offer fresh insights and new ideas for organizing or conducting world politics that emerge from different concerns and priorities (ibid). A shift



in perspective from Global North to Global South presents the Third World as an active, articulate, formidable agent with alternative visions and distinct aspirations (Agathangelou and Ling 2009; Biswas in Dunne et al 2016; Acharya and Buzan 2019).

For Wachira, Kamungi, and Sillah (2014, 10), this shift indicates that, for instance in some African settings, justice and reconciliation are not abstract notions but are understood, expressed and ritualized in such practical terms as ‘reparation’ and ‘restoration,’ with the goal of being the reestablishment of normalcy and functioning relationships. In this way, notions of justice do not necessarily draw a line between punishment and restoration (or reconciliation): retribution and restoration are integral to the whole. The boundary is located in the intention, that is, the restoration of balance and relationship rather than revenge against the offender (ibid). A postcolonial approach to the governance of transnational justice does not therefore seek to replace transnational justice. It simply aspires to offer a more expansive and fuller transnational justice governance that can account for the diversity of perspectives and worldviews (ibid).

Another layer to this suggested by different scholars of transnational justice is on local ownership of transnational justice governance. Stahn maintains that in contemporary discourse, the notion of the ‘local’ is mostly used as a structural argument (in Kamungi, and Sillah 2014, 10). It is popular in the field of development, where the notion of ‘local ownership’ became a central concept to reduce the divide between external interference and domestic capacity in development action (OECD 1995; Pouligny 2009; Donais 2012). After the Brahimi Report of 2000, ‘local ownership’ became a key component of UN peacebuilding and transitional justice doctrine (Chesterman 2014, 3; Donais 2012, 3).

The need to pay greater attention to local priorities was presented as one of the ‘lessons learned’ from the shortcomings of multidimensional peace operations in the seminal 2004 report of the UN Secretary General on the Rule of Law and Transitional Justice (UN Secretary General 2004, para 17). The concept was meant to mitigate certain criticisms of liberal peacebuilding, for instance, paternalism, norm entrepreneurship, lack of sustainable ‘exit’ strategies, and leave space for context-sensitive justice responses such as hybrid courts and community-based reconciliation (Roberts 2011).

Local interests and perceptions have gained greater importance in the fields of transitional justice (Hinton 2010; Waldorf and Hazan 2010; Lundy and McGovern 2008; Baines 2007; Vink and Pham 2008) and restorative justice (Findlay and Henham 2012; Doak and Mahoney 2011) and peacebuilding (Millar 2014), and perception-based research more generally (Pham et al 2005; 2007; Vink et al 2008). The local perspective places greater emphasis on narratives, experience, empathy and perception of international action (MacGinty 2013). Post-colonial scholars in TWAIL have discussed localization of transnational justice in specific contexts, such as institutional decentralization (Burke-White 2003), rule of law reform (Open Society Justice Initiative 2011) or court management (in situ proceedings) (Ford 2010). But alternatives to TWAIL regard local approaches with suspicion from an accountability perspective.

They critically assess justice from a universal lens, criticize TWAIL approaches in light of ‘international standards’, for instance the duty to investigate and prosecute, procedural fairness, proportionate sentencing or accepted as ‘necessary evil’ (Clark 2010; Freeman 2009). The ICC is, therefore, still vulnerable to some of the dilemmas that other liberal and emancipatory projects face in their engagement with ‘the local’, such as

paternalistic and missionary features, perpetuation of structural inequalities or distorting effects of de-localization (Anghie and Chimni 2003; Nielsen 2008).

What is referred to as hybrid has also not practically worked as so. For instance, the only hybridity with the Special Courts of Sierra Leone is that it had Sierra Leonean nationals as judges (Branch 2011, 127). There was also a suggestion regarding the application of some of the national laws to the practice, but none was applied. It was purely based on the international rules of evidence that were borrowed from the international system with procedures done in an international Nuremberg-inspired framework (Clarke 2020, 122). It came out to be a mini- ICC model. Basing the court in Sierra Leone, the center of atrocities in question, and allowing the country to propose judges made it different, but hardly did anything else make a difference to assume that level of hybridity (Jalloh 2010, 71). Regional mechanisms like the Extraordinary African Chambers (EAC) on Chad have also been established (Edozie and Khisa 2022). These societies have also devised novel approaches like South Africa's Truth and Reconciliation Commission, and Rwanda's Gacaca courts. All these approaches were rooted in society's diverse concepts of justice and guided by the justice outcomes they sought to achieve based on their intricate contexts (Clark 2010; Schabas 2005, 883; Minow 2007, 329; Mamdani 2015, 72).

From that angle, there are only two models visible, and these are the international model and a new trend of customizing justice systems of accountability, which was started by South Africa's TRC in 1996 and the Gacaca courts in Rwanda in 2001. However, the Gacaca process was only established because the ICTR could not operate to largely deal with all the issues or atrocities or the accused persons (Uvin 2001, 178).

They had a limited mandate of only 10 years, and they had to be aware of trying to deal with that (Uvin 2001, 179). The traditional establishment of Gacaca was holistic because it considered both survivors and alleged perpetrators, who interfaced with each other and built some level of the emotional connection to the wrong and the right, at the same time people feeling good that they contributed to the system (Cobban 2003; Clark 2010). It is not clear of whether there was some bit of restitution where survivors were compensated for the lives and property lost during the genocide.

The international criminal jurisdiction of Uganda's High Court is a demonstration to the ICC that because complementarity is the basis of the 1998 Rome Statute, a domestic system was built as a mechanism of trying cases of an international criminal nature, and Uganda's will to do so. However, some cases have already been handled by the ICC with some arrest warrants still existing of those that are still at large since Uganda referred its Lord's Resistance Army (LRA) insurgency cases to the ICC jurisdiction in 2003 (Apuuli 2013). South Africa's TRC also gave people the opportunity to apply for amnesty, leaving it to the discretion of the panel of judges to determine whether one's confession was truthful enough to exempt them from prosecution (Wilson 2001; Ross 2003, 329; Mamdani 2015, 73). Unfortunately, lots of cases were recommended for prosecution but none has been tried to date leaving a question of justice for the survivors of apartheid (Hamber 2002; Minow 2007). Customized justice frameworks have therefore emerged, especially in Africa, despite the popularity of this post-WWII liberal justice framework.

In the 'Peace versus Justice' debate, scholars like Glasius stress the importance of victim community experiences and perspectives as critical to transforming conflict and sustaining peace. Gasius uses northern Uganda to position Phuong and Vinck's argument

that the investigation would keep Joseph Kony and the LRA in the bush and away from the negotiating table (Gasius 2009, 507). He uses Phuong and Vinck's ethnographic and qualitative research projects to demonstrate that people in northern Uganda do not necessarily see peace and justice as irreconcilable, and that at the very least, a sizeable minority prioritizes some form of justice over peace at any cost (Phuong and Vick 2005 in Gasius 2009, 507). Uganda's case indicates two divided camps. Whereas supporters of the ICC thought the intervention by the Court would catalyze productive local, national and international political developments leading to peace (Branch 2007, 183), critics argued against this intervention given the marked potential of arrest warrants by this Court to remove the LRA command's incentive to leave the bush, which made peace talks difficult, if not impossible (*ibid*).

Secondly, the warrants eviscerated the Ugandan Amnesty Act of 2000. The broad understanding in Acholiland that the war will not end until the LRA leadership abandons the rebellion provided the impetus behind the mobilization for the Amnesty Act, which, at the insistence of Acholi civil society organizations, granted a general amnesty to the LRA, including its top commanders (Hovil and Lomo 2005). Branch asserts that supporters of the ICC irresponsibly frame the Amnesty Act not as the product of mobilization by the Acholi trying to find peace and duly promulgated by the Ugandan Parliament, but as a gift from the Ugandan executive, to be withdrawn by President Museveni at his convenience (Branch 2007, 184).

## **Conclusion**

This chapter reviews the universality and relativity of justice that is increasingly becoming transnational. The concept of retribution espoused in the universality of the

concept advances individual culpability as a scope of analysis, while relativity considers justice teleologies from the Global South that use the ‘Ubuntu’ philosophy champion collective justice through memory and reconciliation. Key to this competing dichotomy is the need to utilize the concept in its context as part of thinking global and acting local.

A post-colonial International Relations approach and TWAIL challenge the universality of justice as a dominant view of the world through Euro-American lenses with less accommodation of alternative views from the Global South. Thinkers of this paradigm suggest engaging post-conflict situations based on their unique contexts, away from a one-size-fits-all approach.

Any approach to justice that advances victimhood denies considers communities in transition from post-conflict situations as objects waiting onto ‘saviours’ to proffer solutions through post-conflict policies and peacebuilding programs. However, post-conflict communities are ones with agency who must be subjects in the governance of transnational justice and treating them as survivors, and not victims, brings them back to the center of justice with power to determine what justice is and how it is governed within their unique post-conflict situations.

Literature on post-conflict transnational justice governance is silent on the agency of survivors, with their unique contributions less acknowledged. This study engages this gap in transnational justice scholarship by approaching justice from the perspective of survivors involvement in transnational justice governance, the outcomes of justice administration and what survivors’ justice contributions imply in the grand scheme of transnational justice governance.

## CHAPTER 3

### RESEARCH DESIGN AND METHODOLOGY

The dissertation uses a multi-method qualitative approach of archival research, in-depth interviews, and focus group discussions. The theoretical framework and extensive review of literature available on transnational justice was complemented by research of transnational justice cases at ICC, ICD, non-judicial processes like Mato-Oput together with memory and memorialization, and datasets. These cases were studied to generate an in-depth, multi-faceted understanding of survivors' agency in the governance of transnational justice approaches implemented in the aftermath of the LRA versus the Government of Uganda conflict. These cases aided an exploration, evaluation and understanding of the different aspects of my research problem regarding survivors' agency.

#### **Case Studies**

The first case was the *Dominic Ongwen versus The Office of the Prosecutor* at the ICC. The second case was the *Thomas Kwoyelo versus the Government of Uganda*. The third case were those in the category of reconciliation and reintegration adjudicated through non-judicial mechanisms like *Mato-Oput* at the community level. These are as described below:

*Case I: Dominic Ongwen versus The Office of the Prosecutor at the ICC*

This is a transnational justice case that was adjudicated at the ICC using a liberal retributive approach to transnational justice governance. Dominic Ongwen was a Brigade Commander of the Sinia Brigade of the LRA at the time of the arrest warrant on July 8<sup>th</sup>, 2005. On February 4<sup>th</sup>, 2021, the Trial Chamber IX found Ongwen guilty of 61 counts of crimes against humanity and war crimes allegedly committed after July 1<sup>st</sup>, 2002 in northern Uganda and sentenced him to 25 years of imprisonment. This case demonstrates an adjudication mechanism where survivors were represented at The Hague by appointed legal counsels, while other survivors were invited to participate as witnesses.

*Case II Thomas Kwoyelo versus the Government of Uganda*

To domesticate the 1998 Rome Statute of the ICC, Uganda established the International Crimes Division (ICD) of the High Court in 2008 as part of the government's efforts to implement the Juba Peace Agreement of 2007. On September 6<sup>th</sup>, 2010, the Director of Public Prosecutions (DPP) indicted Thomas Kwoyelo for grave breaches of the Geneva Conventions, including war crimes and crimes against humanity, committed during the Uganda civil war in Northern Uganda from 1992 to 2005. In this transnational justice adjudication mechanism, the ICD Registry has a mandate to assist survivors to participate in the proceedings. In 2016, the ICD granted survivors the status to participate at all stages of the case, subject for them to file an application with the ICD. Subject to the approval of their application by the ICD, survivors can seek compensation if the accused is convicted.

In this case, the ICD can, in its discretion, order the convicted person to pay compensation as the Court deems fair and reasonable to any person who has suffered



material loss or personal injury in consequence of the offence committed. In awarding reparations, the trial judge or trial panel takes into account the views of the survivors on reparations.

*Case III: LRA Survivors in Mato-Oput*

A community of village leaders and elders in the Gulu province of Northern Uganda a stronghold of the LRA conflict established the Mato-Oput justice mechanism to govern reconciliation and reintegration programs for formerly abducted survivors of the war. Mato-Oput is a mechanism that this community has established both as a process and ritual ceremony that aims at restoring relationships between clans that would have been affected by either an intentional murder or accidental killing. It helps to bring together the two conflicting parties with the aim of promoting forgiveness and restoration, rather than vengeance (Anyeko et al 2012; Oola 2012, 56; Komakech 2012, 64).

It is believed by many Acholi that Mato-Oput can bring true healing in a way that formal justice systems cannot (Pham and Vinck 2005, 2007 and 2010). It does not aim at establishing whether an individual is guilty or not, rather it seeks to restore marred social harmony in the affected community. These local justice mechanisms informed a third case study for this dissertation. I interviewed Acholi elders, chiefs who act as transnational justice local practitioners and survivors participating as returnees or formerly abducted persons (FAPs) in these Mato-Oput programs.

Mato-Oput is the Acholi traditional approach to justice and the war in Northern Uganda. This is mostly supported by those that believe that Acholi traditions embody the principles and practices which have been central to the support for reconciliation and amnesty within that community (Oola 2012, 58). Traditionally, the Acholi believe in the

world of the “living-dead” and divine spirits, and their belief in this world plays a significant role in shaping how they see justice and reconciliation (Afako 2002, 64). The traditional Acholi culture views justice as a means of restoring social relations, which they consider as restorative, not retributive. The traditional culture of the Acholi encourages individuals to voluntarily accept their mistakes and take responsibility for their actions. Individuals are encouraged to forgive and not to seek revenge (Oola 2012, 63).

**Figure 3: Matrix of different justice frameworks implemented in northern Uganda**

<b>Different justice models examined</b>			
<b>Case</b>	<b>Actors</b>	<b>Purpose</b>	<b>Intended outcomes</b>
ICC	Office of the Prosecutor, Survivors’ legal representatives, Perpetrator legal representative, Witnesses upon invitation	Internationally adjudicate war crimes and crimes against humanity they commit.	Conviction or acquittal of alleged perpetrators of crimes; Setting of legal precedence for international justice; Compensation of survivors
ICD	Directorate of Public Prosecution (DPP), perpetrator’s legal representative, survivors’ legal representative, witnesses upon application	Domestically try perpetrators of international crimes.	Conviction or acquittal of alleged perpetrators of crimes; Setting of legal precedence for international justice; Compensation of survivors
Mato-Oput	Survivors, community leaders (cultural, religious, or local), custodians of memorial sites, central government, local government, NGOs	Promote forgiveness and reconciliation among aggrieved parties.  Contribute to remembrance for generations	Rebuilding of broken relationships, guarantee of non-relapse into violence, acceptance of responsibility, compensation of survivors, Learning about this tragedy.

These cases serve to illuminate some aspects of transnational justice governance and adjudication. The goal was to deeply understand the complexity of survivors’ agency in adjudicating LRA cases at the level of the ICC, at the ICD, and at the community justice process of Mat Oput to ascertain the nature of survivors’ participation and their ability to define justice, influence these justice frameworks, and the results they produce.

### **Site of Analysis: Northern Uganda and the Lord's Resistance Army (LRA) conflict**

Uganda's ethnic groups have had a history of rivalry based on their differences and competing political interests both before and after the country's independence in 1962. In 1986, the armed rebellion led by Yoweri Museveni's National Resistance Army (NRA) won the Ugandan Bush War and took control of the country. The victors sought vengeance against ethnic groups in Northern Uganda. Their activities included Operation Simsim, which engaged in burning, looting, and killings of locals. Such acts of violence led to the formation of rebel groups from the ranks of the previous Ugandan army, Uganda National Liberation Army (UNLA). Many of those groups made peace with Museveni. However, the southern-dominated army did not stop attacking civilians in the north of the country. Therefore, by late 1987 to early 1988, a civilian resistance movement (Holy Spirit Movement) led by Alice Lakwena was formed but defeated.

The Lord's Resistance Army (LRA) then emerged and occasionally carried out local attacks to underline the inability of the government to protect the population. The fact that most National Resistance Army (NRA) government forces, in particular, former members of the Federal Democratic Movement (FEDEMO) (Plaut 2010), were known for their lack of discipline and brutal actions meant that the civilian population was accused of supporting the rebel LRA; likewise, the rebels accused the population of supporting the government army (O'Kadameri 2008).

In December 2003, Uganda referred the LRA to the ICC to determine if the LRA was guilty of international war crimes. ICC Prosecutor Luis Moreno-Ocampo formally opened an investigation in January 2004. Some local Ugandan groups criticized this move, in light of attempts at peace through diplomatic efforts in 2003, as an ICC

conviction of Joseph Kony and his senior lieutenants was seen to make a negotiated end to the conflict nearly impossible.

Between 2006 and 2008, the Government of Uganda and the LRA engaged in a series of negotiations over the terms of a ceasefire and possible peace agreement. The talks, held in South Sudan's capital Juba, began in 2006 mediated by Riek Machar, the country's Vice President. The talks, which had resulted in a ceasefire by September 2006, were described as the best chance ever for a negotiated settlement to the 20-year-old war (Seguya 2010; Zaid 2021). Both sides of the negotiations called for a ceasefire which was implemented and Uganda asked the ICC to drop arrest warrants issued against the LRA's top command for the sake of realizing peace in northern Uganda (Apuuli 2013; Nakaiza 2016). The ICC rejected this request and negatively affected the Disarmament, Demobilization and Reintegration (DDR) process (Macdonald 2017; Assal 2022).

Although a final agreement was not reached, both sides agreed to the principles of how justice and reconciliation would be handled, the third of the five-point agenda with an agreement on allowing both formal justice procedures and the traditional Mato-Oput ceremony of reconciliation to play a role (Gissel 2017; Zaid 2021). Agreement of accountability and reconciliation decided that the war crimes would be tried in a special section of the High Court of Uganda as opposed to the ICC (Zaid 2021). The ICD was thus set up on May 26, 2008 with the mandate to try the LRA in an attempt to convince the ICC to withdraw its indictments against LRA leaders (Gould 2017; Nanyunja 2023).

### **Field work**

The study engaged academics, practitioners and survivors in Northern Uganda that have participated in distinct transnational justice processes with an expectation that they

have adequate knowledge that fits the purpose of this study. The categories of survivors engaged included returnees (formerly abducted persons), ex-combatants, former child soldiers, amputees, and former IDPs among others. Other respondents included members of international and local NGOs, members of the central and local governments, cultural and religious leaders. To gain entrance into the field and access respondents, I partnered with institutions like Gulu University and Refugee Law Project that have always engaged with survivors of the LRA insurgency. This strategy involved learning from their perspectives and experiences of engaging survivors in research (dos and don'ts), identifying respondents for the purpose of the study, and minimizing the challenges of my positionality as a student from a university in the Global North.

#### *Archival research*

I used archival research to establish variations (from documentations) in the process through which liberal universalist justice frameworks engaged survivors in justice programs. I extracted evidence from archival records of the ICC, Uganda's ICD, and the National Memory and Peace Documentation Center (NMPDC). This involved browsing their websites and physically accessing their resource centers in Uganda for historical documents, records, and other sources relating to survivors' testimonies, together with documents that reveal how adjudication processes were set up, and the impact of their outcomes. Specifically, these records included newspaper articles of Uganda between 2006 and 2021 for an account of how these two distinct transnational justice processes were applied to address its legacies since the 2006 Juba Peace-talks. Archival data also included personal ads, speeches, government documents, press releases, policy briefs, internal monitoring and evaluation reports; and online content including video and images

gathered from websites of the targeted transnational justice processes. For archives with a large number of materials still unprocessed, I consulted directly with archive staff who have a clear understanding of collections and their organization to be useful as they were a source of information regarding unprocessed materials or of related materials in other archives and repositories (Ramsey et al., 2009).

### *Interviews*

The study engaged a total of 30 key informants. I identified and selected respondents that are proficient and well-informed with the purpose of the study. The key informants targeted by this method included ICC officials whose contacts I acquired through the connections of my identified contacts that included: Refugee Law Project and Gulu University. Added to ICC officials were legal representatives of survivors and LRA indictees at the ICC. This was mainly done for the *Dominic Ongwen versus Office of The Prosecutor* at the ICC. In this case, interviews with 10 key informants were conducted.

For the *Thomas Kwoyelo versus the Government of Uganda* case at Uganda's ICD of the High Court, I used the same approach of acquiring respondents in the ICC case. This targeted respondents from Uganda's Directorate of Public Prosecutions that are involved with the Thomas Kwoyelo case. Added to these are members of the civil society involved with this case that include: Refugee Law Project, Justice and Reconciliation Project, and the International Center for Transitional Justice (ICTJ) Uganda Office. These are organizations I profiled as those that have followed this case since its inception with a historical account of the ICD's establishment and its accomplishments so far.

Uganda's civil society has no culture of not supporting researchers, a factor that I banked on for their support in identifying more key informants to engage with. In the

Thomas Kwoyelo case, I also engaged 10 key informants. Inquiry on the restorative justice process of Mato-Oput and other memory and memorialization activities targeted cultural and religious leaders (Acholi Religious Leaders Peace Initiative - ARLPI and Ker Kwaro Acholi), and local government officials that are custodians of this community justice process. This is because they have historical memory of these community justice processes and understand the purpose of implementing community justice frameworks. I profiled Gulu University's Institute of Peace and Strategic Studies as a center that has effectively engaged the cultural and religious institutions of the Acholi people in Northern Uganda. I then went through this institute to access the custodians of the Mato-Oput cultural process.

I interviewed religious leaders of the Acholi Religious Leaders Peace Initiative (ARLPI) and cultural leaders under Ker Kwaro Acholi (KKA). I engaged 5 religious leaders that represented the different religious denominations in the Acholi land, and 5 cultural leaders from the different clans of Acholi. These differences in religions and clan cultures helped in characterizing the differences in views on the traditional justice mechanisms based on their religious and cultural differences.

Throughout these interviews, interview guides were used to gain from deeper conversations that allowed respondents to share as much information as they could, which I then used to fit the purpose of study. These in-depth interviews were motivated by the need to tap into the respondents' experiences on survivors' agency in the governance of the different transnational justice processes implemented in Northern Uganda.

### *Focus Groups (FGDs)*

I complemented purposive in-depth interviews with 6 focus group discussions (FGDs) done at Lukodi, Pajule, Odek, Pagak, Lamoji, and Ajenjeri that ranged from a total of 6 to 9 participants each. These targeted survivors with adequate knowledge of transnational justice processes implemented in Northern Uganda by virtue of their participation in them. The targeted survivors were those that were directly affected by the LRA conflict. These included women survivors of rape and forced marriage to the LRA, male former abductees, male and female amputees, former IDPs, and children born in captivity. Survivors involved were those that had either participated in ICC processes, ICD processes, Mato-Oput, or all the three justice processes. Survivors were not restricted by the nature of their participation to enrich the discussion with a diversity in views. I revised the gender composition of the FGDs based on feedback from the contact persons' experiences with conducting gender mixed FGDs. Whereas I targeted one ethnicity (the Acholi), respondents belonged to different Acholi clans such as Patiko and Atiak.

I benefited from the experience of contact persons to ascertain the impact of the clan factor on successfully conducting FGDs and on the purpose of my study. Class is another factor that impacted survivors' views on agency and I mapped out the differences in survivors' responses based on class. I then probed how survivors' agency has worked to address these differences in survivors' experiences based on the cases that had been adjudicated and the Mato-Oput ceremonies that had been accomplished. I accessed these categories of survivors through the Refugee Law Project, and Gulu University's Institute for Peace and Strategic Studies. Each FGD comprised of 6 participants making a total of 36 respondents for the 6 FGDs, where each institution mobilized 3 FGDs.



I conducted six FGDs to identify patterns of similarity and difference. Respondents presented varied views about survivors' agency in transnational justice processes implemented in northern Uganda based on the nature of their participation and type of justice process in which they participated. This difference also manifested in the level of knowledge and experience with distinct justice processes. There were also similarities in perceptions and experiences based on the institution recruiting respondents. I thus conducted 6 FGDs with survivors identified by the two institutions with an aim of ensuring institutional information is not reproduced by survivors in the FGD.

Therefore, FGDs were per recruiting institution which helped to easily identify similarities and differences, together with finding explanation for them. I observed and listened to how survivors think and talk about their agency in the transnational justice processes in which they participated. I then applied the same approach to how they view their participation and the processes in which they engage. Lastly, I examined how their ideas on transnational justice are shaped and what shapes them, together with how their transnational justice ideas are generated or moderated through conversation with others. Listening to each other facilitated a reflection and refinement to deepen respondents' insights into their own circumstances, attitudes or behavior (Finch and Lewis 2013).

FGDs also facilitated my ability to conduct direct and explicit discussion of difference as it emerges in the group (ibid). Each FGD was supported by an FGD checklist to ensure a guided conversation with respondents. However, I acknowledge that focus groups offered me less opportunity to capture individual perspectives because of the collective responses captured. I remedied this by asking probing questions for a deeper understanding of these perspectives. Respondents are unique and therefore carry different

experiences which were also projected in the focus groups, and this created an opportunity for differences to be directly and explicitly discussed. This strategy was supplemented by more targeted in-depth interviews with some survivors that carried more similarity and an in-depth understanding of the themes covered in the FGDs to make more meaning and clarity of information that still seemed a bit ambiguous.

**Figure 4: Matrix of data collection methods used**

<b>Data Collection methods</b>	<b>Archival research</b>	<b>In-depth interviews</b>	<b>Focus groups</b>
<i>Nature of data</i>	Datasets (historical documents, records,)	<ul style="list-style-type: none"> <li>• In-depth personal accounts/perspectives</li> <li>• Contextual meanings of stories, artefacts, customs, beliefs, etc</li> <li>• Details in customization of transnational justice processes.</li> </ul>	<ul style="list-style-type: none"> <li>• Survivors' accounts shaped by group interaction, refined and reflected.</li> <li>• Social context exploring how survivors talk about transnational justice processes.</li> <li>• Differences within the focus groups displayed and discussed</li> </ul>
<i>Subject matter</i>	Nature of survivors' engagements	<ul style="list-style-type: none"> <li>• Processes of universalist vis-à-vis customized justice processes.</li> <li>• Nuanced understanding of survivors' agency and justice outcomes.</li> </ul>	<ul style="list-style-type: none"> <li>• Survivors perspectives on universalist and customized transnational justice processes</li> <li>• Survivors' accounts of justice outcomes</li> <li>• Survivors' perspectives on the nature of their involvement.</li> </ul>
<i>Targeted participants</i>	ICC, ICD, NMPDC	Academics, practitioners working on transnational justice in northern Uganda	Survivors of the LRA versus UPDF insurgency in northern Uganda with adequate knowledge of transnational justice processes implemented.
<i>Tools</i>		Interview checklist	FGD guide
<i>Duration</i>	2 months	1 hour per interview in 3 months	1 hour per focus group

While collecting data, I engaged in the iterative process of sharing preliminary findings with participants both as a way of disseminating research results and eliciting their feedback, interpretation, and identification of left-out variables. To respect participant confidentiality, I treated my sources as anonymous.

### **Data analysis**

I analyzed the data gathered at three levels of analysis: global/international level where data involved Uganda's cases at the ICC; at the national level with data from Uganda's ICD process; and at the community level with data from community justice processes in northern Uganda.

I carried out content analysis for data generated from archives to examine patterns in communication in a replicable and systematic manner (Bell and Bryman 2018). This enabled me to analyze survivors' agency in the governance of transnational justice in its non-invasive nature (ibid). A conceptual coding technique was applied to open up data. This technique helped in establishing links both between data and concepts and between concepts of the study. A priori coding method was applied by developing codes based on a postcolonial theoretical framework, and pre-existing knowledge generated from the archives and datasets.

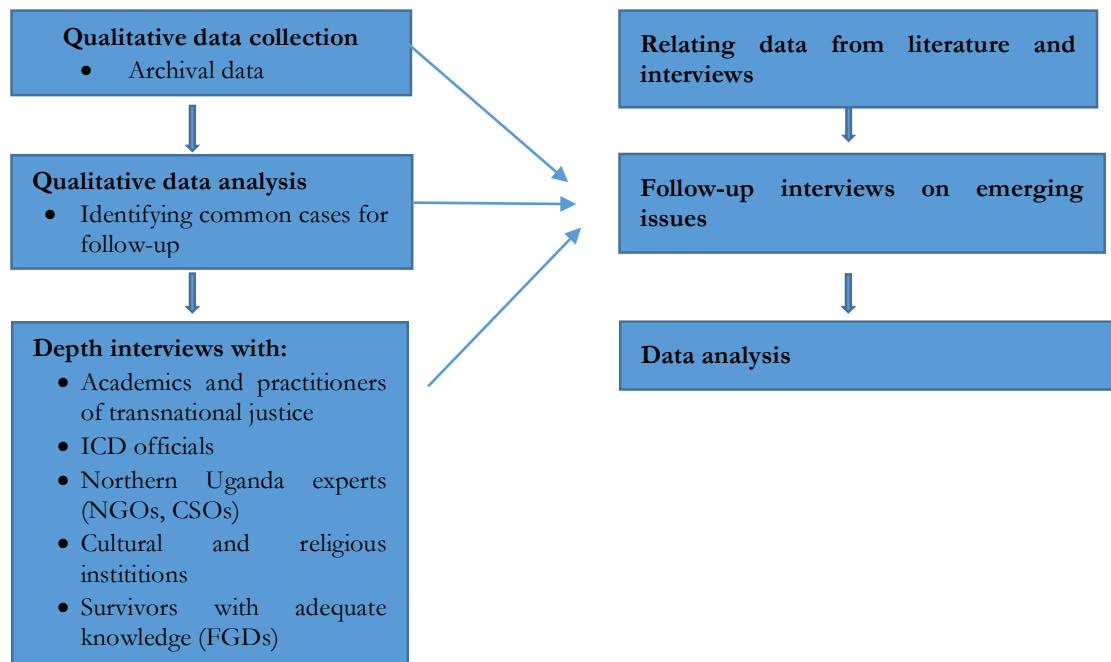
I transcribed the audio-recordings of interviews (both key informants and focus groups), while retaining contextual meanings accorded to terms by the respondents. I read these transcripts with an aim of looking for similarities or differences and subsequently finding common emerging themes. This was to achieve dependable results (Anfara, Brown and Mangione 2005). I then explored values, meanings, beliefs, thoughts,

experiences, and feelings characteristic of survivors' participation in transnational justice processes in the Acholi community.

I coded these transcripts to identify emerging themes and make sense of huge amounts of data by reducing the volume of raw material. I subdivided the huge amount of raw data and subsequently assigned them into categories. I then identified significant patterns, and finally drew meaning from data where I used themes to build a logical chain of evidence (Patton 2005). After writing the first draft of my analysis, I engaged in peer debriefing of emerging themes of findings with colleagues at the host institutions for their comments and inputs since they understand the field and the purpose of my research. After addressing comments raised by colleagues at the host institutions, I engaged in the second phase of peer debriefing with members of my dissertation advisory committee to share insights from the field together with tapping into their comments regarding some of the gaps that may be identified to be filled.

The data I analyzed at all the three levels was compared across cases using the method of structured and focused comparison of case studies guided by questions that reflect the research objective asked of each transnational justice process under study (George 2019). This was motivated by the need to guide and standardize data collection, thereby making systematic comparison and cumulation of the findings of the cases possible (ibid). From the many cases, I selected two categories that included those that fit the framework of liberal institutionalized justice and customized justice cases from which I compared how survivors feature, and the agency available to survivors to influence justice processes.

**Figure 5: Research design flow chart**



### **Ethical challenges encountered and remedies applied**

*Obtaining truly informed consent:* Some of the survivors I engaged as respondents had a diminished autonomy given their livelihood challenges due to the long impact of the LRA conflict on their ability to access necessities for their survival. This is coupled with a high degree of illiteracy or mistrust of authority which partly meant that consenting to interviews was meaningless or even dangerous. I took practical steps to respect confidentiality and ensure privacy of survivors. The process of obtaining informed consent was sensitive to the norms, customs and sensitivities of the local environment.

The institutions I used as points of contact for my research were of tremendous benefit to the survivors I engaged in this study, the specific informed consent ‘agreement’ I developed ensured that respondents are fully aware of the details of their acceptance to participate as interviewees. The consent form ensured participants are aware that consent

or refusal to participate is in no way interpreted as being linked to the provision of services. The purpose of the study was also emphasized and respondents were encouraged to withdraw their consent any time they felt uncomfortable to continue with the study. I gave a detailed explanation of the procedures used to protect confidentiality. All these were done with the assistance of a research aid who interpreted the consent form, word-per-word, in Acholi, the language of respondents, especially in the focus groups.

*Vulnerability:* The Acholi community in northern Uganda is still in the process of recovering from two decades of the LRA conflict where social support mechanisms were destroyed. They were subjected to multiple human rights abuses. This presents the potential for exploiting a situation of differential power which may lead to denying or compromising the rights of individuals. For this study, I tapped into the experiences of survivors of LRA conflict regarding their participation in different justice processes. Asking survivors to talk about experiences that were frightening, humiliating or degrading normally increases their level of trauma associated with the past conflict events. I thus made efforts to assess individuals in a particular group who are particularly vulnerable and as far as possible be allowed not to participate or withdraw from this research with a possibility for referral for psychosocial support. During the recruitment of respondents, I instructed my research aid to ensure every respondent is voluntarily choosing to participate in this study. Before the beginning of the interviews, I again shared the consent form with an in-depth explanation of the purpose of the study together with the rights of respondents as part of creating a comfortable environment for all the study respondents. Throughout the study process, I only had three respondents (female) that chose to opt out of the interview (one at the beginning and the other two in the middle of

the interview). However, their withdrawal from the interviews did not lead to denial of their entitlements which included transport facilitation to the interview venue and back to their homes.

*Maintaining confidentiality and data security:* The sensitivity of this study meant the necessity for an increased level of confidentiality of study data as part of ensuring sufficient protection for the study respondents in situations where even the simplest information provided can lead to deliberate targeting of individual/groups by perpetrators and other members of the community (reprisal attacks). To ensure confidentiality, and security of data, I developed a coding system for names, took notes in separate books, and saved notes only on a secure internet location with password enabled locks.

*Conflicting times for interviews and schedules for other community activities:* Whereas some periods in the day were more favorable to carryout interviews, I also observed patterns of activity to ensure my interview schedules did not conflict with the time when my targeted respondents are carrying out their day-to-day activities. Interviews were scheduled in full consultation with respondents and the same interviews were only conducted during the times of respondents suggested availability. This was to prevent disruptions of their daily programs where the targeted respondents, especially survivors, are mainly cultivators/farmers.

*Conflict between the research design approved by the IRB and the ethical intricacies of conducting research with survivors in northern Uganda.* In this study, the ethical codes of research in the targeted epistemic community took precedence. The ethics review board in Uganda lacked fully developed codes of ethics for researching survivors of the LRA. I then discussed the IRB approved plan with the contact persons and agreed

on the dos and don'ts in the proposed study context. This is because they have experience conducting research in the communities that I targeted. The study thus strived to meet the ethical expectations of the contact persons, based on their shared experience. Fortunately, they fitted within the ethical code approved by the IRB for this study.

*Benefits to participants:* This study did not enjoy the availability of enough resources to provide immediate benefits to respondents in this study. Some survivors of the LRA conflict are still in high need of medical attention and psychosocial services for physical and psychological repair to recover from the long-term effects of conflict. The resource envelop for this study was not enough to facilitate responses to these immediate survivor challenges that were noted during the study. However, the plan for referral pathways for survivors that needed specialized attention to these unique challenges was effected as it enabled the study to tap into the networks of contact persons Gulu University and Refugee Law Project that included five referrals to Lacor hospital in Gulu city for medical attention and the study only facilitated with transport from the villages to the hospital.

*Judging risk and benefit:* because interviewees experience emotional pain during an interview does not mean that they are unwilling to participate in the study and do not benefit from the research. Whereas this study did not plan for immediate tangible benefits like healing, I ensured the story of the survivors told in this study without dilution. Added to this was identifying referral pathways for seeking psychosocial services for the respondents as the utmost priority. This is because there was no general objective criterion for judging the risks and benefits of research in this post-conflict environment.



## **Study limitations**

This qualitative study design was tailored towards a specific context (the Acholi community in Northern Uganda). Whereas archival research assessed different other cases that contributed to widening the context of the study, perspectives from the field were only restricted to survivors of the LRA conflict in northern Uganda. This invoked generalizability challenges in studying the governance of transnational justice from the perspectives of survivors, but only ignited a discussion that can be applied to other distinct contexts not addressed in this study.

The time I spent in the field (2 months) limited the amount of results I was able to generate compared to studies that for instance engage in ethnographic studies, notwithstanding the key informant interviews I mostly conducted on zoom over a period of one year. The proposed study design only captured information generated as a result of talking to people through interviews against information that may have been generated had the study engaged in a participant observation approach. Therefore, the study did not benefit from activities like Mato-Oput and memorial prayers, together with court sessions as these activities did not happen during the time of field data collection. However, visits to memorial sites and peace documentation centers (museums) were conducted to get a feel of what happens during these activities conducted to restore peace in Northern Uganda. The study also benefited from narratives of custodians of these museums and peace restoration processes.

Demographic studies of this community by the Uganda Bureau of Statistics (UBOS) indicate a low literacy rate among the proposed epistemic community in Northern Uganda. This affected my ability to effectively engage survivors who did not

have a full command of the English language without a research assistant due to language barrier yet benefiting from interpretation services of a research assistant may have diluted some of the raw data from respondents. This was noticed during the daily evening debriefs with my research aide. I partly mitigated this challenge with comparing my notes with some of the documented literature about these processes, together with posing probing questions during interviews with key informants who had an effective command of the English language as an opportunity to double-check the information I collected.

Using contact persons such as NGOs and academic institutions in the Acholi sub-region implied limited ability to choose respondents relevant to the nature and purpose of my study. This limited my ability to control the quality of data gathered since choosing respondents was done by these contact persons on my behalf because they understood respondents better. However, I retained the power to choose who I admit as study respondents based on the characteristics shared by the contact persons. I also chose a bigger sample size which helped me control this through reaching saturation. The focus groups also helped me achieve the validity of the data as they were platforms for testing some of the common narratives that came out of one-on-one interviews.

### **Vicarious trauma and how it was managed**

Despite the ethical duty to protect my respondents, I also had the responsibility to protect myself throughout the research process. This was towards minimizing the possibility of compromising the ability of my wellbeing to effectively carryout data collection, analysis and dissemination in a reflective and holistic manner. This is because researching survivors invokes memories and reignites an emotional feeling of helplessness by a researcher especially when they identify with traumatizing stories

shared by their study participants. I therefore envisioned risks of vicarious trauma as a result of engaging survivors of the LRA conflict in my study. Survivors narrated their day-to-day challenges as a result of LRA conflict legacies. These were both physical in terms of the need for medical attention to treat bodily injuries sustained during and after the conflict, together with psychological realities due to trauma and stigma associated with the nature of violence survivors experienced.

I was cognitively affected by the resultant vicarious trauma through hopelessness, pessimism, and preoccupation with stories of participants. Whereas I was able to use my referral pathways to assist survivors I found with some physical and psychological injuries as a result of the LRA insurgency, I was unable to offer assistance that required me to fund some treatments. I perceived this as a failure on my side to make my study beneficial to the respondents.

Because I was able to foresee these challenges associated with vicarious trauma, I put in place a management plan that enabled me to mitigate its likely effects. This three steps plan involved: preparation stage; during active field research; and during data analysis.

1. In advance of field research, I identified safe housing and transport while in the field. I had local contacts for both professional and personal assistance, and identified local resources for psychological support including a gym, yoga studio and cycling activities. I also identified a network of friends in the field, together with a secure wifi for data management. I built in flexibility and additional time for the field work due to its intensity and the emotional burden.

2. During active field research, I used the identified support structures, ensured regular debriefings with my research aide and contact persons, took routine breaks to allow more time for and space during data collection and analysis. I also took notice of the signs and symptoms of vicarious trauma and handled it as a normal reaction, developed and implemented routine self-care strategies such as watching movies, teaching and regular walks to cool down the stress of fieldwork. I also celebrated daily goals achieved as a source of motivation to continue with the research.

3. During data analysis and write-up, I continued regular debriefs with my advisor, monitored the signs and symptoms of vicarious trauma, actively took breaks during data analysis, relied fully on identified support systems, continued with self-care strategies, and continuously celebrated achievements based on my plan for finishing the write-up.

### **Conclusion**

From the perspective of survivors, there is a distinct categorization of liberal universalist approaches to justice vis-à-vis customized alternative frameworks. Whereas the former objectifies survivors (reducing them to the role of mere witnesses) in the administration of justice, the latter categorizes them as key actors in the transnational justice processes. Whereas there are protocols guiding the global governance of transnational justice, these protocols assume a one-size-fits-all approach, yet the conditions that influence the conception of justice in the aftermath of conflict violence are context-specific.

Justice in a retributive fashion, characterized by punishment of perpetrators, is insufficient in accounting for the justice needs of survivors. Rather, survivors' aspirations beyond prosecution give more meaning to contextualized justice. This remains a

challenge where survivors' agency in the administration of justice is not at the center of conceptualizing justice. This is the missing link that the global governance of transnational justice needs to address if transforming societies devastated by conflict violence is the principal aim of transnational justice governance. To elucidate this, this study depended on a multi-method qualitative design to engage survivors' perspectives of justice through archival research, key informant interviews, and focus groups. Different constituents such as different categories of survivors of the LRA insurgency in the Acholi sub-region of northern Uganda, custodians of different justice mechanisms, NGOs, the academia and practitioners, central and local government officials were engaged in this study. This was with the aim of understanding how, when and why survivors are engaged in the different ICC, ICD and other non-judicial mechanisms of finding justice in the Acholi sub-region of northern Uganda in the aftermath of the LRA insurgency. Memorial sites were visited, different officials and survivors were interviewed to collect data regarding how survivors were engaged in the ICC process of the Dominic Ongwen case, how the same constituency is engaged in the ICD case against Thomas Kwoyelo, together with other non-judicial processes conducted in the search for peace and justice in northern Uganda. The study engaged respondents on the questions of the process of engagement, results of these transnational justice processes, and what these outcomes mean in the grand scheme of governing transnational justice at the global level. These results of these engagements are presented in chapters five about the ICC process, chapter six about the ICD process, and chapter seven on non-judicial processes in which survivors of the LRA insurgency were engaged, in the Acholi sub-region of northern Uganda.

## CHAPTER 4

### THE LRA INSURGENCY AND THE SEARCH FOR JUSTICE

Most post-conflict situations have required addressing legacies of a violent past. A combination of approaches, both judicial and non-judicial, is always deployed in search for peace and justice. These programs revolve around knowing the truth of what happened, why it happened, and ensuring accountability for those responsible for the crimes committed. State-building or nation-building exercises are also normally engaged to target the philosophies and designs of institutions of governance as a precursor for ensuring a non-repetition of large-scale violence.

In the aftermath of the Lord's Resistance Army (LRA) versus the Government of Uganda (GoU) insurgency in Northern Uganda, different actors engaged the question on the best ways to address this violent past with an interest in realizing sustainable peace and achieving justice. Northern Uganda became a laboratory of different approaches for restoring peace and implementing justice. Theories of peace and justice were applied. Northern Uganda saw a proliferation of organizations (Inter-Governmental Organizations, International Organizations, Non-Governmental Organizations, and Civil Society Organizations alike) that implemented both software and hardware programs. All these were in collaboration with the GoU to support its programs of reconstructing the

region whose cultural, education, health and social service infrastructure was devastated by two decades of violence.

These programs were in form of affirmative action for the communities of Northern Uganda that had lagged behind in terms of development compared to other regions of the country that were relatively peaceful. The GoU and associate development partners pushed for peace and justice on one hand, and infrastructure development on the other. However, the missing link was consultation with survivors' communities who were seen as vulnerable victims that only waited for external help instead of assistance in conceptualizing recovery programs, including justice. In the peace recovery process, survivors were reduced to mere recipients of both peace and justice programs, but not contributors to the philosophy and designs of these approaches to developing Northern Uganda. As a result, different blue prints were implemented without much focus on the unique needs of the ultimate beneficiaries thereby presenting a dilemma of effectiveness in an environment of dynamic justice needs. Another difficult puzzle was around whether to implement hardware versus software programs, and most importantly the pursuit of peace at the expense of justice and vice versa.

Justice was conceived in different forms. There was a conventional approach to justice that meant ensuring accountability for the crimes committed by alleged actors in the conflict (both LRA commanders and the GoU) through court processes that are both national and transnational. Another focus of justice was on truth-seeking to understand how and why violence happened, together with seeking a conciliatory approach to restoring relationships and realizing sustainable peace. The proponents of a traditional criminal justice approach advanced an argument of the need to ensure suspected

perpetrators are liable for the crimes they committed. The advocates of a conciliatory approach on the other hand expressed fears of an eye-for-an-eye approach to justice that would have undermined the minimal gains towards peace that had been realized. They had interests in re-building society, restoring community values and relationships and investing efforts in guarantees for non-repetition of large scale violence.

This chapter accounts for the aftermath of the LRA versus GoU insurgency to which these peace recovery programs were designed to respond. However, it does this in Uganda's colonial and post-colonial context characterized by ethnic cleavages that the state creation and state building projects have not revisited as sustainable approaches to transforming Northern Uganda's conflict situations. Since the interest of this study is more on the governance of justice, it accounts for the different justice processes being implemented especially in the Acholi sub-region that was the epicenter of the insurgency under study. This chapter details the purpose and actors of each justice system. It discusses the achievements of these justice processes so far and how they feed into the overall justice realm.

### **Uganda's Colonial and Post-Colonial Context**

Insurgencies in Uganda have existed under the context of historical ethnic cleavages encouraged by the "state-creation" colonial project, of the late 1880s to the early-1960s, which arrested the state-formation process in Africa. Until today, Uganda's North and South are divided with limited efforts towards state-building. The LRA insurgency in Northern Uganda is one of the many that happened due to those engrained ethnic divisions.



The ethnic and cultural tensions within Uganda grew during the years of creating Uganda as a British Protectorate in 1894 where ethnic communities with distinct political and economic designs were forced into a common entity (Uganda). Through their policy of 'divide and rule', the British emphasized the differences between communities of the South against the North (Bass 1975). Whereas the Southern ethnicities worked closely with the British and were encouraged in education and then influenced to join the civil service and business, Northerners were seen as more naturally martial (Mutibwa 1992, 6). Those in the North supplied much of the national manual labor and came to comprise a majority of the military (Nhema 2008, 53). Mutibwa (1992, 7) emphasizes that Buganda became the 'apex of Uganda's economic pyramid' creating resentment amongst the rest of the country. The Southern region became the center for commercial trade and development (Dolan 2009, 41). The livestock-raising Acholi from the North were resented for dominating the army and policing. Following the country's independence in 1962, Uganda's ethnic groups continued to compete with each other within the bounds of Uganda's new political system. The harsh divisions created within the country, especially in terms of labor, made political stability and social cohesion a momentous task for any leader (Armitage 2015, 2).

Although the British left the country to create its own state of independence, as Mutibwa points out 'the irony of Uganda's history is that its woes did not start with the arrival of the British rather it started with their departure (1992, 22). Among many things, the vast superiority of Buganda and the South in general meant there was a wide division in the country's development. The immediate post-independence period exhibited a caricature of a state that could not hold its distinct communities together, and

the country suffered several political instabilities. The first of its kind was the Mengo Crisis of 1966 which was a contestation for power between Prime Minister Milton Obote and the Kabaka of Buganda, Muteesa II, culminating in a military assault upon the latter's palace that drove him into exile. This is when the military became a central institution for solving internal political problems until today, with political leaders not shying away from using military force at whatever cost (Mwakikagile 2012).

Since the 1966 crisis, the militarization of Uganda's politics has manifested in every unconstitutional change of government, including in 1971 when President Idi Amin launched a coup and toppled President Milton Obote I. What is characteristic with the change of guards in Uganda has also been a change in ethnic entrenchment in power and access to privileges. Whereas the Acholi and Lango dominated the Obote administration, those from the West Nile immediately occupied positions of authority when Idi Amin took over thereby displacing mainly the Acholi and Lango from the North. Because they believed their safety depended on their proximity to power, they retreated to Tanzania. With the help of the Tanzanian forces, they launched a military offensive against the Idi Amin administration and toppled him in 1979. Uganda then witnessed its first post-independence elections in December 1980 which were highly rigid, leading President Museveni to also organize a military offensive dubbed the Bush war between 1981 and 1986.

### **The NRA Insurgency**

In 1986, the armed rebellion led by Yoweri Museveni's National Resistance Army (NRA) seized power. This coincided with the situation where the bulk of Uganda's army, the Uganda National Liberation Army (UNLA) was made up of people predominantly

from Lango and Acholi sub-regions who retreated northwards (Apuuli 2013, 4). As early as August 1986, elements of the defeated UNLA started organizing to fight the Museveni government which they considered an illegitimate administration following its unconstitutional seizure of power in January 1986. Whereas the NRA was able to defeat insurgent outfits, including the Holy Spirit Movement (HSM) I and II and the Uganda People's Army (UPA) between 1988 and 1990, the LRA under the leadership of Joseph Kony also emerged mainly from the Acholi sub-region in Uganda to militarily challenge the authority of the Museveni administration.

### **The LRA Insurgency**

Every insurgency has a motive, a driver and a trigger. It is the diversity of ethnic groups which were at different levels of socio-economic development and political organization that led to the LRA conflict. This facilitated ethnic strife that led to the current mistrust by the populace against virtually any overtures from the government to the rebels. Added to this is the strong imbalance in the level of development and investment between the North and South which was interpreted as economic marginalization characterized by disparate poverty levels that still exist until today. Apuuli (2005 and 2013) also highlights that the immediate trigger was the way elements of the NRA behaved when they reached the Northern parts of the country. The victors (NRA) sought vengeance against ethnic groups in the North of Uganda. Their activities included Operation Simsim, which engaged in burning, looting, raping and murdering people. This prompted former soldiers of the UNLA to take up arms against the government.

The LRA was a consequence of an ethnic-oriented war that was initiated by the NRM/A war against ‘northerners’. This was fueled by the belief on the part of the NRM/A leadership that Uganda’s politics had since political independence been ‘dominated’ by the ‘northerners’ in the country which happened because of their alleged domination of the armed forces. The determination was that this domination of politics in Uganda by the northerners had to end, which suggested that until that objective of removing northerners from power had been achieved and all threats from those quarters removed, the war in the North had to continue (Africa Study Center 2003).

The LRA thus emerged as another rebel group and heterodox Christian group operating in Uganda, South Sudan, the Central African Republic (CAR) and the Democratic Republic of Congo (DRC) (National Consortium for the Study of Terrorism and Responses to Terrorism, October 2011; Jjuuko and Kirabira 2023). It was formed with the aim of overthrowing the Museveni government, establishing multi-party democracy (Obita 2010), and ruling Uganda according to the Biblical Ten Commandments (Borger 2012), and Acholi nationalism (ibid). Ruddy and Koen (1999, 22) highlight that from the start, Kony’s program was a “mixture of political entrepreneurship, personal frustration and war-lordism.”

Because Southern Sudan (the present-day South Sudan) had also been wrecked by war since May 1983 when the Sudan People’s Liberation Army (SPLA) started fighting the Khartoum administration, the LRA found a perfect geographical space for organization and re-organization. This created a dichotomy of insurgency and support where the Khartoum government allied with the LRA while the GoU openly supported

the SPLA thereby allowing Kony's LRA to get bases and the much-needed supplies of weapons to continue fighting the Ugandan army (Apuuli 4, 2013).

Characteristic of LRA's operations were abduction of people, particularly children. These abductions were essentially aimed at accomplishing a number of things including recruitment of abductees into the LRA ranks especially for boys, while the girls were married to the LRA rank and file (ibid). In addition, the LRA used the children as human shields, porters and laborers, and also to fight, kill, and abduct other children (ibid). The LRA allegedly also carried out local attacks to demonstrate to the locals the inability of the government to protect the population. Whereas the NRA also accused the local population of supporting the rebels, the rebels likewise accused the population of supporting the government army (O'kadameri 2002).

Mahmood Mamdani argues that the reason for the continuation of this insurgency was because victims – the civilian population of the area - trust neither the LRA nor government forces. He believed that “a Ugandan political solution” (“political process”), rather than “military mobilization” and international “escalation,” is what was needed to resolve this conflict (Mamdani 2012).

### **Efforts in Search for Peace and Justice in Northern Uganda**

The pursuit of peace and justice in Northern Uganda took several strands. It was a pattern of strategies that all aimed at either weakening the insurgents for an overall victory by the GoU, or forcing the LRA into negotiations in terms of shuttle diplomacy and peace talks. These efforts also aimed at rallying the international community against the LRA as a way of forming and influencing public opinion and mobilize more support against insurgents.

Whereas the insurgency in Northern Uganda had lasted for many years, little was known about it in the Southern regions of Uganda and beyond the country's borders. Where it was known, it attracted little or no attention of the would-be interested actors. The GoU therefore sought to thrust this long-forgotten war onto the international stage by making a referral of the LRA top command to the ICC (Akhavan 2009, 114). This referral helped Uganda to engage an otherwise aloof international community by making the prosecution of LRA leaders a litmus test for the much-celebrated promise of global justice (ibid, 113). For the ICC, the voluntary referral of a compelling case by a state party represented both an early expression of confidence in the nascent institution's mandate and a welcome opportunity to demonstrate its viability (Nabudere et al: 2008, 78).

The ICC issued arrest warrants on July 8 and September 27, 2005 against Joseph Kony, his deputy Vincent Otti, and the LRA commanders Okot Odhiambo, deputy army commander and Dominic Ongwen, brigade commander of the Sinia Brigade of the LRA. These were the first arrest warrants issued by the ICC as an institution since it was established in 2002. However, until now, only one commander in the LRA top leadership indicted has been convicted. While other LRA commanders on the warrant list still remain at large, others have been confirmed dead. The warrants also came under assault from civil society organizations (CSOs) and scholars that wanted to see the conflict ended by peaceful means (Branch 2007). CSOs arguments revolved around the belief that indicting the LRA leadership would destroy all efforts to end the conflict peacefully (Apuuli 2009, 182).

The four LRA leaders were charged with crimes against humanity and war crimes, including rape, murder, and sexual slavery. Ongwen was the only one among the four not charged with recruiting child soldiers. The warrants were filed under seal' public redacted versions were released on October 13, 2005 (ICC 2007). Details of the warrants were sent to the three countries where the LRA was active: Uganda, then Sudan, and the Democratic Republic of Congo, demonstrating the transnational nature of the LRA cases at the ICC. The LRA leadership insisted on not surrender unless they were granted immunity from prosecution, thereby rendering the ICC's arrest warrants problematic to efforts towards a negotiated end of the insurgency (Macdonald 2017; Adetula, Murithi, and Buchanan, 2018).

Whereas ICC's indictments received warm praise within the international community, the Acholi people showed mixed reactions since many felt that amnesty for the LRA soldiers and a negotiated settlement was the best hope for an end to the crisis. The ICC's intent to prosecute leaders of the LRA reduced the insurgent group's willingness to cooperate in peace negotiations. In January 2015, Dominic Ongwen was reported either to have defected or to have been captured and was held by the Ugandan forces (Oluka and Ssekika 2015). He was successfully transferred to the ICC.

However, it is important to note that it was not the ICC interventions that brought relative peace to Northern Uganda. Neither was the silence of the guns provided for through military means. It was instead efforts by the GoU and other interested parties, including local communities affected by the insurgency. The cultural and religious leaders, especially in the Acholi and Lango sub-regions of Uganda, that were the epicenters of the insurgency, pressured government to find a strategy of restoring peace

in Northern Uganda. They suggested efforts for peace talks, amnesty and alternative justice mechanisms to the ICC. On November 30, 2005, the LRA deputy commander, Vincent Otti, contacted the BBC announcing a renewed desire among the LRA leadership to hold peace talks with the Ugandan government. The government expressed skepticism regarding the overture but stated their openness to a peaceful resolution of the conflict (Macdonald 2017; Adetula, Murithi, and Buchanan, 2018), hence the peace talks in Juba brokered by South Sudan.

### **The Juba Peace Talks**

The Juba peace talks were a series of negotiations between the GoU and the LRA insurgent group over terms of a ceasefire and possible peace agreement. Having resulted into a ceasefire by September 2006, these talks were described as the best chance ever for a negotiated settlement of the 20-year old insurgency (Zaid 2021). The Juba peace process was a result of President Museveni's pledge to grant Joseph Kony total amnesty if he gave up insurgent activities, and Joseph Kony's call for an end to hostilities in a video he released in May 2006 in which he denied committing atrocities (ibid). This was a realization of a need for a political solution to the insurgency opposed to the legal remedy that was being pursued through the ICC arrest warrants.

At the start of the Juba peace talks, the arrest warrants posed one of the most salient obstacles to their successful conclusion (Apuuli 2013, 5). By the time of the Juba peace talks, it was clear that the military solution would not be as easy as originally thought to be, a reason for the invitation extended to the ICC by the GoU to gain leverage over the insurgency (ICG 2005, 8). However, the Court also became a complicating factor in finding a solution to the conflict. The Juba peace agreement was sought to guarantee a



non-relapse into the conflict if the indicted LRA leadership would benefit from amnesty by the GoU on condition the LRA leadership signed the agreement.

However, this was dependent on the willingness of the LRA leadership to return to Uganda's jurisdiction so that it became Uganda's responsibility to govern, under its judicial architecture, the process of accountability for crimes committed by the LRA (Seguya 2010). This came with a suggestion to use the traditional justice system to enable the accused seek forgiveness from the victims (ibid). Several organizations, including the ICC (Apuuli 2013; Gissel 2015; Macdonald 2017) and the International Bar Association's Human Rights Institute insisted that the LRA must be arrested in accordance with the Rome Statute (Gissel 2015; Duursma 2020; Clark 2021).

On July 14, 2006 talks begun in Juba between delegations from the LRA and Uganda, with South Sudan's Vice President Riek Machar as the chief mediator. The broader context of the peace talks remained ambiguous. The government of Southern Sudan viewed the talks as a means of ridding itself of a foreign army that is complicating their delicate relationship with the Khartoum government. The request by the GoU for the ICC to suspend war crimes indictments against leaders of the LRA, condemned by international human rights groups but largely supported by leaders and civilians within northern Uganda, led some political analysts to see the GoU's request as a ploy to gain local support as evident in the comment made by an IDP.

He (Kony) should not be taken to The Hague. Let him come back and live with the community because this is how reconciliation will be achieved. ... Peace will come if the talks succeed, but there is the potential that they may also fail like they have done before" (IRIN 2006).

The GoU and LRA signed a truce on August 26, 2006 where, under the terms, the LRA forces were required to leave Uganda and gather in two assembly areas, where the GoU promised not to attack them, and the Government of Southern Sudan guaranteed their safety. As talks continued, both sides agreed, on June 29 2007, to the principles regarding how justice and reconciliation was to be handled, the third of the five-point agenda (Zaid 2021). The LRA and GoU agreed that both formal justice procedures and the traditional Mato-Oput ceremony of reconciliation would play a role. A breakthrough in negotiations was reached on February 3, 2008 regarding accountability and reconciliation (ibid). A deal was signed on February 19, 2008 which decided that the war crimes would be tried in a special section of the High Court of Uganda, thus bypassing the ICC and also removing one of the last obstacles to a final peace deal (ibid).

The ICC prosecutor-general Luis Moreno Ocampo on March 5, 2008 rejected demands by the rebels for a meeting, stating that “arrest warrants issued by the court... remain in effect and have to be executed” (Assal 2022). The ICC inquired as to the precise nature of the special courts in Uganda (Macdonald 2017). Kony also delayed signing of the final treaty asking for more information regarding the kind of punishments he could face (ibid). He also showed interest in the details about how Mato-Oput, the Acholi traditional justice, would be used, and how exactly the special division of the High Court would work (ibid). On May 26, 2008, the GoU set up a special war crimes court with the mandate to try the LRA in an attempt to convince the ICC to withdraw its indictments against LRA leaders (ibid).

As a result of the LRA fighters leaving Northern Uganda, the bulk of the formerly internally displaced persons (IDPs) were able to leave the camps, restrictions on freedom

of movement were eased, roads throughout the conflict area became accessible, and greater security and mobility permitted humanitarian workers to travel without armed escorts to deliver aid and services (Apuuli 2013, 6). In 2006, the GoU was able to regain control of Northern Uganda for the first time in nearly twenty years and the suspension or withdrawal of warrants would ensure the LRA did not come back to disturb the status quo (ibid).

For the LRA, arrest warrants rattled the affected LRA commanders, giving them an incentive to start talking about a peace agreement that might bring immunity from prosecution (ibid). The International Crisis Group emphasizes that the arrest warrants helped bring the LRA to the table, [and] kept it engaged (ICG 2007, 15). The LRA saw the ICC as the greatest obstacle to their participation in peace processes suggesting they may not participate unless the warrants are withdrawn (Apuuli 2008, 804). Thus, suspending or withdrawing warrants would be an opportunity for the LRA leadership to participate efficiently in peace talks.

Despite the different failed attempts for the GoU and LRA to sign the final peace accord in Juba (South Sudan), there was at least an agreement by both sides on the need to confront the prevailing conflict legacies in Northern Uganda. Like in any peace talks, survivors of the conflict in Northern Uganda were the missing link in the negotiations, yet they are the primary beneficiaries of an end to hostilities. The outcomes included facilitating the return of ex-combatants and their reintegration into the community, designing and implementing justice processes, and investing in strategies to guarantee a non-relapse into conflict, including transitional justice as discussed in the next section.

## **The Emergence of ICC, ICD, and Mato-Oput Justice Mechanisms**

2008 marked the end of the Juba peace talks and since then, Northern Uganda continues to enjoy relative peace. Different strategies were devised and implemented to assist communities that were devastated by conflict to come to terms with that dark past and collectively chat a future of peace and prosperity. Among these strategies of redressing the effects of this insurgency is transitional justice with processes governed at the global, national and local levels. These justice processes are characteristic of different players, either influencing or facilitating their effective implementation, thereby giving them a transnational face since they are not restricted to local and national facilitators, but also those around the globe. The target for all these justice processes are the survivors that are either included as primary contributors to these justice governance frameworks or as recipients of justice outcomes.

For the first five years of the transitional justice policy development process (2008-2013), government and non-government entities primarily conducted studies about the types of crimes committed during the LRA insurgency and the associated effects on conflict-affected communities across Northern Uganda. They also garnered citizens' views across the country about how to address the critiques of a liberal justice framework. The findings of these studies showed a range of views in conflict- affected communities; some supporting liberal critiques for practical and moral reasons and other challenging or deeming them irrelevant to their daily lives (Birjandian, 2020). Because of ICC-centered debates, the societal problems discussed under 'comprehensive solutions' were treated as something separate from the technical issues of 'accountability'. Whereas the LRA commander Dominic Ongwen's trial at The Hague, for instance, showed Ugandans how

limited the Court actually is in practical terms, the many years spent prosecuting Thomas Kwoyelo in Uganda's International Crimes Division of the High Court is evidence of ill-preparation for the contextual realities of administering justice. Some sections of communities affected by the LRA insurgency have retreated to community-grown solutions to the conflict legacies with particular focus on traditional justice.

Scholars, practitioners and beneficiaries of these justice frameworks may see them as parallel to each other in practice and target, but the beneficiaries remain the same, which makes them complementary to each other. The contention then remains on the extent of relevance of these different practices of justice to the intended beneficiaries, who are the survivors. In the 2007 Office of the Prosecutor (OTP) report, the Chief Prosecutor also stated the ICC's willingness to accommodate local, alternative forms of justice under its complementarity principle (Greenawalt 2009, 133). The report, however, did not specify any of the conditions or criteria for accommodation (*ibid*). Rather, it stressed the distinction between positive and negative complementarity, in particular how positive complementarity involves the normative aspects of assistance, dialogue and restorative justice, while negative complementarity refers to retribution (Roach 2013, 259).

The distinction has attracted considerable scholarly attention of the normative features of administering justice (Zeidy 2008; Stahn 2008; Kleffner 2003). This positive complementarity provides the basis for the application of different justice frameworks in Northern Uganda from the mandate of ICC's victims unit to the mandates of ICD and Mato-Oput towards survivors' justice. This multilayered justice approach in Northern

Uganda is discussed with emphasis on the intended purpose of each justice framework, target and the justice outcomes each produces.

## **Conclusion**

Different justice approaches have been (and continue to be) deployed in northern Uganda in the aftermath of the LRA versus the GoU insurgency that lasted for close to two decades. Different actors deployed in northern Uganda to contribute to the agenda of building peace and ensuring the achievement of justice. However, the dilemma that existed was on the choice of either pursuing peace at the expense of justice, or treating both variables as complementary to each other.

The pursuit of justice, on which this dissertation is centered, exhibits an interplay of retributive punitive approaches and restorative methods, both thought to contribute to the overall goal of achieving peace but in parallel ways. Whereas the former, championed by the international community, concentrates on ensuring accountability for the crimes committed during the insurgency in Uganda, the latter's focus is on reconciliation, forgiveness and rebuilding relationships between the survivors and their alleged aggressors. The justice processes are transnational in nature and represent both global, national and local justice governance frameworks, which accords them a transnational face.

However, what these transnational criminal justice approaches miss is the historical perspective of a post-independence state-building dilemma characterized by ethnic identity divisions that continue to manifest in the political contestations for leadership. Whereas these justice processes have taken a purely legal approach to addressing the discrete conflict legacies, the conflict realities they seek to respond to are purely political.

They are rooted in colonial challenges of the state creation project that have continued to facilitate an unconstitutional violent transfer of power from one political administration to the next in Uganda. These transnational punitive justice approaches are therefore seen in Uganda's context as a piecemeal approach to a yet complex challenge of governing a people with distinct identities rooted in culture, language and tradition, but also used to victimize sections of the Uganda society by the privileged groups.

Efforts in search for peace and justice in northern Uganda were alive to this reality. Whereas the pursuit of justice through the ICC was given priority by Uganda's referral of the LRA leadership to The Hague jurisdiction, the Amnesty Act of 2000 and the Juba peace talks (both political process) guaranteed a cessation of hostilities in northern Uganda. These two processes facilitated voluntary a demobilization, disarmament, and reintegration (DDR) process of the ex-LRA combatants, leading to the relative peace that northern Uganda has enjoyed close to fifteen (15) years not.

Whereas implemented as parallel to each other, the distinct justice processes, including the global ICC process, the national ICD approach, and the local frameworks of justice in northern Uganda are viewed as complementary to each other, though with contestation over their philosophy and application. The ICC punitive approach is viewed as one where the relative peace enjoyed in northern Uganda is not fully guaranteed given that some of the indictees are still at large. It is equally a process that is seen as alien to the communities it is expected to serve given the highly legal application of justice that does not tally with the communities understanding and appreciation of justice, in a context where they see indictees as part of them, and therefore need to reconciliatory approach to bring them home. The ICD approach is equally viewed by survivor communities as a

victors' form of justice where none of the UPDF members has been indicted yet they are equally seen as culpable for the atrocities that were committed in northern Uganda.

Adjudication through traditional justice, though seen as a process void of meeting international justice standards, is considered contextually grounded in the ethos of justice by the communities in transition from war. It is therefore a model of justice that advances an effective multilayered model of justice as a contribution to a plurilateral justice approach in Northern Uganda.



## CHAPTER 5

### SURVIVORS, THE ICC, AND THE CASE OF DOMINIC ONGWEN

Uganda referred the LRA cases to the ICC on December 16, 2003 (ICC 2004) after 17 years of failed attempts to defeat the LRA. In its letter referring the situation to the Court, the GoU explained that, “[h]aving exhausted every other mean of bringing an end to this terrible suffering...turn[ed] to the newly established ICC and its promise of global justice” (GoU 2006). This referral invited the OTP, which initiated investigations into the alleged war crimes and crimes against humanity committed in the context of armed conflict in Northern Uganda predominantly between the LRA and the national authorities. Upon a referral from the GoU, the OTP issued a press release stating:

A key issue will be locating and arresting the LRA leadership. This will require the active cooperation of states and international institutions in supporting the efforts of the Ugandan authorities. Many of the members of the LRA are themselves victims, having been abducted and brutalized by the LRA leadership. The integration of these individuals into Ugandan society is key to the future stability of Northern Uganda. This will require the concerted support of the international community – Uganda and the Court cannot do this alone.

Investigations opened in July 2004, and alleged crimes include: war crimes, including murder, cruel treatment of civilians, intentionally directing an attack against a civilian population, pillaging, rape, and forced enlistment of children; and crimes against humanity, including murder, enslavement, sexual enslavement, rape, and inhumane acts of inflicting serious bodily injury and suffering (ICC 2004). This

situation led to the Court's Pre-Trial Chamber to issue the Court's first arrest warrant, against the leadership of the LRA under seal on July 8, 2005 and unsealed on October 13, 2005. All suspects remained at large for a decade, until the LRA member Dominic Ongwen surrendered himself in January 2015 (Kirabira and Jjuuko 2022). Other top members of the LRA, including Vincent Otti, Raska Lukwiya, and Okot Odhiambo whose proceedings were terminated due to their passing, while Joseph Kony and Alphonse Lamola are still at large. Until these suspects still at large are arrested and transferred to The Hague, their cases will remain in the Pre-Trial stage (ICC 2004) because the ICC does not try individuals unless they are present in the courtroom.

Whereas other members of the LRA top leadership were confirmed dead and others still at large, Dominic Ongwen was captured in the Central African Republic (CAR) and handed over to the ICC. Ongwen was the Brigade Commander of the Sinia Brigade of the LRA at the time of the arrest warrant. Ongwen made his first appearance before the ICC on January 26, 2015. His trial began on December 6, 2016. The Prosecution and the Defense completed and presented their evidence. The Legal Representatives of victims also called witnesses to appear before the Chamber. On December 12, 2019, the presiding judge declared the closure of the submission of evidence in the case. The closing briefs were filed on February 24, 2020. The closing statements took place from March 10 to 12, 2020.

On February 4, 2021, Trial Chamber IX found Dominic Ongwen guilty of 61 crimes comprising crimes against humanity and war crimes committed in northern Uganda between July 1, 2002 and December 31, 2005 (ICC 2021a). On May 6, 2021, Trial Chamber IX sentenced Dominic Ongwen to 25 years of imprisonment (ICC 2021b).

Ongwen's defense team appealed the sentence but the Appeals Chamber confirmed the decisions of Trial Chamber IX on Ongwen's guilt and sentence (ICC 2022; Kirabira and Jjuuko 2022).

Over four thousand victims were "participants" in Ongwen's trial, separate from the role of witnesses (Human Rights Watch 2021). Early decisions in the case highlighted shortcomings, however, regarding giving victims a voice in the choice of which lawyers would represent them (ibid). The ICC also actively conducted outreach to the local population on the trial that included bringing community members to observe the trial at the ICC and audio and video screenings in northern Uganda of portions of the trial (ibid).

The application of this criminal justice framework in the global south has been received as an approach that is out of sync with the justice interests and outcomes societies devastated by violence in this part of the world seek to achieve (Komakech 2012, 64). This is partly because the law governing criminal justice has not cared much about survivors. The moment atrocities have been identified, the focus is no longer about just the survivors, but also justice and for the justice governors or for those pursuing justice, it is about prosecution and bringing the law to bear to ensure accountability for the atrocities committed (Anghie and Bhupinder 2004; Branch 2004; Branch 2011). There is also a presumption that the pursuit of accountability satisfies survivors. However, this chapter enlists perceptions of survivors of the LRA insurgency towards justice through the ICC using the case of Dominic Ongwen.

How is justice through the ICC understood by survivors of the LRA insurgency in Northern Uganda? How were survivors of the LRA insurgency engaged in ICC adjudication processes in Northern Uganda? What results did ICC's adjudication process

deliver to survivors of the LRA insurgency in Northern Uganda? This chapter presents and explains engagements with these three questions that guided conversations with distinct groups of respondents in accounting for the process of searching for justice in Northern Uganda through the ICC as a global justice process. This chapter uses the case of *Dominic Ongwen versus the Office of the Prosecutor* at the ICC to present findings on the LRA survivors' and other respondents' concept of justice. The chapter also responds to questions on process of engagement with survivors of the LRA insurgency and the formula of their participation in the ICC adjudication process. It presents survivors' perceptions on the protections offered to those that chose to participate in the ICC process, together with the expected and actual benefits of their participation. It lastly accounts for justice outcomes of ICC's engagement with survivors and the impact of these results to survivors of the LRA insurgency.

A total of 20 respondents were engaged in both key informant interviews and focus groups where they were encouraged to respond to questions based on their understanding of justice sought through the ICC process, together with their perspectives of the overall process of engagement in the ICC's approach to justice. The respondents engaged had both similar and different perspectives to the questions asked throughout the interviews based on the nature of their victimhood. Survivors of the LRA insurgency saw the ICC 'a big savior' (a term mentioned by one of the survivors interviewed at Lukodi massacre site on July 13, 2023) with capacity to deliver on all their justice expectations. Findings indicate that: first, survivors' expectations of ICC transcended the mandate of this Court. Second, survivors expected to use their participation to influence the direction of adjudication at the ICC but the Court's participation protocols limited their influence.

Third, survivors received news for the conviction of Dominic Ongwen with mixed reactions since the results they expected from the ICC transcended what this adjudication process was designed to offer.

This chapter gives a detailed account of justice through the ICC vis-à-vis survivors' concept of justice in Northern Uganda. It engages survivors' perspectives on how they participated in adjudicating *Dominic Ongwen versus the Office of the Prosecutor* case. It finally accounts for the outcomes of ICC's prosecution of Dominic Ongwen vis-à-vis LRA insurgency survivors' perspectives on the impact of these outcomes.

### **Interpreting Justice: The *Dominic Ongwen versus the Office of the Prosecutor Case***

In the process of holding high-profile perpetrators accountable, the 1998 Rome Statute of the ICC guidelines lead to either conviction or acquittal of a suspect. However, to understand ICC's justice in the context of the LRA insurgency, this section engages survivors' perceptions in the case of *Dominic Ongwen versus the Office of the Prosecutor*. To understand how survivors and other key informants interpret justice, they were asked what justice, through the ICC, looks like in the aftermath of the LRA insurgency. In their responses, survivors and other target respondents interpreted justice based on the actors involved in the adjudication process at the ICC, what they thought was the purpose of adjudication at the ICC, and what they considered to be the process of adjudication at the ICC, using the Dominic Ongwen case. This section thus highlights who survivors engaged with (actors), what they thought to be the reasons for this engagement (purpose), and the protocols that guided these engagements in ICC's adjudication (process).

#### *Actors in ICC's adjudication framework*

The respondents engaged highlighted different actors that they engaged with at the different layers of prosecuting Dominic Ongwen by the ICC. These actors involved lawyers that represented survivors in the prosecution process (hereby referred to as victims' counsels), and lawyers that represented Dominic Ongwen at The Hague (defense counsels). Survivors also reported engagements with representatives from the Office of the Prosecutor (hereby referred to as the OTP) at the time of gathering the requisite evidence to facilitate the trial process. At the ICC, survivors recognized judges (the Trial Chamber) who considered evidence that was presented by the OTP, together with compliments by victims' representatives and the defense filed by representatives of the indictees to determine the outcomes of the trial process. Survivors also reported that among them were those that applied to be co-opted as either witnesses or observers in the trial process.

They acknowledged that not all interested parties from groups of survivors of Dominic Ongwen's atrocities made it to The Hague, but only those that were selected by the OTP. Other survivors were engaged by their victims' representatives. ICC's outreach office in Gulu also engaged with survivors through information sessions about the ICC's mandate. An official of ICC also highlighted the activities of the ICC and included "managing survivors' expectations by laying bear what ICC's mandate is for survivors to understand what the Court does and what it does not do" (interview with an official of ICC's outreach program in Gulu on July 19, 2023). It is a combination of these actors whose interactions facilitate the ability of the Court to fulfill its mandate of administering justice through prosecutions.

*Purpose of adjudicating Dominic Ongwen versus OTP case*

Dominic Ongwen was among members of the LRA top command that were referred by Uganda to the jurisdiction of the ICC in 2002. By inviting the ICC's adjudication process, the Government of Uganda sought to bring an end to the LRA insurgency and hold the LRA top command accountable for the atrocities in Northern Uganda. The Pre-Trial Chamber of the ICC made preliminary determination as to whether LRA cases fell within the jurisdiction of the Court without prejudice and also in respect of jurisdiction and admissibility in terms of acceptability and validity. It then granted the OTP leave to investigate crimes of the LRA insurgents including those committed by Dominic Ongwen. After finding satisfactory evidence implicating the LRA top command, the ICC issued arrest warrants for the LRA top command to hold them accountable for the atrocities they committed.

In 2014, Ongwen was captured in the Central African Republic and handed over to the ICC. The pre-trial chamber confirmed the charges against him on March 23, 2016 (ICC website "Decision on the confirmation of charges against Dominic Ongwen" *ICC-02/04-01/15-422-Red*). His trial process started on December 6, 2016 and continued until the end of 2019 when the defense gave their closing statements as confirmed by an interpreter of the ICC in the interview of him conducted on January 8, 2023. The trial chamber convicted Ongwen and sentenced him to 25 years in prison. Ongwen appealed the case and the Appeals Chamber also confirmed the charges and stayed the ruling of the Trial Chamber leading to the closure of Ongwen's case in December 2022.

The purpose of adjudicating crimes at the ICC can be traced in the outcomes of its trial processes. Through Ongwen's trial, the ICC scored on the question of relevance and

legitimacy of the Court as an institution before its members, including Uganda that referred cases to its jurisdiction. For this dissertation study, survivors and other respondents were asked to share what they thought was the purpose of prosecuting Dominic Ongwen at the ICC, together with their perceptions about prosecuting Dominic Ongwen at the ICC. Among the survivors of Ongwen's atrocities, his conviction was received with mixed reactions. Whereas some, especially those that do not belong to his clan, welcomed the confirmation of charges by the Appeals Chamber of the ICC, others, especially members of his clan, saw Ongwen as a victim of both the LRA and ICC's justice process. An elder from Coroom (Ongwen's village in Northern Uganda) remarked: "Ongwen was a victim of forced recruitment by the LRA since he was abducted when he was young and his family was not sure whether he was alive or dead for 28 years until he first appeared on trial at the ICC" (interview with Ongwen's clansman at Lamogi on July 18, 2023). The ICC, on the other hand, won trust among survivors who welcomed Ongwen's conviction who saw it as an opportunity to gain from this justice process. Survivors at Lukodi remarked "we saw this ruling as accountability for the crimes committed to us during an attack on Lukodi and we look forward to the compensation that was promised by the ICC" (focus group interview with survivors at Lukodi massacre site on July 13, 2023). The ICC must therefore position itself to be relevant to the survivors of the LRA and one of the ways is through the compensation that survivors of Ongwen's atrocities expect from the Victims Trust Fund since Ongwen was convicted.

Through the Ongwen case, the ICC also sought to provide survivors of the LRA insurgency a voice by providing platforms of their participation. The ICC's outreach office in Gulu engaged survivors of the LRA insurgency, with particular recognition



given to direct survivors of Ongwen's atrocities from whom witnesses and observers were sourced. Prosecution was not complete without survivors of the LRA insurgency who were represented by the victims' counsels. A victims' counsel emphasized the importance of survivors' voice by indicating their importance to the prosecution and remarked "since the OTP had to use their testimonies to support the evidence it availed to the trial chamber, the ICC had to recognize survivors of Ongwen's atrocities as sourced by ICC's outreach office and vetted by the OTP" (interview with a victims' representative at the ICC on December 19, 2022). Witnesses, who are always sourced from survivors, have a role of ensuring clarity of what happened by telling the judge or jury everything they know about the events, through their testimonies. The legitimacy and effectiveness of the trial process was therefore anchored in testimonies by witnesses which supported evidence that the OTP collected from Northern Uganda.

Adjudicating Ongwen's atrocities at the ICC therefore fulfilled the purpose of justice at three levels that included at the Court (institutional level), at the Government of Uganda (national level), and at the community level among survivors of his atrocities. At the ICC, it fulfilled the purpose of maintaining the norm of criminal liability by holding Dominic Ongwen accountable for the atrocities he committed during the LRA insurgency. Uganda achieved by using the Court to bring an end to the LRA insurgency, together with sending signals of criminal liability to other potential insurgents in the country. Giving survivors of the LRA a voice at the ICC was part of recognizing their victimhood, together with advancing their interests of compensation following the conviction of Dominic Ongwen. This study also pushed the frontiers of justice when it

engaged respondents with an interest in understanding the protocols and mechanisms through which the ICC engaged survivors.

### **Engaging Survivors**

Survivors of the LRA insurgency that were engaged in this study are those that participated in the case of Dominic Ongwen at the ICC. They were asked to share the means through which they participated in the prosecution of Dominic Ongwen. This section engages responses on the mechanisms that the ICC used to involve the survivors of atrocities in the case of *Dominic Ongwen versus the OTP*. Survivors were also asked to state how they benefited from participating in the Dominic Ongwen case and their accounts are as presented below:

#### *Mechanisms of survivors' participation at the ICC*

Participation of survivors is provided for and protected in the legal framework that governs justice at the ICC. This is to reassure survivors of their role in adjudicating atrocities. During the interviews, survivors indicated their awareness of the mechanisms available to the ICC that ensured their direct and indirect participation in Dominic Ongwen's trial. They equally indicated that these mechanisms increased their confidence to participate in both the investigation and prosecution phases. These mechanisms are as presented below.

Survivors noted a deliberate effort by the ICC to register all those that wanted to participate in the Court process. They cited the Victims' Participation and Reparations section of the ICC that was involved in registering all those survivors that wanted to participate in the process. They saw the activities of this section as good will on the side of the ICC that also assigned them legal counsels who they could not afford to hire.

Survivors highlighted that “survivors at the ICC are being represented by two lawyers appointed by the ICC. A number of them are also participating through their legal counsels.” They added: “though not sufficient, we were given legal aid that allowed us a level of participation through our legal representatives” (interview with a survivor at Lukodi massacre site on July 13, 2023). However, not all that applied to participate were taken on by the OTP because they must meet the threshold of being direct victims of crimes for which Ongwen was tried. A UN Human Rights Official emphasized this threshold and remarked “the ICC is limited to case locations where a perpetrator in question is being prosecuted leaving out survivors that do not fall in those case locations” (interview with a UN Human Rights official, November 30, 2022). Archives from ICC’s outreach office indicated that they were able to register only 4000 to 5000 survivors, which survivors found a great underestimate for survivors of Ongwen’s atrocities alone.

The ICC allowed for an interface between survivors and their legal representatives it assigned them. Survivors saw this opportunity to express their justice expectations as empowerment with hope of receiving immediate benefits in return for sharing information that led to Ongwen’s trial. Survivors reported periodic meetings they had with court officials who spoke to them regarding the mandate and activities of the Court. It is in these meetings that they shared their interest in participating at different stages of the ICC justice process. They also used these meetings to express their justice expectations.

However, some survivors saw participation through their victims’ representatives as a mechanism that limits their direct input in the trial process as participants at Odek massacre site remarked: “this mechanism does not adequately promote survivors’

participation where they are relegated to the extreme sidelines with perpetrators taking center stage” (focus group interview with survivors at Odek on July 18, 2023).

They saw this as a limitation to their input into the Ongwen trial. This empowerment by the ICC to speak through their legal representatives was a contribution to survivors’ healing process, though it still remains incomplete as a survivor noted that “time has passed and people have moved on. Ongwen was convicted but no compensation is forthcoming” (interview with a survivor at Odek massacre site on July 18, 2023). Survivors saw the long delay in compensation a challenge on their trust in ICC’s outreach office that has not returned to them since the end of Ongwen’s trial. One of the participants at Odek remarked “I would say time is one of the biggest challenges. Time has passed...people have decided to heal. People do not want to be reminded of what went wrong, but only use compensation to respond to their needs” (interview with a survivor at Odek massacre site on July 18, 2023).

It was ICC’s outreach office in Gulu that frequently reached out to survivors with updates on the progress of the investigations and prosecution. Survivors saw this as a continuous attempt to engage them which maintained the momentum of their participation. ICC’s outreach office identified and registered survivors that sought to participate in the Court’s adjudication process. This office also facilitated the collection of information and testimonies on behalf of the OTP by engaging with survivors for testimonies that supported evidence that the OTP availed to the trial chamber to be used in prosecuting Ongwen. Survivors were dismayed by the one-sided communication by ICC’s outreach office which emphasized the mandate and activities of the Court without adequately considering the justice needs of survivors. Survivors reported no evidence of

their justice needs reflected in the trial of Dominic Ongwen yet they expected the Court to listen to them and respond within their context. Immediate needs like psychosocial programs to address the trauma and stigma among the survivors and ex-combatants, together with treatments for amputations remain relevant in today's recovery efforts for survivors in Northern Uganda.

However, ICC's outreach office in Gulu was not able to address these immediate needs according to the expectations of survivors. Whereas the outreach office listened to survivors during several engagements, activities of the ICC did not reflect feedback from survivors of Dominic Ongwen's atrocities. Survivors therefore did not feel the ICC listens to them as participants in an interview at Ajenjeri noted "...survivors' justice interests would have an influence on the programming of the Court through its outreach activities but it has little in return for survivors" (focus group interview with survivors at Ajenjeri on July 19, 2023).

The ICC outreach office in Gulu also provided survivors with video streaming to keep them updated on the trial of Dominic Ongwen at The Hague, added to taking some victims to directly participate as witnesses and observers of the trial process. This was part of bringing the Court closer to the people in the community for them to witness first-hand what was happening at The Hague which they found useful. However, with video streaming, survivors had to go through third parties to contribute their perceptions on the trial of Dominic Ongwen. Survivors had to rely on what they were being told and the news they heard, a factor that denied them an opportunity to offer timely insights during the prosecution process.

Still on ICC's outreach mechanism, respondents underscored the value of working with people who live in the community with them. This was through the ICC's work with intermediaries who always convey information to the survivors in the community as a victims' representative remarked: "the Court has a small team that is not always on the ground. We adopted the structure of intermediaries, as leaders in the community who work as paralegals to increase our reach" (interview with victims' representative at the ICC on December 19, 2022). However, the identified paralegals in the communities were also faced with a challenge of interpreting ICC protocols for the survivors they engaged as intermediaries because they had no qualifications in law. Some members of civil society and NGOs that spoke to this challenge remarked that "the protocols in the administration of justice through the ICC remained difficult for survivors to understand yet they had to participate" (interview with a UN Human Rights official, November 30, 2022). This limited survivors' ability to contribute effectively to the prosecution of Dominic Ongwen.

Lastly, the mechanism of protecting survivors who voluntarily chose to participate in the ICC process enhanced their safety and encouraged them to contribute testimonies and evidence that was used by the OTP. After frequent information sessions, survivors were motivated to trust the ICC system when they learnt about its capacity to protect their identity. Redacted information by the ICC enhanced survivors' confidence in the ICC's principle of confidentiality as a protection mechanism against identifying survivors and exposing them to reprisal targeted attacks by Ongwen's sympathizers. Some of them had hopes of traveling to Gulu, Kampala, and The Hague since they were given passports. Some of them were promised money on a monthly basis which they expected to use to

send their children to school. However, some survivors withdrew their voluntary participation after learning the ICC could not guarantee some of these benefits.

### *Protecting survivors at the ICC*

From the background of victimization and the potential for secondary and double victimization, survivors were asked to share how they felt participating and sharing information supporting the prosecution of Dominic Ongwen. Survivors of the LRA insurgency that chose to participate in ICC's justice process were either witnesses or observers within a unique context both during the investigations and prosecution. This context was characterized by different clans in the Acholi sub-region where members established close relations during their stay in IDP camps. Among members of the community were also sympathizers of Dominic Ongwen who were against collaboration with the ICC. The ICC therefore instituted protection mechanisms to encourage witnesses and observers to participate in investigations and prosecution. These protection protocols involved: subjecting participants to rigorous vetting processes to identify the right survivors of Dominic Ongwen's atrocities; maintaining anonymity of survivors who chose to share information during investigations by the OTP; holding one-on-one close sessions with survivors; the ICC paying for lawyers to avoid survivors' identification through legal transactions; distortion of survivors faces and voices; and resettling identified participants.

Respondents engaged in this study alluded to attempts by ICC's outreach program to subject survivors who applied to participate in ICC processes to a rigorous vetting process to identify the right survivors of atrocities that fell within the jurisdiction of

crimes for which Dominic Ongwen was being investigated and prosecuted. A legal representative explained this process and highlighted stages that involved LRA survivors' completion of an application to participate. That application would specifically be processed by the Victims Participation and Reparations section of the ICC. The application could as well be filled out by an NGO and then submitted to the registry which is the same office.

Another mechanism was of maintaining the anonymity of survivors who chose to participate in investigations and prosecution. Once an application form was received, it was processed in such a way that every victim was given a unique identification or court number in which case the name was protected. If one had to identify a victim, they could only identify them by knowing that allocated unique victim code. This applied to every person that was granted status to participate in the proceedings. In the meantime, the names and all the other details, including location, were redacted from the application form as emphasized by an external legal representative for survivors during the interview on December 19, 2022. To achieve the effectiveness of this protection method, all records of survivors, including their children, were kept anonymous. Whereas an accused person was entitled to a copy of their application form, their identity was redacted to prevent any likelihood of leaking information that carried any identifiers. Once every critical information was redacted, it was a guarantee for protection. Allocating a court number also served the same purpose and this number was only known by the court, legal representative and individual survivors to prevent other people from identifying survivors participating in the investigations and prosecution. To access specific survivors, victims'



counsels used a database that gave them victims' names and the code to ease the process of identifying them.

During the investigation phase by the OTP, one-on-one closed meetings were held with the identified survivors who filled in forms to participate in the ICC justice process. A victims' representative emphasized, "when we went out to engage survivors, we did not hold open meetings because these meetings were closed to non-participating survivors (interview with a victims' representative at the ICC on December 19, 2022). These closed-door meetings were to ensure survivors sharing accounts of violations by Dominic Ongwen also do not know each other. The ICC facilitated survivors to travel far away from their communities to meet their legal representatives without other community members knowing the purpose of their travel.

Legal representatives would as well meet survivors in the community in a disguised identity to ensure they are not easily identifiable in the community. This involved using public means of transport instead of ICC's cars, using materials without ICC's labels. Survivors were also encouraged not to share any information with any member of the community about their meetings with ICC officials to prevent them from compromising their safety. This was to ensure there is no trace of the ICC officials meeting survivors, together with any leakage of information shared with the OTP during investigations.

As part of protection, the Court also met all the costs involved in these processes. Survivors were prevented from facilitating lawyers to ensure their identities could not be traced from legal transactional fees. The ICC's Legal Aid process facilitated all victims' legal representatives. The OTP and the trial chamber also expected legal counsels to take extra care regarding how much information they could share with a particular survivor

since they handled sensitive information that could lead to violence through retaliation, self-defense and reprisal attacks. The Trial Chamber also set out, in its ruling on engaging with survivors, a framework for victims' counsels to ensure confidentiality, but also to ensure that when they receive confidential information from the investigation, prosecution, and defense, they can inform their clients about it but ensure proper management of that information. Victims' representatives in the Dominic Ongwen case at the ICC interviewed in this study also admitted to holding trainings for the counsels and judges to share experiences with handling the Ongwen case at the ICC with suggestions of how they can potentially deal with some of these challenging issues.

When the Dominic Ongwen case reached the trial phase and survivors had to testify, Ongwen had a right to know who they were. However, the protections within the Rome Statute's Rules of Procedure granted the legal counsels permission to apply for protective mechanisms which are provided for within the framework of the Rome Statute and the Rules of Procedure and Evidence. Survivors would testify and their voices and faces would be distorted, which is an extra protective mechanism. Publicizing the proceedings with distorted voices and faces increased the difficulty of knowing the identity of survivors who testified during Ongwen's trial. The ICC also had closed and open sessions. Most of the time if a survivor had to testify or give evidence about certain information that could easily lead to their identification, the Chamber or a particular calling party would request the Chamber to go into a closed session. For those that participated as witnesses, their identities were protected by covering their faces and disguising their voices which made it difficult to identify them.

### *Benefits of the ICC towards survivors*

Survivors who participated in adjudicating Dominic Ongwen's crimes were asked to share what their expected and actual benefits were. Survivors of the Ongwen-associated atrocities participated in the search for justice for the following benefits as promised by the outreach office of the ICC in Gulu. Survivors' account of these benefits was multi-dimensional, touching the legal, psychological, physical, and social factors.

Legally, survivors' participation is a prerogative given to them by the 1998 Rome Statute of the ICC as important agents of the criminal justice process, independent of their role as witnesses for either the prosecution or defense. The participation of survivors in the Dominic Ongwen case at the ICC increased their hope in the visibility of their actual lived experiences in the context of mass violence that was characteristic of abductions, mutilation, forced recruitment into rebel ranks, and forced marriage. Survivors feel their lived experiences were recognized under international law, while being protected to voice their concerns. Survivors shared that it was their testimonies that painted a factual picture of what happened during the insurgency. In the focus group interview at Lukodi, they emphasized "in the concluded case of Ongwen, we wrote testimonies as confirmation that the atrocities he was being charged with really happened" (focus group interview with survivors at Lukodi massacre site on July 13, 2023). Survivors in the Dominic Ongwen case therefore helped the judges to see through their experience, as the custodian of a memorial site in Lukodi, remarked "the judges do not know any of these things. Much as the ICC judges came to the field, they did not experience first-hand what the situation in these camps was before" (interview with a survivor and custodian of the Lukodi memorial site on July 13, 2023). Survivors also feel their interface with the victims' representatives

at the ICC helped in the execution of the case because some of the victims' representatives never experienced the LRA insurgency and they had to hear from them as the custodian further clarified, "as an individual, I receive visitors who come here. I tell my story as a contribution to understanding what happened" (interview with a survivor and custodian of the Lukodi memorial site on July 13, 2023).

Psychologically, participation gave survivors satisfaction that their views were represented in the process of prosecuting Ongwen as a victims' representative acknowledged, "survivors know the perspectives and so suggest the ways how these perspective views should be presented" (interview with a victims' representative at the ICC on December 19, 2022). Since survivors were given a platform to voice their concerns through their representatives and different meetings with ICC's outreach office in Gulu, allowing an alternative narrative from them meant their fair representation in the Dominic Ongwen case. For instance, sexual violence against women dominates narratives around war crimes and crimes against humanity but the trial of Ongwen also introduced sexual violence against men. A civil society official acknowledged this novelty when he remarked, "in the course of meeting with our clients, we also met men who were victims of the same crime (sexual violence). This was an important perspective that was included in the case. In the end, the charges were not taken up because they could not be included as they were not part of the initial charges" (interview with an official from Open Society Africa on January 17, 2023). Having this new narrative in the legal reports of the LRA insurgency complements investigations into LRA atrocities, a factor that survivors hope will inform other interventions outside the ICC towards male survivors of rape. Survivors, especially male survivors of rape, shared the potential of highlighting this crime within a

highly patriarchal setting which enabled them to recover from the emotional trauma associated with male victimization. Their source of satisfaction was in ensuring that Ongwen was held accountable for the crime of sexual violence, “other survivors participated to ease their pain and feel some relief with the expectation that perpetrators will be held accountable” (interview with a survivor at Ajerijeri on July 19, 2023).

Survivors therefore felt psychologically fulfilled that they contributed to the process of bringing justice by sharing information with the OTP and the trial chamber. This fulfilment helped survivors to trust the court system and dealing with their protection needs in the aftermath of their participation as a survivor in Lukodi accounts: “at first people were worried Ongwen was going to win the case. As it is, as survivors we are happy with the ruling” (interview with a key informant/survivor at Lukodi massacre site on July 13, 2023). Survivors believe that their participation gave them hope that they will not suffer reprisal attacks when the court convicted Dominic Ongwen. However, there are those survivors that also chose not to participate in fear of re-traumatization by ICC’s justice process, and once they were told there were no immediate benefits for their participation, they withdrew their willingness to take part.

Socially, participants in the Dominic Ongwen case at the ICC had hopes in the restorative component of the justice process. Survivors feel the ICC’s engagements with the Government of Uganda on issues of human rights violations facilitated their return from camps where their livelihoods had stagnated and so restored their right to livelihoods and decent living standards. Before the Government of Uganda forced survivors into IDP camps, survivors had sources of livelihoods that guaranteed them capacity to provide at least the basic needs for their households. To offer effective protection, they were

confined in camps and lost access to assets like land. Survivors therefore believe that when the ICC issued arrest warrants for the LRA top leadership, relative peace was restored which enabled them to return to their land and re-established their subsistence farms to feed members of their households. Since the time for OTP's investigations into LRA atrocities coincided with the period of resettlement back onto their original lands, survivors saw investigations as an opportunity to advance the land question as a justice question. The land question still remains among key factors in restoring societal harmony that they thought the ICC would address. However, survivors' responses were negative on the social dimension of their justice expectations, especially around land. Some respondents remarked "the land question was left unattended to as outreach officers always referred this issue to the government that victimized us" (interview with a survivor and custodian of the Lukodi memorial site on July 13, 2023).

The custodian added, "because the Court could not respond to our most immediate and pressing needs during resettlement, we got fatigued by telling our story over again yet it did not translate to our reality." Besides the land question, the pronouncements of the pre-trial chamber following investigations into LRA atrocities by the OTP facilitated both physical and psychological rehabilitation programs in Northern Uganda to which some survivors interviewed were beneficiaries. Some of the physical rehabilitation programs targeted amputees, sexual violence survivors with referrals to hospitals for specialized surgeries. A consultant with the ICC highlighted "through the Trust Funds for Victims, ICC has worked with very many partners including GWEDG to rehabilitate victims of war" (interview with a consultant on ICC processes with the London School of Economics on January 9, 2023).

Survivors also saw the ICC's investigation and prosecution process as a moment for truth-telling to establish the whereabouts of some of the abducted family members and those that were killed but not offered a decent burial according to the Acholi traditions and customs. There are those that lost their immediate family members and relatives to LRA attacks and abductions and have never seen them again as one of the survivors narrated:

“I remember I was fifteen years old when Dominic Ongwen's battalion attacked the IDP camp at Lukodi and we ran away. On returning, I found when some of my relatives that could not escape had been killed and others abducted. After the war, there was the 'Te Yat' talk show on Mega FM where a returnee that benefited from amnesty confessed to the attack on Lukodi accounting for what happened and some of the abductees that were killed in captivity. That is when I knew that some of my family members that did not return could be among those killed by the LRA while in captivity” (interview with a survivor at Lukodi massacre site on July 13, 2023)

The justice process enabled truth-telling as some returnees revealed, during the investigation process, the whereabouts of some of the people that had been buried in the bush. These were exhumed, taken home and offered a decent burial as a survivor interviewed at Lukodi recounts “the truth-telling process helped us locate the burial sites of some of our family members whom we exhumed and offered a decent burial at home.

However, the bodies could not properly be identified and so we operated on the information given by some of the returnees to identify them. What pains us is we are not sure we buried the right people at our family burial site” (interview with a survivor at Lukodi massacre site on July 13, 2023). Whereas these moments brought back the historical trauma suffered by the survivors, truth-telling through ICC's investigations revealed information that was needed by the survivors. This information was documented and kept in mini-museums at different memorial sites, with mass graves identified and names of those buried there documented for remembrance. However, some of the people

that participated had no history of the conflict and so could not contribute much to the justice process, but because they were invited by important people in their lives such as their parents, they chose to participate.

Whereas survivors were positive about some benefits that were met by their participation in ICC's justice processes, there still remains some unmet expectations of justice through the ICC as highlighted below.

### **Outcomes**

Away from the benefits of participating as witnesses in the ICC justice process, survivors interviewed in the *Dominic Ongwen versus the OTP* case at the ICC had justice expectations beyond those that the ICC mandate envisaged. This study noticed that survivors' justice expectations changed across time and space depending on the nature of atrocities suffered, together with what they perceived their future to be as remarked by one of the survivors interviewed in Gulu: "justice needs change with the situation. Where it is tough I know, and where it is not shifting I can tell" (interview with a returnee mother and victim of forced marriage at Gulu on July 18, 2023). This section presents survivors' justice expectations during their involvement with the ICC process, and how they feel ICC responded to these justice expectations.

#### *Justice expectations by survivors*

Survivors' justice expectations at the ICC ranged from the immediate benefits they anticipated the ICC would provide through its outreach office in Gulu, and the long-term programs they hoped the ICC would implement after convicting Ongwen. Though their justice interests included accountability for the atrocities committed by the LRA and the Government of Uganda during the insurgency, their expectations went beyond convicting



perpetrators. However, respondents also acknowledged the limited mandate of the ICC to respond to some of the immediate and long-term justice expectations of the LRA insurgency survivors. They recognized ICC's ability to expose some of the information they found during the Court's investigations. They reiterated "we believe part of the information the ICC's exposed led to the little help we have received so far through our survivors' groups. Different organizations responded to our plight we shared during the investigations by offering to treat those that were amputated" (focus group interview with survivors at Odek on July 18, 2023).

Recognition for victimhood was both an immediate and long-term need. Most of the survivors wanted the ICC to recognize their need for urgent attention for the physical and psychological injuries they sustained as a result of the insurgency. Among survivors were victims of rape and forced marriage, amputation, orphans, and the widowed who need immediate attention. The Trial Chamber IX of the ICC dealing with the Dominic Ongwen case acknowledged, for instance, individuals that were killed, from the evidence available to it, identified by name people who were killed in the different IDP camps. The victims' representative at the ICC noted this acknowledgment as "very significant to the families of those victims of attacks because it sends a message within the survivors that the court acknowledges their loved ones that were killed by the LRA" (interview with a victims' representative at the ICC on December 19, 2022). The investigation process coincided with a return of survivors from IDP camps who expected settlement packages like food and household items to restore their livelihoods. These were immediate needs that, until the time of the interviews, survivors felt the ICC did not respond to as a survivor remarked: "we are here, we suffered and we need to be prioritized, we need justice. This

justice can be in terms of conviction of the perpetrator, emhh...can be compensation, in terms of communal or individual compensation, if that is possible” (focus group interview with survivors at Pajule massacre site on July 15, 2023). Recognizing survivors’ victimhood was thus a good beginning point to understand the nature of meaningful justice. Survivors needed this recognition to advocate for their prioritization in government programs.

Survivors saw investigations by the OTP as a moment of truth-telling they needed to cease. They expressed interest in different accounts of attacks on the IDP camps where they lived to identify those that were responsible. For instance, a victims’ representative at the ICC shared that when they interacted with survivors, they asked questions to see whether anyone saw Ongwen in their camp when they were being attacked. Survivors indicated they did not see Ongwen. However, investigations established that Ongwen was responsible for ordering the attacks on Lukodi, Odek, Labok, and Pajule” (interview with a victims’ representative at the ICC on December 19, 2022). Survivors indicated that it was this information that facilitated their contentment because they got to this truth. Seeking the truth facilitated the accountability process for many of the survivors that were represented at the ICC. Truth-telling also helped communities to know the whereabouts of some missing persons, and the burial sites of those that died whom they exhumed and offered a decent burial according to the Acholi tradition and customs.

Survivors also considered the platform that was given to them to voice their concerns as an opportunity that facilitated their healing process. The Refugee Law Project produced a report titled “The Compendium of Conflicts” and the overwhelming desire by people in Northern Ugandan to speak out was captured in the forward. Those that

participated in the ICC justice process thus saw the process of reaching out to them as an opportunity to express themselves, share their post-war challenges with those that were willing and ready to advocate for them. Some of the survivors interviewed expressed that their willingness to forgive after utilizing the ICC platform was due to the process of healing they went through when the ICC gave them audience.

To many survivors engaged in this study, documentation of the atrocities committed by the LRA was an important component of their justice expectations. For them, their involvement in the ICC process was a moment of mapping the different atrocity sites including mass graves where victims were buried for purposes of memory and remembrance. When the ICC initiated investigations into the atrocities committed by the LRA, there were also other organizations, which survivors repeatedly referred to as ‘development partners’ that invested resources in identifying and preserving these massacre sites with hopes of establishing memorials and museums. Survivors saw documentation and preservation of important sites linked to LRA atrocities as justice in form of passing on knowledge to the future generations as a contribution to the non-repetition of violence.

A number of survivors also lost out on education, health and other livelihood opportunities because the insurgency denied them access to these services. Education for the survivors that needed to go back to school, together with returnees and their children was therefore another justice priority in the immediate aftermath of the LRA insurgency. For the survivors interviewed, livelihood opportunities ranked first on their immediate and long-term justice needs during the ICC’s investigations into the atrocities of Ongwen. Participants in a focus group interview at Lukodi expressed their biggest interest in

restoring what they lost to address their livelihood challenges. They challenged the immediate need for other services like education and road infrastructure as they considered livelihoods as a springboard for addressing other needs like education. A survivor in Lukodi questioned “what will the construction of schools mean if we cannot afford the school fees charged there?”

They saw compensation as an intervention that will empower them to access other services like education as they emphasized “the first thing should be to compensate us so that we are empowered to take our kids to school” (interview with a survivor at Lukodi memorial site on July 13, 2023). It is through affirmative action programming that the Government of Uganda, through the Office of the Prime Minister (OPM) implemented phases one and two of the Peace Recovery and Development Program (PRDP), Northern Uganda Social Action Fund (NUSAF I, II, and III) and other associated programs. These programs were acknowledged by survivors engaged, although mixed reactions were noted “different development programs were implemented by the government to redeem us but we are not using this infrastructure such as schools and different health centers that were constructed” (participant in a focus group interview at Ajenjeri on July 19, 2023).

However, other survivors saw this as a mandate of the government which should not be treated as a favor. But they credit investigations by the ICC which they said partly pressured the government to plan for them. Survivors said they should have been consulted to determine what was best for them at the immediate time when the war ended and they remarked “we see all these infrastructural projects that were implemented here but we were not prepared to use them. How can the government expect a traumatized and hungry child to concentrate in class? These hardware projects would have been secondary

to the software projects like psychosocial assistance to allow us recover and use the infrastructure effectively” (a participant in a focus group interview at Lukodi on July 13, 2023)

Some survivors also wanted to see perpetrators punished for the atrocities they committed. During the prosecution of Ongwen at the ICC, survivors shared their perspectives on imprisonment and community service. They considered community service to be more beneficial to the victimized communities opposed to imprisonment as they remarked “of what use is jailing Ongwen? Why not subjecting him to community service for us to benefit from his punishment?” (group interview with survivors at Odek on July 18, 2023). Survivors equally alluded to direct compensation from the perpetrators because they wanted them to feel the punishment, as opposed to the compensation that will be paid by the ICC. They highlighted that this would send a signal to other likely perpetrators of violence that their actions cannot go unpunished.

However, some survivors believe that no amount of compensation would bring back the lives and opportunities lost during the LRA insurgency. They instead hope for a reparation process that will facilitate healing the physical and psychological injuries they continue to sustain since the end of the war. Timing was also a challenge for engagements on the issue of compensation. Whereas survivors were engaged, it happened after the ruling at the ICC. A consultant on ICC processes expected the question of survivors’ justice expectations to come at the beginning of the trial process for the court to position itself to respond effectively to the unique justice needs of survivors” (interview with a consultant on ICC processes with the London School of Economics on January 9, 2023).

In the eyes of respondents, the cumbersome bureaucracy and red tape is another challenge with ICC's adjudication process which does not support delivering timely compensations to survivors of the LRA insurgency. Members of the civil society engaged on the question of ICC's long investigations and a lengthy prosecution process pointed to a delay by ICC's justice system which also implies a delay in survivors' access to reparations. "The justice system is not moving according to the expectations of the survivors and so they are frustrated and lose morale. The people representing the survivors are equally not as interested and so it demotivates the survivors (Interview with an official from Open Society Africa on January 17, 2023).

Responses on the question of justice expectations from ICC's adjudication process varied based on the timing of the ICC engagements in the communities. They were both immediate and long-term as indicated above. Survivors were lastly engaged on their perception of the ICC after their engagement with the Court on the *Dominic Ongwen versus OTP* case. Their responses were as below.

#### *Survivors' perception of ICC's adjudication system*

Survivors interviewed saw the ICC as a framework of justice only for the victors against the vanquished. Throughout OTP's investigation process, survivors indicated to also have cited government among the victimizers but they did not see any government official implicated by the ICC, an issue they termed as 'one-sided justice'. They expressed that "during investigations, we included the UPDF on the list of perpetrators but no member of this national army was arrested and handed over to the ICC" (interview with one of the victims' leaders in Kitgum on July 12, 2023). Survivors saw the ICC as an institution that lacked capacity to remove the veil of protection from government officials

as a victims' leader asked: "so, in a way, what about those who are off the hook? Who adjudicates for those that were victimized by the government? How do we hold those in power to account for what they did?" (interview with one of the victims' leaders in Kitgum on July 12, 2023). The victims' leader cited the principle of impartiality and used Ongwen's case and termed justice through the ICC as an 'incomplete justice'. He emphasized that "justice at the ICC has to be for all the culprits, including the government of Uganda that instead of protecting people, they bundled-up communities in IDP camps and failed to offer them sufficient protection from LRA attacks" (interview with one of the victims' leaders in Kitgum on July 12, 2023). Survivors in a group interview at Pajule on July 15, 2023 suggested that an approach of the ICC is one that encouraged them to give testimonies against Dominic Ongwen while preserving the government of Uganda which they felt silences survivors today but may lead to retaliation when people from the Acholi community also attain power.

Survivors also considered the ICC to be a court that offers protection for perpetrators and not survivors of atrocities as they considered Dominic Ongwen better off in The Hague, based on the videos they streamed during the trial process. They watched Ongwen in the videos and considered his appearance healthier than he was during his time of capture in the Central African Republic. They considered this factor in light of the long wait for their compensation from the Victims Trust Fund as a survivor stated "okay, so trying Ongwen, how does it benefit me? How can the perpetrator appear better than the survivors he victimized? We have waited for our compensation for so long and when I saw this on video, I gave up on the ICC" (a survivor in a focus group interview at Lukodi massacre site on July 13, 2023).

The retributive justice approach by the ICC was also considered by survivors as piecemeal and insufficient to address complex historical political challenges of Uganda's independence that led to previous insurgencies in Uganda. Survivors in the focus group interview at Pajule emphasized "some of the people in the community see the LRA war as an attempt to protect the Acholi community against retaliation by NRA for the bad governance of the late Presidents Milton Obote and Tito Okello Lutwa. Therefore, an approach to justice that is seen as one-sided runs the risk of not satisfying the communities who interpret it as an attempt to render them more vulnerable, especially the clans where perpetrators like Dominic Ongwen comes from" (focus group interview with survivors at Pajule on July 15, 2023). Members of the civil society interviewed also emphasized that Uganda is a society that was colonially divided with communities and ethnicities pitted against each other, and therefore saw some of the solutions expected as not legal, but rather political and so must be addressed by well-thought-out political processes.

## **Conclusion**

This chapter looked at justice at the global level, using the *Dominic Ongwen versus the OTP* case at the ICC and accounted for responses given by participants that were engaged on the question of justice through the ICC in the aftermath of the LRA insurgency. The responses captured majorly indicate how survivors of the LRA insurgency were engaged in the international adjudication process of the ICC, and what survivors felt was the importance and relevance of the ICC to their justice expectations in the context of post-war recovery. This chapter has presented accounts of different groups of respondents on these two principal questions. Accounts presented in this chapter were responses from these categories of respondents to questions on their



understanding of the ICC trial process and participation of survivors in this process of adjudication. Another set of questions they responded to was on survivors' participation in the ICC process, and the mechanisms that provided for survivors' participation. The second category of responses presented by this chapter was on protection of survivors who participated in ICC's adjudication process, with specific reference to how these protection mechanisms worked and the respondents' views on the effectiveness of ICC's protection framework. The last part of this chapter presented responses regarding the justice outcomes of the ICC adjudication process in the context of the Acholi sub-region of Northern Uganda. Respondents accounted for the unique context-specific justice expectations of the survivors, ICC's readiness to respond to them. The respondents engaged gave both similar and different perspectives to the questions asked throughout the interviews based on the nature of their victimhood which conditioned them for different expectations from the ICC. This study also established that justice expectations shifted based on survivors' distinct times of engagement with the ICC.

**Figure 6: Matrix of responses on the ICC justice model**

<b>Method</b>	<b>Type of respondent</b>	<b>Questions asked</b>	<b>Response</b>
Focus Groups	Ex-combatants Ex-wives to the rebels Former IDPs Sexual violence survivors Amputees Children born in captivity	What does justice through ICC mean?	Prosecution; Accountability; high-level Adjudication. However, it was elitist, its benefits highly selective, and targeted specific members of the community.
		Why did you participate in ICC process?	Saw a savior; Available avenues for participation; Opportunity to be heard and express justice expectations. However, participation was highly restricted; there was a cumbersome bureaucracy and red tape; no opportunity to interface with justices of the Court; only limited to the position of witnesses; insufficient protection provided.
		How do ICC's justice outcomes benefit you?	Recognition of victimhood; an opportunity to be heard adding more practical testimonies to the prosecution; a moment of truth-telling facilitating healing; Documentation of atrocities; Achieving relative peace. However, there was re-traumatization; no attention to urgent needs like physical repair and compensation; selective and no targeted compensation;
Key informants	Members of the academia, civil society, NGOs	What does justice through the ICC mean?	Accountability but: Justice of the victors against the vanquished; a piecemeal approach to a rather complex conflict situation; a very expensive endeavor
		Why does ICC encourage survivors' participation?	For the prosecution to benefit from survivors' testimony; Survivors are the cornerstone of justice administration;
		How do ICC's justice outcomes benefit survivors?	Right to information promoted; right to justice protected; a precedent of criminal liability set; a warning for other likely violators of human rights

## CHAPTER 6

### SURVIVORS, THE ICD, AND THE CASE OF THOMAS KWOYELO

As demonstrated in Chapter four of this dissertation, the International Crimes Division (ICD) of the High Court of Uganda was the first experiment of domesticating the 1998 Rome Statute. Despite the slimness of the chances that Kony would sign the Final Peace Accord following the Juba peace talks, the Uganda Justice, Law and Order Sector (JLOS), a coordinating forum bringing together senior officials in government agencies working in the areas of justice, law and order implemented some of the provisions of the Accountability Agreements (Nouwen 2012, 283).

Uganda adopted the ICC Act of 2010 to give effect to the Rome Statute, thereby introducing several novelties to Ugandan law (ibid, 284). The Act proscribed war crimes, crimes against humanity, and genocide – for almost all crimes, for the first time in Ugandan history. The Act also established extraterritorial jurisdiction on grounds other than residency or nationality, namely employment by the state of Uganda, passive personality, and universality on the condition of the offender's subsequent presence in Uganda (ibid). Uganda has therefore implemented the Rome Statute into national law, facilitating cooperation with the ICC.

In 2008, Uganda established the Special Division of the High Court (SDHC), also known as the War Crimes Court (WCC) or War Crimes Division that later metamorphosed into the International Crimes Division (ICD). This is a product of the

Juba peace talks. The LRA leader Joseph Kony had informed his delegation in Juba that he would not sign any agreement if the ICC arrest warrants were not dropped. The only way for the parties to end the ICC's involvement was to challenge admissibility on grounds of complementarity.

Both the Ugandan government and the LRA delegation initiated a position that traditional justice mechanisms could substitute the ICC (Parliament of the Republic of Uganda February 21, 2007). However, over time, the dominant view became that traditional justice would probably not amount to domestic proceedings as envisaged by the ICC's complementarity principle (Nouwen 2012, 285), if only because traditional justice does not include prosecution. The parties agreed that the government would establish a "special division of the High Court" "to try individuals who are alleged to have committed serious crimes during the conflict" (Meeting of JLOS officials in Kampala in September 2008 cited in Nouwen 2012, 285).

As a result, Uganda established the ICD under its High Court to try war crimes, crimes against humanity, genocide, terrorism, human-trafficking, piracy, and other international crimes. This division of the High Court of Uganda was modeled on the structure of international crimes tribunals. According to the administrative circular, it comprises a bench of at least three judges and a Registry; to which the OTP is attached, and an Office of the Defense Counsel (Special Division of the High Court of Uganda 2008 Administrative Circular, Clause 2).

The creation of a court, like the adoption of the ICC Act, may seem to enhance accountability. However, the primary cause of impunity in Northern Uganda was historical, linked to the state creation project that forced distinct groups to live together

in defined boundaries by the British. The colonial administration's divide and rule policy also denied attempts to building Uganda as a nation in the evening of colonialism due to the ethnic differences that were strongly promoted at the expense of other existent unifying factors. The contestation for leadership since Uganda's independence on October 9<sup>th</sup>, 1962 has further exacerbated ethnic tensions with politics that has further divided the country since politics has always revolved around ethnicity leading to competition for power and control over the state. These historical antecedents have not guaranteed the effectiveness of this piecemeal legal approach to confronting the legacies of a violent past in Northern Uganda. The ICD has investigators, prosecutors, and judges assigned to it, but to date the judges have more actively pursued their work than the investigators and prosecutors (Nouwen 2012, 292). These investigators advanced an argument that it would be a waste of time and resources to start building cases against persons who may never be arrested (*ibid*), together with a process that does not enjoy full support of the war-ravaged communities since they see some of the perpetrators in question as their own. Added to this is the challenged innocence of the Uganda People's Defense Forces (UPDF) around the atrocities that were committed in Northern Uganda. The Acholi community leadership for instance sees the UPDF as equally culpable for the atrocities for which the LRA top leadership was indicted.

When the ICC prosecutor announced that the Uganda government had referred "the situation concerning the LRA," NGOs were quick to point out that the referral "concerning the LRA" should not limit the Court's personal jurisdiction to the LRA; the ICC should equally investigate crimes allegedly committed by the state actors, in particular the UPDF (Amnesty International 2004). Both the ICC and the ICD have not

yet opened an investigation into the UPDF with a justification by the OTP that LRA's crimes were graver than those committed by the UPDF (Ocampo October 14, 2005). However, the state's involvement in the commission of crimes against civilians is an independent and sufficient indication of gravity, because of the high risk of impunity for such crimes (Schabas 2008, 748 in Nouwen 2012, 297).

Consequently, state officials in Kampala as well as Acholi have seen the ICC and the ICD as an extension of the executive's instrumentation, rather than an independent court that enforces the law equally (Nouwen 2012, 298). For the Acholi, the impression of the ICC and ICD as president Museveni's marionette was one of the reasons to respond negatively to the ICC's and ICD's intervention since to them, the ICC's and ICD's selective justice amounts to injustice (ibid).

Like in the case of Dominic Ongwen at the ICC, Thomas Kwoyelo still remains the first and only LRA commander ever tried by the ICD. Kwoyelo was convicted for his participation in LRA activities. Uganda's Constitutional Court ruled in 2011 that LRA commander Thomas Kwoyelo, on trial at the ICD, had a right to amnesty. The Kwoyelo case resumed in 2016 after the Supreme Court overturned the Constitutional Court decision (Coalition for the ICC 2012). Kwoyelo did not benefit from Uganda's amnesty law as other former LRA combatants because he was captured and handed over to Uganda yet the Amnesty Act shields only those who voluntarily renounce and abandon involvement in the war or armed rebellion from prosecution or punishment for crimes covered by the Act.

Thomas Kwoyelo is a former combatant in the LRA who is also from Pabbo in the Amuru district of northern Uganda, in the Acholi sub-region. In March 2009, Kwoyelo

was injured and taken into custody following the fighting between the Ugandan army and LRA combatants in Ukwa, DRC (Amnesty International 2011). He was subsequently taken to Uganda where he faces charges with crimes under Uganda's Penal Code Act, the 1964 Geneva Conventions Act, the 2010 International Criminal Court Act, or any other criminal law (ibid). In August 2010, Kwoyelo was charged with violations of Uganda's 1964 Geneva Conventions Act, including the grave breaches of willful killing, taking hostages, and extensive destruction of property in the Amuru and Gulu districts of northern Uganda.

Kwoyelo's trial opened on July 11, 2011 in Gulu, northern Uganda. Holding the trial in Gulu was thought to accrue important benefits by increasing its visibility and resonance with the communities that were most affected by the crimes committed during the conflict. At the same time, locating the trial in this area was thought to have the potential to increase security risks for judges, division staff, and the accused, along with heightening challenges to protect witnesses (Amnesty International 2011).

However, the work of the ICD has been hampered for several reasons, including a pre-existing amnesty law that was applied to LRA members, together with concerns that the traditional justice processes at the ICD coerce reconciliation between victims and perpetrators (Coalition for the ICC 2012).

The Act that guides the operations of the ICD seeks to fulfill the following objectives: to implement Uganda's obligations under the Rome Statute of the ICC; to make further provisions in Uganda's law for the punishment of international crimes of genocide, crimes against humanity and war crimes; and to enable Ugandan Courts to try, convict and sentence persons who have committed crimes referred to in the statute.

To this day, the ICD's landmark case so far is that of Thomas Kwoyelo, one of the LRA commanders, following a 2011 Constitutional Court ruling that Kwoyelo had a right to amnesty, a decision that was overturned by Uganda's Supreme Court and the Kwoyelo trial resumed in 2016. Whereas Thomas Kwoyelo had never been subject to an arrest warrant by the ICC and was never a fugitive from ICC prosecution, the ICC prosecutors and the Ugandan prosecutors have continued to cooperate and exchange information regarding their investigations that implicate Kwoyelo. As a possible alternative to the ICC jurisdiction, the GoU and the LRA agreed to domestic trials of serious crimes during the 2006 – 2008 Juba peace talks. While the final peace agreement was not concluded, he Ugandan government began domestic trials of serious crimes through the ICD (HRW 2011). Under the principles of subsidiarity and complementarity, Uganda sought to demonstrate its ability and willingness to investigate and prosecute serious crimes domestically. This was therefore part of implementing the 1998 Rome Statute into national law and cooperate with the ICC in adjudicating LRA cases, including in investigating and prosecuting individuals accused of crimes under the Rome Statute. To fulfill this purpose, Uganda established the International Crimes Division in the High Court of Uganda to carry on the mandate of criminal prosecutions.

To the survivors of the LRA insurgency, what does justice, through Uganda's ICD mechanism, look like? How is the ICD engaging survivors of the LRA insurgency in the Thomas Kwoyelo case? How does justice through the ICD framework meet the justice expectations for survivors of Kwoyelo's atrocities? These questions guided an inquiry into Uganda's adjudication efforts, through the ICD, to understand LRA insurgency survivors' perspectives on Uganda's prosecution of Thomas Kwoyelo. This study



engaged respondents on the mechanisms available to the ICD to enhance survivors' participation, the nature of ICD's justice outcomes, and how these outcomes reflect the justice expectations by survivors of the LRA insurgency.

This chapter presents responses from survivors and other respondents engaged on the above questions based on their understanding and perspectives on the overall justice through the ICD of the High Court of Uganda. The responses presented are a blend of similar and different perspectives on specific questions asked across the different categories of respondents. Whereas this is an innovation in Uganda's judicial framework with focus on trying international crimes, survivors are pessimistic about ICD's capacity to deliver the justice that they feel to have taken longer than anticipated. Government officials shared the challenges that affect the ICD such as inadequate resource capacity to execute a wider focus of ICD's mandate that also touches human trafficking, smuggling, and dealing in narcotics away from insurgency-related crimes.

This chapter presents survivors' account of the nature of justice within the mandate of the ICD vis-à-vis their role in this adjudication process. It then engages accounts for a detailed role of survivors from the dimension of participation to understand survivors' potential to contribute to justice outcomes of the ICD. It lastly touches on the outcomes of the ICD from the perspective of survivors' justice expectations against ICD's mandate towards those justice expectations.

### **Interpreting Justice**

To actualize the Juba Agreement on Accountability and Reconciliation, the government of Uganda created the International Crimes Division (ICD) within the High Court as its commitment (Archive of the Judiciary of the Republic of Uganda). The

Parliament of Uganda also passed the ICC Act of 2010 to operationalize the ICD, as part of building Uganda's capacity to domestically prosecute international crimes. The Directorate of Public Prosecutions (DPP) was equally created to provide prosecution services for the ICD. Justice at the ICD is understood from the perspective of actors, the reasons for establishing the ICD, and the protocols that guide ICD's operations as revealed by respondents and information that was found in this Court's archives.

*Actors in ICD's adjudication framework*

The ICD, as a tool of justice, consists of the prosecutor whose success is in finding points of conviction. Once a crime is proved, then the prosecutor pushes for a conviction. The role of the prosecutor in the ICD arrangement is executed by the DPP's office whose director and deputy director are appointed by Uganda's Judicial Service Commission (JSC) under the Ministry of Justice and Constitutional Affairs. The DPP is a specialized prosecution department that was created for the prosecution of cases of international crimes such as those for which Thomas Kwoyelo is being tried. The prosecution also involves witnesses who are mainly sourced from survivors. In the case of Kwoyelo, witnesses are those survivors that were affected by Kwoyelo's atrocities during the LRA insurgency. Survivors participate to either give testimony in support of the DPP's evidence or as observers of the trial process. The ICC Act of 2010 also protects Kwoyelo's right to defense, making defense counsels also part of the ICD process to question the evidence brought in by the DPP. The defense stage of Thomas Kwoyelo's trial finally began in Uganda on January 19, 2023, nearly 13 years after the war crimes against the alleged LRA commander began.

In the ICD process are also victims' representatives who adjudicate on behalf of survivors of the LRA insurgency in the case of Thomas Kwoyelo. They engage survivors who furnish them with testimonies they present to the court during the trial, in support of evidence presented to the trial chamber by the DPP. Lastly is the trial chamber composed of judges who will listen to evidence adduced by the DPP together with the testimonies from witnesses in support of that evidence, and the defense challenging that evidence. The judges will then decide on the culpability of Kwoyelo and decide whether to convict or acquit him.

#### *Purpose of prosecuting Thomas Kwoyelo*

The primary objective of the ICD is to “handle prosecutions of international crimes in Uganda’s transitional justice framework” according to an official from the DPP’s office. The mandate of the division was also expanded to include other offenses like terrorism and trafficking in persons among others. The ICD operates locally with a focus on holding former insurgents accountable for atrocities they committed. As by the time of this study, there is only one commander of the LRA insurgency, Thomas Kwoyelo, who has been in custody since he was captured in 2009 and is due for trial at the ICD. At this stage, the DPP is still giving its evidence on the allegations that Kwoyelo committed atrocities associated to war crimes and crimes against humanity during the LRA insurgency. An official from the DPP’s office emphasized that “when the prosecution files enough evidence to the trial chamber of the ICD, the court will rule whether Kwoyelo has a case to answer or not” (interview with an official from the DPP’s office on December 8, 2022).

### *Process of prosecuting Thomas Kwoyelo*

Prosecution services involve direct investigations, preparing indictments, facilitating witness protection, and conducting outreaches to the affected communities. What makes the ICD different from other Ugandan courts is victims' representation. This is a recognition that survivors are an important composition of a trial because judges need to hear from the survivors about the atrocities they faced during the LRA insurgency, as an interpreter at the ICD emphasized, "survivors' participation also helps even for their closure that indeed a trial has taken place, a decision was made based on facts on the ground and their views heard and their interest taken into consideration" (interview with an interpreter at the ICD on July 20, 2023). Nonetheless, the ICD is still at the initial stages and has the opportunity to learn from the lessons drawn from the experiences of the ICC to resolve challenges around the Kwoyelo case with focus on the relations between the judges and survivors' representatives, as a victims' counsel highlighted:

"most of the judges are 'court positivists' who look at the law by its letter, yet the ICD needs a lot of innovation" (interview with a victims' counsel at ICD on March 26, 2023).

He added:

"we have been able to train the judges to understand survivors' participation but still there is a lot of hurdles affecting victim's participation" (interview with a victims' counsel at ICD on March 26, 2023).

The process of prosecuting Kwoyelo is equally challenged by the less technical experience of actors involved given the ICD is a relatively new justice process, added to the Court's funding deficit. An official from OSA referenced Kwoyelo's case from 2011 when he was taken to the ICD until today where it is not clear how far the ICD has gone

with this case (interview with an official from OSA on January 17, 2023). The OSA official also emphasized:

“Kwoyelo’s case is dire, but it is also a reflection of a deficiency in Uganda’s criminal justice system due to a lack of bail, there is no recourse to justice. Whereas Thomas Kwoyelo is an accused person, he is equally a survivor. It is the fairness of this system that is lacking especially around delayed justice” (interview with an official from OSA on January 17, 2023).

The ICD differentiates between victims and survivors where this Court only provides for participation of those that were directly affected by the atrocities of Thomas Kwoyelo (victims), not survivors. This arrangement leaves out victims of atrocities by other perpetrators who have important information that may support prosecution. There is also the victims’ counsel which can address the court independent of the prosecutor, although that is equally problematic in the event that there is a disagreement between the victims’ counsel and the prosecutor on how to proceed. In such an event, the DPP official intimated that “the judges allow the victims’ counsel and the prosecutor to sort out their disagreements and come back to court with an agreed position of how to proceed” (interview with an official from the DPP’s office on December 8, 2022).

The ICD is challenged by the limited time scope which prevents it from investigating atrocities committed before July 1<sup>st</sup>, 2002. Kwoyelo was investigated and is being prosecuted for crimes under the Geneva Conventions Act, which is part of Ugandan law. This makes it impossible for survivors to participate in the proceedings because the Geneva Conventions Act does not provide survivors’ participation. “This also challenges survivors’ representation in the Kwoyelo case because it is hard to deal with. It is a big challenge that will remain a sticky issue in the Kwoyelo case unless the judges are very

creative and open to allowing survivors’ participation in the proceedings, which is unlikely because our judges are conservative” (interview with an official from the ICTJ Kampala office on December 8, 2022). An official from OSA also considered survivors’ participation at the ICD a general civil law jurisdiction provision and therefore a challenge to include it in Uganda’s common law courts. Nonetheless, “survivors have some representation in the ICD process but slightly different from what happens at the ICC, though too early to tell its effectiveness given the delay of the Kwoyelo case” (interview with an official from OSA on January 17, 2023).

In the process of prosecuting Kwoyelo, survivors of the LRA insurgency are important in terms of the evidence they avail to the DPP and the testimonies they give through their representatives. Their nature and level of involvement is important to understanding how they support the on-going ICD process. Survivors were engaged on the process of the ICD and below are their accounts of participation in the Kwoyelo case.

### **Engaging Survivors**

Survivors are engaged because there are arrangements that provide for their participation whenever there is a court hearing. From the wider affected community, it is one of the reasons that informed the location of the Court in Gulu to ensure that the survivors are practically able to be present to participate and observe as opposed to if it were to be located in Kampala. This section presents responses on the question of LRA survivors’ participation in Uganda’s ICD justice process. This study engaged survivors’ participation understanding the position and role of survivors at the ICD, the mechanisms available at the ICD to support survivors’ participation, the benefits of participating in the

Kwoyelo case, together with the protections available to guarantee the safety of those that choose to participate. These sections are as presented below:

*Position and role of survivors*

Whereas responses regarding the position of LRA survivors at the ICD were overly ambiguous, respondents were aware of the role of survivors in the ICD justice process. Respondents interviewed either separated ‘position’ from ‘role’ or treated them as synonymous to each other. Most of the respondents shared that the position of survivors in the ICD justice process remains that of an observer, informer or witness, with their role limited to giving testimonies. An official from the Ministry of Justice emphasized that “survivors are approached because they have to be witnesses in the trial or a witness has mentioned them that they may have more information that is critical for a case in question” (interview with an official from the Ministry of Justice on February 27, 2023). The official added: “for survivors, there are victims’ counsels in the Kwoyelo trial. Therefore, at times there are survivors who are not witnesses but they are needed to give information to the court that would possibly influence the trial” (interview with an official from the Ministry of Justice on February 27, 2023).

At the ICD, survivors tell their story to help the judges appreciate what they went through. For instance, an interpreter at the ICD intimated “if they are talking about murder, the survivors whose people were killed...they come and tell their story of how these people were killed and how they survived being killed” (interview with an interpreter at the ICD on July 23, 2023).

Establishing truth of what happened is another key role of survivors in the trial of Kwoyelo as an official from OSA emphasized “if the goal of a judicial process involves

establishing this truth and holding the perpetrator accountable, it should not be difficult for a member of the panel to deeply allow survivors to participate” (interview with an official from Open Society Africa on January 17, 2023). Allowing survivors to give their side of view enriches the evidence available by sanctioning accounts that would be lost by not allowing survivors to directly participate. Nonetheless, providing for meaningful participation of survivors in ICD processes would work to build their capacity and confidence to share all information needed for the effectiveness of the prosecution as a victims’ representative at the ICD noted: “I have learnt from my experience that engaging with survivors one-on-one, and speaking to them together with giving them information, one builds confidence in them and they will speak to you by themselves about certain things that have happened to them” (interview with a victims’ representative at the ICC on December 19, 2022). The victims’ representatives therefore must establish rapport by giving survivors information, and most importantly build their trust and confidence to freely share information to support the prosecution process. Achieving survivors’ participation is a precursor for an effective prosecution, and the ICD must provide mechanisms that enhance their participations as presented below.

#### *Mechanisms to support LRA survivors’ participation at the ICD*

Survivors involved in cases that the ICD is handling are either victims or witnesses to the atrocities for which Kwoyelo is being prosecuted. The first mechanism is through the DPP’s office, police and social workers either from the Ministry of Gender or civil society, survivors are engaged in one-on-one conversations. These one-on-one engagements are aimed at collecting survivors’ views and getting to understand what their true feelings are regarding participating in the judicial processes. Some survivors refrain



from participating because they are former captives and the children they bore while in captivity are fathered by the perpetrators in question. They are therefore hesitant to participate as witnesses against the fathers of their children.

The second mechanism of engagement is outreach. These are done jointly as a team where the court, the office of the DPP, the Justice, Law and Order Sector (JLOS), local government, and police are all represented. These outreaches involve explaining the ICD process to survivors to make them aware of the main objectives of the engagements. The third and final process of engagement is the public awareness creation through workshops organized by or with support from NGOs, CSOs, local governments, Office of the Prime Minister, radio and TV shows. It is through this mechanism that stakeholders of the ICD process engage key members of the communities, especially those in leadership, to pick feedback from the community about their feelings on the concept of justice by the ICD.

Another mechanism of engaging survivors of the LRA insurgency in the ICD process was through different media outlets that publicized and popularized the activities of the ICD to the survivors. They also allowed for survivors' participation in different talk shows on TVs and radios for the Court to capture their perspectives. The DPP's office still engages survivors through outreaches, though now more restricted to the Kwoyelo case that is currently before the ICD. The outreaches are therefore more limited to the communities that were affected by Kwoyelo's atrocities, while building engagements from the survivors' point of view to get the feel of the community.

The different arrangements to facilitate survivors' participation in the ICD adjudication process still come with a challenge of maintaining an adequate number of survivors in Court. Instead, respondents reported domination of the ICD process by

members of the NGOs and CSOs who come to witness what is happening. On the question of survivors' presence in Court, the classic framework of the judicial system limits the participation of victims later on survivors because they are left with no role to play. Survivors' participation as witnesses is at the discretion of the DPP, otherwise survivors have no role in the proceedings until it gets to the time of the ruling where their views are sought about certain issues in the final verdict.

For emphasis, a leader of one of the survivors' group interviewed remarked "survivors' participation at the ICD is like breaking the window and smuggling the victims inside the room, not going through the door" (interview with one of the victims' leaders in Kitgum on July 12, 2023). In the Kwoyelo case, an official from the DPP's office remarked "we engaged a consultant to inform the court about the whole LRA war and the situation of the victims. The consultant wrote a report and participated as a witness. We used views of survivors in that report as part of the evidence to be adduced in the prosecution process" (interview with an official from the DPP's office on December 8, 2022). Survivors' safety is another factor that influenced their willingness to participate, while it also discouraged those that did not see protections available in the ICD process as adequate as elucidated below:

#### *Protecting survivors*

Survivors of the LRA insurgency and other respondents also indicated threats such as the potential for reprisal attacks from sympathizers of Kwoyelo, and other reintegrated ex-combatants as a challenge to their participation in the ICD judicial process. When asked about this existential challenge for survivors, officials from the DPP, the Ministry

of Justice, and civil society intimated protection measures available to the ICD as presented below.

The mechanism of redacted information helps the ICD to maintain anonymity of survivors who choose to participate in investigations by the DPP. The DPP also uses name codes and voice distortion. This is a deliberate effort by investigators of crimes committed by Kwoyelo to keep and protect the details of their informers who are mostly survivors of the LRA. This is done to hide the identity of witnesses. However, survivors interviewed shared their limited confidence in this system that is manned by the same government they accuse of having violated them during their time in the IDP camps. Survivors at Lamogi intimated “we are not sure if our information will not land in the hands of the UPDF because the government that asks for information from us is the same that violated us and failed to protect us from LRA” (focus group interview with survivors at Lamogi on July 23, 2023). An official from OSA also emphasized these fears existing among survivors of the LRA insurgency when she remarked “these mechanisms can only work if there are no forces working against mechanisms of protection because they are challenged by that particular litigation in which the UPDF fears to be implicated” (interview with an official from OSA on January 17, 2023).

Another protection mechanism available to the ICD is a collaborative approach between the Court, DPP and Police based on Uganda’s ICC Act. Uganda has not yet passed the witness protection bill because it has not yet been presented to parliament since it is heavily resource intensive. It includes an expansive program of resettlement that has to be funded. However, an official from the Ministry of Justice emphasized a symbiotic relationship existing between the ICD, DPP and police that facilitates “their own covert

protection standards which they enforce during the justice processes to increase the safety of survivors who choose to participate” (interview with an official from the Ministry of Justice on February 27, 2023).

However, a civil society official shared pessimism about this relationship and instead shared preference for a local community protection mechanism based on mutuality and trust. The official felt it is what could report threats to the Court directly as opposed to going through government institutions which survivors have less trust for. (interview with an official from UVF on January 3, 2023). A victims’ counsel at the ICD shared optimism in increasing funding for the operations of the DPP and police to effectively protect witnesses (interview with a victims’ counsel at ICD on March 26, 2023).

Respondents, especially from government agencies handling the Kwoyelo case at the ICD also emphasized protection that starts with survivors themselves especially around securing their individual privacy by not revealing to anyone in the community what they have shared. Through its outreach activities, the DPP’s office creates awareness about the security situation emphasizing the importance of personal protection by the survivors by keeping their information secret. A victims’ counsel at the ICD also highlighted the importance of ensuring confidentiality, including among witnesses (interview with a victims’ counsel at ICD on March 26, 2023). However, the challenge comes when Kwoyelo has to know those testifying against him because it is his right based on Uganda’s ICC act.

Nonetheless, respondents highlighted the absence of a witness-protection framework through laws and policies that deter survivors from participating in the ICD

justice process. Members of the civil society referenced the absence of a well-defined witness-protection architecture in the Constitution of Uganda as a challenge limiting survivors' engagements with the DPP since they do not know the right procedures of reporting threats. Survivors at Pajule indicated their limited awareness of the protections available in the community where they live with the ex-combatants yet information about the Kwoyelo case easily percolates into the community as they remarked: "if we easily get information about what the investigations found out, how sure are we that the names of people who share information during investigations will not be leaked?" (remarks by a survivor during a focus group interview at Pajule on July 15, 2023).

This lack of confidence in the ICD's victims' protection protocols also affected survivors' ability to share their justice expectations during the investigations for fear of reprisal attacks. A victims' representative at the ICD confirmed survivors' protection fears and affirmed that "I know, for instance, that the CID has an ad-hoc kind of structure that would enable them to protect survivors but it is difficult to say it exists because there is no law to support it" (interview with a victims' representative at the ICC on December 19, 2022).

Without the protection law in the Kwoyelo case, the DPP has to find effective strategies to protect the identity of witnesses. Nevertheless, officials from the DPP and the Ministry of Justice emphasized that this challenge is countered by ICD's Rules of Procedure that allow for the ICD to make orders for the protection of witnesses. One of the officials from the DPP affirmed "a lot of prosecutors and other support institutions like police underwent trainings on witness protection measures" (interview with an official from the DPP's office on December 8, 2022). The Ministry of Justice linked

challenges in witness protection to insufficient resources available to provide all the necessary requirements for an effective witness protection program. The ministry's official remarked: "protections are insufficient because the resources are insufficient. However, we have not yet gotten any protection threats from our witnesses" (interview with an official from the Ministry of Justice on February 27, 2023).

Without platforms of direct participation, survivors' expectations are mostly lost in representation. Whereas survivors' accounts of the LRA insurgency aid the adjudication process at the ICD, survivors also see this Court as a platform that would provide the following benefits:

*Benefits of the ICD towards survivors*

The benefits of survivors of the LRA insurgency participating in the ICD justice process are bi-directional. Whereas survivors are a critical component of the prosecution, the Court is equally of importance to the survivors. An account of this bi-directional relationship is presented below basing on responses by the interviewees that were engaged in this study regarding what they felt they benefited the ICD and how they think this Court can benefit them.

The ICD benefits from LRA survivors' participation by getting survivors' perspectives of the Kwoyelo case currently under prosecution. Survivors add more perspective to the Kwoyelo trial when they respond to questions of where, when and how atrocities were committed under Kwoyelo's command. Whereas the DPP provides evidence, that evidence is limited to what is relevant to the elements of the offense and can only be substantiated by testimonies from witnesses who are sourced from survivors. This deepens the evidence available for the ICD to act on. However, victims'

representatives pointed to prosecution's failure to fully utilize this opportunity as it is still reluctant to embrace the role of victims' representatives to ensure the voices of survivors are effectively captured.

Providing for survivors' participation sanctions free expression of survivors' feelings and thoughts about the LRA insurgency, together with the aftermath of this insurgency which contributes to survivors' search for healing which an official from the DPP called "a feeling that they have been heard and their views been taken into account" (interview with an official from the DPP's office on December 8, 2022). In the process of participating in the proceedings, legal counsels create a safe environment for survivors to share or speak out against their victimization. Many of the survivors reported to experience and suffer survivors' guilt. They feel they could have done something to avoid abductions and the violations that took place during the war. Unless there is someone to provide a platform for them to tell their story, they are left to carry this burden of guilt. Allowing survivors a platform to express themselves leads to closure.

Survivors, especially returnees, see any justice process and other non-judicial mechanisms as an opportunity for reintegrating into the community. Former abductees, ex-combatants, and children born in captivity shared a lot of fear especially when they are labeled rebels yet they consider themselves survivors. The communities in which they now live subject them to stigma which makes them more vulnerable. They therefore use any opportunity of participation to formalize their reintegration through different justice process, including ICD, together with Uganda's amnesty program. Girls believe that is the only way of being accepted back in the community and their children to gain identity from their clans, together with being given land to settle. The immediate issue for this

category of survivors is looking for settlement, acceptance and identity. They therefore look at the ICD as one of the platforms through which they can realize this justice expectation.

Survivors equally shared that they believe there are some immediate benefits the ICD could give them, through the Government of Uganda, to temporarily restore their livelihoods but the process has taken longer than expected. Some of the challenges referenced for why the ICD process has taken long are the establishment of legal instruments for its operation, together with the resources to facilitate the Court's activities. Some of the respondents alluded to this challenge to the mechanism of delivering survivors' justice expectations as they remarked "the ICD in Uganda is now struggling to raise money for Court sessions. They claim that the Kwoyelo case has taken long because they lack the money to hold the court sessions" (interview with a UN Human Rights official on November 30, 2022). A victims' representative at the ICD emphasized this challenge and stated:

"Ours we do our case on a part-time basis. They will bring you when there is money. Even after a quarter there is nothing and yet you are supposed to go and know the status of survivors. We have been lucky to be supported by the ICTJ, they want to take me out to meet and talk with the community. But this is for a very short time. Ideally, we should be meeting them on a regular basis to understand their status, how they are doing, do they want to opt out? Now we are just checking them but somebody might want to opt out. Do we still keep them when somebody does not want to participate? So, we should give the victims that like they are doing in Busoga. Are supposed to be hearing from them and get further instructions from them" (interview with a victims' representative at the ICD on December 19, 2022).

Because of a challenge with funding for the Court, survivors' hope in the Court's ability to respond to their tangible justice expectations is limited.



Survivors interviewed mentioned the Court's rulings as one of the mechanisms through which this adjudication process can deliver the benefits of justice. They equated the ICD to other categories of courts that make pronouncements in their judgments, either sanctioning the government or the accused persons to rectify some challenges. These could be in terms of compensations for any damage caused by any action of the accused party. Because the ICD is Uganda's first jurisdiction to handle crimes of an international nature for which Kwoyelo is accused, survivors of the LRA insurgency hope that ICD's adjudication process will foster an understanding of their justice needs and order the government of Uganda to respond to them through Uganda's National Development Plan. With this, they hope for improved health and education sectors in Northern Uganda, together with both infrastructural and livelihood programs to improve their wellbeing.

On the other hand, some of the respondents engaged on this question feel justice through the ICD is still far-fetched because of the physical distance between the survivors' communities and the venues of the ICD court processes, together with the timing for these court sessions. The ICD runs programs in Kampala and Gulu cities. Whereas most of the proceedings are held in Gulu, this location is still far away from the villages like in Pagak and Lamogi sub-counties in Amuru district where Kwoyelo is alleged to have committed crimes. The Acholi community is also predominantly agrarian with people, including groups of survivors, scheduled to till their land and plant food during the morning hours. Some of the Court sessions are equally scheduled to run in the morning and afternoon hours which make it difficult to abandon their gardens in exchange for justice through the ICD system, as a leader of a survivor group remarked: "after the war, we were left to start lives again with inadequate assistance. The easiest job to do was

to go into farming and earn a living. This is the kind of work we are used to now and it normally happens in the morning when we are still fresh before the strong sun comes out. Holding sessions during this time is difficult for us. This is how we end up missing out” (interview with one of the victims’ leaders in Kitgum on July 12, 2023). A UN Human Rights official also agreed to this observation on the distance and timing and emphasized “it is difficult for survivors to leave their gardens during the time of cultivating. It is equally difficult for survivors to raise transport fare to travel to Gulu where the ICD court process is taking place” (interview with a UN Human Rights official on November 30, 2022). This therefore leaves out many survivors who would like to participate.

Secondly, survivors feel a lot detached from what is being done in the formal judicial processes because they do not understand the protocols, rules, human rights, and the lengthy process, which has increased their preference for non-judicial mechanisms. Most of the survivors lost out on education during the LRA insurgency that lasted for two decades because they were confined in camps with limited education opportunities. As a result, this region records one of the highest illiteracy rates in Uganda. This reality challenges survivors to contribute to the justice processes through the ICD thereby telling their stories through third parties. This was emphasized by an official from the DPP’s office “they are not essentially playing a direct role through questioning or telling their stories. Instead it is the prosecutor who is the middleman. These factors affect their engagement and participation” (interview with an official from the DPP’s office on December 8, 2022).

Because the Acholi traditional concept or notion of justice is rooted in Acholi culture and traditions, they feel belonging to this system more than its alternative. Added

to this is a limit in jurisdiction that legally eliminates some survivors that were not directly violated by Kwoyelo, an approach they see as very discriminatory because prosecuting Kwoyelo's cases at the ICD is focused on only the parishes of Pagak and Lamogi in Amuru district. This leaves out other survivors of the LRA insurgency who feel they should also be beneficiaries of justice in the ICD adjudication process.

Ethnic relations were also found to have a role in determining the willingness by survivors of the LRA insurgency to participate in Uganda's ICD process. The LRA command was dominated by the Acholi but the victims included ethnicities beyond Acholi. The LRA command believes they were fighting against a government they saw as illegitimate since it also emerged out of insurgency activities. The ethnic relations are at play where they believe that if possible all of them need to be forgiven because everybody fought and while they killed, the government also killed and so they find the pursuit of one side as an imbalance in the pursuit of justice.

Some of the ex-combatants interviewed claimed that those of the LRA top command were also in the bush fighting to save their ethnic community, the Acholi. This prevents them from participating because the justice system requires some returnees to testify against the people with whom they fathered and mothered children which they see as a betrayal against their children's parents. Instead, "female ex-combatants believe there must be a system created to reunite them with their husbands so that their children can have fathers. Their children are suffering stigma at school from their fellow pupils and students, a factor that is exacerbated by their missing fathers" (interview with an official from UVF on January 3, 2023).

The mixed reactions by survivors and other categories of respondents on the question of survivors' willingness and readiness to participate in the ICD adjudication process anchors context-related security situations, relationship of survivors with Kwoyelo, and expected benefits of survivors' participation. Survivors equally intimated their position based on the expected outcomes of the ICD justice process, together with their perceptions of justice through the ICD as elucidated in the last section of this chapter.

### **Outcomes**

Respondents highlighted expected outcomes of the ICD while cognizant of its challenges as a first Court of its kind in Uganda. Whereas some expectations were in line with the mandate of the ICD, survivors also indicated their challenges that they would like this Court to address.

#### *Justice expectations by survivors*

The purpose of establishing the ICD in the aftermath of the LRA insurgency gave this Court a mandate that clarifies its justice obligations. These range from using the DPP to raise survivors' awareness around the mandate of the ICD, to delivering on the rights of the survivors through public interest litigation processes. Whereas the ICD is relatively a new adjudication process in Uganda's jurisdiction, its results are yet to be realized. However, respondents shared some remarks based on the results that are guaranteed by the mandate of this Court. Some survivors shared their preference for prosecutions against perpetrators (both LRA and UPDF) to ensure criminal accountability. Others see the ICD investigations by the DPP as a moment of truth-telling that they hope will reveal a lot of information about lost persons who may be alive or dead to appease their souls. Survivors hoped for forgiveness since some of the perpetrators hail from their communities and they

see them as community members with strong family ties to victimized communities. They therefore saw the ICD process as a moment of truth-telling which would act as a catalyst for forgiveness after knowing the truth about the different attacks, abductions and the whereabouts of missing persons. While some would condemn a prosecution for justified reasons, others would justify it.

As part of the mandate of the ICD, the DPP has organized survivors and has used its outreach programs to create awareness around survivors' entitlements. Survivors have in turn used this information to influence the system by presenting their cases to the relevant authorities and powers by themselves. Survivors do this through their associations with which they engage their members of parliament as an official from UVF highlighted: "they have formed associations through which they advocate and receive relevant livelihood support from government and various development partners" (interview with an official from UVF on January 3, 2023).

The greatest hope in the ICD was the restoration of life to the way it was before the insurgency. When respondents were engaged on the nature of restoration they seek for in the ICD framework, they mentioned factors such as basic needs involving decent shelter, food, health and education for their children. Survivors in Pagak believe the beginning point is a guarantee for these basic needs as they noted: "what the ICD can do is to at least make a pronouncement that guarantees our children access to quality education because we do not have the needed resources to take them to good schools" (focus group interview with survivors at Pagak on July 22, 2023).

On the issue of health, survivors hoped the government could expedite access to specialized health facilities for amputees and others that are still nursing open wounds as

a result of the LRA insurgent activities. At Lamogi, survivors remarked “the President made a commitment to address the health conditions of victims of the war. Different health facilities have been constructed but they are not specialized enough to treat our complicated health challenge. We feel this Court has capacity to make a ruling to enforce the president’s promises to us” (focus group interview with survivors at Lamogi on July 23, 2023). However, a DPP official indicated impracticality of assuming all that can be achieved in a short time while also emphasizing the mandate of the ICD that does not involve a restoration process, “of-course not everyone can be on the same level and it is impractical to assume so. It is equally not possible to achieve that high level of restoration given the limited funds the government has” (interview with an official from the DPP’s office on December 8, 2022). For the restoration process, survivors emphasized recovery programs to deal with trauma, supporting memory and memorialization activities to pray for their loved ones who died during the war which they believe the ICD can respond to through its judgments.

Respondents shared that the ICD is expected to make its decisions and rulings based on the available evidence and the law. Survivors may have justice expectations but the Court’s decision is based on evidence available to prosecution, together with the protocols that guide the Court’s administration of justice. Due to the restricted mandate of the ICD, a decision may sometimes not be reflective of survivors’ needs based on those two aspects of the judicial process. For instance, throughout the interviews, survivors kept challenging the judicial system to also try UPDF officers for perpetrating crimes in Northern Uganda. An official from ICTJ indicated that “once the Court has no evidence to that effect, it is difficult to address that. Even though they may be aware of the context, the judges have

to face it with evidence and the law even for their own credibility” (interview with an official from ICTJ on December 8, 2022). Survivors therefore consider justice through the ICD as a one-sided approach to justice.

They blame this framework to the government of Uganda which they say lost locus when it violated them during the LRA insurgency instead of protecting them. Since they see the government as a perpetrator, they believe the government cannot hold itself accountable, through the ICD, on the atrocities it committed as a survivor remarked: “the government which presides over this national process tortured us to get information about LRA and they killed some of the victims they were meant to protect in IDP camps” (focus group interview with survivors at Lukodi on July 13, 2023). They thus see justice through the ICD as a mockery because the government cannot be a judge in cases against it.

Whereas the ICD may make a ruling that orders compensation, which is only a part of the justice needs of the survivors of alleged atrocities committed by Kwoyelo, the challenge will either be in determining who qualifies for that compensation, or the framework to use in compensating survivors. Survivors already have a challenge of trust since they alluded to wrong people making it to the list of potential recipients of compensation. The Court has not yet come out with a robust mechanism to ensure people do not fraudulently receive compensation whenever it will be available. Since the Court is challenged with resources to run the prosecution process, a factor that has been highly cited for a long period of adjudication at the ICD, survivors are losing the hope of receiving compensation when a final ruling in the case of Kwoyelo will be made. Survivors also highlighted the government’s strong support that is missing in ICD’s adjudication process. Survivors referred to a stalled National Transitional Justice Policy

that would support the ICD process to deliver on their expectations but it has not yet been operationalized by an act of parliament. The transitional justice bill currently being developed is one way of forcing government to act.

Nonetheless, survivors view the Kwoyelo case at the ICD as a situation that can be used to inform their children about the dangers of getting involved in insurgent activities as a participant at Odek indicated “this can be used as an example to instill a sense of responsibility among our children” (focus group interview with survivors at Odek on July 18, 2023). They believe by passing on information using the example of Kwoyelo will instill fear among the youth and contribute to deterring likely insurgencies. They therefore perceive the ICD adjudication process as a deterrence where communities are guaranteed of a framework for holding perpetrators in their individual capacity.

An official from the DPP also highlighted some of the efforts they have taken to redress the justice expectations of survivors of the LRA insurgency and highlighted their partnership with the government and other development partners in situations where resources are limited. The DPP finds out where survivors’ specific needs are and uses the limited budgets to address only the most pressing needs. For those needs with partners who provide services, the DPP acts as a referral pathway. The official from the DPP’s office emphasized the importance of reports from DPP as information from survivors is used to inform development programming for Northern Uganda. The official stated: “we send our outreach reports to the Office of the Prime Minister, and Ministry of Gender, with a copy to the Office of the President indicating what the survivors’ critical needs are, and it is our recommend interventions that are included in the National Development Plan



and budgets for the different financial years” (interview with an official from the DPP’s office on December 8, 2022).

However, with those expected justice outcomes of the ICD process, most of the survivors interviewed feel they may never get justice at the ICD because of the unexpected delay. When the Thomas Kwoyelo case commenced, survivors of the atrocities, for which he is tried, expected to have the case executed in the shortest possible time due to their active participation in sharing evidence with the DPP. Survivors at Pagak remarked “when they reached out to us, we gave all the information we had in return for a promise of compensation. It is now several years since the capture of Kwoyelo but we have not yet received anything. We feel the government just took advantage of our situation” (remarks by a participant in a focus group interview at Pagak on July 22, 2023). Survivors interviewed at Lamogi feel this is delayed justice whose benefits they may not see as they remarked: “we are not sure of when this Kwoyelo case will end because they recently told us the trial has not yet started.

We do not know whether they are lying to us or telling us the truth because they also take extremely long to come back to us. May be the benefits from the Kwoyelo case will be enjoyed by our grandchildren” (remarks by a participant in a focus group interview at Lamogi on July 23, 2023). Survivors therefore feel a delay of this justice is a denial of justice as well. This is because until the verdict has been reached, justice for survivors cannot be triggered, an implication of delayed reparations that are highly expected among the survivors’ communities. This is also a challenge with the lawyers that work with the survivors because it impacts the frequency of their visits to the survivors’ communities as an official from OSA indicates “for the lawyers working with victims, it also becomes

a challenge because they run out of what to tell their clients given that the justice process has overly delayed. This makes victims lose interest and hope in the ICD as a justice system” (interview with an official from OSA on January 17, 2023). A UN Human Rights official referred to this situation as ‘elusive justice’ for survivors in Northern Uganda, indicating a need for different stakeholders to come up with a concrete plan for the ICD adjudication process towards survivors of Kwoyelo’s atrocities (interview with a UN Human Rights official on November 30, 2022).

Survivors of the LRA insurgency also consider the ICD adjudication process as a mechanism for the elite. They based this perception on the approaches the DPP uses to engage them. These approaches limit their participation to only being represented by victims’ counsel in the trial of Kwoyelo which they see as an alienation of survivors from the trial process. Survivors at Lukodi emphasized this perception about the ICD process when a participant remarked “they are just up there. They must find a mechanism of understanding the feedback from the community” (remarks by a participant in a focus group interview with a survivor at Lukodi massacre site on July 12, 2023). A victims’ counsel also emphasized this perception when he referred to ICD judges and remarked “I don’t know whether they read the report from outreaches where we go to the communities and the community gives feedback. The judges are there saying they don’t want to be biased by any external factors but they must know maybe the things that will bias them but they must know what they are” (interview with a victims’ counsel at ICD on March 26, 2023).

## **Conclusion**

Responses from the different categories of participants presented in this chapter indicate a vast array of justice interests that prompt survivors of the LRA insurgency to participate in ICD adjudication processes. Survivors' unique justice interests also inform their approach to the concept of justice that they do not consider as purely retributive, as championed by Uganda's ICC Act of 2011 through the ICD. Whereas members of the civil society engaged find merit in a purely punitive approach of the ICD, justice expectations advanced by survivors transcend the trial of Thomas Kwoyelo and anchor questions of restoration, reparations and rehabilitation in post-war Acholi sub-region. In Uganda's efforts to domesticate the Rome Statute through the ICD, limited attention is given to approaches that run parallel to the ICD adjudication process, yet survivors of the LRA insurgency feel less engaged in this judicial process. In their perceptions of the ICD, survivors consider justice through the ICD as one-sided with no one to hold the government accountable, a mockery of justice since the ICD's outcomes are long overdue, and an elitist justice system that does not anchor the interests of the semi-literate.

However, they find the ICD's relevance in its deterrence effect as it sends a message of individual culpability to potential perpetrators of crime. The challenges of the ICD are mainly seen in the context of its slow growth with a lot of lessons to learn from the ICC to propel its effectiveness and improve its relevance to the survivors it claims to serve.

**Figure 7: Matrix of responses on the ICD justice model**

<b>Method</b>	<b>Type of respondent</b>	<b>Questions asked</b>	<b>Response</b>
Focus Groups	Ex-combatants Ex-wives to the rebels Former IDPs Sexual violence survivors Amputees Children born in captivity	What does justice through ICD mean?	Investigations; Prosecution; and Accountability; justice closer to the community. However, it not different from the ICC.
		Why did you participate in ICD process?	Provided for by law; Opportunity to be heard; the Court is near though the distance still long. However, participation is highly restricted; limited trust in government discourages voluntary participation; a very lengthy justice process; survivors limited to the position of witnesses, observers and informers; insufficient protection provided; and domination by members of CSOs and NGOs.
		How do ICD's justice outcomes benefit you?	Recognition of victimhood; an opportunity to express views about justice; a moment of truth-telling leading to closure and facilitating healing; documentation of atrocities; Achieving relative peace; potential of Court rulings to guide development programs in the North. However, there was re-traumatization; no attention to urgent needs like physical repair and compensation; selective and no targeted compensation;
Key informants	Members of the academia, civil society, NGOs	What does justice through the ICD mean?	Accountability, established capacity for domestic jurisdiction to complement the ICC, but: a delayed justice process due to low capacity; aggressor turned prosecutor and jury.
		Why does ICD encourage survivors' participation?	For the prosecution to benefit from survivors' testimony; Survivors' testimonies are critical for the success of prosecution;
		How do ICD's justice outcomes benefit survivors?	Right to information promoted; right to justice protected; a precedent of criminal liability set; a warning for other likely violators of human rights; court ruling has a potential to improve development planning in northern Uganda;

## CHAPTER 7

### SURVIVORS, MATO-OPUT, AND THE CASE OF EVELYN AMONY

During the Juba Peace Talks between the Government of Uganda and the Lord's Resistance Army, there was an agreement on the cessation of hostilities. This arrangement did not only silence the gun, but it also engaged the question of justice as indicated in the previous chapters. Custodians of justice processes in northern Uganda sought to revive the ancient procedure of Mato-Oput practiced by the Acholi. Its wide application, in this context, would address an important, emerging reality: that the ICC cannot investigate and prosecute many of the worst perpetrators, many of whom are children of the LRA forcibly conscripted (JRP 2011). Mato-Oput can not only be seen as a potential for expanding the scope for administering justice at the local level, but also a complementary process to other justice efforts at the ICC and ICD by allowing more perpetrators to voluntarily confess their guilt (Komakech 2012; Oola 2012; Roach 2013, 249). However, many legal scholars and ICC officials remain skeptical of Mato-Oput's capacity to effectively offer an alternative to the ICC and its high evidential standards (admissibility) (Mallinger 2007; Allen 2006; Unger and Wierda 2009).

Others remain more optimistic towards the ICC's gradual accommodation of traditional justice mechanisms (Roach 2009 and 2011; Nouwen and Werner 2010; Renee 2011). They see local procedures of justice as capable to work effectively with the ICC

and national courts for further accountability and peace, and resolving the disparities between local and international justice. Mato-Oput in this case should not be seen as that procedure to replace ICC and national court processes. It is rather a justice process that advances an effective multilayered model of justice as a contribution to a plurilateral justice approach in northern Uganda.

Practiced by the Acholi community, consisting of fifty different clans, Mato-Oput is an inter-clan / inter-group procedure designed to resolve disputes and promote reconciliation among the different clans (Roach 2013, 251; Komakech 2012; Oola 2012). As an intra-clan procedure of justice, Mato-Oput remains one of the most well-known forms of local justice practiced by the Acholi. Others in northern Uganda include *kayo cuk*, *tolu kakwa* and *moyo pliny* (Ogora and Murithi 2011). Of these other traditional mechanisms, only *moyo pliny* has been adapted to address the elements of war crimes covered by the Rome Statute, notably child conscription.

Like *moyo pliny*, *mat-oput* involves the sacrifice of livestock and healing through ritual. Its distinctive approach to healing involves the consumption of the bitter tasting mato root (Mato-Oput literally refers to the “bitter root”) (Komakech 2012). When mixed with a local brew, *kwete*, consisting of the blood of sacrificed lambs or goats, it becomes a viscous, bitter substance, which both the perpetrators and victims are required to drink at a traditional ceremony. This procedure allows the afflicted parties to consume the bitterness of the vengeance of their victims, symbolizing the act of moving beyond hatreds, distrust, and hostilities (Roach 2013, 251).

Mato-Oput primary goals is the promotion of reconciliation through truth-telling and symbolic / ritual acts. Like the other traditional mechanisms mentioned above, it

emphasizes the restoration of peace and community well-being and provides an alternative to punitive mechanisms such as the ICD and ICC trials. As such, it is comprised of four modes: the voluntary feature of the legal process; establishment of truth mediation guilt acknowledgment; and reparation and reconciliation via symbolic acts and spiritual appeasement (Baines 2007, 93; Anyeko, Baines, Komakech, Ogora & Victor 2012). Mato-Oput differs in substance from the formal punitive mechanisms of transnational justice (trials).

Unlike formal criminal systems, whose aim is to punish and isolate the perpetrator's guilt, Mato-Oput is an informal procedure of justice, relying on the goodwill and good faith of the community to foster an environment of mutual trust among the members of the local community (Ogora and Murithi 2011). The intention of its voluntary nature is to encourage confessions and / or truth telling and to diminish the perpetrator's fear of reprisal by warring members of aggrieved groups (Anyeko et al., 2012). Placing faith in the community's willingness to forgive is an important element because faith does not only initiate the process of administering justice; it also performs the important psychological function of "cooling the hearts" of those impacted by the violence (ibid). As such, voluntary truth-telling initiates the first step of coming to terms with one's guilt.

The clan leaders or elders oversee the second step of compensation: determining the amount of compensation or the number and / or size of goat and lambs to be sacrificed and split (ibid). truth mediation in this respect refers to the intervention by the elders to in the negotiations between the victims' families and perpetrators. Here, the Ker Kwaro Acholi (KKA), the local institution of the Acholi, led by the paramount chief, serves as trusted mediator in conflicts, typically involving the killing of a family member, although

disputes can also involve lesser offenses (Roach 2013, 252). As the leader of the Councils of Elders, the chief therefore serves three important, discernible functions for settling disputes and conflicts in the Acholi region: to evaluate the admission of guilt and confessions (truth-telling); to determine what amount of compensation is adequate to commence and perform the healing process; and to conduct and oversee the rituals or symbolic acts (Anyeko et al., 2012). For the confession to be considered genuine, it must be strictly on voluntary basis, with the task of the chief being to ensure the confession has not been pressured or coerced (ibid). The legitimate authority placed in the KKA institution enables the chief to serve as the caretaker of local custom because of his extensive knowledge of local custom and law.

During the ceremony, both aggrieved clans eat the exchanged food separately. After, they both start approaching each other holding sticks as if they want to fight and the KKA chief calms them down as they hit the mediators' stick as a barrier preventing them from reaching the other side (Mato-Oput project 2009, 15). The KKA thus offers timely and creative intervention in the Mato-Oput ceremony and is intended to spontaneously enhance the symbolic power of rituals.

The practice of Mato-Oput comes with its challenges and prospects. Critics of this justice process claim that its mass application only undermines or compromises its traditional, localized application. This is because the change needed, which in this sense is a willingness to confront the sheer brutality of the insurgency that engendered deep-seated grievances among the local population (Swerker 2010, 137; Quinn 2010, 5). The length and brutality of the war led to a reluctance to forgive the LRA leaders evident in the nearly sixty-six percent of the survivors who indicated that they would prefer



punishment or retribution for the worst perpetrators while twenty-two percent preferred a traditional non-punitive option (Kai, Large and Wierda 2009, 268; Minow 2007, 22; Teitel 2000). Minow suggests that local justice with a reconciliatory approach, in the broader context of transitional justice, would assist stability and democracy, but it would also require other measures: restoring dignity to survivors would be part of the process, but so would dealing respectively with those who assisted or were complicit with the violence (2007, 23)

Whereas there is a mix of preferences in the pursuit of distinct justice approaches, what is clear is the engagement of survivors' views on those justice mechanisms. Recognizing survivors' and defendants' rights requires not only the legal and political resources to compensate and offer social assistance to survivors, but also emphasizing communal values or healing to achieve individual and communal closure. Mato-Oput however, requires that forgiveness not be "commanded" as the Justice and Reconciliation Project notes:

...forgiveness comes before Mato-Oput. Mato-Oput is a ceremony that marks an end to every kind of anger that exists among the affected people. For the sake of this war, I think you should forgive so that the abducted children come home (JRP 2011).

It is also important to recognize the daunting task of getting perpetrators of such unprecedented violence to voluntarily confess as many fighters remained fearful of reprisal by the LRA should they voluntarily confess Roach 2013, 256). Because the LRA forcibly conscripted and kidnapped children, many of the recruits were forcibly separated from their families and communities and hardened by the effects of the war. Local supporters of Mato-Oput point to this fact to demonstrate that communal or ceremonial justice may be the best way to reintegrate the community (ibid). In their view, the ICC's

indictments and its intolerance of Uganda's 1999 amnesty law – which was designed to end the violence by allowing LRA fighters to confess in exchange for immunity – have exacerbated tensions by obstructing the national government's efforts to prosecute the LRA leaders (and by extension, discouraging young conscripted fighters to disarm and voluntarily confess) (Anyeko et al., 2012; JRP 2011; Mato-Oput project 2009)

Chapter Five, for example, examined the ICC adjudication process while Chapter Six focused on Uganda's domestic adjudication process of the ICD through the country's High Court. To engage the need for a comprehensive approach to justice, discussions in Juba also touched on the importance of non-judicial mechanisms. Whereas restoring peace in Northern Uganda was the primary goal, also critical was the question of contextualized justice to heal communities that were devastated by the LRA insurgency, including the Acholi sub-region. This is the focus of Chapter Seven.

Justice through non-judicial mechanisms engaged survivors using their customs and traditions. This was a strategy to enable Northern Uganda to consolidate its relative peace and assist the people to rebuild their lives. The approach included facilitating the return of Acholi IDPs to their homes, addressing their physical and psychological injuries, attending to their livelihood needs, aiding the search for truth of what happened, how and why it happened, and creating a culture of peaceful co-existence as a contribution to the goal of ensuring non-repetition of atrocities.

The Juba Accountability Agreement emphasized the need for traditional reconciliation mechanisms practiced by communities in conflict-affected areas to play a large role in addressing the atrocities that occurred frequently during the LRA insurgency (Worden 2008, 1). For the broader range of crimes, the agreement introduced a role for

traditional, community-based justice mechanisms as “a central part of the framework for accountability and reconciliation” to be applied to lower-level perpetrators and those who have already received amnesty (Worden 2008, 4). The Acholi and other communities that were affected by the LRA insurgency have a longstanding tradition of resolving intra-ethnic conflicts through apology, negotiation, compensation, and forgiveness. Many survivors, custodians and practitioners interviewed indicated that these customary ways are alive and well, and have potential to serve as a firm foundation for peace. These customary approaches to justice are anchored in the mandates of traditional chiefs and religious leaders.

Chapter Seven presents the research findings from the representatives of the traditional institute of Ker Kwaro Acholi to benefit from the cultural context in the search for justice. Another category of custodians engaged were the religious leaders, through their umbrella organization the Acholi Religious Leaders Peace Initiative (ARLPI), for a religious context to the Acholi approaches for realizing justice. Academia, NGOs and civil society were also interviewed to gain from their perspectives given their involvement in the implementation of non-judicial approaches to justice in the aftermath of the LRA insurgency. The most important category of respondents were the survivors who are seen as the primary beneficiaries of the customary approaches to justice in the Acholi sub-region to learn from their perspectives of justice through non-judicial processes. Survivors were also engaged on the question of their participation in the non-judicial processes of justice, their protection, and their perceptions of the justice outcomes of these processes.

To deepen an understanding of non-judicial mechanisms of justice akin to the Acholi community, archives of the National Memory and Peace Documentation Center (NMPDC) at Kitgum town were used. This archival expedition involved studying stories, music, artefacts, photos and videos documenting these non-judicial processes of the Acholi people to give more context to this approach to justice in the aftermath of the LRA insurgency. This Chapter accounts for the perspectives shared by the different categories of respondents on the meaning of justice through a range of approaches that include *Mato-Oput*, memorial sites, commemorations through memorial prayers, and dialogues (*te yat*).

Respondents engaged on *Mato-Oput* as a community justice process included mainly survivors of the LRA insurgency through both key informants and focus groups. The study also used key informants to engage custodians of *Mato-Oput* that included cultural leaders through Ker Kwaro Acholi who shared their perceptions of *Mato-Oput*. Respondents' experiences of *Mato-Oput* were based on what they thought this cultural justice process was meant to deliver on. They considered it as a justice process closer to the survivors as it is embedded in their ways of life where everyone is free to participate. They also felt *Mato-Oput's* justice outcomes reflect agency since the interests of survivors are at the center of this cultural practice.

### **Interpreting Justice**

Respondents engaged on the question of justice through non-judicial mechanisms implemented in the Acholi sub-region see justice beyond judicial processes as one of the survivors stated: "some people say that if offenders are in Court, they think that is good enough. But if those people stay in Court for long and the lives of victims are not improved, it does not make any sense to the victims" (interview with a returnee mother

on July 18, 2023). They instead cited different non-judicial mechanisms akin to their culture, traditions, values, and customs that they felt are closer to them and form an integral part of their identity. One mechanism they emphasized was Mato-Oput.

### **Mato-Oput in the Acholi community**

Survivors consider *Mato-Oput* to be justice of rehabilitation, reparations, and restoration of community life. Survivors gave justice a non-judicial outlook by referring to Mato-Oput as a facilitator of truth-telling, forgiveness and reconciliation, and collective memory through commemorations and memorial sites, as processes of delivering justice. The NMPDC in Kitgum documented Mato-Oput's literal meaning to imply 'drinking *oput*'. *Oput* is a tree common in Acholi whose roots are grinded and used to prepare a bitter drink that is shared at the peak of this traditional justice ceremony (archived at NMPDC and retrieved on July 13, 2023). The major aim of this tradition is to re-establish relationships suspended between two clans as a response to a killing, deliberate or accidental. The NMPDC at Kitgum documented the willingness of the offender's clan (not the offender as a single person) to assume responsibility for the act committed as well as its readiness and ability to pay compensation as fundamental to the process of Mato-Oput. The religious leaders engaged also emphasized the willingness of both clans to come together as the beginning point. A religious leader from ARLPI noted:

“both sides came willingly, they were not forced. Then they decided to reconcile. We facilitated, we supported them, so that the two parties could come together, they sit and discuss, they give out a testimony of the period that thing happened. That the incident happened, but it kept disturbing one side, continuously, but after that, with the transitional justice that took place, later things became well. The ladies were enjoying their marriage well and things normalized” (interview with a religious leader under ARLPI on March 12, 2023).

Whereas atrocities handled in this traditional justice process are individual crimes, accountability and responsibility for these crimes are treated as collective for the clan of the offender against the offended as one of the religious leaders emphasized:

“I witnessed a clan that in the past had problems and decided to reconcile. After the reconciliation, they had to bring two sheep, one from the other side of the killer, one from the other side of the killed. After exchanging the two sheep, the two sheep were slaughtered, then a calabash of mixed herbs, the two sides they folded their hands on their backs, and drunk from it” (interview with a religious leader under ARLPI on March 12, 2023).

The religious leader added

“...after drinking, I think the liver is cut into pieces and roasted. Each side picked by the mouth and ate in our presence as we witnessed. After that, they brought one sheep again, that sheep was slaughtered, and after slaughtering it, the two parties now feasted together and enjoyed that meat. All of them ate, then they invited us to give them a prayer and they started dancing together thereafter.”

This philosophy engages the clan of the perpetrator as a collective for failure to nurture well members of their clans that are involved in committing atrocities, and grants them a collective responsibility to right wrongs and guarantee non-repetition of the same atrocities.

Mato-Oput is a mechanism that helped survivors to realize some of their justice expectations that included truth-telling to establish the whereabouts of the missing persons, and set the ground for forgiveness and reconciliation among clans that had been torn apart by the insurgency as a religious leader from ARLPI noted: “nearly all these former fighters needed truth telling and confession. Then we reached final transitional justice, otherwise, this area would still be haunted by people who live in the society but are not free because they know the evil they committed that has not yet been concluded”

(interview with a religious leader under ARLPI on March 12, 2023). It was an opportunity to revisit the community approach to resolve conflicts that is anchored in Acholi traditions, norms and customs that were lost during the two-decade insurgency.

The limitation of *Mato-Oput* became glaring in the event that so many people died, many of the perpetrators still remain not known, and those that are known lack the capacity to pay compensation. Some traditional rituals, however, remain for the reintegration of the ex-combatants and cleansing ceremonies to accept them back by the community as one of the respondents emphasized "...these include stepping on the egg, drinking of the bitter root, and cleansing which are psychological and help in accepting ex-combatants back by the community" (interview with an official from FJDI on November 30, 2022).

*Mato-Oput* is complemented by the ceremony of 'Nyono tongweno' *stepping on an egg*. After reconciliation, this is the cleansing ceremony done to wash away the sins of the offender. It involves putting a fresh egg on the ground and the offender steps on it. This process is believed to cleanse the offender, as a religious leader indicated: "when you have done something, you are the only person who knows that, so when you come, the people must understand what you have done, you cannot go in the community with blood in your hands, they stop you" (interview with another religious leader under ARLPI on March 30, 2023). This activity has three significances: First, it signifies acceptance as members of the community or clan receive the offender again as a full member, "they do not reject you. You have done something bad but they have to accept you because you are still part of them" (interview with another religious leader under ARLPI on March 30, 2023). Secondly, it symbolizes the purity and sanctity of human life. "that means human

life is very important. It emphasizes the principle of not committing the first offence to anybody, having respect for all, being consistent, speaking the truth at all times” (interview with another religious leader under ARLPI on March 30, 2023). The third significance is self-distraction. “If you have done it, killing another human being is like killing yourself. Whoever kills a human being loses their humanity (interview with another religious leader under ARLPI on March 30, 2023).

Once a ‘nyono tongweno’ ceremony has been accepted by the community or clan of the offender, offenders are taken back but they do not go back to their families and are not expected to talk to anybody because they must be kept in isolation or confinement. It is a collective responsibility by all elders to ensure this cleansing ceremony is complete. A compensation of 10 to 20 cows is then given depending on the circumstances that surrounded the incident. Killing is condemned strongly and compensation is an expression of remorse by the offender and the entire clan, it is to appease the spirit of the dead, and restore relations with the aggrieved family. It is critical that the offender is also taken through the ritual of cleansing as a sign of renewal. Once compensation is done, there is another important action of sharing food which symbolizes re-established relations and love. Mato-Oput involves truth-telling where ex-LRA combatants reported on some of the whereabouts of the missing persons, the nature of the massacres they carried out and the location of those massacre sites, together with the names of those that fell victim of the various massacres. It is the results of Mato-Oput’s truth-telling process that facilitated memorial activities in remembrance of the lives lost to the LRA insurgency.



Mato-Oput involves a range of processes to remember episodes of LRA attacks and the dead as a result of the attacks on different communities, including IDP camps, together with commemoration through periodic prayers and associated activities. The captured narratives of respondents in this study point to two concepts: ‘collective memory’ and ‘practices of memorialization’. Whereas ‘collective memory’ was expressed through processes that LRA insurgency survivors’ communities transmit narratives about themselves and others, ‘practices of memorialization’ were evident in material and non-material memory locales that include monuments and museums.

As part of collective memory, respondents cited memorial prayers that are held annually to remember and mourn the dead as one of the religious leaders remarked: “they gave us the opportunity to pray. As a Muslim leader, I was there, and Bishop Ochola prayed on behalf of the Christian flock” (interview with a religious leader from ARLPI on March 12, 2023). Survivors equally emphasized memorial prayers as an opportunity to mourn the dead and a reminder to continue looking for the missing persons, “...that is some of what I witnessed. We survivors made September 20<sup>th</sup>, 1986 to be a Memorial Day” (interview with a survivor in Kitgum on July 23, 2023). September 20<sup>th</sup>, 1986 is the day when the 7<sup>th</sup> NRM/A battalion, located at Oryang Labongo, killed unarmed civilians (Opiyo 2010, 92). The survivor added “so now for 36 years we have been remembering this day with prayers. We get together and recount the occurrences of the day. So, this year shall be 37 years and we are already preparing for 20<sup>th</sup>, September with families of those who belong directly to the thirteen victims of the massacre in that location on that day” (interview with a survivor in Kitgum on July 23, 2023).

It is expected that the government of Uganda would support these initiatives of remembrance as part of the search for justice by the families of the victims. However, survivors also formed associations to collectively support their recovery efforts. To support these associations, survivors are involved in making arts and crafts for remembrance that people buy during the memorial prayers as part of income-generation to sustain these survivors' groups. The attack and massacre at Lukodi IDP camp equally claimed a lot of lives while other IDPs were able to escape the wrath of the LRA. Survivors equally recount this incident and reconsider justice through memory since they feel the judicial system is very slow and therefore denies them justice through Courts as one of the survivors of the Lukodi massacre narrates:

“so, there when we talk about justice, we have not seen any justice. Because after 37 years, we have nothing and elders like us have kept the younger ones. We have tried to fend for them the best way we can. During the attack, they were just at home and most of them were elders although we had a fourteen-year-old at that time called Joseph. He also died amongst them like my brother who was still in secondary school” (interview with a survivor at Lukodi massacre site on July 13, 2023).

For symbolic purposes of remembrance, survivors' communities in the Acholi sub-region also identified and marked different massacre sites with names of victims that were killed and buried in mass graves by both the LRA and NRA (present-day UPDF). Close to those sites, they set up places of worship and mini-museums as part of respecting the dead and sending a signal as a strategy of contributing to the non-repetition of atrocities. A survivor, whose family members were killed during the LRA insurgency noted:

“...we built a church. We call it St. Joseph, named after the fourteen-year-old Joseph who was also massacred. We go and pray in it every Sunday. It's a chapel. We relate it to the bible. Joseph was a worker so we now call our church St. Joseph

the worker chapel. And whenever we meet here, we advocate for peace. No retaliation. We advocate for reconciliation. That is our strong message for; for peace! The government officials also join us for the prayers; they do” (interview with a survivor in Kitgum on July 23, 2023).

### **Justice through Mato-Oput**

Survivors referred to different factors to make meaning of justice. The accounts of justice they shared included: collective action between perpetrators and the survivors to realize peace; accountability and reconciliation; truth-telling; rehabilitation; and non-repetition of violence through memorialization as elucidated below:

Justice as a collective action good: some of the survivors of the LRA insurgency engaged on their understanding of justice considered justice to be a process of collective action. They noted that justice cannot only be restricted to the government, but also other players since the concept of justice implies different things to different actors. They saw justice as a communal responsibility within deliberate processes aimed at rebuilding community relationships through intermarriages, collective action on community goods as approaches that provide an opportunity of interacting and fostering relationships. As a collective action good, survivors considered justice as an all-encompassing process with an intention not to demoralize one side by those that have the power to do so since those they consider perpetrators were from different parts of the country and engaging them in the search for justice helps them to deal with guilt. Eliminating them from the equation of justice makes them the missing link in administering comprehensive justice. Survivors see multiple layers of culprits in the LRA insurgency ranging from government soldiers to LRA insurgents.

Justice as accountability and reconciliation: throughout the interviews, there was a marked awareness of the existence of different accountability mechanisms through Court

processes. However, survivors believe that those prosecuted by the ICC and ICD are not the only perpetrators of crimes. They mentioned the Government of Uganda as a party to the insurgency that not only failed in its responsibility of protecting them, but also violated them in camps accusing them of collaborating with the LRA. They therefore see justice as also accountability for the atrocities from the side of government which they consider an incomplete process that may not guarantee reconciliation unless government admits to its side of the atrocities that were committed. Participants at Odek highlighted that “Government has to do more to come out and reconcile us to itself. Because if not, the worry is; these memories that live can play negative or positive. ... for us at present we look towards the government to own up and apologize” (remarks by a participant in a focus group interview at Odek on July 18, 2023). Survivors also acknowledged the joint meetings they have had with government and their representatives in the Parliament of Uganda to engage them directly on the question of accountability and reconciliation.

Survivors also referred to *Mato-Oput* as an important traditional justice mechanism that fosters reconciliation as an elder emphasized “culturally, there are ways cultural institutions also administer justice and reconciliation through *Mato-Oput* and *Nyono Tong Gweno*” (interview with an elder at Kitgum on July 13, 2023). This is a cultural process survivors consider to be closer to them compared to the ICC and ICD, a mechanism anchored in the customs and traditions of the Acholi people and therefore relate with it. They believe that this conciliatory process of *Mato-Oput* and *Nyono Tong Gweno* provides harmony, together with a peaceful atmosphere for healing and coexistence. Survivors also find accountability and reconciliation transformative because it brings a complete change in the lives of both communities (offenders and survivors) involved in

violence and conflict as a religious leader emphasized: "...it transforms both parties. It is saving because it brings a new life to all in the violent conflict (interview with another religious leader under ARLPI on March 30, 2023).

Justice as truth-telling: Some respondents emphasized the need to know the truth as they noted "...for us who were in captivity, we do not know why they were fighting. We do not know the truth about the war" (interview with a returnee mother and victim of forced marriage at Gulu on July 18, 2023). Among those interviewed were survivors who considered truth-telling as part of the search for justice, while others viewed this process as justice in itself. Members of the civil society, academics, and legal representatives among other categories of those interviewed who considered truth-telling as part of the justice process emphasized information gathering that helps in the documentation of events as to where, how and why they happened as an official from the International Center for Transitional Justice emphasized: "it is difficult to get a collection of events that are important for memory if people do not share their accounts of these events as they speak to the exact locations of these events and how they happened" (interview with an official from ICTJ on December 8, 2022).

Another official from Uganda Victims' Foundation paused a question "how do we account for victims of atrocities when there are no people to speak to them? This is where truth-telling comes in to help us understand the magnitude of these events, together with seeking forgiveness and reconciliation from the community" (interview with an official from UVF on January 3, 2023). However, survivors of the LRA insurgency considered truth-telling as justice as they referred to its importance. They acknowledged this process as a moment to reflect on the atrocities as they happened, together with determining what

would be the right way forward after understanding why the insurgency happened. Survivors engaged at Pagak noted “...we live in a complicated situation where some of the perpetrators were our sons, but it gives us satisfaction if they can tell us why they staged such a rebellion that ended up costing us the people they were meant to protect. When they confess their actions, it gives us satisfaction and peace” (remarks by a participant in a focus group interview with survivors at Pagak on July 22, 2023).

Another participant at Lukodi also mentioned the importance of knowing why the atrocities were committed against vulnerable people in the camps and shared: “in one of the sessions, one of the returnees who benefited from amnesty shared a story of their attack on Lukodi and described the people he killed and among them was my sister. I felt bad but that was a moment of knowing the whole truth by the community that I did not want to ruin. At least I was able to know how my sister died” (remarks by a participant in a focus group interview with survivors at Lukodi on July 13, 2023).

Survivors also revealed justice through establishing the whereabouts of missing persons. This is because there are a lot of community members that were abducted during occasional attacks in the community that have never been seen again since the end of the LRA insurgency. However, it was discovered that some of them were killed and buried and the truth-telling process was central to this process which they referred to as a ‘breakthrough’ as survivors at Odek indicated: “in our culture, finding missing persons is important and we do not feel justice has been served until we find them, either dead or alive, and offer descent burials at their family cemeteries to those that are found dead” (focus group interview with survivors at Odek on July 18, 2023).

Justice as rehabilitation: Survivors engaged on the question of justice through non-judicial mechanisms suggested rehabilitation of both survivors and returnees that include ex-combatants and former captives. There are survivors with both physical and psychological wounds like trauma. Survivors therefore considered rehabilitation as a potential source of healing from trauma to be able to reorganize themselves as part of recovery from the atrocities they suffered during the insurgency. Survivors at Ajenjeri added “we have been keen on rehabilitation to cope up with our lives again. There should be a memorial institution like schools or hospitals for the benefit of victims but also for issues of memory” (focus group interview with survivors Ajenjeri on July 19, 2023). Therefore, survivors believe that unlike compensation, rehabilitation encompasses the provision of collective benefits for survivors’ communities as they emphasized ...no monetary value can compensate what we lost. Maybe a token of compensation, a school here for the survivors to support them with education... Schools, hospitals in memory of survivors but also for the benefit of survivors” (interview with an elder at Kitgum on July 13, 2023).

By the concept of justice as rehabilitation, survivors also pointed to restoring livelihoods with emphasis on using post-war recovery to invest in income generating projects: “we also want to build a hotel closer to the museum and a vocational training institute to earn forex and employ our children to prevent redundancy that will lead them into crime” (interview with a survivor at Lukodi massacre site on July 14, 2023). Survivors see this as justice because generating forex will help them restore livelihoods to enhance justice through achieving decent living for them and their children who are not guaranteed of opportunities that come with attaining quality education since the two

decades insurgency left them illiterate. To sustain this, they emphasized the need to have their capacities built to manage these important income-generating memorial ventures.

Justice as a guarantee for non-repetition through memory: Respondents also shared the importance of commemorations and memorial sites as justice. Whereas these are processes that still remain less supported, survivors found memory through commemorations and memorial sites as justice in itself. Survivors shared that they have days dedicated to remembering the dead through community prayers while also emphasizing the importance of marking sites for massacres with the names of victims of those massacres. Allowing for memory is part of recognition of what happened and indeed contributing strategies for ensuring such atrocities do not happen again. Survivors therefore acknowledged recognition with memorial sites and commemoration activities as justice when they emphasized the importance of the lives that were lost as one of the survivors shared “it is also a reminder that the people we lost in this massacre are people that would have been lawyers, doctors, etc. Right now, children ask us why we are poor and we tell them about the war” (remarks by a participant in a focus group interview with a survivor at Lukodi massacre site on July 12, 2023). Added to acknowledging the importance of lives lost, survivors also stressed the significance of justice through constant reminders about what happened and a commitment to ensuring non-repetition of such violence. Survivors at Lukodi referred to massacre sites / memorials as permanent reminders to the people that massacres should never happen again.

They also see these sites as points of reference when passing on information to their children that no person should incite them to fight since the outcomes are disastrous. Survivors also emphasized their beliefs in life after death when they shared that justice



transcends the living and extends to the dead who they believe are always watching them. Survivors at Odek mentioned that they can only serve justice to the dead through what is within their reach and that is holding annual memorial prayers for them: “we hold memorial prayers every May 19<sup>th</sup> to remember the lives that were lost since we believe that we can only accord them justice by honoring them” (participants in the focus group interview at Odek on July 18, 2023). For survivors, having sites of remembrance is also justice as it enables them to revisit what happened as they work on rebuilding a peaceful community: “we are also trying to build a museum to keep artifacts that remind us about our culture and the war. We now appeal to anyone to help us build this museum and realize our dream” (interview with a survivor at Lukodi massacre site on July 14, 2023).

### **Engaging Survivors**

Survivors engaged on the importance of the different non-judicial mechanisms implemented in the Acholi sub-region in the aftermath of the LRA insurgency accounted for the importance of these mechanisms. The solutions sought for in judicial mechanisms were found to be different from those expected from non-judicial processes. This section accounts for why survivors of the LRA insurgency participate in these non-judicial processes (survivors’ expectations), the effects of these non-judicial processes (outcomes), and the mechanisms for delivering these outcomes.

#### *Justice expectations*

From locating missing persons and appeasing the dead, to working for peace through reconciliation, restoring societal harmony, and preserving cultural norms and traditions that were threatened by the two-decade LRA insurgency, survivors turned to non-judicial mechanisms.

The LRA insurgency claimed a lot of community members and many lives were lost to the attacks. Some members of the community are known to have been killed during the different attacks on the Acholi community, including in IDP camps. Survivors interviewed stressed the need to appease the spirits of the dead through traditional ceremonies like Mato-Oput and Nyono Tongweno.

An elder in Kitgum emphasized the importance of holding annual memorial prayers to pray for the dead as a way of serving justice to the dead that the people of Acholi community believe still live with them in spirit. “Many other people died from other incidences but this particular one is for the thirteen-people gathered together and shot. Yeah, we join in their suffering. We keep in mind how they felt before they were shot and what they would have done for their families” (interview with an elder at Kitgum on July 13, 2023). Besides remembering and appeasing the spirits of the dead, survivors of the LRA insurgency also believe periodic memorial prayers are a catalyst for their collective healing as the elder in Kitgum emphasized, “it’s a day of sadness. People shade tears and so on...but we hold ourselves back and say it’s fine; God’s will. It’s God’s will. That’s why we say, ‘praise God for what he has done, to us humans!’. God has a way and that’s why we built a church and that is forever” (interview with an elder at Kitgum on July 13, 2023). Survivors also expressed more hope that they will heal from the painful past and consequently recover as they remarked “we have hope that these processes will foster rehabilitation and lead to recovery (focus group interview with survivors at Odek on July 18, 2023).

Survivors of the LRA insurgency also find non-judicial mechanisms as a platform for knowing the truth surrounding missing persons. The insurgency was also

characterized by abductions of youths, young boys and girls for purposes of recruiting them into the LRA ranks, together with forced marriage to LRA combatants. Since the end of the insurgency, there are members of the Acholi community that have never been seen again. Whereas some victims of abductions are thought to be still at large, their family members also believe that some of them died during the insurgency. Respondents shared that talk shows and different dialogues with ex-combatants are moments of telling the truth about the LRA insurgency without expectations for any form of retaliation. Ex-combatants are able to account for some of the missing persons especially those that died. For missing persons that cannot be accounted for, the NMPDC archives in Kitgum revealed the mechanisms through which they can be located, whether dead or alive, using traditional approaches embedded in Acholi culture. After two decades of the insurgency, some of the victims of abductions were still missing.

Survivors emphasized the factor of missing persons and reiterated cases of families that have not yet located their missing members and therefore do not know whether their persons are still alive or dead. The cultural process of finding missing persons that still remain unaccounted for is led by mothers who prepare food, use clothes and other belongings of a missing person, who may as well be dead but not located. Mothers also use the tools a missing person often used. The mother of the missing person cooks the food that person used to like. They prepare the food in the hut and when everything is ready, they bring the belongings of the missing person near the food and then they will start calling the missing person's name. "I am your mother, wherever you are, I have prepared for you this food. Please come and eat. You are still part of our family. I know you might be somewhere far from here but we want you to come and reveal to us that you

are either dead or still alive” (NMPDC archive on July 13, 2023). This is then followed with singing traditional songs. At the end of the ceremony, they leave the food inside the hut. When asked how the results get to be known, one of the custodians at NMPDC remarked that “these results about the missing person come in form of a dream or a vision” (engagements with NMPDC staff on July 13, 2023). To confirm the dreams, the NMPDC custodian added,

“when we were documenting, that is an issue we wanted to understand. We needed proof that indeed there were dreams and the vision. We went and again interviewed the family. What they told us was that this missing person would come to any member of the family in form of a vision or dream. He will say, I am Okot. I appreciate the food you prepared for me. I came and ate it but I am already dead. I actually succumbed to a bullet exchange at the border between Uganda and Sudan as we were going to Sudan” (engagements with NMPDC staff on July 13, 2023).

One of the cultural leaders in Ker Kwaro Acholi interviewed also revealed that “people have an opportunity to locate their missing person because that traditional process helps the spirit to reveal where the person was temporarily buried. The body is then exhumed and accorded a decent burial at their ancestral land” (interview with a cultural leader under Ker Kwaro Acholi on May 1<sup>st</sup>, 2023). Finding missing persons dead or alive contributes to healing because at least people are able to know the truth of what happened.

The traditional justice practices of Mato-Oput and Nyono Tong Ngweno also facilitate forgiveness, reconciliation, and reintegration of ex-combatants into the community, which is among the primary justice outcomes that were negotiated during the Juba Peace Talks. The Acholi community views justice in the aftermath of the LRA insurgency as a collective responsibility of all stakeholders including the survivors, ex-combatants, cultural and religious leaders, and different government structures in the

Acholi sub-region. The complexity of recovery from the two decades of insurgency in northern Uganda is that both the survivors and the perpetrators of atrocities belong to the same community. The Acholi survivors therefore see ex-combatants as members that need reintegration which can only be guaranteed through forgiveness and reconciliation.

To stress the importance of forgiveness, a religious leader from ARLPI referred to the documentary ‘Forgive 70 times 7’ that ARLPI did to advocate for reconciliation. The religious leader remarked “this documentary was derived from the biblical and also the Quranic teaching about forgiveness” (interview with a religious leader under ARLPI on March 12, 2023). They used their position as religious leaders and an observer team in Juba Peace Talks to engage with cultural leaders in the Acholi sub-region on the question of rebuilding the region.

Both cultural and religious leaders realized forgiveness, reconciliation and reintegration as central pillars to recovery and restoration of harmonious relationships among different clans. “By the time cultural institutions received children who came back from captivity and were getting the amnesty certificate, we were one of the party that worked with traditional leaders to see that our children attain certificate and after attaining the certificate, they underwent either religious or cultural ceremonies for facilitate their reintegration (interview with a religious leader under ARLPI on March 12, 2023). Because the two decades of war threatened the preservation of culture that facilitates forgiveness and reconciliation, religious leaders also advocated for the same elements of justice. A religious leader remarked “we came up with the documentary titled ‘Peace and Reconciliation’. We advocated for blanket Amnesty and mobilized the leaders of Northern Uganda in the various capacities and the law was passed in the parliament of

Uganda later as the Amnesty Act (interview with a religious leader under ARLPI on March 12, 2023). An elder interviewed in Kitgum also stressed the centrality of reconciliation in Acholi culture and remarked “as Acholi, we have a strong component of reconciliation with whoever has committed a crime against whosoever. With the victim, you need to reconcile with the perpetrator and as we welcome all manners of people here, we chose to live peacefully (interview with an elder at Kitgum on July 13, 2023).

This study views survivors of the LRA insurgency as central to all initiatives implemented in the search for justice and therefore treats survivors’ participation as critical to fulfilling survivors’ justice expectations. The rest of the chapter describes how actual survivors of the LRA conflict have engaged in these non-judicial mechanisms by engaging mechanisms of survivors’ participation and their roles as elucidated below.

#### *Mechanisms of participation*

The mechanisms of participation available to survivors of the LRA insurgency in the Acholi sub-region range from talk shows, dialogues, commemorations through memorial prayers, and preserving memorial sites. Survivors of the LRA insurgency reported the different radio talk shows where they have participated in the search for justice. They made specific reference to talk shows hosted by Gulu’s Mega FM. This radio station features political and administrative leaders covering topics concerning latest developments in the search for justice and peace in northern Uganda. The interview format also embedded questions from phone-ins and letters from listeners that were given during the program. Survivors indicated that this program at times features ex-combatants who are able to reveal the truth of what happened. Survivors also have the opportunity to

call in and seek clarifications on the number of issues, including on the different justice processes implemented, the prospects for peace and non-repetition of atrocities.

A returnee mother shared “what personally is of interest to me are the testimonies of some of the LRA rebel returnees during ‘Dwog cen paco’ (coming back home). In this program, former child soldiers speak straight to the audience and narrate their ordeal of captivity” (interview with a returnee mother in Gulu on July 18, 2023). Survivors found this program compelling because child soldiers tell their stories of how they were forced to kill their colleagues who were trying to escape from the LRA. Whereas these are sad stories, survivors feel they are important to truth-telling, together with facilitating reintegration efforts as they are able to understand the plight of returnees as a precursor for forgiveness. ‘Te yat’ (under the tree) was another program highlighted by survivors where they are given an opportunity to call-in using a toll-free line to also participate in the dialogues.

For survivors therefore, “talk shows have engaged them by seeking their opinions regarding how they think justice should be realized” (focus group interview with survivors at Ajenjeri on July 19, 2023). Talk shows thus provide a platform of interaction between government, ex-combatants, and survivors which helps in building trust and confidence. They are also referral pathways as they pass on information to survivors regarding existing services that they can benefit from in their process of recovery.

Regarding memorialization, different survivors participate by cleaning and maintaining the memorial sites. Survivors also view their participation through fundraising efforts on days of commemoration in remembrance of the dead and paying respect to the survivors of different atrocities by the LRA and the government of Uganda.

Survivors and communities also construct and promote monuments. In many cases, such ceremonies have a religious component and include prayers for the people who were killed or went missing. Survivors interviewed believe that it is through memorial prayers that they satisfy or appease the spirits of the dead. It is on such occasions of memorialization that survivors also advocate for peace, lobby for government support through their political representatives to construct education and health infrastructure in remembrance of victims of the insurgency. A case that is relatively frequently discussed is that of Barlonyo, where president Museveni at the burial of those who had been killed in the massacre promised the community to build a technical institute, a bridge and a health center in memory of the victims (Olaka, 2017a; Oketch, 2011; URN, 2016 in Martens 2021, 37).

This was reportedly done on request by the community of Barlonyo “that an institution be established in honour of their dear ones” (Mugalu, 2014 in Martens 2021, 37). At Aboke, where in October 1996 139 students were abducted by the LRA from St. Mary’s College, a boarding school for girls, the functional element took yet another form. Here, in 2016, former students of the school raised funds to renovate the roofs of the school “in memory of their colleagues who were abducted by the ... LRA” (Olaka, 2016a in Martens 2021, 37). During the war, much of the northern region’s infrastructure, (public) facilities and services were severely damaged and disrupted. In the forms of memorialisation described here, survivors find a combined purpose of honouring victims of the conflict and working on more material reconstruction of the region (Martens 2021, 37).



Survivors of the LRA insurgency also participate in ceremonies like Mato-Oput as observers. Other survivors are also community leaders mandated with presiding over the Mato-Oput traditional justice process. They therefore offer their knowledge, expertise and time to facilitate this reconciliation ritual. They help in identifying the relevant herbs for the ceremony, identify and support cultural leaders with a mandate of administering Mato-Oput, oversee this reconciliation process and coordinate efforts of reintegrating ex-combatants.

### *Benefits of participating*

Memorialization serves the purpose of remembering, honoring, and praying for victims of the LRA insurgency. The benefit of such remembrance and honoring is in expression or symbolism through actions and events that provide an opportunity to collectively pay respects to victims. For families of the missing persons and the dead as a result of the insurgency, activities of collective memory serve the purpose of mutual support and healing as they feel their family members are respected and honored and therefore not forgotten. Commemorations through prayers in Acholi culture appeases or satisfies the spirits of the dead.

Commemorations like these are also moments of apology that cultural leaders promoted during the Juba peace talks which are a critical component of healing as survivors at Odek emphasized: “there have been several missed opportunities for apology but when the President of Uganda offered us an apology for the atrocities committed, we felt that our vulnerability was acknowledged by government” (participants in the focus group interview at Odek on July 18, 2023). More functional forms of memorialization were noted in survivors’ expectations for functional infrastructure in terms of schools and

hospitals to improve their access to education and health care given that much of the northern region's infrastructure was destroyed during the insurgency.

Non-judicial approaches like memorialization also promote emotional healing by relieving survivors some of the psychological pain they experience. An example of events that promote healing was organized by the Refugee Law Project (RLP) in 2019 that involved launching an exhibition at Uganda Museum in Kampala about the experiences of girls who had been abducted by the LRA. With the remarks of the RLP Director about this exhibition:

“this exhibition aimed at healing all the girls abducted by the LRA rebels”; “the clothes, books, and other items are being displayed to provide healing to the victims of the LRA war who are still hurting” (Dr Chris Dolan cited in Martens 2021, 38).

In commemorations, survivors get to listen and talk through the tragedy of the LRA insurgency and its aftermath, share experiences and strategies of healing. Commemorations are equally opportunities of identifying centers of help through referrals by other stakeholders and development partners that refer survivors to different psychosocial programs to enhance their healing. An exception to this is when president Museveni promised the construction of a memorial vocational institute, a health center, and a bridge in memory of the victims of the massacre at Barlonyo IDP camp. He said that “these would serve as a consolation to the surviving community” (Olaka, 2017a cited in Martens 2021, 39). These structures built in memory of the victims would provide a degree of emotional relief to survivors of the massacre at Barlonyo. Therefore, these pledges were presented as a form of reparation, of a material nature but also with symbolic meaning (Martens 2021, 39).

Survivors looked at memorial sites as income generating centers with ambitions to construct recreational facilities around those areas to accommodate an ever-rising number of visitors. These they see as potential sources of employment for the youth to improve their livelihoods that were lost during the insurgency. Survivors consider the potential for income generation from these memorial sites as an opportunity to harness the talents and energy of the youth that were born during war and lost out on formal education, saving them from engaging in criminal activities. A survivor at Lukodi massacre site remarked “employment opportunities from planned activities on these memorial sites will help us on the challenge of youth unemployment that include highway robbery” (interview with a survivor Lukodi massacre site on July 13, 2023). Survivors therefore find investments in preserving and further developing these memorial sites a critical component of transforming the livelihoods of youths and survivors of the LRA insurgency.

Survivors’ accounts of atrocities of the LRA insurgency also contributes to documentation of the legacies of this insurgency. Survivors indicated that they engage in dialogues as part of the commemoration activities. In these dialogues, they re-visit incidences as they happened during the insurgency with specific reference to attacks against civilians in the IDP camps marked with abduction and killing of people. Survivors equally use commemorations as platforms for sharing their post-war experiences. These are always documented and stored as important points of reference for the future as a returnee mother indicated: “our accounts of persecution, forced marriage, abduction and death is a reflection of the war that we would like our children to learn from against engaging in violence” (interview with a returnee mother in Gulu on July 18, 2023).

Survivors also highlighted forgiveness and reconciliation as a benefit promoted through the traditional justice system of Mato-Oput. Participants in non-judicial mechanisms seek to restore peace in northern Uganda anchored on forgiveness and reconciliation as a main pillar for achieving this goal. Survivors at Odek find the potential of forgiveness and reconciliation in Mato-Oput as “it calms people down, restores harmony and peaceful co-existence” (focus group interview with survivors at Odek on July 18, 2023). They see Mato-Oput as a major process of handling the complex aftermath of the LRA insurgency that seeks to demobilize and reintegrate ex-LRA combatants, together with promoting harmony in the community. One of the children born in captivity remarked “my biggest motivation is to see there is peace in the community. When there is peace, there is love, people are free and happy” (interview with a youth born in captivity during the LRA insurgency on July 18, 2023). Survivors equally acknowledged the dynamic nature of justice needs and a deployment of different non-judicial approaches seeks to respond effectively to these ever-changing views of justice by survivors.

Survivors see the traditional adjudication processes of Mato-Oput and Nyono Tong Ngweno as part of culture. They are traditional processes that every returnee is subjected to as a returnee mother emphasized: “Mato-Oput and Nyono Tong Ngweno are standard procedures of everyone that comes home and so I participated in them” (interview with a returnee mother and victim of forced marriage at Gulu on July 18, 2023). The Acholi survivors value them because they are part of their traditions, values, and customs. They consider these forms of traditional adjudication closer to them since they understand these processes. However, survivors interviewed expressed dissatisfaction in government laxity to include non-judicial adjudication mechanism in the formal judicial processes planned

through Uganda's existing transitional justice policy. Survivors equally believe that traditional mechanisms are central to the restoration and preservation of Acholi culture which is the societal fabric on which to base forgiveness, reconciliation and reintegration of ex-combatants that are also considered members of the Acholi community.

Most of the youth were born in IDP camps during the LRA insurgency and missed out on learning Acholi culture yet they are considered the custodians of Acholi traditions, customs and values. Therefore, non-judicial processes have helped in addressing this gap because youth are able to witness first-hand the traditional ceremonies and learn from the existing elders and cultural leaders who pass on this knowledge through the various rituals of community restoration. However, they also cited the importance of protection whenever threats are detected and highlighted different mechanisms of fostering safety against potential threats.

#### *Protecting survivors*

To promote and enhance full participation, survivors of the insurgency must feel free to operate in a justice environment with hopes of having their interests reflected in the outcomes of justice administration. In a community like Acholi where both the accused persons (alleged insurgents) and their victims (survivors of the LRA insurgency) belong to, and live in the same community, guaranteeing protection to survivors is a critical component of enhancing their participation in non-judicial Acholi practices. The mechanisms elicited above have strategies to provide this required protection for survivors as indicated below.

### *Mechanisms of protection*

The first line of protection rests in shielding alleged perpetrators from retaliation by the survivors of atrocities. This aims at preventing ex-combatants from planning and organizing against potential vengeance that may be in form of existential threats, either real or perceived, posed by survivors' communities. This kind of protection takes a collective action approach between the leaders and people in the community based on mutual trust and the need to preserve the Luo culture of acceptance and ownership of responsibility for crimes. An elder in Kitgum emphasized that “the Luo culture also puts some bit of responsibility on the side of survivors for a certain degree of failure to prevent atrocities” (interview with one of the victims' leaders in Kitgum on July 12, 2023). A clan leader also stressed “even Ongwen was just a child soldier abducted on his way to school. If we had taken care of him, attacks on different IDP camps would have been avoided. We acknowledge failure in our responsibility” (interview with another clan leader under ARLPI on March 30, 2023). This is to recognize that the insurgency was a collective problem and preventing it is also a collective responsibility since insurgents were from the Acholi community and some survivors owned the missed opportunity of inculcating a culture of non-violence. Both the perpetrators and the survivors must therefore feel the duty to re-establish peace and rebuild a culture of non-violence that is against retaliation of any form.

The second line of protection lies in the traditional justice approach of *Mato-Oput* where an offender cannot enter a community without undergoing this cultural practice of reconciliation and cleansing. A survivor in the focus group interview at Odek remarked “the culture states very clearly that an offender is not allowed to enter into the community

with the blood in his hands...that is to protect the survivors” (focus group interview with survivors at Odek on July 18, 2023). Therefore, for a reconciliation process to take course, the perpetrator must accept responsibility, show remorse for the atrocities committed, and ask for forgiveness. When the community agrees to the plea, a traditional cleansing ceremony of *Nyono Tong Gweno* is organized to facilitate the reintegration of ex-combatants into the community. Accepting former insurgents back encourages them to disassociate themselves from any acts of violence that may be a threat to survivors. The traditional cleansing ceremonies and forgiveness is a responsibility of both the offender community (clan) and that of the survivors. The offender’s clan takes responsibility for the atrocities committed by their member, while the survivors’ clan also has the responsibility to accept the interest in a reconciliation with the offender’s clan. This mutuality re-establishes a relationship that is devoid of reprisal attacks, which is a protection mechanism for survivors who seek to participate in non-judicial adjudication mechanisms.

The third line of protection lies in the truth-telling process where perpetrators take full responsibility. This involves establishing rapport with survivors, elders, and perpetrators to facilitate an environment that encourages perpetrators to account for the different atrocities that were committed. Survivors are encouraged to tell the truth without fear of consequences since they are protected from potential retaliation of any form. Survivors are encouraged to listen in and ask questions that can further help in searching for the truth about the insurgency. Survivors’ interest in the truth about their missing persons, the death of their family members, and information about why the insurgency happened encourages them to maintain a safe environment for the perpetrators to interact

with them. Establishing rapport between survivors and perpetrators guarantees confidence that comes with truth-telling and forgiveness, together with the willingness by perpetrators to take full responsibility. Speaking to trust as a protection mechanism through truth-telling, the cultural leader noted “...it creates trust, confidence and hope for a safe future destiny. It’s liberating in the sense that both mercy and forgiveness sets free the offender community and the offended community from their guilt, bitterness and desire for revenge” (interview with a cultural leader under Ker Kwaro Acholi on May 1<sup>st</sup>, 2023).

In cases where survivors do not want to be known, they participate in non-judicial processes like Mato-Oput and Nyono Tong Gweno anonymously. Survivors may withdraw their willingness to participate directly in non-judicial processes for reasons ranging from trauma, stigma, bitterness, and fear of being identified. Regarding bitterness, some survivors feel it is important to keep away from meeting with their victimizers to avoid a replay of the traumatic experiences that ignite feelings of revenge, as they seek for psychosocial assistance.

A survivor at Lukodi remarked “you know if someone has done wrong to you, you have that bitterness and that bitterness accumulates in the heart... so keeping away from interfacing with them sets us free from that desire to pay back in revenge” (interview with a survivor at Lukodi memorial site on July 13, 2023). Cultural leaders therefore become their medium through which they pass information relevant to the adjudication process of engaging returnee ex-combatants. Returnee survivors of forced marriage also expressed their fear to be identified and stigmatized by other members of the community. The decision by some survivors to keep themselves away from direct participation maintains



their anonymity and protects them from re-traumatization, stigmatization, and re-awakening feelings of retaliation.

### **Conclusion**

In this chapter, survivors expressed mixed reactions about non-judicial mechanisms for adjudicating the LRA insurgency. Whereas they find the traditional justice approaches constrained in their mandate towards the atrocities that were committed, they view these approaches in the line of restoring peace and harmony within the Acholi sub-region. They referred to these cultural-based mechanisms of justice as the missing link in the search for peace and justice in the aftermath of the LRA insurgency. In these mechanisms, survivors locate their identity since they are anchored in their tradition, norms and customs that form their belief system. They therefore considered non-judicial mechanisms as closer to them and expressed a competent understanding of these processes. Because they are anchored on Acholi traditions and customs, they feel more in charge and presided over by custodians they trust. However, they blamed government for the limited support offered to these non-judicial frameworks which they see as an attempt to downplay community recovery efforts.

**Figure 8: Matrix of responses on the Mato-Oput Customized justice model**

<b>Method</b>	<b>Type of respondent</b>	<b>Questions asked</b>	<b>Response</b>
Focus Groups	Ex-combatants Ex-wives to the rebels Former IDPs Sexual violence survivors Amputees Children born in captivity	What does justice through Mato-Oput mean?	Truth-Telling; Accountability; Forgiveness; Reconciliation; Rehabilitation; and Collective memory. However, it is entirely voluntary.
		Why did you participate in Mato-Oput process?	To seek protection; to be reintegrated into the community; to know the truth of what happened, and about the missing persons; to mend relationships with the aggressor; it is a cultural expectation; this justice is closer in scope and practice; it is the only justice system that does not discriminate against survivors.
		How do Mato-Oput's justice outcomes benefit you?	Recognition of victimhood; an opportunity to express views about justice; a moment of truth-telling leading to closure and facilitating emotional healing; documentation of atrocities; achieving relative peace; remembrance for victims through memory; appease the spirits of the dead; preserve Acholi culture; memorial sites, museums and artefacts are a reminder of a violent past and contribute lessons for non-repetition. However, re-visiting the past produces re-traumatization; it is difficult to fully recover and forgive when events of remembrance are relayed annually.
Key informants	Members of the academia, civil society, NGOs	What does justice through Mato-Oput mean?	Accountability, Reconciliation; Forgiveness; Truth-telling; Community agency; Identity preservation.
		Why does Mato-Oput encourage survivors' participation?	For collective action; to give survivors a voice; it is an opportunity for truth-seeking; to know the whereabouts of missing persons;
		How do Mato-Oput's justice outcomes benefit survivors?	Right to information promoted; right to justice protected; re-establishing relationships as a precursor for peaceful co-existence; memorials are a reminder of the cost of violence; cultural preservation.

CHAPTER 8  
COMPARING SURVIVORS' AGENCY IN TRANSNATIONAL JUSTICE  
GOVERNANCE MODELS

This chapter analyzes the dissertation's thesis and research questions. The chapter serves a summative and analytical role in that it synthesizes the dissertation's findings from chapters 5, 6, and 7 while using them to present evidence to respond to the dissertation's research questions and reject or support (engage) the dissertation's thesis. The chapter uses the findings to engage the questions - How do universalist and customized justice frameworks vary in their approaches to engaging survivors in the adjudication of African conflicts? What are the justice outcomes of customized justice approaches in Africa? What do customized justice approaches contribute to the global governance of transnational justice?

To answer these questions and support this dissertation's thesis, chapter 8 uses findings from Chapters 5, 6, and 7. As evidenced by the ICC and ICD cases in Uganda, global transnational justice treats survivors as objects in prosecutorial processes without agency and applies a one-size-fits-all retributive justice framework in distinct conflict contexts. This chapter reveals from the case study's research findings that a non-judicial framework in Uganda's case (the community approach of Mato-Oput) espouses a genre of survivors' agency that is lacking in the ICC and ICD case studies of Uganda.

This community non-judicial framework suggests a transformative justice with a bottom-up approach that views survivors not as passive actors in form of witnesses, but critical and active players in restoring societal harmony, rebuilding relationships, and contributing strategies for a non-relapse into violence. This community-led process vis-à-vis the national (ICD) and global (ICC) approaches showed distinctively varying outcomes in terms of processes, impacts, and contributions. The Ugandan case study reveals that the Ugandan government's approach in the ICD was also lacking in its transnational approach to justice for survivors of the post-conflict LRA case. Rather, it was customized community-led justice processes through Mato-Oput that was the preferred justice mechanism for survivors' agency in the post-LRA insurgency Acholi sub-region in Northern Uganda.

This chapter conducts a comparative analysis of the processes, impacts, and contributions of survivors in the three transnational justice mechanisms that have informed the core element of this study. The chapter reveals the limitations of both the ICC's and national ICD approaches while demonstrating survivors' preference for the community customized transnational justice approaches. The chapter concludes with a recommendation using the Ugandan case on how the governance of transnational justice mechanisms – including ICC and national/regional institutions – may reform their approaches to transnational justice by incorporating or relying on complementarity with customized community mechanisms.

### **Comparing processes, impacts, and contributions: ICC, ICD, and Mato-Oput**

Does the dominant top-down liberal criminal justice approach advance the best framework of engaging survivors in the aftermath of conflict? This question forms the

crux of this dissertation whose findings indicate that justice approaches, which emerge from below engage the agency of survivors better than those that engage justice from the top. This study established that the ICC and ICD treats survivors as objects limiting them to the position of witnesses and observers in the prosecutorial process. Mato-Oput on the other hand engages survivors of the LRA insurgency as subjects who are critical participants in the justice process with significant contributions to the justice outcomes.

This chapter uses distinct findings from the ICC, ICD, and Mato-Oput in Uganda to support this dissertation's thesis that because Mato-Oput engages the justice process from below, it is more supportive of survivors' agency compared to the ICC and ICD processes that use a top-down approach to justice. The chapter engages the impacts of these three justice approaches in line with survivors' justice interests and posits that the justice outcomes of Mato-Oput reflect the justice expectations of survivors more than the ICC and ICD. It engages the justice gap left by the ICC and ICD processes to discuss restoration of communities, reconciliation of survivors and their victimizers, demobilization, disarmament and reintegration of ex-combatants as Mato-Oput's major contributions to the governance of transnational justice.

### **The Limitations of the ICC's Transnational Approach: Survivors as Objects**

There is a common argument advanced by scholars of international criminal justice that the ICC should not be assessed outside its mandate informed by the objectives it seeks to fulfill. However, ICC is in a constant process of legitimating itself among its constituents to which survivors of atrocities are part. The Court must therefore remain relevant to the survivors it claims to serve by seeking to respond to their ever-evolving justice needs or else it risks being an inappropriate framework of justice for survivors.

The ICC's mandate is contingent upon survivors who double as witnesses and observers to its prosecutorial process and outcomes.

In the *Dominic Ongwen versus the OTP* case, the ICC followed a Nuremberg criminal justice approach with an aim of trying and convicting LRA insurgents. Survivors only became a part of the process only when the OTP needed to substantiate the evidence it availed to both the pre-trial chamber and trial chamber. Had the pre-trial chamber found evidence availed to be inadmissible, Ongwen would not be prosecuted and ICC's mandate would not extend to survivors of Ongwen's atrocities. What then would the adjudication process be without the trial of Ongwen? What would be the importance of the ICC to survivors? Would the mandate of the ICC not be extended to survivors if Ongwen's prosecution had ended in an acquittal instead of a conviction?

The purpose of trying Dominic Ongwen at the ICC was not guided by the justice expectations of the survivors of the LRA insurgency, but rather by the 1998 Rome Statute which provides the Court jurisdiction over crimes committed by the LRA in Northern Uganda. In the Rome Statute, interest is in holding perpetrators like Ongwen accountable for the atrocities for which they are tried. Accountability in the protocols of the Rome Statute implies ending impunity for those who would otherwise go unpunished and bring justice to survivors. In Ongwen's trial, ICC fulfilled the mandate of accountability through the norm of individual liability in transnational criminal justice. This sent signals of criminal liability to other potential insurgents in Uganda. In fulfilling this mandate, the objectification of survivors by the ICC in the Dominic Ongwen case manifested in the mechanisms of their participation, together with the outcomes that did not adequately reflect their justice expectations as discussed below.

In the *Dominic Ongwen versus the OTP* case at the ICC, participation was made available to the survivors of Ongwen's atrocities that successfully went through the Court's stringent selection process. The Victims' Participation and Reparations Section assisted survivors in the process of applying to participate in proceedings, and for reparations after convicting Ongwen. ICC's mandate was limited to case locations where Ongwen was tried. Applicants had to prove they are direct survivors of Ongwen's atrocities for their willingness to participate to be approved. ICC's outreach office in Uganda and the assigned legal representatives mostly engaged survivors that met the threshold of Ongwen's atrocities. These survivors had to be direct victims of atrocities specifically tied to Ongwen and not any other LRA commander. This meant that participation in investigations by the OTP, confirmation of charges by the pre-trial chamber and the conviction of Ongwen by the trial chamber was limited to only those survivors that could demonstrate their direct victimhood in atrocities for which Ongwen was tried.

As a result of that limitation, ICC's archives indicate that the Court's outreach office in Uganda was only able to register 4000 to 5000 survivors out of thousands of the Acholi people that suffered the wrath of the LRA insurgency. Survivors' communities equally found this a great underestimate for the number of survivors for Ongwen's atrocities alone. This selection thus left out a majority of survivors that needed to tell their story through ICC's processes. Treating survivors as objects in the trial of Ongwen thus started with the selection of who qualifies to participate and who does not. The Court lost its relevance to the many other survivors who demonstrated their willingness to

participate but were not selected. The survivors equally missed the opportunity to demonstrate their justice expectations through Ongwen's prosecution at the ICC.

Survivors that met the threshold of participating in Ongwen's prosecution were mostly engaged through representatives ('legal counsels', also referred to as 'victims' representatives') the ICC assigned to them through the Court's legal aid program. Survivors saw this approach as one that relegates them to the extreme sidelines of the Court proceedings without a direct input into the trial process. This was a challenge as legal representatives were sourced from the Acholi community which affected the trust they had in the ICC process and limited the nature and amount of information survivors shared with the ICC through intermediaries. In the Acholi community, ex-combatants of the LRA are co-existing with survivors of the LRA insurgency. The nature and amount of information survivors shared with intermediaries depended much on the effective profiling of these legal representatives. Survivors' trust in the intermediaries was highly dependent on the clans to which legal representatives belonged. Survivors censored the nature and amount of information they shared with legal representatives especially those that were suspected to belong to Ongwen's clan in fear of exposing their identity. Survivors lost trust and the need to maintain their safety prompted them to withdraw their willingness to participate in Ongwen's prosecution.

The ICC also used outreach activities to engage survivors of Ongwen's atrocities through which the Court informed and updated survivors about the progress of the Ongwen case. The shortfall of reaching out to survivors was in the one-sided communication strategy that only emphasized the mandate of the Court towards survivors. It is expected that ICC's outreach office facilitates mutuality between the Court



and the survivors. This implies that while the ICC engages survivors on its mandate to manage their expectations, it also uses its mechanisms to seek information regarding their expected justice outcomes to maintain its relevance in the communities of survivors it serves. Survivors had immediate needs that they expected ICC to respond to in the process of legitimating itself. The Court missed this opportunity by the failure to utilize its Victims' Trust Fund to cater for the physical health and psychosocial wellbeing of survivors whose information it used in prosecuting Ongwen.

Applying the Victims' Trust Fund is limited to when a conviction of a perpetrator in question has been reached. Since Ongwen was sentenced and charged, survivors of his atrocities are yet to receive compensation. This compensation is only limited to survivors that were direct victims of Ongwen's atrocities. Those that suffered atrocities by other LRA combatants are not included in the planned compensation packages by ICC's Victims' Trust Fund. Compensation is seen by survivors as a form of justice. Although the ICC has recently announced a fund to compensate victims of Ongwen's atrocities, survivors feel the compensation has overly delayed, which is also a delay of justice since justice is also seen as compensation. For survivors that are not targets of the recently approved compensation, it is a denial of justice.

ICC's outreach office in Uganda also provided video streaming to survivors as part of updating them on the progress of Ongwen's trial. Survivors watched the confirmation of charges by the pre-trial chamber of the ICC, the proceedings that led to the conviction of Ongwen by the trial chamber, and the stay of conviction by the appeals chamber. In all these livestreaming activities, the missed opportunity was the direct feedback to the trial chamber by survivors in Gulu. They had to go through third parties to contribute their

perceptions of Ongwen's trial. Survivors therefore relied heavily on the news and information from ICC's outreach office in the trial of Ongwen which limited their capacity to provide timely feedback to the Court at The Hague. Survivors banked on timely information and feedback which they expected to facilitate timely compensations had the ICC tapped into the potential for survivors' ideas of the formula of distributing compensation packages. However, survivors feel their lack of direct engagements with the Court also affected their timely compensation. They cited intermediaries as enablers of this challenge who they suspect frustrated the compensation process. Had the ICC facilitated a direct communication between survivors and the relevant sections of the Court, survivors feel their ideas on compensation would be implemented in a timely manner since they know survivors of Ongwen's atrocities better and they are best positioned to guide the Court.

The ICC also relied on paralegals to inform survivors' communities about the Court and the protocols that guided the administration of justice in the Ongwen case. The Court oriented and trained paralegals on the mandate of the Court, together with the procedures of Ongwen's prosecution. The identified paralegals in the community were semi-literates who did not fully understand and comprehend the legal protocols on which they had to engage survivors that met the participation threshold. Those paralegals that had a fair understanding of ICC's protocols faced a challenge of interpreting and communicating these protocols and the associated legalese to the survivors.

The paralegals were sourced from survivors of the LRA insurgency who had no qualifications in law. They therefore could not effectively interpret ICC protocols to the level of survivors, neither could they translate them to the Acholi language that is mostly

used by survivors of Ongwen's atrocities. Survivors were left to a caricature of participation in ICC's processes since effective participation was limited to legal procedures that facilitate the administration of justice. The legalese therefore created a disconnect between the Court and the survivors who were expected to participate through legal representatives they did not highly trust.

Some of the LRA fighters returned from the bush and were integrated into the Acholi community in the aftermath of the LRA insurgency. They are therefore living with survivors. Participating in Ongwen's prosecution could not be guaranteed without providing sufficient protection to survivors that applied to participate. Survivors' willingness to participate was affected by either a perceived or real threat of reprisal attacks from sympathizers of Ongwen. Throughout its investigations and prosecution process, the ICC instituted a witness-protection framework to maintain the anonymity of witnesses as they provided information that strengthened the evidence OTP used in prosecuting Ongwen. ICC's witness-protection protocols involved vetting applicants, redacting witnesses' identities, assigning legal representatives to witnesses, holding closed-door meetings with witnesses, encouraging survivors not to share confidential information with each other, and resettling those that had been identified.

However, in a community like the Acholi sub-region where people are closely related to each other, these protections were not sufficient as survivors found themselves easily confiding in family members and friends who failed to maintain the confidentiality of this critical information. This information percolated into the community, exposed some of the witnesses and risked their safety. Equally important to note is during the trial process, Ongwen had a right to know who his accusers were based on the Rome Statute's

Rules of Procedure and Evidence. This scared away other potential witnesses despite provisions for protecting the identity of witnesses through hidden faces and distorted voices provided for by the same Rules of Procedure and Evidence as witnesses did not trust this mechanism.

Still on protecting witnesses, the ICC is challenged by its lack of an institutional security apparatus. Under the principle of complementarity, the ICC relies heavily on the security architecture of member countries. During investigations, the security institutions of a country in question have a mandate to provide protection to the OTP to carry out relevant investigations that include witnesses that are always sourced from survivors. In the Ongwen case, the OTP relied heavily on Uganda's security framework whose army was also accused of victimizing the Acholi community during the LRA insurgency. Involving Uganda's Criminal Investigation Directorate (CID), Uganda Police Force (UPF), the Uganda People's Defense Forces (UPDF) and the local governments affected witnesses' readiness to share information with ICC's investigations arm. In the Acholi sub-region, the legacies of the LRA insurgency, in which survivors accuse the state security machinery of violating them in IDP camps, are still alive. Relying on the state security apparatus during the investigations re-awakened trauma and threats based on what survivors experienced and witnessed during the LRA insurgency. Uganda's security involvement thus discouraged some survivors from sharing critical information for fear of being identified and targeted by Uganda's security institutions.

In the eyes of the survivors of the LRA insurgency, ICC is a cobweb that only captures small insects as the big ones go through. In their testimonies during the investigation phase, survivors referred to atrocities of the government of Uganda against

them during the insurgency but they were dismayed by the OTP's lack of interest in crimes against humanity committed by the national army that had the mandate to protect them against the LRA. Survivors repetitively referred to the neglect of crimes by Uganda's national army as 'one-sided version of justice' that was only interested in the atrocities of the LRA. In situations where the ICC depends fully on the security provided by member countries, guaranteeing responses to atrocities that implicate governments of member countries is either ignored or handled in piecemeal. This affected the trust some of the survivors had in the ICC process leading to a voluntary withdrawal from participating in the ICC process.

The Juba Peace Agreement on Accountability and Reconciliation evoked the establishment of a domestic justice arrangement parallel to the ICC. This was part of building Uganda's jurisdiction over crimes of an international nature for which the LRA was charged at the ICC, together with creating a jurisprudence that can be used in trying other future violations of the same nature. The next section presents a discussion and an analysis of ICD's engagement protocols with the survivors of the LRA insurgency in Northern Uganda.

### **The ICD National Approach: Reinventing the Wheel or Replicating a Dominant Approach?**

To domesticate the 1998 Rome Statute of the ICC, the Parliament of Uganda passed the ICC Act of 2010 to create the ICD of the High Court. Under the Rome Statute's principle of complementarity, the ICC is intended to complement, not to replace, national criminal justice systems. Also important to note is that the practice of the doctrine of subsidiarity, to which the jurisdiction of the Court is limited, teaches that in all cases, problems are best addressed at the level closest to that problem. It is against this

background that Uganda established a domestic jurisdiction over the same crimes tried at the ICC following the Juba Peace Agreement on Accountability and Reconciliation. Originally formed to prosecute cases related to the LRA insurgency, the ICD was limited to those persons that did not fulfill conditions for Uganda's Amnesty Act of 2000. To this date, Thomas Kwoyelo is the only former commander of the LRA that is under ICD's prosecution process.

Domesticating the ICC meant a replication of the same criminal justice approach implemented by the ICC. The difference between the ICC and the ICD lies in the doctrine of subsidiarity that brought the jurisdiction of the LRA cases closer to the location of where the LRA atrocities were committed. Thus, domesticating the Rome Statute marked the process of socializing Uganda's judicial system into the norm of individual criminal liability espoused by the Rome Statute and promoted by the ICC. This is because through the ICC Act of 2000, the Parliament of Uganda created a jurisprudence for domestically prosecuting crimes of genocide, war crimes, crimes against humanity, and other recently added crimes of terrorism, and trafficking in persons, among others. The ICD is therefore not a novel creation, but rather replica of ICC's criminal justice regime in Uganda. Despite its domestic nature, this structure of justice also maintained survivors at the periphery in both form (process) and substance (outcomes).

In the process of administering justice by the ICD, the purpose of prosecuting Kwoyelo is to hold him accountable for the crimes he allegedly perpetrated during the LRA insurgency. In the Kwoyelo trial, Uganda is demonstrating its capacity to prosecute crimes of an international nature as it seeks to establish and deepen jurisprudence of crimes for which Kwoyelo is being tried. Whereas the DPP is still establishing evidence

implicating Kwoyelo, the amount of evidence it avails to the trial chamber of the ICD will contribute enormously to determining whether Kwoyelo has a case to answer. Prosecuting Kwoyelo involves direct investigations and facilitating witnesses in the process of substantiating the evidence available. Survivors therefore become a core component in the prosecution process at the ICD as they give context to the evidence availed to the trial chamber. However, the ICD jurisdiction is still deepening its jurisprudence with support and lessons from the ICC.

As a relatively new jurisdiction, the ICD has a limited time scope of trying Kwoyelo and this prevents it from prosecuting crimes that Kwoyelo committed before July 1, 2002 due to the non-retrogressive nature of the law. Among survivors of Kwoyelo's atrocities before July 1, 2002, the ICD process remains a mockery of justice to survivors who consider themselves victims of Kwoyelo's atrocities. It is thus important for the DPP to think creatively about a comprehensive justice approach that would see such survivors also engaged and at least share into alternative justice processes.

Participation of survivors is a core component of the ICD process and how survivors are engaged in the prosecution of Kwoyelo is a key determinant of their agency in this justice process. The critical importance of survivors informed the establishment of the ICD in Gulu, a location within areas that were devastated by the LRA insurgency to bring justice near to survivors' communities. Participation is limited to those survivors (classified as victims) who were directly affected by Kwoyelo's atrocities. Like in the Ongwen case at the ICC, this selection criteria leaves out many survivors that would like to share testimonies needed in the prosecution of Kwoyelo. The power for determining who can participate in the Kwoyelo case is left to the DPP, a process that denies survivors

of the LRA insurgency agency. Even those survivors selected to take part in the investigations, and later on in the trial of Kwoyelo, remain passive participants who have to wait on the guidance of the DPP because they must operate within the distinct protocols of Uganda's ICC Act.

The nature of crimes for which Kwoyelo is prosecuted also follow the Geneva Conventions Act which is part of Ugandan law. The Geneva Conventions Act does not provide for survivors' participation which makes it almost impossible to meaningfully involve survivors. This then only leaves judges with the mandate of creating a jurisprudence that would allow for the meaningful participation of survivors. Without a jurisprudence that puts survivors at the center of the prosecution, their participation remains piecemeal and only restricted to when they are invited to the prosecution process.

The mechanisms available to support survivors' participation are equally not in tally with the context in which survivors live. Participation mechanism are run by the DPP, police and social workers, and civil society. Engaging with many categories of players in the prosecution of Kwoyelo creates an ambiguity among survivors who are operating within an environment of increasing threats as a result of their participation. This ambiguity affects their trust in the protection by the prosecution since they are easily accessed by any actor whose identity can be easily disguised. Some survivors refrain because they are former captives who are seen by the community as ex-combatants and withdrawing from participation is part of protecting their identity from the different actors in the ICC prosecution process.

The power and influence of the different actors ranging from government agencies, NGOs and civil society cannot be matched with that of the survivors who still remain



vulnerable to the highly elitist justice through the ICD. The interests of these players have dominated Kwoyelo's prosecution with little and insignificant input from survivors. This challenges survivors' agency as their interests and voices are continuously suppressed by the competing interests of other actors with unmatched resources to influence the direction of Kwoyelo's prosecution. Their view of justice that follows a criminal justice framework becomes the dominant voice as opposed to a restorative view by the survivors crippling and or limiting the capacity of the ICD to legitimate itself before the survivors it principally claims to serve. This stance at justice relegates the position of survivors to the periphery during the proceedings with their opinion only sought for on certain issues in the final verdict as a leader of a survivors' group remarked "survivors' participation at the ICD is like breaking the window and smuggling the victims inside the room, not going through the door" (interview with one of the victims' leaders in Kitgum on July 12, 2023). This emphasis by a leader of survivors in Kitgum is therefore a classic expression of how survivors view justice through the ICD, as justice by the elite but not for survivors.

Where survivors are sought for in the prosecution of Kwoyelo, their safety is another factor that influences their willingness to participate. Whereas the potential for reprisal attacks from Kwoyelo's sympathizers and other reintegrated ex-combatants is latent, feelings of existential threats are still alive. The involvement of the government's security organs remains a major source of threats since survivors of the LRA insurgency also see the Government of Uganda as among the perpetrators which affects their trust in government institutions. They are therefore not optimistic about protections by an agent that violated them. Government agencies engaged in the Kwoyelo case emphasized security by survivors as the first line of protection where they expect witnesses to also

maintain their anonymity in the communities where they live. Communities in Northern Uganda have highly symbiotic characteristics that are fused within their collective communal activities. Their cultures promote mutuality based on the trust they have in their already established social support structures.

It is thus difficult to guarantee their utmost silence on their engagements with the ICD process since they always seek opinions from peers regarding their participation in different activities with the DPP. Therefore, it is not possible to assume that survivors who also double as potential witnesses in the ICD process can trust the DPP more than their peers in the community. Contributing to survivors' safety would be through a clearly thought-out witness-protection framework that is currently absent in both Uganda's security and judicial architecture. The safety of witnesses is therefore left to the creative perspective and perceptions of security by Uganda's security institutions. This reality challenges the trust survivors have in the protection provided to them in the Kwoyelo case.

Besides a protection deficiency, survivors' agency is also challenged with ICD's sought outcomes that do not tally with survivors' justice expectations. As indicated before, ICD's adjudication framework is a replica of ICC's philosophy of justice as retribution, which keeps a restorative and reparative component as secondary to the overall justice outcome. Whereas trying Kwoyelo is the primary purpose of the ICD jurisdiction in response to the legacies of the LRA insurgency, survivors' hopes are in a restorative approach characterized with the restitution to be able to live a fulfilled life like other regions of the country. The DPP officials referred to the government's attempts to contribute to the restoration of livelihoods through the different livelihood programs

implemented in Northern Uganda by the Office of the Prime Minister following Uganda's National Development Plan. Because this is not a solution proffered by the ICD, survivors have turned to their Members of Parliament to influence livelihood programs thereby reducing the importance of the ICD in addressing their livelihood needs. This challenges the agency of survivors in the ICD adjudication process who turn to alternative mechanisms of influence through their representatives who, through the Parliament of Uganda, contribute to Uganda's legal and policy framework with the mandate of allocating annual budgets to different livelihood programs including those implemented in Northern Uganda. Added to livelihoods are also survivors' psychosocial needs that have not been prioritized in Uganda's development planning which they expect the ICD to make pronouncements on. However, the delayed Kwoyelo prosecution process also implies a delay in access to these services since they are incumbent upon court pronouncements.

Like the ICC, ICD is also a relatively unpopular framework among the Acholi survivors based on its limited justice mandate. Survivors in the ICD remain the most forgotten actors whose agency is affected by their treatment as objects in the ICD adjudication framework but not subjects that need to be engaged as critical actors in this process. There was a noticed increased preference for customized justice that engages survivors based on their cultural norms, values, and customs as survivors of the LRA insurgency noted Mato-Oput's potential to bring justice closer to them. This customization is increasingly defying a liberal approach to justice seen through a Nuremberg lens that has characterized transnational justice today. In Africa, countries like South Africa established the Truth and Reconciliation Commission (TRC) post the

Apartheid system of administration because not all the solutions South Africans sought were in a court system. Rather, they treated the process of addressing Apartheid's victimization as an opportunity to form and build a South Africa that works for everyone, different from a dominant retributive or punitive approach to countering the Apartheid legacy. Survivors of apartheid became the pillars of this process that sustained peaceful co-existence as a springboard for establishing a new South Africa.

Rwanda's Gacaca post the 1994 genocide is also another classic case that the people of Rwanda reinvented from their traditions, norms and customs to deal with an overwhelming number of genocide cases. This invention rested on the challenge of a collapsed judicial system due to the state institutions that were devastated by the 1994 genocide. To re-build a new Rwanda, the government turned to the people in their respective communities as a precursor for effective prosecution. Away from an overwhelming legalese that characterized a parallel structure of the UN hybrid court far away in Arusha (the International Criminal Tribunal for Rwanda - ICTR), Gacaca rested its effectiveness on the agency of survivors of the genocide.

Mato-Oput among the Acholi community was also found to bear the element of agency by survivors as a core component in reaching its overall goal of restitution, restoration, forgiveness, and guaranteeing non-repetition of violence. To reach its overall goal, the customized justice approach of Mato-Oput considers survivors of the LRA insurgency as the central pillars in the administration of this customized justice in all its forms as presented in chapter seven. But, what opportunities does customizing justice contribute to the overall governance of justice? How do these opportunities fill that missing link in administering transnational justice? The next section uses South Africa's

TRC and Rwanda's Gacaca to engage these two questions in the context of the Acholi customized justice process of Mato-Oput.

**The Opportunities in Customized Approaches to Justice: the case of Uganda's Mato-Oput vis a vis Gacaca and the TRC**

A liberal teleology that considers survivors of atrocities secondary in the processes of searching for justice underpins the mainstream approach to transnational justice. However, the growing customization of justice emphasizes an existing alternative understanding of what justice is together with complementary ways of addressing atrocities. South Africa's choice against a purely punitive approach to addressing the legacies of apartheid was informed by what the survivors of apartheid sought to achieve. There were varying interests that ranged from holding the architects and implementers of apartheid responsible for the victimization of majority South Africans. However, the interest in knowing the truth about apartheid violations together with re-building South Africa superseded the norm of punishment.

This is why direct survivors of apartheid crimes were given a platform to give statements about their experiences and were selected for public hearings, while also encouraging perpetrators of crimes to give testimony and request amnesty from both civil and criminal prosecution. South Africa set up the Truth and Reconciliation Commission (TRC) in terms of the *Promotion of National Unity and Reconciliation Act*. The TRC's mandate was to bear witness to, record, and in some cases, grant amnesty to the perpetrators of crimes relating to human rights violations as well as offer reparations and rehabilitation to the survivors. To engage many survivors, TRC was anchored on public hearings by the Human Rights Violations Committee and the Amnesty Committee at many venues around South Africa, including Cape Town, Johannesburg, and Randburg.

TRC's emphasis on reconciliation was in sharp contrast to the punitive approach taken at Nuremberg as South Africa chose to pursue forgiveness over prosecution, and reparation over retaliation (Ginger 2003). TRC introduced the importance of engaging survivors, not as passive recipients of justice, but as active participants in the governance of justice by involving them in the conceptualization, design and indeed administration of justice. The TRC also highlighted the overwhelming importance of collective rehabilitation for survivors without a recourse to only those that are direct victims of crimes for which perpetrators in question are prosecuted.

Also important was the justice process of Gacaca in the aftermath of the 1994 genocide in Rwanda. Gacaca co-existed with a liberal punitive criminal justice approach through the UN hybrid International Criminal Tribunal for Rwanda (ICTR), set up in Arusha, Tanzania to try those that were found highly responsible for conceptualizing, planning and implementing the genocide in Rwanda. Rwanda as a society sought not to only punish perpetrators, but also establish the fundamental challenges within the country that led to the genocide. For the people of Rwanda, it was not enough to know who committed what crime and where. The fundamental question they needed to find answers to was why people sought recourse to the largescale massacre of their countrymen and women. Gacaca rested on the spine of community norms, customs, and traditions whose outcomes were mainly based on collective consensus, different from ICTR that was based on international criminal law protocols. Survivors became the fulcrum on which Gacaca was facilitated.

These were community courts administered under the tree by eminent members of the community in the different villages of Rwanda. What Gacaca contributed to the

governance of justice in the aftermath of violence was the involvement of the community as central actors with agency to determine the outcomes of justice. Power rested in the hands of the community members to decide the outcomes of justice they needed. The outcomes were a combination of incarceration promoted by the liberal punitive approach, together with seeking for truth, forgiveness, reconciliation and community service to promote rehabilitation in form of psychological and physical healing promoted by a reparative and restorative approach to justice.

South Africa's TRC and Rwanda's Gacaca expose the inadequacy in treating survivors as secondary to the justice process. By engaging survivors of atrocities as active players, they provide the opportunity of responsiveness to the unique justice expectations of communities in transition that a punitive mandate does not explore. Survivors engaged during South Africa's TRC and Rwanda's Gacaca share the following factors in common. The importance of truth-telling as a precursor for understanding the underlying factors that challenge the sustainability of peace. Restoring relationships by fostering reconciliation is another key component for survivors' recovery that directly engages the underlying threats to the safety of survivors in transition. Appealing to collective rehabilitation is equally critical to restoring the livelihoods of survivors as a deliberate effort to enhance their capabilities. These cannot be facilitated without engaging survivors in distinct contexts because each conflict situation produces unique outcomes that necessitate tailor-made engagements that facilitate recovery. A truth-telling approach that engages communities of survivors that lived the wrath of atrocities also avails critical information needed to guide collective strategies that guarantee non-repetition of largescale violence.

By appealing to the same approach of South Africa's TRC and Rwanda's Gacaca vis-à-vis the ICC and ICD justice processes implemented in Northern Uganda, survivors of the LRA insurgency sought for a justice framework that would enable them to engage the importance of justice. Mato-Oput and other associated justice processes provide a different outlook that engages justice beyond the Court frontiers. More often than not, criminal justice approaches are implemented with a view that Court processes provide more justice outcomes needed by survivors of atrocities. However, the conceptualization of justice around Acholi traditions, norms and customs condition different justice processes and outcomes. A punitive approach espoused by a criminal justice framework is one of the many components of justice, but not the overall. A justice framework in which survivors can locate themselves is one that reflects their understanding and values of justice as a collective concept, an endeavor that is not exclusive to a few, an approach that provides a platform for silenced voices, and one that embraces a diversity of views.

Mato-Oput introduces the concept of justice as a collective good. Away from the punitive approaches that assume survivors as actors on the receiving end of justice, Mato-Oput views the results of justice as a process of collective action. Justice is not a concept whose actualization comes from outside as survivors wait onto other players to deliver its benefits. Customized justice through Mato-Oput is a process that sanctions the participation of every member of society as an active player whose views and ideas are important for effective outcomes. Therefore, the concept of ownership is sustained by the communities in transition as justice is rooted in their traditions, norms and customs that invites their inputs as key players and sustainers of culture. Therefore, restoring and preserving culture through Mato-Oput is a responsibility of both perpetrators and



survivors of atrocities. The longstanding tradition of resolving intra-ethnic conflicts through apology, negotiation, compensation and forgiveness among the Acholi served as a firm foundation for resolving differences and restoring peace as a collective responsibility of all members of the community. Because Mato-Oput warrants collective action, it also fosters collective healing as members of communities in transition are able to collectively reflect on forgiveness and reconciliation.

Mato-Oput contributes a different approach to accountability that is not exclusively focused on punishing select categories of perpetrators. It recognizes and sanctions shortfalls of all actors in conflict and not exclusively the LRA insurgents. This approach challenges a focus on only the vanquished that is characteristic of a liberal approach to justice. It advocates recognizing the atrocities carried out by victors in any conflict. Silencing the crimes of victors is silencing the voices of survivors of crimes by those with power in the aftermath of violence. A comprehensive justice must therefore recognize the reality of power that downplays the crimes of victors and work to dismantle processes of denial by exposing crimes that power silences while also advocating for acknowledgement and accountability for crimes of the victors. Engaging crimes of victors creates an environment that fosters complete truth as opposed to one-sided truth and provides opportunities for healing by survivors of crimes perpetrated by the victors.

The customization of justice also exposes truth that would otherwise have been silenced by fear of accountability through incarceration. Traditional justice processes like Mato-Oput attempt to create an environment of reconciliation based on truth. The promise of pardon and forgiveness in exchange of truth encourages perpetrators to reveal information that is necessary for a deeper understanding of the underlying factors that

drive conflict. Sharing the right and true information facilitates effective recovery efforts and strategies that guarantee non-repetition as underlying enablers of conflict are addressed by their roots as part of building resilient societies. Memory and memorialization thus becomes part of the enablers of remembrance and a constant reminder of the need to plug gaps that facilitate violence by facilitating the creation of a society that recognizes and acknowledges the importance and agency of every member of society.

More often than not, survivors of crimes that are not under prosecution are forgotten in rehabilitation packages that focus on direct victims of crimes for which a perpetrator in question is convicted. Customizing justice summons collective rehabilitation of everyone as an enabler of collective recovery. This is to deal with a challenge that comes with dividing survivors based on the nature and types of crimes to which they are victim. The practice of neglecting survivors of atrocities that are not under prosecution is an act that prioritizes some survivors against others which further divides societies. Customization of justice through the community process of Mato-Oput that views justice as a collective good therefore strengthens the bond among survivors by treating them as people who all need attention irrespective of the nature of crimes they suffered.

Lastly, the increasing customization of justice is a reminder that a one-size-fits-all approach to justice in distinct contexts is an attempt to downplay the values of some societies that are forcefully socialized into frameworks that do not fit within their traditions and customs. Attempts by societies, like the Acholi in Northern Uganda, to establish justice processes parallel to the dominant liberal frameworks is an emphasis of the importance of survivors who are always kept out of an elitist legalistic approach

implemented among communities in transition. Customizing justice therefore summons those silenced voices that are always considered the center of justice but normally kept to the periphery of justice by design.

**Figure 9: Matrix comparing characteristics and results**

<b>Justice Processes</b>	<b>Survivors' Agency</b>	<b>Approach</b>	<b>Results</b>
<b>ICC</b>	Objects	<ul style="list-style-type: none"> <li>• Top-down</li> <li>• One-size-fits-all</li> <li>• Participation mainly through intermediaries</li> <li>• Admissible evidence limited to that relevant to crime in focus</li> <li>• Both within and out of communities</li> <li>• Has temporal scope challenges</li> <li>• Only responds to what, who, how and where.</li> </ul>	<ul style="list-style-type: none"> <li>• Conviction</li> <li>• Compensation</li> <li>• Truth-telling</li> <li>• One case so far</li> <li>• Recognition of victimhood</li> </ul>
<b>ICD</b>	Objects	<ul style="list-style-type: none"> <li>• Top-down</li> <li>• One-size-fits-all</li> <li>• Participation mainly through intermediaries</li> <li>• Admissible evidence limited to that relevant to crime in focus</li> <li>• Both within and out of communities</li> <li>• Has temporal scope challenges</li> <li>• Only responds to what, who, how and where</li> </ul>	<ul style="list-style-type: none"> <li>• Conviction or acquittal</li> <li>• Compensation</li> <li>• Truth-telling</li> <li>• DDR through amnesty</li> <li>• One case so far</li> <li>• Justice closer to survivors</li> </ul>
<b>Mato-Oput</b>	Objects	<ul style="list-style-type: none"> <li>• Bottom-up</li> <li>• Administration based on context</li> <li>• Everyone participates</li> <li>• Based on community traditions, norms and customs</li> <li>• Within communities</li> <li>• Engages the roots of violence</li> </ul>	<ul style="list-style-type: none"> <li>• Collective responsibility</li> <li>• Compensation</li> <li>• Truth-telling</li> <li>• DDR through amnesty</li> <li>• Reconciliation</li> <li>• Restitution</li> <li>• Collective memory</li> <li>• Several cases handled</li> </ul>

For more context, this matrix compares the three justice models implemented in Northern Uganda in the aftermath of the LRA insurgency. The respondents to the questions that guided this gave their responses based on their understanding of each model and what they felt about the results each model produced.

Respondents to questions about the ICC, with specific reference to the Dominic Ongwen case, emphasized their treatment as secondary and not primary actors in the adjudication process. They viewed the ICC process as one that passed on solutions from above with limited input from the intended beneficiaries of justice outcomes. Whereas they acknowledged the outreach component, they did not feel its relevance due to the failure by ICC's outreach office to respond to their immediate justice needs. It thus treated them as objects in the adjudication process whose participation was limited to the nature of crime suffered that had to be in tandem with crimes for which Ongwen was prosecuted. Whereas survivors welcomed acknowledgement of their victimhood by the ICC in the Ongwen case, their opinions were only channeled through intermediaries who represented them at The Hague. This denied them the opportunity to share their justice expectations directly with the judges at the ICC. This is a factor of ICC's mandate which limits survivors to the position of witnesses and observers both at the investigation and prosecution phases. In the justice outcomes of the ICC process, beneficiaries of programs like compensation were also limited to those that satisfied the threshold of direct victimhood from crimes committed by Ongwen. The compensation program of the ICC left out survivors who suffered crimes committed by other insurgents, leading to further polarization of the community as beneficiaries of ICC's justice remain few compared to the overall number of survivors. Survivors also shared their disappointment in the ICC's

failure to hold the GoU accountable for war crimes during the LRA insurgency and therefore saw justice through the ICC as justice by the victors against the vanquished, which increases community polarization in the aftermath of the LRA insurgency.

On the other hand, respondents regarding the administration of justice through the ICD welcomed the process of bringing justice closer to them. However, they kept relating this process to the ICC whose similarities they emphasized more than the differences. They saw both processes as a piecemeal approach to a rather complex political question found in Uganda's history of power rivalry among Uganda's ethnicities that justice processes must engage if transforming conflict situations is the ultimate goal. They saw the trial of Kwoyelo as a process that has sent a message to other ex-combatants who surrendered to the government and benefited from the amnesty program. They agreed to share information about the war and the whereabouts of missing persons. This truth-telling process facilitated documenting stories about the war, helping people to heal from the violent past after knowing the truth of what happened. Different from the ICC process, respondents considered the ICD as an attempt to bring justice closer to survivors communities. However, they emphasized the need to conceptualize ICD's justice from the perspectives of survivors for them to relate with it. Like in the ICC justice process, they saw the government-led ICD process as justice by the victors against the vanquished. They questioned the practicality of the GoU holding Kwoyelo accountable for the crimes it also committed during the LRA insurgency, a factor they repetitively referred to as 'the perpetrator turned prosecutor and jury at the same time'. Their participation in the ICD process is equally impeded by the less trust they have in government institutions which they categorize as double victimization. The same institutions such as the UPDF and

Uganda police they accuse of victimizing them are the same institutions that are part of ICD's witness-protection framework, a factor that influences them to withdraw their willingness to participate for lack of trust in this justice process.

Unlike Mato-Oput, what the ICC and ICD share in common is they have used a lot of resources to handle only one case each across a long period of time. This speaks to the effectiveness of different justice models in dispensing justice to their intended beneficiaries. Survivors gauged the effectiveness of justice models based on the number of cases they have handled vis-à-vis the resources they have used to execute that mandate. The ICC has only handled the Dominic Ongwen case for the period of five years (December 6, 2015 to December 15, 2022). Since his capture in 2009, the ICD has neither convicted nor acquitted Thomas Kwoyelo. Respondents to the ICC and ICD questions consider this delay in the dispensation of justice a denial of justice against a lot of resources invested in the prosecution process. Mato-Oput on the other hand has so far handled approximately over 200 cases since 2010 (Mwaka and Obol 2023). This is attributed to the low scale nature of crimes handled by this traditional adjudication mechanism. The DDR process through Amnesty has also facilitated this process. It is an entirely voluntary process that ex-combatants and returnees have used to benefit from its reintegration component. Whereas justice in the ICC and ICD is entirely focused on individual perpetrators and victims, Mato-Oput espouses a collective justice process that attracts the interest and participation of all members of the community that yearn to know the truth and heal from it. Several factors can be attributed to survivors' growing interest in Mato-Oput compared to the ICC and ICD justice models. They find Mato-Oput closer to them since it is administered within their traditions, values and customs, which they

view as cultural preservation. Because they are all invited to participate without any restrictions, they see Mato-Oput as a model that upholds their right to participate, be heard, and right to information. Away from a retributive view of justice championed by the ICC and ICD models, Mato-Oput pushes for reconciliation. Northern Uganda's context is characterized by clans of survivors and perpetrators that are fused together and communities in transition see the strategy of rebuilding relationships that ensure a non-repetition of violence as an approach that transforms their conflict situations, opposed to advancing values that promote revenge in a community where the security of survivors cannot be guaranteed.

Also key to the three justice models are survivors who are considered passive recipients of justice waiting onto a 'saviour' to deliver on their justice expectations without their meaningful involvement in determining what the justice results should be, based on the ICC and ICD model. Conversely, Mato-Oput positions survivors as active participants that lived in the conflict situations and therefore understand the conflict terrain better than other out-group actors. They are therefore best placed to proffer the right solutions based on their view of justice in the aftermath of the LRA insurgency.

For survivors of the LRA, prosecuting Ongwen meant more divisions in the already polarized community based on a selective participation criteria that positioned some survivors as victims while leaving out the majority that did not fit in the threshold of crimes for which Ongwen was convicted. The current divisions that exist in the Acholi community are also inspired by the selective application of compensation whose strategy only targets a few members of the Acholi community and leaves out the majority of survivors. It is therefore a denial of justice to the majority of survivors of the LRA

insurgency. The ICD, on the other hand, represents a delay of justice since the Kwoyelo case has stalled since 2009. This still leaves survivors of the LRA in a dilemma as some individual victims continue to die without benefiting from the justice outcomes of the ICD justice model. Whereas underresourced, Mato-Oput presents a contextualized approach that bears the vision of survivors. It is one that is sensitive to the culture of the Acholi people, their justice expectations, and their aspiration of restoring a society whose conflict indicators and drivers are managed effectively. This is because it endeavors to find answers to why the LRA insurgency happened, with an interest in ensuring a conflict of that scale is not repeated.

Survivors' agency in governing transnational justice therefore implies bringing survivors back to the center in the administration of justice. Looking at people in transition from violence as survivors, not victims, preserves their agency and positions them as active participants in distinct justice processes with a clear awareness of their justice needs. A justice framework with a firm basis in reality guided by the context in which it is applied (substantive justice) is one that places survivors at the center of transacting justice. In transacting justice therefore, survivors become the pillars whose expectations inform the thinking and practice of justice in distinct contexts.

## **Conclusion**

Placing survivors at the heart of different transnational justice frameworks implies interrogating the dominant hegemonic assumptions that inform the current liberal teleology of justice that keeps survivors at the periphery of justice processes and outcomes. It is the criminal justice approach that derives meaning in too much legality and less in legitimacy because the overall focus is not the survivors but reinforcing a



criminal justice regime that is out of sync with the overall justice interests of societies in transition.

The different transnational justice processes implemented in Northern Uganda in the aftermath of the LRA insurgency expose survivors as the missing link in the administration of justice. Survivors' voices are silent in the conceptualization of transnational justice because survivors are considered victims that are helplessly waiting to be rescued by other actors in the justice process. The voice of survivors is silenced by a design that only leaves them the option of transmitting their justice interests through intermediaries that work for the preservation of international law protocols in which survivors cannot locate themselves.

Using lessons from the Dominic Ongwen case at the ICC, and the Thomas Kwoyelo case at Uganda's ICD, this study established that top-bottom approaches are elitist and deny survivors' agency. It is bottom-up approaches that characterize customized community-led justice frameworks such as South Africa's TRC, Rwanda's Gacaca and the present-day Mato-Oput among the Acholi that engage justice from below. Whereas the former promotes punitive outcomes, the latter promotes restorative and reparative results that survivors in Northern Uganda find more meaningful as they are anchored in their traditions, norms and customs that reflect their interpretation and understanding of justice different from results of Court processes.

Bringing survivors back to the center of justice demands a justice logic that reflects survivors' values in the administration of justice. Justice must bear the vision that reflects survivors' interests. A critical civil society is important to creating spaces for realizing this vision. However, it should be a civil society that does not reinforce the vision of the

donor, but that which creates spaces for alternative voices that have been silenced by a dominant criminal teleology. It should be a vision that transcends inclusivity and aims for transformation. This is because a system that demands inclusivity is one that has rules set not by survivors but by dominant and hegemonic forces. The first safety valve would be that which includes survivors at all levels right from conceptualization, designing, to implementation. The second safety valve would be that which does not look at survivors as passive recipients of justice but active participants in the administration of justice. There must be a deliberate process for allowing this to happen. This deliberate process will not be that governed from the top, but rather that emerging from below. This is what will make survivors subjects to the transnational justice governance realm and not objects of its results.

## CHAPTER 9

### CONCLUSIONS

The concept of justice is as diverse and multi-dimensional as the post-conflict needs of societies in transition that see an interplay of justice theories in response to distinct legacies of violence. However, a dominant liberal teleology of justice champions a criminal justice approach through justice institutions like courts. This conventional approach to addressing justice exposes the missing links in a purely punitive approach by ignoring the dimensions of reparations and restitution. The growing customization of justice, especially in the Global South through South Africa's TRC, Rwanda's Gacaca and Northern Uganda's Mato-Oput is a reaction against an assumption of a one-size-fits-all approach. Post-colonial IR scholars and TWAIL places inclusivity at the center of approaches that engage justice from the bottom because solutions that emanate from below also position survivors of atrocities as key actors in the governance of justice, opposed to a liberal approach that considers them victims without agency waiting for solutions from other actors.

Since the Nuremberg trials after the Second World War, retribution, as an approach to justice, has been championed as a universal model replicated in different post-colonial contexts across the globe. However, societies like South Africa took the direction of truth and reconciliation away from vengeance. Rwanda on the other hand blended a criminal

justice approach with the culture and traditions of the communities that were devastated by the 1994 genocide. This customization of justice, away from a ‘universalist’ approach came with its criticisms focusing on rights violations that a restorative approach did not seek to fully address. Where the focus also included human rights, like in the case of Rwanda, the international community sought the use of international legal instruments to hold perpetrators accountable. However, these societies have insisted on customization. Therefore, in the administration of justice, distinct societies have sought to utilize approaches that fit their unique post-conflict situations seeking to heal their societies from trauma, remember the lives lost, and guarantee a non-repetition of large-scale violence. ‘Cutting the cloth according to one’s size’ implies reflecting on the context and proffering responses based on what each unique post-conflict situation demands.

Referring to post-conflict societies or communities as victims is another hindrance launched by victimologists to deny survivors the agency they need. They position survivors as objects of transnational justice administration. Victimologists’ assumptions of helpless and hopeless post-war communities waiting onto ‘saviours’ to transform post-conflict situations risks a wrong definition of justice and diagnosis of conflict and indeed post-conflict situations. This dissertation therefore re-positions post-conflict communities back to the center of transnational justice governance by viewing them as survivors who are actively in constant search for solutions and responses that have the potential to transform their post-conflict situations. Transnational justice governance must therefore preserve the power of post-conflict communities to participate meaningfully in addressing their post-conflict situations. This is because survivors make unique contributions that are less acknowledged, and approaching justice from the perspective of survivors regarding

the processes of justice governance and the outcomes of justice administration has a unique potential of building resilient communities. These are communities that are constantly working towards rebuilding structures that guarantee non-repetition of violence using their unique norms, traditions and customs.

This study depends on a multi-method qualitative design while engaging survivors' perspectives of justice in the Acholi sub-region of Northern Uganda. It uses archival research, key informant interviews, and focus groups on different categories of survivors of the LRA insurgency, custodians of different justice mechanisms, NGOs, the academia and practitioners, central and local government officials. It compares three distinct justice processes that include the ICC through the Dominic Ongwen case, the ICD through the Thomas Kwoyelo case, and the Acholi traditional justice mechanism of Mato-Oput using the case of Evelyn Amony. It compares these justice models to understand how, when and why survivors are engaged in the governance of justice in post- LRA conflict Northern Uganda. Respondents reacted to questions of the process of engagement, results of these transnational justice processes, and what these outcomes mean in the grand scheme of governing transnational justice at the global level.

Through responses on the ICC justice mechanism, the study found that there are distinct protocols for determining how justice is governed, together with the outcomes of justice administration. It was clear that survivors were only invited to participate to support the prosecution exercise. Whereas survivors of the LRA insurgency felt the ICC acknowledged their victimhood, restricting them to the role of witnesses denied them an opportunity to contribute meaningfully to the ICC justice process in the Dominic Ongwen case. Survivors viewed this justice process as an elitist framework where they could not

locate themselves in the complex legal protocols involved and the language used. They equally noted a huge gap that exists between approach and the survivors. Whereas the ICC and the justice it dispenses is meant to benefit LRA survivors, they felt the Court was still far away from them regarding the distance despite the existence of the Court's outreach office in Gulu. Conceptually, survivors failed to relate to the justice dispensed because it only targeted those that were directly affected by Dominic Ongwen's atrocities. The ICC is an important process that acknowledges the atrocities that were committed in Northern Uganda while also being an arbiter of justice. However, the Court needs to translate its protocols to the unique post-conflict situations it seeks to confront to maintain its relevance among the beneficiaries of its justice in the Acholi sub-region.

Respondents on the ICD process shared the same insights about this national justice process by the Government of Uganda. However, it was viewed in the same way as the ICC. Whereas the Government of Uganda scored on the principle of complementarity and subsidiarity in line with the international crimes for which the LRA top command was indicted by the ICC, the Thomas Kwoyelo case was commented on with mixed feelings. Survivors viewed the ICD as an acknowledgement of victimhood by the government but expressed dissatisfaction with its administration as they saw the government as part of the aggressors during the LRA insurgency who later turned into a prosecutor and jury.

Survivors therefore acknowledged the ICD's contribution in bringing justice closer to them but the government lost the moral authority in the administration of post-conflict justice in Northern Uganda for failure of fulfilling its mandate of protecting people against the LRA attacks while in IDP camps. Post-conflict situations presume peacebuilding exercises that exist in situations where there has been a change of guards. Uganda's

situation is different in the event that the Museveni administration that presided over the anti-LRA insurgency programs is the same that is in charge of the ICD's administration. This affects the trust survivors have in the ICD since they see the Museveni administration as an aggressor. Post-conflict situations like that of Northern Uganda are unique and assuming the application of the same Court processes like in other post-conflict situations that saw a change of guards is the risk of applying the same solutions to different contexts expecting the same results.

Mato-Oput, a traditional justice mechanism among the Acholi, advances a different set of post-conflict responses rooted in acknowledgement of victimhood, knowing the truth, encouraging forgiveness, fostering reconciliation, restoring relationships, and instituting guarantees of preventing future violence. Despite criticism on failure to achieve international standards of justice administration, survivors who participate in the Mato-Oput consider this traditional justice process as one that fosters their collective values of living as a community. They therefore value relationships more than isolation, a factor that conditions their view of justice as a collective endeavor (collective action good) that every member of the community must belong to and participate in. This is because in a communal spirit, policies determined in the community affect everyone and therefore everyone must contribute to their formation and promulgation. That is why survivors viewed their participation in Mato-Oput as a noble duty for preserving their collective identity since it is rooted in their culture and traditions. The LRA insurgency is unique because the side of the aggressor and the side of the survivor are both from the Acholi community. They therefore see Mato-Oput as an opportunity to mend relationships. This is why Mto-Oput highly supported and facilitated Demobilization,

Disarmament and Reintegration of ex-LRA combatants compared to the ICC and ICD processes. Trust was an important value preserved by Mato-Oput and ex-LRA combatants has to be guaranteed of their safety in the community through Mato-Oput. It is therefore important to assess each process based on its vision and goals it seeks to achieve, within the context where it is applied.

Survivors pursuit of justice is highly dependent on how they perceive the pre-conflict, conflict, and post-conflict situations. Any justice process that is out of sync with the reality it seeks to confront is therefore rendered meaningless and irrelevant to the survivors who are its intended primary beneficiaries. A justice process that does not consider the justice trajectories and interests of survivors in question risks being non-responsive to its primary constituents who are the survivors of violence. The legitimacy of justice models implemented in Northern Uganda is therefore determined by how and why they engage survivors of the LRA insurgency. The effectiveness of transnational justice processes is equally determined by how much they put survivors at the center of justice administration.

### **Putting survivors first**

The effective administration of justice implies implementing a justice framework that has a firm basis in reality guided by the context in which it is applied. More to this is ensuring a specific justice framework is important to the survivors whose justice needs it claims to respond to, and therefore meaningful because its results reflect survivors' justice expectations. This can only be achieved when the philosophy embedded in the design and indeed the practice of a specific justice framework is a constant reflection of the perspectives for survivors of atrocities in question.



The colonial model, especially the British model, a part of civilizing people in the colonies was to tell them that their laws and systems of governance are not as sophisticated as European laws and systems of governance. Through this process, they made subjects (the colonized) start to internalize these beliefs as if they needed some kind of civilization, and those that were resisting unfortunately did not have the requisite hard power to do so. In trying to resist that kind of cultural domination, a big part of colonizing populations was to continuously make them exposed to and also slowly start to transform their self-identity in regard to how they understand themselves, their culture, their own history, and ways of doing things as being inferior to the colonial model. In the process of colonizing people's cultures, their agency became one of the central victims of attack on their humanity.

In the grand scheme of things, what justice means to the people that are engulfed in conflict, the people that lived through the atrocities, the question of human rights observance may not be as clear. Human rights are waived between the individual versus the collective. There is also a different understanding of what rights should look like. In a context like Northern Uganda where rights are not the main concern, social cohesion and community harmony occupy center stage in decision making. Examining when individuals weigh what justice means to them and what they feel will satisfy them in terms of redress, the question is not easily answered and there are so many different components that inform it. These may be experience, access and resources, cultural and religious beliefs, as components that influence their understanding and choices in the conceptualization of justice.

Challenges of transnational justice in Africa's post-conflict context are broader, systemic and different. They are concerned with socio-economic issues, cultural and political. This context introduces more comprehensive reparations schemes, moving away from reparations solely administered and allocated through the courts of law where there is a guilty verdict. These reparations are much more programmatic and broader. They involve tailoring the transnational justice language to the people who are the beneficiaries of these justice programs, together with looking for local ways of doing this and allowing the context and people to show what justice means to them. There is always a local turn in identifying the problem but the local remains the missing link in the process of analyzing the problem. Whereas there are a lot of overlaps between regions, there also exists a lot of differences. Added to this are the relationships between problems over time that can also be theorized before engaging in conversations about justice mechanisms to use to address the problem.

In the Acholi sub-region of Northern Uganda, there were a collection of immediate issues like basic needs that people need to meet in their everyday life whose access was made difficult by the war. There were a lot of physical wounds from which victims needed to heal through physical treatment. There was a discussion around displacement and resettling people back on their family and ancestral lands. These were all practical challenges that were caused by the war. It is the substantive justice that survivors of the LRA insurgency prioritize because of its potential to respond to their distinct justice needs presented in chapters 5, 6 and 7. This can be mostly contextualized when justice transactions are done with the survivors and not with intermediaries or donors whose

power and influence point to a direction of justice interests that are far away from those of the communities in transition.

Transacting justice with survivors of the LRA insurgency has a potential of extending frontiers beyond addressing the effects of insurgencies to confronting the root causes of these insurgencies and reforming systems that perpetuate violence. This is because survivors' interpretation of justice is influenced by their traditions, customs and norms as markers of justice frameworks, the process of its administration and the outcomes such frameworks produce based on their expectations of justice. Involving survivors' groups and communities in the administration of justice facilitates a right diagnosis that sanctions contextualized solutions instead of assuming a similarity of challenges and subjecting them to the same framework of addressing them. An approach of customizing justice is rooted in survivors' understanding of the legacies of violence which justice seeks to respond to. In the Acholi sub-region, court processes are important, but they do not contribute a restorative and restitutive component that fits within survivors' expectations.

Survivors of the LRA insurgency relayed interests in conversations for revitalizing communities as a collective. They failed to locate themselves in a justice framework that promotes an individualistic world view focused on protecting individual human rights, and interested in individual criminal liability yet they look at themselves as a collective. The individualistic world view of justice negates a context of people that see themselves as a collective interested in rebuilding communities and restoring harmonious peaceful co-existence. Therefore, while a retributive framework of transnational justice was suggested and implemented as a solution to the legacies of the LRA insurgency, survivors

emphasized a restorative approach within a context defined by their traditions, norms, values and customs. In the Acholi community, there is a conscious awareness of the factors that divide communities and those that unite them, with a willingness to promote the similarities and work on differences as they build a society that works for all.

Customary justice systems are challenged by the state and international community around their capacity to administer justice, and their functionality within international criminal justice standards. Even when survivors see the capacity of their customary justice systems based on accessibility and responsiveness to the justice needs of people at the grassroots level, there were challenges around picking which system to use in what specific cases, and getting them to operate in a way that is legitimate. Conversely, the process that legitimizes a criminal justice framework and reforms the justice system does not address the cultural meanings and the legitimacy of a criminal justice approach before the survivors.

Studies by the Uganda Law Reform Commission on the traditional justice mechanisms across eight sub-regions in Northern Uganda assessed what these customary dispute resolution mechanisms handle, the cases and issues they address, together with whether they have the capacity to facilitate truth-telling. These studies established that customary mechanisms have this capacity because truth-telling is embedded in each of the customary justice processes as a core component. They also have the capacity to facilitate reconciliation and social cohesion. This means paying much attention to the capacity of these processes and further enhance these capacities. These studies also exposed a donor agenda that dominates the administration of justice in the post-LRA insurgency that frustrates the capacity of traditional justice mechanisms and gives

prominence to a retributive justice agenda through the ICC and ICD processes. Administering justice in the interests of the donor community obscures the justice expectations of survivors and renders their inputs meaningless. According attention to the collective interests of justice by survivors in transition from violence implies dialoguing with survivors' communities to understand their collective views since a communitarian spirit guided by their cultural values and traditions also facilitates their collective views and action.

### **Individualized versus collective justice**

Whereas the liberal teleology of justice considers individualized approaches to justice, collective thinking and actions espoused in the cultural and traditional processes of the Acholi people also inform their view of pursuing justice as a collective endeavor. A liberal justice framework that focuses on individual perpetrators of violence through ICC and ICD adjudication mainly targets Dominic Ongwen and Dominic Ongwen in their individual capacity due to the principle of individual culpability. However, it leaves out others who are either still at large, or those on the side of government who are still protected either by the national judicial process, or the ICC jurisdiction has not picked interest in their cases yet survivors see them as perpetrators.

The other dilemma in the Acholi sub-region is on the ethnicities of those on trial at the ICC and the ICD whom they either consider their brothers or sons. Separating them from the community and keeping them away from the traditional justice process obscures the responsibility the Acholi community feels it has towards them as members of the different clans that make up the Acholi chiefdom. Subjecting Ongwen and Kwoyelo to

justice processes alien to survivors conceptualization of justice is denying them their collective agency in adjudicating their post-conflict situation.

Another challenge of individualized justice lies in the process of selecting participants in the adjudication process. Survivors in the Acholi community detest a justice system that selects people based on their direct connection to the crimes for which Dominic Ongwen and Thomas Kwoyelo prosecuted and leaves out the majority of survivors who would share their perspectives to inform the adjudication process. This approach silences the many voices that find participation an opportunity for acknowledgement of their victimhood. When they do not meet the threshold of participation in the criminal justice approach, they consider it a denial of their victimhood.

Added to a stringent selection mechanism that denies the victimhood of many survivors is the justice outcomes like compensation especially from the ICC that goes to only those that met the parameters of victimhood for the crimes Ongwen was convicted. Denying the majority of survivors in the Acholi sub-region access to compensation packages is a risk that highly polarizes the community of survivors who believe their identity is uniform based on the LRA insurgency violence they collectively faced. It creates a binary of victimhood where those the receive compensation are considered more victims than those that do not meet this threshold of victimhood. It therefore affects their collective identity and further defies the communitarian spirit that binds Acholi survivors together.

The belief in communitarian approaches also conditions the view of justice in the Acholi community as a collective action good that not only finds out the truth about who committed atrocities, but also working together with the perpetrators to address the

conflict drivers. Their interest is more in addressing the underlying factors that led to the LRA insurgency, opposed to a criminal justice framework they consider a piecemeal approach to a rather complex conflict and post-conflict situation. This is why they have returned to the traditional justice approach of Mato-Oput that invests in not only finding out who and how the LRA insurgency was raged, but rather invests in establishing why the insurgency happened. They view this approach as comprehensive since it touches the fundamental questions that find answers to these underlying factors for the LRA insurgency, together with solutions that would ensure future largescale violence is prevented. Whereas the principle of criminal culpability championed by a criminal justice approach is a major deterrent to other likely perpetrators, dealing with the root causes of violence is more sustainable. But, what does this philosophy espoused in the increasing customization of justice contribute to the global governance of transnational justice?

### **African contributions to transnational justice governance: Ubuntu in justice**

The high cost, unfair treatment, corruption and lack of trust are some of the reasons Africans mostly cite as part of the struggle to get justice. Another major reason often cited in post-conflict justice is the importance of ‘cutting the cloth according to one’s size’, which is a call for contextualized approaches. Scholars and practitioners have highly engaged this debate from the perspective of what different frameworks of justice seek to deliver vis-à-vis what societies in transition seek to achieve in the administration of justice. When South Africans sought to know and understand the truth about the system of apartheid that the white minority subjected to the other races, they abandoned a criminal justice approach because it would not sufficiently deliver this truth. When they looked at the future of rivalry between the white minority who still control the bigger

percentage of South Africa's economy, the Convention for a Democratic South Africa (CODESA) negotiations considered compromise as a critical factor in creating a rainbow nation. That is why reconciliation was painstakingly taken as another important piece of the puzzle. Rwanda's post-1994 genocide situation also met the dilemma of a collapsed judicial architecture as many judges had fled the country, yet the list of perpetrators of the genocide was growing day by day. Prisons were forced to accommodate offenders beyond the capacity they were designed to accommodate. People sought to know why a genocide happened, and these answers they needed immediately. The Arusha-based ICTR could not deliver on this mandate. The new government retorted to the traditions and customs of the people of Rwanda as a solution to this overwhelming dilemma, hence the system of Gacaca (justice without lawyers) that, to the satisfaction of the people of Rwanda, delivered on this mandate. It was able to decongest Rwanda's prisons, people found out the truth of who and why the genocide happened, and of primary interest was the participation of the community of survivors.

In both post-violence stories of South Africa and Rwanda, 'Ubuntu' is the African communitarian philosophy that runs through as a common denominator. It is an African philosophy that emphasizes 'humanity to others'. It is an African value system that describes a set of closely related African-origin value systems that accentuate the interconnectedness of individuals with their surrounding societal and physical worlds (Letseka 2012; Ewuoso, Hall 2019). Ntlapo and White add that "as an African understanding and a strategy of upholding justice and maintaining peaceful relations, *Ubuntu* recognizes the importance of the process of rehabilitating both the victim and the perpetrator (2022). Ubuntu in TRC was considered a vital source of restoration and



healing (Doxtader et al., 2007 in Ntlapo and White 2022, 11), since it was rallied to effectively succour the TRC and South Africa in its quest of consolidating harmonious and cooperative relations among peoples of various races and ethnic backgrounds (Sigenu et al., 2017 in Ntlapo and White 2022, 11). As an African epistemological understanding of justice, Ubuntu is demonstrated through the Africanist sense of broad-based , public consultation and discourse, interdependence, and the consciousness of the need for accord on matters of moral dispute (Letseka 2015, 549). Letseka considers group solidarity context epitomized by African traditional societies, consensus, restorative justice, and reconciliation as paramount, and emphasizes African unit or community as crucial since “there is no Ubuntu without community” (ibid). Gade also established that the epilogue of South Africa’s Interim Constitution (South Africa’s TRC, 1998) stated that in addressing the divisions of the past, there was “a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for Ubuntu but not for victimization” (Gade 2011).

In Rwanda, Ubuntu provided a springboard for the development of the Gacaca system of restorative justice as practiced in post-conflict Rwanda (Hinton 2015). Lederach suggests that “understanding conflict and developing appropriate models of handling it will necessarily be rooted in, and must respect and draw from, the cultural knowledge of a people” (Lederach 1995, 10). Human dignity is an essential element of Ubuntu because dignity underlies true humanity, and true dignity is a reality created in common humanity (Hinton 2015, 393). For Africans, it is an interrelationship between self and other, and even the intangible reality of being a part of a living Kosmos (God, the ancestors, and the sacred harmony of the natural world) (ibid). Gacaca in Rwanda is

a method of culturally sensitive approaches to psychological healing (Hinton 2015, 395). It attempts to address trauma and post-conflict reconstruction needs. Based on the concept of Ubuntu, Gacaca also stressed a need for restorative justice, not retributive justice, a need for forgiveness, not vengeance, a need for rehabilitation, not expulsion, a need for conversation, not agitation, a need for reconciliation, not division, and a need for sustainable peace, not protracted war.

The Acholi community of Northern Uganda also places a high value on communal life. Maintaining positive relations within society is a collective task in which everyone is involved because maintaining positive relations within society is a collective task in which everyone is involved (Murithi 2008,22). Murithi establishes that:

A dispute between fellow members of a community is not merely perceived as a matter of curiosity regarding the affairs of one's neighbours, but in a very real sense an emerging conflict belongs to the community itself. Each member of the Acholi community is viewed as being to varying degrees related to each of the disputants. To the extent that somebody is willing to acknowledge this fundamental unity, then people can feel either some sense of having been wronged or some sense of responsibility for the wrong that has been done. Owing to this linkage, a lawbreaking individual thus transforms his or her group into into a disputing group (Murithi 2008, 22-23)

The Acholi society thus uses Mato-Oput to resolve disputes and promote reconciliation based on the principle of consensus-building (Kacoke Madit 2000 in Murithi 2008, 23), embraced by the Acholi as an endogenous cultural pillar of their efforts to regulate relationships between members of a community.

Therefore, the African concept of Ubuntu in the administration of justice contributes the conceptualization of justice as a collective endeavor with collective targeted benefits, and not an individual expedition. Customization of justice in Africa is aimed at keeping societies together in the aftermath of crisis, and not polarization. It

contributes the preservation of collective dignity, but not temporal dignity for a few. It advances rebuilding relationships that sustain peace, in the place of emphasizing the hardware components of post-conflict transformation.

### **Recommendations for effectively engaging survivors in transnational justice governance**

Dixon and Tenove advance the transnational nature of justice governance in terms of how it works and how it is arguably the most influential approach to transitional justice (2013, 393). This is so because the field has developed at the intersection of interstate diplomacy, criminal justice, and human rights (*ibid*). Transnational justice draws on the rules and practices of these fields, operating as a central site for the use and exchange of the delegated, legal, moral and expert authority active in them (Dixon and Tenove 2013, 397). It can thus mobilize authority in ways that make it more powerful at a global level than ‘place-based’ or customized approaches to transitional justice (*ibid*). This intentional dominance of transnational justice norms and values with orientation from a dominant part of the world (the Global North) is what makes post-conflict justice through Court processes an approach that is somewhat out of sync with the societies in the Global South where it is implemented.

Chapters 5, 6, and 7, together with the antecedent sections of Chapter 8 indicate a four-fold deficit in transnational justice processes implemented in Northern Uganda in the aftermath of the LRA insurgency that collectively undermined survivors’ agency. (1) there were no shared beliefs about normatively desired outcomes and the ability of the ICC and ICD to achieve them, the process of exercising power and influence in governing justice, and the failure of the ICC and ICD to be repositories of survivors’ confidence in

a criminal justice approach; (2) participation as a process of will-formation did not ensure that the authorization to exercise power arises from collective decisions that included the ICC and the Government of Uganda on one hand, and survivors of the LRA insurgency from whom their participation could generate legitimacy; (3) accountability by the ICC and the ICD did not effectively capture the justice interests of LRA insurgency survivors because they were not considered vital members of a liberal justice process; and (4) the transparency of the ICC and the ICD did not address the shortcomings in the justice system as a means of producing collectively desirable outcomes. They instead privileged a liberal teleology of justice over inclusiveness of community norms where they operated rendering survivors' ideas of justice meaningless due to the Courts' limited and inflexible mandate. Therefore, the main challenges of a liberal teleology of transnational justice implemented in Northern Uganda in the aftermath of the LRA insurgency, reflect deficiencies in these four principles: legitimacy, participation, accountability, and transparency, especially around their engagements with survivors in the Acholi sub-region. The following recommendations for effectively engaging survivors in transnational justice governance are anchored on these four principles.

Processes of engaging survivors in addressing the legacies of the LRA insurgency requires legitimacy before the constituents for whom transnational justice is dispensed. The claim made by the different transnational justice processes implemented in Northern Uganda to be for the survivors of the LRA insurgency cannot hold where survivors have failed to locate themselves in these justice frameworks. Legitimacy before the survivors is an increasingly important lens through which processes, practices, and structures of transnational justice have been examined (Zaum in Cogan, Hurd and Johnstone 2016,

1107; Jackson 2018). Legitimacy is founded in shared norms and values and established via the ‘moral performance’ (Liebling 2004 in Jackson 2018, 3) of power holders. A liberal justice system through the ICC and ICD was judged by survivors of the LRA insurgency as a one-sided justice mechanism. It missed the legitimacy mark when it failed to engage members of the National Resistance Army (NRA) that survivors accused of the same atrocities for which the LRA was prosecuted. For transnational justice processes to effectively engage survivors of the LRA, they must exert and maintain their relevance to the constituency of survivors as their primary targets for legitimacy. Prioritizing form over function is important since implementing outreach programs to engage survivors helps Courts to identify the interests of conflict survivors. However, to survivors of the LRA, function is more important than form. Therefore, reforming Courts as a legitimation effort should not be seen as, what the development economist Matt Andrews calls ‘isomorphic mimicry’, where reforms are not aimed at changing the underlying philosophy of justice, its structures and dynamics, but at signaling to important and powerful audiences, including NGOs and civil society, together with states funding ICC and ICD programs to encourage their continued material and political support (Andrews 2013). Transnational justice governance should therefore aim at ensuring the power of the Court system is justified in terms of moral and other socially embedded beliefs, and survivors recognize it should be obeyed (Zaum 2016, 1108). Legitimacy should be rooted in the collective beliefs of the survivors’ community to give their belief in transnational justice a certain degree of stability (ibid). Transnational justice will therefore be durable since it will be protected from the current shocks it is facing especially in the Global South.

The participation of survivors in transnational justice is another principle that should be emphasized in governing post-conflict related justice since it is critical in ensuring that justice outcomes arise from collective decisions that involve survivors as the subjects of justice processes. Faultlines existed in the ICC and ICD justice processes implemented in the aftermath of the LRA insurgency, evident in the highly selective participation. This selective process was based on the nature of crimes under prosecution. Survivors that did not fit the category of crimes under prosecution were left out of the different liberal justice processes thereby negating their usefulness in the governance of justice. Dingwerth and Nanz emphasize participation as a powerful principle underpinning current attempts to improve the legitimacy and effectiveness of transnational processes (Dingwerth and Nanz in Cogan et al., 2016, 1126). In the context of transnational justice, participation amounts to all voluntary activities by justice constituents, including survivors, to influence either directly or indirectly choices at various levels of administering justice. The democratic ideal behind the principle of participation is a process of will-formation, which assures that the authorization to exercise power arises from collective decisions by all constituents over whom that power is exercised (Steffek and Nanz 2008, 5). Transnational justice processes must use meaningful participation to ensure more view-points of justice are accommodated, as opposed to centering activities around the dominant notion of Court solutions, to increase justice plurality. This is because accounting for different view points that emerge through meaningful participation potentially improves transparency in the governance of transnational justice, thereby leading to ownership of the process and acceptability by survivors for whom justice is administered.

Ensuring transnational justice processes are accountable to the survivors of violence as vital members of justice governance is critical. However, accountability cannot be achieved if justice processes do not attend to survivors' justice demands, away from those projected in the mandates of the ICC and ICD. Mark Bowens defines accountability as a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences (Bowens cited by Archibugi in Cogan et al., 2016, 1148). More often than not, administrators of these transnational justice processes accord more accountability to the funders and NGOs that engage in transnational justice work, and neglect survivors for whom they claim to administer justice. In governing transnational justice, there are standards that must be agreed to by justice administrators and beneficiaries of justice, and it is these standards that administrators of justice must be expected to meet. Unfortunately, in the case of Northern Uganda, the standards of the ICC and ICD were set by constituents outside the LRA insurgency survivors' communities, making it difficult to hold justice administrators accountable to standards that did not involve survivors. Survivors of the LRA insurgency therefore missed a critical step of knowing the factors for which to hold the ICC and ICD accountable. This diminished survivors' ability to evaluate the performance of power wilders. For transnational justice governance to be effective in varied contexts, a say should be given to all survivors of violence who might be affected by justice outcomes of transnational justice processes (Archibugi in Cogan et al., 2016, 1150).

Lastly, the effectiveness of transnational justice governance is also determined by the level of transparency accorded by different transnational justice processes. This is

because it has a bearing on accountability, effectiveness, and legitimacy of justice. Transnational justice processes are established to address conflict legacies as a means of producing collectively desirable outcomes. Institutions reflect ideas and norms about what constitutes appropriate and legitimate modes of governance (Tolberg in Cogan et al., 2016, 1176). To achieve utmost transparency, survivors must be a critical part of these institutions because then they become socialized into believing in the normative appropriateness of transparency (ibid). Transparency is necessary for any form of accountability in transnational justice governance, access for survivors can expand the participation of different other justice constituents in governing justice, and it is important for the possibility of holding power-wielders accountable (ibid). The functional benefits of transparency in governing transnational justice is survivors' contribution of diverse justice focused perspectives linked to their localities. Growing transparency and openness stems from purposeful attempts to legitimize transnational justice processes in response to criticisms advanced from other transnational justice process implemented elsewhere such as ICTY and ICTR. Enhancing transparency and openness has potential to increase the capacity to hold power-wielders accountable for actions and decisions, enhances efficiency and effectiveness of transnational justice governance, and the legitimacy of transnational justice governance.



## APPENDICES

### APPENDIX A: DRAFT KEY INFORMANT INTERVIEW PROTOCOL FOR CUSTODIANS OF THE ICC AND ICD JUSTICE PROCESSES

#### Background

1. What is your position at [organization]? What are your major responsibilities in your current position?
2. How long have you been with [organization]?
3. Can you tell me a bit about your work and experience as it relates to the administration of justice?
4. How does your work relate to the justice of survivors and survivors' agency in obtaining justice?

#### Justice for survivors through the ICC and ICD

1. What is the composition of the ICC and ICD trial processes?
2. How would you describe LRA conflict survivors' justice by the ICC and ICD justice processes?
3. In your opinion, what facilitates or challenges LRA conflict survivors' willingness to participate in ICC and ICD processes?

#### Survivors' participation in court processes

1. Does your justice process have a mechanism for the participation of LRA conflict survivors?
2. What is this mechanism?
3. What is the primary role of LRA conflict survivors in the ICC and ICD processes?
4. How do these mechanisms promote and enhance LRA conflict survivors' participation in ICC and ICD processes?
5. Of what benefit to LRA conflict survivors is their participation in ICC and ICD processes?
6. Are there feedback mechanisms for LRA conflict survivors, by ICC and ICD, to understand survivors' perspectives on justice?
7. If yes, how are these justice perspectives from LRA conflict survivors taken care of by ICC and ICD processes?

#### Protecting survivors participating in court processes

1. What are the available mechanisms to the ICC and ICD for protecting LRA conflict survivors who participate in these justice processes?
2. How do these mechanisms protect LRA conflict survivors?
3. What are your views on protection offered to survivors in court processes?

#### The justice outcomes of court processes

1. What are some of the common justice aspirations noticed from LRA conflict survivors?
2. How do ICC and ICD processes ensure their justice outcomes reflect the justice aspirations of LRA conflict survivors?
3. What do you see as the main contribution of court processes towards survivors of the LRA conflict?

#### Closing

1. What is the most important message that you want us to take away from this interview?
2. Is there anything else that you would like to add about any of the topics that we have discussed or other areas that we did not discuss but you think are important?

If you know of any research, tools, or resources that may be useful to include or adapt for the Guide, please send them to me.

Thank you for your time and participation in this interview. The information that you provided will be very helpful to this project.

## APPENDIX B: DRAFT KEY INFORMANT INTERVIEW PROTOCOL FOR CUSTODIANS OF NON-JUDICIAL MECHANISMS

### Background

1. What is your position at [the religious or cultural institution]? What are your major responsibilities in your current position?
2. How long have you been with [this religious or cultural institution]?
3. Can you tell me a bit about your work and experience as it relates to the administration of Mat Oput?
4. How does your work relate to the justice of survivors and survivors' agency in obtaining justice through Mat Oput?
5. Why do you feel this is an important approach to adjudicating justice instead of the ICC and ICD?

### Justice for survivors through Mat Oput

1. What is the Mat Oput justice process and what is it composed of?
4. How would you describe LRA conflict survivors' justice through Mat Oput?
5. In your opinion, what facilitates or challenges LRA conflict survivors' willingness to participate in Mat Oput?

### Survivors' participation in Mat Oput

1. Does Mat Oput have a mechanism for the participation of LRA conflict survivors?
2. What is this mechanism?
3. What is the primary role of LRA conflict survivors in the Mat Oput process?
4. How does Mat Oput promote and enhance LRA conflict survivors' participation?
5. Of what benefit to LRA conflict survivors is their participation in the Mat Oput process?
6. Are there feedback mechanisms for LRA conflict survivors, by Mat Oput, to understand survivors' perspectives on justice?
7. If yes, how are these justice perspectives from LRA conflict survivors taken care of by Mat Oput?

### Protecting survivors participating in Mat Oput

1. What mechanisms does Mat Oput use to protect LRA conflict survivors who participate in this justice process?
2. How do these mechanisms protect LRA conflict survivors?
3. What are your views on protection offered to survivors through Mat Oput?

### The justice outcomes of court processes

1. What are some of the common justice aspirations noticed from LRA conflict survivors?
2. How does the Mat Oput justice process ensure its justice outcomes reflect the justice aspirations of LRA conflict survivors?
3. What do you see as the main contribution of Mat Oput towards survivors of the LRA conflict?

### Closing

1. What is the most important message that you want us to take away from this interview?
2. Is there anything else that you would like to add about any of the topics that we have discussed or other areas that we did not discuss but you think are important?

If you know of any research, tools, or resources that may be useful to include or adapt for the Guide, please send them to me.

Thank you for your time and participation in this interview. The information that you provided will be very helpful to this project.

## APPENDIX C: DRAFT FGD PROTOCOL FOR SURVIVORS OF THE LRA CONFLICT

### Background

1. Do you see yourselves as survivors of the LRA conflict? In what ways?
2. What does justice look like for you as survivors of the LRA conflict?
3. What are the justice mechanisms you have participated in since the end of the LRA conflict?
4. What motivates you to participate in these justice mechanisms?
5. What were your justice aspirations in the immediate aftermath of the LRA conflict?
6. What are your justice aspirations now?
7. How do you participate in these justice mechanisms?
8. Of what importance are the existing justice mechanisms to you as survivors of the LRA conflict?
9. At what point in time do you get to participate in these existing justice mechanisms?
10. What are your perceptions of existing justice processes implemented in the aftermath of the LRA conflict?
11. What are your perceptions on the justice outcomes of the justice processes implemented in the aftermath of the LRA conflict?
12. What would you suggest as more ways to address the legacies of conflict you suffered as a result of the LRA conflict?

### Closing

1. What is the most important message that you want us to take away from this interview?
2. Is there anything else that you would like to add about any of the topics that we have discussed or other areas that we did not discuss but you think are important?

Thank you for your time and participation in this interview. The information that you provided will be very helpful to this project.

APPENDIX D: INFORMED CONSENT FORM



University of Massachusetts Boston  
Department of Conflict Resolution, Human Security and Global Governance  
John W. McCormack School of Policy and Global Studies  
100 Morrissey Boulevard  
Boston, MA 02125-3393

**Title of Study:** Engaging Survivors in Transnational Justice Governance: Global, National and Local Perspectives from Uganda's Post LRA Conflict

**Researchers:**

Dennis Jjuuko, Doctoral Candidate, Global Governance and Human Security, UMass Boston  
Rita Kiki Edozie, Professor and Dissertation Advisor, University of Massachusetts, Boston  
Julius Kaka Ongom, Research Assistant, Global Initiative Against Transnational Organized Crime  
Sandra Auma, Research Officer, Gulu University Institute of Peace and Strategic Studies

**Daytime Phone Numbers:** +13392131511, +256751013273, +256772748830

**Introduction and Contact Information**

You are being invited to participate in a research study. **Your participation is voluntary.** Please read this form and feel free to ask questions. If you have questions, please contact either Dennis Jjuuko or Julius Kaka Ongom or Jimmy Wamimbi who will discuss any questions you may have. Dennis' telephone number is +13392131511 and his email is [Dennis.Jjuuko001@umb.edu](mailto:Dennis.Jjuuko001@umb.edu) . Julius' telephone number is +256751013273 and his email is [kakapaongom@gmail.com](mailto:kakapaongom@gmail.com) . Sandra's telephone number is +256782745886 and his email is [anyiisandra@gmail.com](mailto:anyiisandra@gmail.com) . Thank you.

**The purpose of this dissertation study is to learn about:**

- How have the different transitional justice processes implemented in the Acholi sub-regional of northern Uganda in the aftermath of the Lord's Resistance Army versus NRA/UPDF conflict engaged survivors.
- What are the justice outcomes produced by these different transitional justice processes towards survivors of the Lord's Resistance Army versus NRA/UPDF insurgency?
- How different are justice mechanisms devised by the community to address the legacies of the Lord's Resistance Army versus NRA/UPDF conflict from the dominant court processes?

### **Description of the Project:**

If you decide to participate in this research study, you will be asked to:

Provide a convenient time available on your schedule for a conversation. This conversation consists of a total of **45** open-ended questions where you can tell us about your background; perspectives about justice for survivors through the International Criminal Court (ICC), the International Crimes Division (ICD) of the High Court of Uganda, and local justice mechanisms among the Acholi people; your perspective on survivors' participation in these distinct justice processes implemented in the Acholi sub-region; protections available to survivors participating in these justice processes; and the justice outcomes these justice processes produce. All these sections of the conversation will be from the perspective of conflict survivors in the Acholi sub-region of northern Uganda.

You have the right to skip any question or stop at any time without any penalties. Each conversation is expected to last for approximately 1 hour.

If you decide to participate in this study, you will be asked to sign consent forms, agree to an audio recording and interview transcription. Interviews can be held in person or virtually depending on your preference.

### **Risks or Discomforts:**

There will be minimal risk to you. However, should you experience emotional distress while participating in any aspect of this study, you may speak with the principal investigator Dennis Jjuuko at [Dennis.Jjuuko001@umb.edu](mailto:Dennis.Jjuuko001@umb.edu). If you want to discuss your concerns with a counselor, a clear pathway to accessing a counselor will be secured for you. Everything that you tell us will be kept confidential by the study team.

Another risk of participation is a loss of confidentiality. We will do everything we can to protect your information. For example, we are not collecting email or internet addresses or any personal information in our study conversations, and we encourage you to not use your real name during a focus group or individual interview.

Within three months of an interview being transcribed, its corresponding audiotape/recording will be destroyed after the transcript has been checked for accuracy. There will be no photos or video-recording during a focus group or individual interview. Between 3 to 7 years after the research is completed and manuscripts have been published or the intervention has been created, all materials will be destroyed by shredding and/or deletion.

### **Benefits:**

There is no direct benefit to you for participating in this study. However, your participation may help us learn what is needed to support the policy and practice of governing transnational justice to tailor justice processes to the justice needs of survivors in the Acholi sub-region of northern Uganda.

### **Confidentiality:**

Your part in this research is **confidential**. Nothing you report to us will be used for future studies. Your responses and interviews are de-identified. What this means is that we are not collecting names, birthdates, addresses, phone numbers, email addresses, or IP (Internet) addresses. There will be no link between your responses or interviews with a master list. In addition, all study findings will be aggregated. This means your responses and what you say in a focus group or individual interview cannot be linked to you and you will not be identified.

However, should you want to participate in a focus group or individual interview, you will need to let us know by giving us your email address or telephone number. After the focus group or individual interview, we will not use your email address or telephone number, nor will we collect this personal information. No information on the consent form will be linked to the survey and your responses. To further protect your identity, a pseudonym or ID number will be used. In this way, only the researcher will know the coding system associated with your identity.

In addition to the above, the information gathered for this project will not be published or presented in a way that would allow anyone to identify you. Information gathered for this research study will be password protected or stored in a locked file cabinet and only the research team will have access to the data.

To ensure everyone's confidentiality, we do ask that if you participate in a focus group, to please respect the privacy of your fellow participants and not repeat what is said in the focus group to others.

The University of Massachusetts Boston Institutional Review Board (IRB) that oversees human research and its representatives may inspect and copy your information.

**Voluntary Participation:**

The decision to take part in this research study is voluntary. If you do decide to take part in this study, you may end your participation at any time without any penalties or loss of benefits to which you are otherwise entitled. If you wish to end your participation in the focus group or individual interview, you should inform the interviewer at the time of the interview or discussion, or just end the Zoom or telephone call.

**Questions:**

You have the right to ask questions about this research before you agree to be in this study and at any time during the study. If you have further questions about this research or if you have a research-related problem, you can contact Dennis Jjuuko or Julius Kaka Ongom or Jimmy Wamimbi at the numbers above.

If you have any questions or concerns about your rights as a research participant, please contact a representative of the Institutional Review Board (IRB), at the University of Massachusetts, Boston, which oversees research involving human participants. The Institutional Review Board may be reached by telephone or e-mail at (617) 287-5374 or at [human.subjects@umb.edu](mailto:human.subjects@umb.edu).

**Signatures:**

.....	.....	.....
Signature of Participant	Date	Signature of Person Obtaining Consent
.....	.....	.....
Printed Name of Participant Consent		Printed Name of Person Obtaining Consent

APPENDIX E: CONSENT TO AUDIO RECORDING AND TRANSCRIPTION



**Title of Study:** Survivors' Agency in the Global Governance of Transnational Justice: Examining Customized Local, National, and Global Approaches in Uganda

**Researcher:** Dennis Jjuuko

**Affiliation:** Department of Conflict Resolution, Human Security and Global Governance, University of Massachusetts Boston

This study involves the audio recording of your interview with the researcher. Neither your name nor any other identifying information will be associated with the audio recording or the transcript. Only the researcher will be able to listen to the recordings.

The recordings will be kept for the duration of the entire study which is expected to end in May, 2024. The recordings will be transcribed by the researcher and erased once the transcriptions are checked for accuracy. Transcripts of your interview may be reproduced in whole or in part for use in presentations or written products that result from this study. Neither your name nor any other identifying information will be used in presentations or in written products resulting from the study.

Immediately following the interview, you will be given the opportunity to have the recording erased if you wish to withdraw your consent to recording or participation in this study.

\_\_\_\_\_

..

**By checking the box in front of each item, you are consenting to participate in that specific procedure:**

having your interview recorded;  having the recording transcribed;  use of the written transcript in presentations and written products.

..

**Participant's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

APPENDIX F: CONSENT FORM IN ACHOLI



University of Massachusetts Boston  
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100 Morrissey Boulevard  
Boston, MA 02125-3393

**Karatac aponga ma lagam peny yee ni kipenye kwede**

**Nying kwed me kwan: Tam pa jo ma oloyo [ki i kukukuku] i Doro Ngol ma atir me cobbo kukukuku i Wilobo: Ngiyo yoo ma kiyubo me tic pi kabedo moni, i lobo Uganda ki Wilobo kulu.**

**Lukwed:**

Dennis Jjuuko, Lakwan me PhD, *Global Governance and Human Security*, UMass Boston  
Rita Kiki Edozie, Professor dok lamii tam pi coc me kwed me kwan man, University of Massachusetts, Boston  
Julius Kaka Ongom, Lakony kor lukwed me kwan, *Global Initiative Against Transnational Organized Crime*  
Jimmy Wamimbi, Lakwed ma tiyo i, *Refugee Law Project*

**Nama cim me agoya i dverceng: +13392131511, +256751013273, +256772748830**

**Ma okwongo ki yoo me nonnge**

Kitye ka lwongi me bedo ikin jo ma kipenyo gi i kwed pi kwan.. **Bedo ikin jo ma kipenyo gi obedo dyere labongo dic.** Tim ber ikwan karatac me aponga man dok bed agonya me penyoye. Ka itye ki penyoye, nong lagam ki bot Dennis Jjuuko onyo Julius Kaka Ongom onyo Jimmy Wamimbi ma giromo dok i penyoye mo keken ma in itye kwede. Nama cim pa. Dennis tye +13392131511 dok ka coyo waraga bote i yhamo tye [Dennis.Jjuuko001@umb.edu](mailto:Dennis.Jjuuko001@umb.edu) . Nama cim pa Julius tye +256751013273 dok ka coyo waraga i yamo tye [kakapaongom@gmail.com](mailto:kakapaongom@gmail.com) . Nama cim pa Sandra tye +256782745886 dok ka coyo waraga yamo tye [anyiisandra@gmail.com](mailto:anyiisandra@gmail.com) . Apwoy.

**Miti me coc pi kwan man tye me nongo ngec ikom:**

- Yoo ango ma jo ma oloyo ki itim kukukuku obedo ma kipenyo tam gi i yub me nongo ngol ma atir ingee kukukuku ma kitiyo kwede i Kumalo me Uganda ni ikare me kukukuku ikin mony pa LRA ki NRA/UPDF.
- Adwogi me ngol ma atir ango ma oa ki i yub me ngol ma atir nia ki i kukukuku ma jo ma oloyo ki i kukukuku ikin LRA ki NRA/UPDF onongo?



- Yoo me ngol ma atir ma patpat ma dul me kabedo moni okato kwede me cobo peko ma aa i kukukuku ikin LR ki NRA/UPDF pat nining ki yoo me pido i nyim langol kop ma dwong tutwal ni?

### **Tito kit ma yub man tye kwede**

Ka imoko tam mi me bedo i kwed me kwan man, ki bipenyi me:

Miino kare ma rwatte ki tic ma meg i wek onywak lok. Nywakko lok man tye iye lapeny me agama gin **45** ka ma ibititto kwo ni; tam mamegi ikom ngol ma atir pi jo ma oloyo ki i kukukuku kun gitiyo ki Kot me Wilobo pi bal (ICC), Jang kot me Bal me Wilobo (ICD) me Kot ma malo me Uganda, ki jo ma Acholi tiyo kwede me nongo ngol ma atir; tam mi ikom tic ki tam onyo miti pa jo ma oloyo ki i kukukuku i yub me ngol ma atir i Acholi; gwok ma tye pi jo ma oloyo ki i kukukuku i yub magi me ngol ma atir ni; ki adwogi me ngol ma atir ma yub magi kelo. Dul magi ducu bedo tye i nywako lok kun aa ki i tam pa jo ma oloyo ki i kukukuku i Acholi, kumalo me Uganda.

Itye ki twero me kallo lapeny mo keken onyo gikko gamo lapeny icawa mo keken labongo nongo pwod mo keken. Nywako lok kibyeko ni tero wang cawa acel.

Ka imoko tammi me bedo tye i kwed me kwan man, kibipenyi me ketto cingi i katarac me aponga me yee tam, iyee ni kimak dwoni ki bene kicoo lok dogi piny. Kiromo miyo lapeny ki i cim onyo ma nongo komi tye, lubo gin ma rwatte kwedi.

### **Adwogi marac onyo dic:**

Adwogi mo marac bibedo nok boti. Ento ka inongo tur pa cwiny mo ikare me bedo tye i kwed me kwan man mo keken, iromo lok ki lakwed me kwan madit Dennis Jjuuko i [Dennis.Jjuuko001@umb.edu](mailto:Dennis.Jjuuko001@umb.edu). Ka imito nywako lok mo ki lamii tam, kibimiyo yoo maleng me lok ki lamii tam. Kibigwoko jami ducu ma ibiwacci i mung kun dul ma gitye ikwed ma kwan man aye gubigwoko.

Adwogi marac me bedo i kwed me kwan man aye kato woko pa lok ma iwaco imung. Wabiyelle ki tekwa ducu me neno ni wagwoko lok ma imiyo wa. Labolle, pe wabigamo email ma meg i onyo gin mo keken ma kwako komi, dok wamio bene ni pe itii ki nyingi kikome ikare me nwakko tam kacel.

Ingee dwe adek ma kicoyo pny lok ma aa ki i kwed me kwan, dwon ma kimako weng kibiballo gi woko ingee coyo gin ma mitte ma atur. Pe kibimako cal onyo video ikare me nywako tam. Ikine mwaka 3-7 ma kwed man otum, kivoyo lok ma mitte dong piny, jami ma kitiyo kwede ducu kiyeco gi onyo kibalo gi woko.

### **Magoba:**

Pe tye magoba mo makome ma ibinongo ne pi bedo i kwed me kwan man. Ento bedo tye ni i kwed me kwan man konyo wa me niang gin ma mitte me jollo kor yub ki tic me ngol ma atir ingee kukukuku wek kiyub ma rwatte ngol ma atir pi jo ma oloyo ki i kukukuku i Acholi i kumalo me Uganda.

### **Mung:**

Gin ma ibitimo i kwed me kwan man tye i **mung**. Pe tye gin mo keken ma iwaco bot wa ma kibitiyo kwede pi kwed me kwan i anyim. Pe wabigamo nying dano, kabedo pa dano, nino nywal gi, nama cim pa dano onyo ka coyo waraga gi. Pe tye wat mo ma obibedo ikin lok meg i ki nying

ma kicoyo. Medo ikom meno, kibiketo kacel adwogi me kwed me kwan man. Man tyen lokke ni gin ma iwaco i nywakko lok kacel pe kibicimo ni man ngadi aye owaco.

Ento ka imito bedo tye i nywakko lok kacel onyo in keni, omyero iwek wange kun nongo imiyo wa nama cim ni onyo email ma meg. Ingee nywako lok man, pe wabitiyo ki nama cim man onyo email ma imiyo ni, dok pe wabicoyo lok komi mo keken piny. Pe tye karatac aponga mo ma kibiweko kubbe ki lagam mo keken. Me gwoki, nying ateta aye ibitiyo kwede. Kit man, lakwed me kwan nongo ngeyo nyingi ateta ni kun kubo ki lok komi.

Medo ikom meno, lok ma kibicoko pe kibicoyo woko onyo pe kibicwalo woko iyo ma weko kingeyi. Kibikwokko ki pungwa lok ma kicoko i kwed me kwan man dok jo ma tye ka timo kwed me kwan man keken aye bibedo kikeru me nongo jami magi.

Wek kigwok mung pa dano weng, wapenyi me bedo inywako lok, ki ni itim ber iwor mung pa lawoti ma bene tye inywako lok malubbe ki gin ma owaco ikare me nywako lok.

*University of Massachusetts Boston Institutional Review Board (IRB)* ma neno kwed ikom dano onyo luwange twero neno lok ma meg.

**Dwere i bedo i kwed me kwan:**

Moko tam me bedo i kwed me kwan man obedo dyere ma dic peke iye. KA imoko me bedo i kwed me kwan mn, iromo gikko bedo tye ni iye cawa mo keken labongo adwogi mo, ka imito gikko bedo ni i kwed me kwan man, omyero iniang jo ma tye ka peno peny i kwed man icawa me penyo peny onyo igoyo cim.

**Lapeny:**

Itye ki twero me penyo lapeny ikom kwed me kwan man ma peya iyee dok icawa mo keken ikare me kwed man. Ka itye ki peny mukene iromo penyo Dennis Jjuuko onyo Julius Kaka Ongom onyo Jimmy Wamimbi kun igoyo cim i nama ma malo ni.

Ka itye ki lapeny ma kwako twero ni ma calo ngat ma tye i kwed me kwan man, coo waraga bot lawang *Institutional Review Board (IRB)*, i *University of Massachusetts, Boston*, ma en aye neno bedo pa dano i kwed me kwan. Iromo oo bot *Institutional Review Board* i nama cimonyo e-mail at (617) 287-5374 onyo i [human.subjects@umb.edu](mailto:human.subjects@umb.edu).

**Cing:**

.....  
Cing ngat ma tye i kwed                      Nino dwe                      Cing ngat ma tye ka nongo twero

.....  
.....  
Nying ngat ma tye I kwed                      Nying ngat ma onongo twero

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