



**University of Nairobi**

**DEPARTMENT OF HISTORY AND ARCHAEOLOGY**

**Whose Justice? - The Dilemma in Resolving the Conflict in Northern  
Uganda 2005– 2015.**

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**A Research proposal submitted in partial fulfillment of the requirements for the  
award of Master Arts Degree in Armed Conflict and Peace Studies, Department  
of History and Archaeology, University of Nairobi.**

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## DECLARATION

This research is my original work and has not been presented for the award of any degree at University of Nairobi or any other educational institution.

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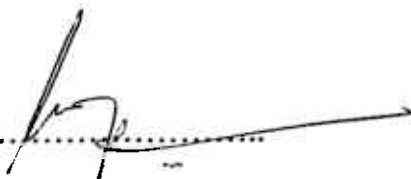
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This research project has been submitted for examination with my approval as the University supervisor.

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Dr. George Gona.

**DEDICATION**

*In loving memory of:  
Justin Joshua Sooma  
2010 - 2017*

## ACKNOWLEDGEMENT

My graduate study has taken a rather long time to complete. The thoughts of quitting were a constant feature in my mind. I would have otherwise given up had it not be for the constant push/nudge often laced with shaming from my wife, Doris Sooma. To this extent wish to a special way say thank you for never letting me throw in the towel. I extend the same token of appreciation to my boys Ethan, King, Nathan and Akim Sooma.

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## **GLOSSARY OF ABBREVIATIONS**

<b>AAR:</b>	<b>Agreement on Accountability and Reconciliation</b>
<b>ARLPI:</b>	<b>Acholi Religious Leaders' Peace Initiative</b>
<b>CBR:</b>	<b>Centre for Basic Research</b>
<b>CIVHR:</b>	<b>Commission of Inquiry into Violations of Human Rights</b>
<b>CoE:</b>	<b>Council of Elders</b>
<b>DDR:</b>	<b>Demobilization, Disarmament and Reintegration</b>
<b>HSMF:</b>	<b>Holy Spirit Movement.</b>
<b>FGD:</b>	<b>Focus Group Discussion.</b>
<b>GoS:</b>	<b>Government of Sudan</b>
<b>GoSS:</b>	<b>Government of South Sudan</b>
<b>GoU:</b>	<b>Government of Uganda</b>
<b>ICC:</b>	<b>International Criminal Court</b>
<b>ICCPR:</b>	<b>International Covenant for Civil and Political Rights</b>
<b>ICTR:</b>	<b>International Criminal Tribunal for Rwanda</b>
<b>ICTY:</b>	<b>International Criminal Tribunal for the former Yugoslavia</b>
<b>IDP:</b>	<b>Internally Displaced Person</b>
<b>LC:</b>	<b>Local Council</b>
<b>LRA:</b>	<b>Lord's Resistance Army</b>
<b>LRM:</b>	<b>Lord's Resistance Movement</b>
<b>MIA:</b>	<b>Ministry of Internal Affairs</b>
<b>NGO:</b>	<b>Non-Governmental Organization</b>
<b>NRM/A:</b>	<b>National Resistance Movement/Army</b>
<b>NUPI:</b>	<b>Northern Uganda Peace Initiative</b>
<b>OPT:</b>	<b>Optimal Psychology Theory</b>
<b>SCT:</b>	<b>Social Capital Theory</b>
<b>SST:</b>	<b>Social Solidarity Theory</b>
<b>UNOCHA:</b>	<b>United Nations Office for the Coordination of Humanitarian Affairs</b>
<b>UPDF:</b>	<b>Uganda People's Defense Force</b>
<b>WFP:</b>	<b>World Food Program</b>

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Figure 1: Uganda Map Highlighting Regions Impacted by LRA conflict.<sup>1</sup>



COURTESY: UN INTEGRATED REGIONAL INFORMATION NETWORKS (IRIN) OF UN-OCHA

<sup>1</sup> Source: Government of Uganda 2007.

## ABSTRACT

The effect of the Kony war to Uganda as a whole and specifically to Northern Uganda has been not only dehumanizing but devastating as well. After decades of conflict and violation of human rights, questions of justice, reconciliation, and post-conflict reconstruction are crucial to attempts to build a society that is at peace with its neighbors and prosperous. Several attempts to resolve the war peacefully have failed. In the context of these failed initiatives this work discusses whether international law, local conflict resolution processes or a mixture of the two should be used to resolve the conflict. Key stakeholders such as Uganda Government, the Cultural leaders and the ICC have held different approaches at different times, further complicating the issue. In doing so, this work illustrates the real decisions and dilemmas facing Acholi land, a community that is moving from pangs of conflict to a peaceful community, it further illustrates the incorrect contradictions and the flawed Peace against Justice Discourse. In the complexity of these attempted negotiated resolution, this work brings forth the voices of the Acholi people who in their opinion Justice can only be achieved through traditional justice mechanism, a mechanism that is entrenched in the fabric of their society. Acholi had their own home-grown approaches to resolving inter-personal conflicts. These approach are still relevant. This works show that these systems served the society well and were responsible in maintaining peace and tranquility within and outside the society. This work argues that, given that the systems worked in the past, it is important to scrutinize what made them work and what can possibly be learnt in the way they were operationalized. By posing the question, whose justice is being sought? This work amplifies the voices of the Acholi with regards to the pertinent and sensitive issue of whose justice is being sought in the quest to end the conflict.

## CHAPTER ONE

### INTRODUCTION

#### 1.0 Introduction

The effect of the Northern Uganda War to the Uganda as a whole and specifically to Northern Uganda has been not only dehumanizing but devastating as well. Northern Uganda has been a battle ground for longer than 20 years. The Lord's Resistance Army hereto (Kony's Army) has waged war against the National Resistance Government and the Acholi community as a whole. The history of the conflict is found in colonial legacy as will be addressed in next chapter. Suffice it to say, the history of Northern Uganda Post-independence has been one of power struggle, notably the National Resistance Government has been notorious for forcefully frustrating nor engaging in dialogue aimed towards bring end to armed conflict. Conflict in Uganda has generally been fought by more than ten Armed Groups.<sup>2</sup> The LRA conflict has been the longest with little progress made toward its resolution notwithstanding many government and community led offences and major peaceful attempts none has yield much.

After years of conflict, gross human rights abuse, demands for Justice, peace, prosperous and stable society has brought to light issues and question of post conflict reconstruction, reconciliation, early recovery and justice. Unfortunately despite attempts to seek a lasting solution as discussed in Chapter 3, one of the most promising peace attempts, the Juba process, collapsed in 2009, a failure largely attributed to lack of trust and the ICC question. However more to this, the conflict and failed resolution attempts provides the classic example of the tension between peace and justice, a tension that questions what should take precedence. This

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<sup>2</sup> *Counting the Cost: Twenty Years of War in Northern Uganda*. Civil Society Organization for Peace in Northern Uganda.

question illustrates the challenges that society recovering from conflict situation are often faced with. Further fueling the debate around which of the two notions should take priority. In the midst of these attempted negotiated resolution, the apparent question is whose justice is being pursued?

This study therefore outlines the approach that has been adopted in the investigation of selected peace resolution issues that have arisen from protracted conflict. It offers background to the conflict and defines the research problem. The objectives, justification, scope and limitations are also offered. This is followed by a glimpse of literature review, theoretical foundation, research hypotheses and study methodology.

### **1.1 Background to the Study**

The war is in four dimensions. In this first incidence it primarily a fight between the NRM Government of Museveni and the Lord's Resistance Army under Kony's command. Secondly, it is an inter-communal conflict amongst the Acholi, with LRA on the one side and the broad population who constantly face killing, child abduction on the other side. The war is attributed to hostility between Sudan in the Northern and Uganda with counter accusation of each country supporting rebellion on each other country. Uganda accusing Sudan for arming and supporting the LRA by offering sanctuary and arms. Lastly, it plays into the inter ethnicity tension within Uganda, a country that since independence has been polarized along tribal lines. The North of the country mostly comprising of the Acholi feel marginalized by the government in favor of the South predominately Bantu<sup>3</sup>

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<sup>3</sup> International Crisis Group. *Northern Uganda: Understanding and Solving the Conflict* ICC, 14 Apr 2004

Museveni's Government attempted to quell the conflict with several military operations, these were, Operation North that was started 1991, the second being Operation Iron Fist 1, which launched in 2002. Finally Operation Iron Fist that was launched in 2004. After each operation, Kony in retaliation launched vicious counterattacks across the Northern regions spreading his attack to include non-Acholi districts of Lira and Soroti. These brutal counterattacks by the LRA included massacres of civilians, mutilations, and rising numbers of child abduction.

Despite the military operations, Peace talks were pursued by the government in 1994, 2004, 2006, and 2008. These were Led primarily by Betty Bigombe, and held for throughout the past two decades. Prominent among these peace initiatives was Juba Peace talks. At the talks, the first series of negotiations focused on ceasefire and potentially a peace agreement. At the negotiations delegations swiftly agreed a negotiating agenda which had the following issues, Cessation of hostilities between the warring factions; Comprehensive political solutions seeking to address past injustice; Justice to victims, demobilization of ex combatant, disarmament and reintegration of the said ex combatants, accountability of the perpetrators, finally a permanent ceasefire crowned the agenda issues.

On a positive note in August 26<sup>th</sup>, 2006 The Hostilities Cessation of Agreement was signed, Signifying potential for peace. A final peace agreement was intended to be reached between Kony and Uganda in 2008, which would have included a permanent ceasefire.<sup>4</sup>

Further to this, major and key agreements were made against each agenda item but these were short lived. Creating political will and traction was a big challenge as each party to the talks lacked trust in each other's motive. The discussion of Justice in the shadow of ICC

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<sup>4</sup> ibid

investigation and likely indictment brought a rift between the local and International community. The former preferring local traditional mechanism, whilst the latter a more retributive mechanism which the ICC sought to bring.

The final blow to the talk was the indictment of key leaders in Kony's Army. The indictment had the effect of complicating the discussion and derailing progress made towards ending the more than two decade war. The failure of the ICC to drop charges against the rebel leadership resulted in the LRA leadership to withdraw its participation in the peace talks. The Ugandan Delegation failed to warrant their protection against the ICC in so doing, the Peace agreement Failed. An agreement that was the most promising and best opportunity to resolve the conflict peacefully.

The failure of the peace process ushered in discussion around alternative conflict resolution that is based on the Acholi traditional and cultural system. There have been argument for and against these process as this work will detail in chapter 3 and 4. Largely the issue has been whether these process are valid and conform to international standard of Justice.

## **1.2 Statement of the Research Problem**

Societies recovering from conflict such as Northern Uganda have often been faced with a dilemma on whether to adopt international law, local conflict resolution processes or a mixture of the two in resolution post conflict atrocities. In Uganda, This scenario has planned out in the form of conflicting perception by different stakeholder, with each having on take.

The Uganda Government, the traditional leaders and the ICC have held different approaches at different times, these approaches have further complicated the discussion. For example the Uganda Government passed the Amnesty Act. It sought among other things to pardon

combatant who had defected, they would be given freedom from procession and integrated in society. The Act in recognition of traditional justice mechanism provide that Justice would in accordance with community based mechanism as opposed to formal trial process in court of law.

Opinion is further divided among civil society, key government officials, human rights and religious leaders for example when the ICC commenced investigation that culminated in unveiling of arrest warrants against LRA leader and top officials. Civil society organization, human rights bodies and faith based leaders vehemently opposed move to indict them. They argued that the indictment wouldn't yield much, a position which has proved to be right.

Tim Allen<sup>5</sup>, writes that there are community based processes that only be found within the community and not the Whiteman's briefcase. It is further contended that the ICC process denied Northern Ugandan's peace after the rebels were arrested. The different view of proponent of retributive justice and traditional justice has continued to take center stage in the quest for peacefully resolution to the conflict in Northern Uganda. These discussion inform basis of this study. To further highlight this dilemma, there are question as to whether the proposed Traditional resolution mechanism are relevant today, given the change in the context.

As will be demonstrated the Chapter 3, Whilst International Community, Human Rights organizations at international level have viewed formal legal process as the right process to bring accountability and justice in region, influential Acholi traditional leaders have opposed such a process fearing that this might not bring peace, arguing and advocating for a process

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<sup>5</sup>Tim Allen. *Trial Justice: The International Criminal Court and the Lord's Resistance Army* London: Zed Books, 2006.

that is based on restorative principles and widely accepted by the community. This is view that is strongly held within the Acholi community. The thought above have ushered in a strong debate and discussion on Justice and Peace, with the question being what should take precedence as rightly questioned by Weisbord,<sup>6</sup> whether Peace more important than justice?

To expand the question further this work asks in whose interest Justice should be pursued, that of the community or the state. This indeed form the problem that this work seeks to address. There are strong measure that need to be put in place to address the continuous demand for Peace, Justice and reconciliation. Measures that effectively and adequately address the demands that come with such calls. The question to be contended with is who voice should be heard? Is it the community that has borne the blunt of the war or a third party that seeks to try the perpetrators?

The above notwithstanding, the challenge in sustaining constructive debate on the notion of peace against justice has been the fact that the two terms have often been used to denoted different meaning by different schools of thought. In the context of Uganda, These notions have denoted amongst others, conflict resolutions, lasting peace, ex combatant and child abductees reintegration, restoration of property destroyed during the war, repairing broken relationship, restitution and ushering lasting peace. These have often been used interchangeably. But don't seem to define what justice entails.

This study recognizes the debate of peace and justice as of utmost importance, however with a lack of well-defined meaning of the two concepts the debate has rather been polarized and caused a desire for an outcome that is not only unrealistic but an outcome that may not be

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<sup>6</sup>Noah Weisbord. *When Peace and Justice Class* International Herald Tribune .New York, 29 April 2005



sustainable. Unsustainability both it in the process of achieving Peace and Justice but most importantly in the daily lives of the victim of the conflict.<sup>7</sup> The above present a gap and raises concerns, questions about what can realistically be done to bring Justice to the Acholi and peace in Northern Uganda. These questions are addressed by weighing the benefit against the cost of seeking justice for the victim and accountability of perpetrator in a society where peace is elusive.

### **1.3 Goal and Objectives of the Study**

The overarching goal was to explore sustainable options for achieving Peace and Justice in Northern Region of Uganda. More specifically seek:

- (i) To investigate the intractability of the conflict in Acholi land.
- (ii) To examine why several peace initiatives undertaken have failed.
- (iii) To investigate the effectiveness of traditional mechanism of conflict resolution in seeking peace and justice in Acholi land.

### **1.4 Significance of the Study**

It articulates issues on justice and peace based on field evidence. The fleshes out the justice and reconciliation dilemma faced by the Acholi today. Noting that that, there has not been considerable documentation of the evolved transitional justice mechanism nor its effectiveness given the significant changes in the North of Uganda context. It thus contributes to the filling of gaps, the practice of application of international law as it relates to Transitional Justice in Acholi contexts. It especially highlights the aspiration and voices of the Acholi

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<sup>7</sup> Refugee Law Project. *Behind the Violence: Causes, Consequences, and the Search for Solutions to the War in Northern Uganda*. Refugee Law Project Working Paper No. 11.

people community, a community that have been affected, and caught up in the debate about best alternative to resolving the conflict. This is a gap apparent in the academic field.

This study will further analyze in a nuanced manner what has caused the chronic Northern Uganda conflict, noting that failure to address the fundamental causes or deal with the divergent interests of the parties involved has been fundamental to this. In addition, the study is more concerned with the depth of analysis as opposed to the variables analyzed. As it is later shown under methodology, the validity of the study results would be deemed high due to the fact that the grounded theory approach was used. This approach is considered supreme to others because it focuses on meaning rather than form.<sup>8</sup>

It contributes to the unique understanding of intricate justice themes which unless one lives among the people or has lived there it may not be possible to unpack them. The study seeks to explore whether Uganda should adopt methods of traditional justice known to the Acholi, rather than international criminal trials and what can be done to bring justice to the victims or whether the current systems should be adapted to suit the context.

### **1.5 Scope and Limitations of the Study.**

The study covered the region affected by the war in Northern Uganda for the period 2005-2015; this is because this period ushered in several peace initiatives to peacefully resolve this conflict. Furthermore, this is the period when ICC began its investigations in northern Uganda. It also covered the activities of such organizations as Northern Uganda Peace Initiative, the Refugee Law Project, the ICC, Key stakeholders such as religious Groups, Civil society. Geographically, the study focused on three districts in Northern Uganda.

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<sup>8</sup> Sarah J. Tracy. *Qualitative Research Methods: Collecting Evidence, Crafting Analysis, Communicating Impact*, 2012.

The researcher had relations with Northern Uganda both at personal and professional, level having worked in the region. This was a potential source of bias but the researcher tried to be as objective in the investigation and analysis as possible. Specifically, to deal with this potential bias, the researcher triangulated the sources of information as much as possible. Last, with most communities in Northern Uganda having returned to their respective homes, finding participants was a real challenge. To deal with this challenge, the unavailable but targeted participants were replaced with others.

## **1.6 Literature Review**

This section describes and analyzes existing studies, identifying existing gap that this study seeks to fill or bridge. Despite significant studies, publication on transitional justice around the world, there is limited literature that addresses in detail transitional justice mechanism in society recovering from conflict. Specifically to Northern Uganda, there is little work written about it transitional mechanism. As a result of this gap there is limited understanding of how attitude and behaviors are influenced by transitional justice. Available literature is mostly informed and based on anecdotal evidence, assumption and are very subjective with a lack of empirical evidence.<sup>9</sup> As rightly pointed out by Austin, very little has been done in the context of Northern Uganda, those that have indeed written have focused on legal systems ,their operationalization and whether they are in tandem with international legislative norms. As shown, a lot of debate and discourse has been in the shadow of the ICC indictment. Not much had been done prior to the ICC intervention.

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<sup>9</sup> B. Austin, M. Fischer, H.J. Giessmann (eds.) "Advancing Conflict Transformation" In *The Berghof Handbook II* Opladen/Framington Hills: Barbara Budrich Publishers. 2011

Despite the gap above, available literature rightly assumes that truth and justice mechanisms contribute to post-war peace building and democratization. However, there is absence of a well sustained analysis or systematic empirical research to support the notion that justice contributes to post war recovery. In Uganda particularly, there hasn't been detailed study on the impacts of tribunals and alternative mechanism on the Acholi nor has there been significant study conducted on what impression Transitional Justice Mechanisms actually have on the perpetrators nor society. In support to the foregoing, Oskar Thoms, James Ron and Roland Paris<sup>10</sup> have in their comparative studies over many countries, conclude that there is still limited evidenced based conclusions about the effects of transitional justice mechanism and specifically Truth and Justice Mechanism whether negative or indeed positive. This work seek to address this gap by providing an analysis and empirical finding on the impact of formal justice mechanism in peace initiatives specifically in Northern Uganda and provide evidence of the functionality of the traditional justice mechanism.

Few rigorous national analyses have been under taken thus far, as a result of this and limitation of data, there is negligible evidence based conclusion to sustain the notion that indeed truth and justice contributes to society healing, on the flipside there is no evidence to rebut the claims that Truth and Justice undermines progress towards these goals. This is despite argument by Huyse L. that at the end the goal is to bring healing to the community, repair the broken relations and uphold the peace. Notions such as Responsibility for crimes, telling truth

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<sup>10</sup> Oskar N. Thoms, James Ron and Roland Paris. *The Effects of Transitional Justice Mechanisms. A Summary of Empirical Research Findings and Implications for Analysts and Practitioners*. Working paper. Centre for International Policy Studies. University of Ottawa, 2008.

for the wrongs, reconciliation and compensating for wrongs, restitution for damages are central to community based resolution in the aftermath of genocide or civil conflict.<sup>11</sup>

The dilemma in the peace and Justice debate arises when families of victims and international community comprising of International Non-Government Organizations, Civil Society and actors within the international arena call of accountability to be imposed on violator of fundamental human rights and crimes against humanity. Such calls are made on behalf of victims who as a result of war remain disempowered. Such demands are linked to deterrence of future occurrences, rebuilding society on the tenants of rule of law and democracy.<sup>12</sup>

The proponents of the above, need to recognize that whilst there is huge advantage in accountability, there is an equal risk that it may destabilize fragile states arising from violent conflict. The forging polarized position form a divide in peace versus justice discussion, which inform policy debated and ultimately decision about responsibility of violation in the context of peacemaking and peace building. This position has been said to be overstated when the choice is a mixture of Peace and Justice as opposed to either.<sup>13</sup>

With a specific focus on Northern Uganda, Tim Allen<sup>14</sup> argues that the advantages of adopting a traditional approach to justice is a notion that has been glorified with little emphasis laid on the dangers that come with it. He argues that Acholi and the other Northern tribes are the same, the process are similar, and therefore the process isn't unique to them. Instead he

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<sup>11</sup> L. Huyse *Introduction: Tradition-based Approaches in Peacemaking, Transitional Justice and Reconciliation Policies* International IDEA Stockholm, 2008.

<sup>12</sup> *Ibid.*, 4.

<sup>13</sup> Chandra Lekha Sriram and Suren Pillay. *Peace versus Justice? The Dilemma of Transitional Justice in Africa*, Scottsville: University of KwaZulu-Natal Press, 2010.

<sup>14</sup> Tim Allen. *War and Justice in Northern Uganda: An Assessment of the International Criminal Court's Intervention* (2005) at 65

argues that there is need functional state that support effort to build their lives and legal system that uphold their rights and protect them from violators.

Drawing his conclusion, Allen argues that in the end sufficient political will, a peaceful, stable border in the North with Sudan coupled with security guarantee will be the only chance at peace in Northern Uganda. The call for a traditional justice mechanism further demonize the Acholi. Who have been labelled for political and historic reason as violent and primitive, because of this they have little regard to the horrible acts of injustice. Tim make good cause of the condition to sustained peace, however his argument is rather narrow with a focus on only political will, he ignores the aspiration and long standing traditional mechanism of the Acholi community, this work will explore beyond the boundaries that Tim Allen articulates.

This study associates with the thoughts of Nick Grono and Adam O'Brien<sup>15</sup> who have argued that it is dishonest to assume that the interest of peace and justice can be attained at the same time. They argue that tough and different choice must be made between the two when seeking to achieve any competing objectives. The tension between the two must weigh and pressures acknowledged based on each context. It's the considered opinion of this author that the two processes have very different outcomes or indeed the objective of each process is distinct. The ultimate goal of traditional justice is reconciliation whilst retributive justice is punishment often characterized by well-defined judicial process.

In line with the above, the author is fortified by the discourse of Tim Allen<sup>16</sup> who have suggested that the above position of Nick and Adam is what has occurred in Juba talks, i.e.

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<sup>15</sup>Nick Grono and Adam O'Brien, "Justice in Conflict? The ICC and Peace Processes" in Waddell and Clark (ed) *Impunity and human rights in international law and practice*. Oxford: Oxford University Press, 1995.

<sup>16</sup>Seay, Laura. *The Lord's Resistance Army: Myth and Reality* ed. by Tim Allen and Koen Vlassenroot. African Studies Review. 201.

carefully weighing the two notions, when the discussion on accountability and reconciliation was at the center of discussion. Balancing between what is agreeable to the parties at conflict yet in line with the ICC statute provision. Such efforts they argue when combined with community based consultation of the community will bridge the gap between local pressure and global legal requirement. The ICC to them is there only a spur to address the issues of accountability in Juba.

In Grono and O'Brien's<sup>17</sup> study of the ICC intervention in DRC and Northern Uganda provides an analysis on ICC decision to investigate and prosecute cases is provided, basing their reflection on Uganda, they argue that the decision has been influenced by the courts priority for short term interest to be seen as having an impact as opposed to efforts to bring the suspects to book.

He further argues that the failure to prosecute state actor in both countries is largely due to the fact that the court seeks to maintain in operations, operations that heavily dependent on the good will of the state. This in his view has brought concerns within the community ICC legitimacy and hence preference to Justice Mechanism which is basis of the argument advanced by Tim Allen, referred to herein above.

Proponent of Traditional justice have argued that it a process that promotes grassroots reconciliation, as opposed to punitive nature of justice that is encouraged by the ICC. However this argument is countered by Tim Allen, who argues that these mechanism are misunderstood amongst the community, any recommendation for adaption are ill informed and thus misguided. Allen further goes to content that calls to promote traditional mechanism in

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<sup>17</sup>Ibid. 190.

Northern Uganda as championed by external actors, amount to treating Northern Uganda as though it is not part and parcel of Uganda as a whole. Instead, he says, an all-inclusive, a nationwide approach is appropriate. This position falls short of the reality, it fails to acknowledge the perspective of the community, and it treats the traditional justice system as alien of the community healing process. The study will provide an account of the perspective of the community a gap that exist in the literature analyzed thus far. The Acholi processes are indeed unique and should be considered in such as aspect, furthermore the Acholi have in the past dealt with their conflict in a manner appropriate to their context which should be acknowledged.

On the Juba Peace Process, this study argues that the Juba peace talks raised profound issues about the retributive nature of criminal justice. The fact that the LRA, who have been accused of waging war and untold suffering to the Acholi were accorded a seat and demanded no prosecution as a condition for peace called to question and legitimacy of the talks.

The current discussion on peace and justice will definitely resurface now as the ICC continues to investigate and indeed put on trial Dominic Ongwen. The ICC is mandated to prosecute or facilitate national level prosecution. On the contrary the same legislation permits deferral to non prosecutorial alternative but only in circumstance considered extreme. The Peace process, peace initiative which promotes Acholi justice mechanism in lieu of Prosecution provides the best alternative to access the no prosecutorial alternative under the State that establishes the ICC, i.e. the Rome Statute.



As Linda M. Keller<sup>18</sup> rightly point out, ICC can defer a matter based on the prevailing situation. Under Article 16, such request may be initiated Security Council. Under Article 53, The Office of the Prosecutor may on its accord opt not to investigate nor prosecute a matter purely on it discretion, in such circumstance the office of the Prosecutor may address itself to considered whether alternative process impedes that ICC case under the principle of *ne bis in idem* found in Article 20 or under article 17, in the event of inadmissibility. She calls upon the relevant ICC entity to address itself not only to statue but in doing so assess the relevant alternative Justice mechanism. Her call is important because there have been continuous call to consider alternative justice mechanism.

Before the introduction of Western legal systems, Africans had their own home-grown approaches to resolving inter communal conflicts. As it is later shown, these systems served the society well and were responsible to maintaining peace and tranquility within and without the society. If the systems worked, perhaps it is important to scrutinize what made them work and what can possibly be learnt in the way they were operationalized.

In the Acholi culture justice is viewed and deemed achieved with social relations are restored. Suffice it to say, justice is restorative. In his view, the Acholi chief says that

The bitterness and hate caused by the war can only be healed if they are given an opportunity to engage in their own process and system.<sup>19</sup>

These principles he says are guided by Respect, Sincerity, renunciation, living in harmony by not causing trouble, respect of one's property, forgiving, solving problems through dialogue, and doing no harm to women, children and disabled during war. Underlying these principle

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<sup>18</sup>Linda M. Keller. *Achieving Peace with Justice: The International Criminal Court and Ugandan Alternative Justice Mechanisms* Connecticut Journal of International Law (TJSL Legal Studies Research Paper No. 1018539, 2008); 209.

<sup>19</sup> Interview with Chief Kitum June 2018 by Author

is the need for harmonious relationship with others an indication that the Acholi are by nature peace loving. The community calls on people to own up their mistake and take full responsibility for their action. Revenge is frowned upon and people are called upon to forgive. These process are voluntary based on one's own volition. These are all contained in the "Mato Oput" process, a process that encourages forgiveness and reconciliation.

Afako while discussing the principle above points out that at the heart of the Acholi tradition is the support for amnesty and reconciliation between warring parties.<sup>20</sup> Forgiveness and reconciliation are at the heart of the Acholi traditional culture. Believing in spirits of the dead, such spirit shapes how justice and reconciliation is perceived. To sum it up Keller<sup>21</sup> argues that within the jurisdiction of International Jurisprudence, in as far as it relates to dealing violation of internal humanitarian law, the traditional approach of the Acholi is inadequate.

On the flip side, the international criminal court process doesn't restore relationship, a very strong aspect of the traditional justice mechanism. This work finds this argument wanting, in as far as, whilst recognizing that there are limits of the Acholi community based Justice it still does an important role. For example in the returnee integration into society, it involves an elaborate process of rituals. Rather than seeing the western and traditional approach as being parallel process, consideration should be made and note taken that the two processes complement each other.

The study seeks to cover the gap created by examining the nature of community based engagement in peace and justice, highlighting what societal responses on the choice between

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<sup>20</sup>B. Afako. *Reconciliation and Justice: 'Mato Oput' and the Amnesty Act*. Accord: An International Review of Peace Initiatives (2002).

<sup>21</sup> Keller, M. L. *Achieving Peace with Justice: The International Criminal Court and Ugandan Alternative Justice Mechanisms*. Connecticut Journal of International Law, (23)209, 209–279. (August, 2008).

peace and Justice. The study argues that comprehensive peace and justice can only be attained through an all-inclusive process. A process that should take into consideration the views, feeling and arguments of all key stakeholder. Paramount emphasis needs to be laid on the Acholi community views. On the other side the views of the perpetrators need to be considered as well in as far as the feasibility and applicability of traditional mechanism is concerned.

### **1.7 Theoretical Framework: Conflict, Peace and Justice**

The concepts of conflict, justice and peace are some of the most talked about issues in the modern world.<sup>22</sup> Despite this, there is no common understanding on these concepts. This study will adopt the Social Capital Theory (SCT) and Optimal Psychology Theory (OPT) as the theoretical framework.

The Social Capital Theory posits that social bonds, trust, networks and reciprocal duties bind members of the society together hence make them to co-exist amicably.<sup>23</sup> The bonds and trust are so strong that one actively seeks peace the very moment they realized they were on the wrong, even without being summoned. One who was not at peace with the others was considered not in communion with them and therefore, technically, not part of the community. Making peace was a way of becoming part of or coming back to the community. The SCT identified two components of the social capital to wit, <sup>24</sup> bond between individuals in any group together and is the bridging social capital which bound groups of persons, within the community and outside the community, together.

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<sup>22</sup> K. Rupesingye. *Theories of Conflict Resolution and Their Applicability to Protracted Ethnic Conflicts*. Bulletin of Peace Proposals. (1987) 4.

<sup>23</sup> Puunam RD. *Bowling Alone: The Collapse and Revival of American Community*. New York: Simon & Schuster; 2000

<sup>24</sup> F. Kariuki *Conflict Resolution by Elders in Africa: Successes, Challenges and Opportunities* Alternative Dispute Resolution, 2015

Another relevant theory for conceptualizing African traditional justice systems is the Optimal Psychology Theory (OPT). The theory addresses how people live and resolve conflicts amongst themselves, with regard to the way they view reality.<sup>25</sup> Based on this, it is construed that peace, justice and even conflict itself, are not understood the same way across the world. This is further punctuated by the debate on universalism versus particularism, which addresses questions whether universal principles or 'culture' can be applied to solve local problems. OPT argues that when people use their culture to solve conflicts amongst them, they make use of optimal psychology. Therefore, traditional systems are considered optimal while international law, the so-called 'received justice systems', are considered sub-optimal. The implicit connotation in the theory is that international law cannot effectively solve Africa's conflict issues because such laws are based on different norms from Africa's. This has been referred to as norm-conflict or cultural-conflict. For instance, the international law is based on Western ideals such as individualism, hence it would be illogical to apply them, at least all the time, to solve problems of a communal African society.<sup>26</sup> In addition, while the western justice systems including the international law are retributive (winner-loser ideology), the African traditional justice systems are restorative (winner-winner situation).<sup>27</sup>

The above are relevant to this study because it forms the basis of reconciliation process known as "*Mato Oput*" – a ceremony performed within the community that aims at relationship restoration between clans in cases of intentional and unintentional murders. It brings two parties in conflict together with forgiveness and restoration as opposed to revenge being at the center of the process. The Acholi believe that after the ceremony "hearts of the offender

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<sup>25</sup> L. J. Myers. *Understanding an Afrocentric world view: Introduction to an optimal psychology* (Kendall/Hunt. 1992).

<sup>26</sup> *Ibid*

<sup>27</sup> *Ibid*

and the offended will be free from holding any grudge between them."<sup>28</sup> The only condition for the acceptance of the person back into the society was after undergoing a cleansing ceremony which also had its conditions. For this reason, members of the community tried to avoid offenses as much as possible. This is in line with the Social Capital Theory.

### **1.8 Research Hypothesis**

The general hypothesis Justice is a prerequisites for peace. Peace is a continuous process and not an absolute. Therefore, Peaceful solution to the Northern conflict can only be achieved through traditional peaceful resolution mechanism, these methods have been Traditional Conflict resolution methods have been tested and proved effective in armed conflicts.

### **1.9 Methodology**

This study was broadly divided into 3 parts. The first aspect was preparations and literature review. The second part was data collection which was further subdivided into three stages, each taking one week (focus group discussions, in-depth interviews and ethnography for each week). The third stage was in-depth analysis, writing of findings, discussions, conclusions and recommendations.

Two methods of Historical research were carried used to carry out this study to wit: Oral interview and study of online and printed material, comprising of Primary and secondary sources. In part, the researcher sought to understand the context widely by reading through wide range of library and online resources. The online resources were accessed through the

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<sup>28</sup>Liu Institute for Global Issues and Gulu District NGO Forum, "*Roco Wati Acoli: Restoring Relations in Acholi-land Traditional Approaches to Reintegration and Justice*", September 2005. available: <http://www.ligi.ubc.ca/admin/Information/543/Roco%20Wat%201%20Acoli-20051.pdf>. Accessed in July 2018.

University of Nairobi's section. This stage took the most time since conceptualization and preparation of the initial chapters had to be concretized first. Secondary sources include materials written when the event has occurred such as academic literature, Journals.

Residents of Pader, Gulu and Kitgum were the target group however participants were categorized into typologies. Key typologies included victims of conflict, old Acholi men and women, NGO workers and others depending on what was found 'interesting' from the fieldwork. The category of old men and women was useful to understand the 'oral history' or rather the experiences of the community and changes in the society during the study period of the conflict. The aged respondents also shed light on the Acholi traditional system of justice and their understanding of cohesion and peace. NGO workers provided information on the evolution of the peace process and how communities have been affected, measured by the amount of reported cases of topical issues in the society such as abductions, gender and the like. The researcher had a good network of these NGOs and their employees. Local government officials and politicians approached with caution, and in some cases completely avoided whenever signs of unnecessary political attention were spotted.

Before embarking on the actual fieldwork, personal security and safety, which were paramount to the success of this study, were taken into account. Indeed, it would not have been possible for data collection to happen if the respondents did not trust the researcher. The first step was to re-activate membership to security forums so that he knew what was happening at every moment in various local areas in the region.

The second safety and security plan item was to liaise with the local government officials and the police but on a personal level not officially. This was essential in establishing the hotspot areas as well as the safe ones. Third, the research assistant had local knowledge of the study

areas hence offered additional guidance. In any case, before the researcher went into an area, he made sure that there was adequate community mobilization. This ensured that the local elders and leaders in the community knew at any point in time that the researcher would be coming hence was not treated like a stranger. Following these strategies, it can be reported that there was not any major incident related to security and safety of both participants and the research team.

The first stage of data collection involved the understanding of the wider picture and involved conducting numerous focus group discussions during the first week of the study. However, before this was done, preparatory activities such as community mobilization and meetings with key stakeholders were carried out. The second stage entailed a detailed investigation of the research questions using in-depth interviews with carefully selected key informants, including Acholi elders such as Clan leaders, traditional leaders, during the second week of data collection. The third stage was carried out during the third week and it involved detailed investigation and closeout of the research project. Notably, as noted under the grounded theory approach, data collection and analysis were done simultaneously. Therefore, keen observation and analysis ran throughout all the three weeks of data collection. The third stage was dedicated to ethnographic data collection which involved living with the conflict victims in a bid to understand key values, norms, perceptions, worldviews and symbols (either in speech or physical symbols).

Data collection took three main forms. These included detailed interview, FGDs and ethnography. In order to get the overarching picture at the initial stages, many FGDs were carried out. After the broad themes were identified, in-depth discussions with conveniently selected informants were carried out. This study used a unique approach because data

collection and interpretation was done simultaneously.<sup>29</sup> One of the expected outcomes was that even after participants explained their answers, some innate meanings would not be unearthed. That is why the researcher used ethnographic approaches with participants in their day-to-day lives so as to identify what they value and make linkages between their external manifestations and latent schemes of thought.<sup>30</sup> In summary, the study was conducted in the following three stages.

Like any other research involving human subjects, ethical standards were observed in this study. The first ethical principle to be observed was confidentiality. Some of the participants were directly involved in the recent attacks and the researcher assured them of confidentiality. The second ethical principle to be observed was anonymity. While doing the interviews, participants were not required to give out their names. In the same way, the storage of data was done in such a way that no one could trace backwards the sources of data.

Third was the physical security of the data. The hard copy notes were locked in a well-secured place while the electronic copies of the data were stored in password-protected devices and password-protected data files. The device passwords were kept different from passwords to the data files. Fourth, whenever interviews or focus group discussions were held at locations other than where respondents lived, transportation costs were covered by the researcher. It would have indeed been unethical to make already straining persons spend their own money for transportation.

Moreover, content analysis was the main method of making sense of the collected data. Precisely, answers that were similar (synonyms or concepts) were given same code.

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<sup>29</sup> Sarah J. Tracy. *Qualitative Research Methods: Collecting Evidence, Crafting Analysis, Communicating Impact* (2012).

<sup>30</sup> *ibid*



**CHAPTER TWO**  
**HISTORICAL BACKGROUND TO CONFLICT, PRE AND POST**  
**INDEPENDENCE.**

**2.0 Introduction**

This chapter address the background to the conflict by providing its historical evolution. It traces, analyses the condition that set ground for the current conflict. Noting that the tension and conflict finds its roots in the colonial policies of marginalization, divide and Rule among others. It shows that Policy of marginalization was adopted and applied consistently by subsequent regimes and governments. It will be demonstrated that the systematic marginalization policy created great discontent among the Acholi, culminating into various rebellion as will be discussed. This chapter further examines the current regimes operation including its policy and approach, a policy which as will be shown not to defer from the colonial policy approach. In discussing the foregoing, this chapter will briefly examine what the reaction of the Acholi community to Museveni regime has been, looking specifically at the three major rebellions and how they were dealt with. The regional power involvement and interest will be discussed as well. In its conclusion, the chapter will note that this crisis, in part, reflects the manner in which Ugandan was constructed through colonial policy of expansion with violence, its policy of divide and rule, manipulation of pre-existing differences which been adopted by successful regimes including the current government.

## 2.1 Evolution of the Conflict.

The genesis of conflict has been extensively studied by several scholars. According to Branch<sup>31</sup> the Acholi people suffer from two political crises: Internal and National. Internal in the sense of intra community conflict whilst National which is fundamentally linked to the crisis of state legitimacy, institutional legitimacy and political officials. These dynamic provides an explanation as to why the conflict in Northern Uganda has been a constant feature for decades. To analyses this, this work provides an account of events as below.

### 2.1.1 Colonial Policy.

Adam Branch establishes two but related root causes of the conflict. The first one was the use of divide and rule tactics by the British Colonialist. According to the author, the boundaries created by the colonial masters later became as basis of political identities.<sup>32</sup> The British ensured that the administrative boundaries were demarcated along tribal lines so that ethnic communities would not pull together synergies to liberate themselves. The British colonialists also preferred the northerners, who were traditionally cattle keepers, to work either in plantations in the south or in the armed forces.<sup>33</sup> Unfortunately this tribal and political identification later became a tool for stigmatization, discrimination and exclusion. As Hovil<sup>34</sup> points out Policy to divide the regions according to tribal line finds it root in colonial times.

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<sup>31</sup> Adam Branch, "Exploring the Roots of LRA Violence: Political Crisis and Ethnic Politics in Acholiland," in Tim Allen and Koen Vlassenroot (eds.), *The Lord's Resistance Army: Myth and Reality* (London: Zed Books, 2010)

<sup>32</sup> Adam Branch, *Neither Peace nor Justice: Political Violence and the Peasantry in Northern Uganda*, African Studies Quarterly 8 (2005).

<sup>33</sup> Advisory Consortium on Conflict Sensitivity (ACCS), "Northern Uganda Conflict Analysis" (International Alert, Refugee, and Law Project and Saferworld, 2013), p. xii.

<sup>34</sup> Zachary Lomo and Luch Hovil "Behind the Violence: Causes, Consequences and the Search for Solutions in Northern Uganda". Refugee Law Project (RLP) during February 2004 as Working Paper No.11

The British colonial regime was interested in securing political control of the territory of Uganda to deny other imperial contenders, as well as establish an economically profitable enterprise for Britain.<sup>35</sup>

Hovil contends that in order for the British to accomplish this, it implemented a divide and rule policy. This was a strategic policy used to effectively administer and maximize profit. The south considered for agricultural purpose where tea and sugar cane were grown. The northern part was deemed “a disturbed, hostile territory, in which there were some tribes powerful enough to offer stiff and prolonged resistance.”<sup>36</sup> In return the British rewarded the southern part of Uganda with infrastructure such as national university, Parliament of Uganda, Principal hospital and best infrastructure. This was done as a token of appreciation for their cooperation.

British colonialized further reinforced the stereotypes of people from each region as useful, productive and suitable this stereotype persisted through the pre independence and post-independence to date. Along with this, labels based on ethnicity persisted to this day.<sup>37</sup>

A reflection of one Acholi Elder summed it as

We the Acholi as seen as second class citizens. Look at the government, there are countable Acholi holding public office. The entire public service is almost 100% people from the North and South. We are seen as trouble makers. We are only good for war. But this is not the case.<sup>38</sup>

The tribes from Northern Uganda, were said to have flaws and traits that made them brutal and martial tribes, traits not deemed fit for political, administrative positions nor economic

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<sup>35</sup> Ibid.

<sup>36</sup> J Barber. “Imperial frontier” East African Publishing House, Nairobi, 1968

<sup>37</sup> Zachary Lomo and Lucy Hovil, “Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda” Refugee Law Project. Working Paper No 11, February 2004

<sup>38</sup> Interview with Council Chairman, Gulu District, 18th June 2018, conducted by Author

governance. The southern were however considered most suited administrative functions. In one of the interview with a community elder he stated

We the Acholi people feel that the colonial master were wholly against us. They didn't invest nor care much about seeing our community prosper. All of development efforts were invested in the Buganda communities. They built schools, hospital but nothing was done in the Acholi region. This created a sense of marginalization and resentment to the colonialist. We also resented the Buganda. We felt isolated, we felt bitter and we hated the white man.<sup>39</sup>

Unfortunately the above situation has played out to date. Within the social fabric of Uganda, there exist apparent enhanced vision between North and South of Uganda tribes, a rift that is based on a fear regional or ethnic dominance, the effect of this has been a lack of national unity in the country. As noted by former senior government official, this divides is indicative of the regional separations that exist throughout Uganda. He said,

There are very few people who view the country as one. When you ask someone what is Uganda, there would struggle to give you an answer. The conflict is a seen as an Acholi issue of nationalism to say the least, because it is not viewed as a national issue really.<sup>40</sup>

Attitudes as the above are a common place amongst many Ugandan citizen including key officials and policy makers. These attitude have further been exacerbated by actions of previous government who deliberately concentrated resource and power in the hands of specific group of people and regions at the detriment of other tribes or regions.

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<sup>39</sup> Interview with Local Counsellor, Gulu District, 18 June 2018 by Research Assistant.

<sup>40</sup> Interview with Council Chairman, Gulu District, 18th June 2018 by Author

In an interview a Key Informant shades more light when he with concern notes that,

In particular, political and economic patrimonialism occurred along a north-south dividing line, with leaders such as Obote and Idi Amin exacerbating anti-northern sentiments in the south through many of their policies. Such political decisions have engendered fear among those regions not in power, and have been one of the chief catalysts of conflict, in an environment in which leaders use ethnic sentiments to mobilize political support.<sup>41</sup>

A local council member in Kitgum summed up the situation in his interview as follows.

Government Policy have been the cause of most insurgencies in Northern Uganda. These policy have been deliberate to exclude, neglect and discriminate against a particular group. In this case the Acholi from the North. They have been exploited and completely sidelined with regard to political participation and access to the national cake<sup>42</sup>

The second genesis of the conflict was the architecture of the Uganda's politics and the north-south division. According to Adam Branch<sup>43</sup> the north is predominantly Nilotic while the south is predominantly Bantu. Although this was not a problem initially, politicians made it an issue through regionalized politics and rewards which left out those in the north.

The author notes that the 'tribal' root begun earlier than the 'regional' root. The north-south strife appears to have started with the reign of Milton Obote immediately after independence. This is because Obote continued to use the northerners to sustain him in power. On this basis, the author cautions that Northern Uganda conflict should not be 'naturalized', that it did not happen overnight, but each aggravation was deposited at the heart of the society until it later erupted

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<sup>41</sup> Interview with Catholic Priest St Mary Church Lacor 10<sup>th</sup> June 2018 by Author

<sup>42</sup> Interview with Local Counsellor Member. Gulu District. 4<sup>th</sup> June 2018, by Research Assistant.

<sup>43</sup> Supra Note 31.

The views have been supported by the reflection of an elder, when he says that

We identified a lot with Obote- He was one of our own. He has the best interest at heart. He recognized we the Acholi people. He was good to us. He made us assume high ranking position in the army. We had well decorated officer in the military<sup>44</sup>

It is crucial to note that the above roots were not a problem by themselves, but the actual problem lies in the fact that leaders ethicized politics and by way those in the north were treated. From the beginning the British did not bring administrative change in a locally acceptable way. According to Branch, the 1950s chiefs who were appointed by the colonial masters to oversee issues in the administrative units marred the existing lineage-based leadership and authority.<sup>45</sup> The author also articulates why the role of the young men got magnified over time. He notes that the colonial system mobilized people to utilize land for productive purposes and, since the young people did not own land, seeking state employment was the only feasible option.

Sooner than later, the lineage-based leaders began to oppose the colonial chiefs, something that caught the attention of the colonial masters prompting them to form the so-called District Councils which handled such disgruntlement. It was during these district council meetings that ethnic (lineage-based) leaders and young men met to initiate plans for collective action. It was at these council meetings that the young men would voice their frustrations, grievances over lack of work. The lineage-based leaders would use council meeting as their bridge to the national government. They exploited the meeting to present their pleas for recognition of the Acholi community at the national level.

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<sup>44</sup> Interview with Acholi Leader. Gulu 18th June 2018 by Research Assistant.

<sup>45</sup> Adam Branch Supra Note 31.

As a result of this common bargaining power, a relatively substantial number of young men were awarded with national appointments in key positions. These men who were already an expanding middle class by the first term of Milton Obote intensified their influence both in the national as well as ethnic politics. According to Branch, this worked against the traditional leaders who felt that their influence was being usurped. It is further essential to note that the authority of lineage-based elders diminished further when some of them were appointed during Milton Obote's reign as chiefs equivalent to what colonial masters had. By the end of the 1960s, the Acholi were satisfactorily included in the central government. Notably, massive numbers of Acholi youths joined the security forces, and this is shown to have empowered their rebellion. Branch notes that by the time Idi Amin took power, Obote's army constituted 9000 strong force from a small number of 700 of which one third of those in the army were the Acholi tribesmen<sup>46</sup>

The political system post-independence has had a military character. This nature continues to play to date. The current NRM regime constitutes mostly of former NRA Army general or freedom fighters. Previous regimes, notably the regime of Idi Amin and Milton Obote were predominately military in character. These regimes were created for disruption of economy and gross rights violations for example extra judicial executions, mass murder, kidnap, systemic rape, torture and civil unrest.

The post-independence period of turmoil and uncertainly following many military coups explains the turmoil that is still apparent today. The turmoil commenced after the overthrow of Obote's overthrown from government in 1971 and on the second occasion in 1985. Then

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<sup>46</sup> Nick Grono and Adam O'Brien. "Justice in Conflict? The ICC and Peace Processes" in Waddell and Clark (ed) *Impunity and human rights in international law and practice*. Oxford: Oxford University Press. 1995.

the overthrow of Idi Amin in 1979, and overthrow of Tito Okello in 1986. The new governments pursued a revenge policy against the loyalist of ushered regime, pursuing them to their homes and causing terror to their kinsmen and local populations. For example in 1971 after the overthrow of Obote, Idi Amin, he commandeered Obote's soldiers into the army barracks for execution. Amin then went on to kill many Acholi and Lango civilians<sup>47</sup>

According to Branch, one of the initial triggers of the conflict in Acholi land was caused by Idi Amin. However, the problem manifested locally with an ethnic face. Idi Amin destabilized the Acholi society by first not recognizing the authority of the elders and second, when NRA/M defeated the Acholi middle class who were seen as the link between the government and peasant.<sup>48</sup> However, Branch clarifies that the internal crises did not erupt until 1986 when the defeated Acholi fighters returned from war. The population of the returnee fighters simply formed a reserve army which neither the elders nor the national government could control. The problem was exacerbated by the government exclusion of Acholi from political appointments.

During the World War II, an estimated 5,600 Acholi were conscripted in the army to fight alongside the colonial masters. They served either in the Police or the colonial army. These constituted an estimated 20% of able bodied male household. Though at the end of the war, most of the Acholi combatant were demobilized, a huge number stayed back in the army making them the tribe with the biggest number of soldiers.<sup>49</sup> As emphasized by Ali Mazrui,

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<sup>47</sup> Zachary Lomo and Luch Hovil 'Behind the Violence: Causes, Consequences and the Search for Solutions in Northern Uganda', Refugee Law Project (RLP) during February 2004 as Working Paper No.11

<sup>47</sup> J Barber *Supra* Note 36.

<sup>48</sup> Adam Branch, "Exploring the Roots of LRA Violence: Political Crisis and Ethnic Politics in Acholiland," in Tim Allen and Koen Vlassenroot (eds.), *The Lord's Resistance Army: Myth and Reality* (London: Zed Books, 2010)

<sup>49</sup> *Traditional ways of coping in Acholi: Cultural provisions for reconciliation and healing from war* Caritas Gulu Archdiocese



the Acholi dominated the post-independence armies. With them constituting the greatest percentage in the army despite the fact that the Acholi were in fact a small proportion of the entire Uganda population. Over 50% of the Uganda army were constituted by the Acholi. He adds that “their preponderance was partly due to their categorization as a tribal unit in the colonial period”.<sup>50</sup> According to Ali Mazrui, the ethnification process in the military was seen through the colonist policy that created Acholi within the army as an ethnic group and further by creating their dominance in the military force.

### **2.1.2 Post-Independence Uganda – An Era of Violence.**

To understand the way in which the war in Northern Uganda broke out, one needs to examine the post-colonial history of Uganda. The said era was characterized by lack of government accountability for actions of its armed forces, there were civil uprisings occasioned by violent coups, armed rebellions, these events galvanized the conflict in Northern Uganda.<sup>51</sup> In an interview with one key informant, noted that soldiers Tito Okello hoped to reclaim power even after their overthrow;

Okello force assumed they would reclaim power because that what they were used to. All government from Amin, Obote Museveni did the same. So they also could use force and topple the government.” “Political mistakes” carried out by undisciplined soldiers became only symptoms of a culture of revenge and exclusion entrenched by historical incidents under various regimes.<sup>52</sup>

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<sup>50</sup> A. Mazrui. *Soldiers and Kinsmen in Uganda: The Making of a Military Ethnocracy*. Beverly Hills and London, Sage Publications, 1975

<sup>51</sup> Supra Note 6.

<sup>52</sup> Interview with Catholic Priest St Mary Church Lacor, 10<sup>th</sup> June 2018. conducted by Author.

### 2.1.3 NRM and Northern Uganda

Museveni, dissatisfied with the result of 1980 arguing that election were rigged launched a Guerilla war. The objective of the resistance was to overthrow Obote regime and replace it with a democratic, functional governance system. Thus in 1986, the Museveni under National Resistance Army overthrew Tito Okello. It has been argued that the ascending to power of Museveni was largely due to inter communal conflict within the Acholi tribe and National disunity as opposed to his military acumen. Museveni is believed to have taken advantage of the disunity in the army who were polarized on tribal basis to.<sup>53</sup>

The NRM/A approach to Northern Uganda since its ascension to power has been brutal. This is largely due to its close association with the overthrown government of Obote. It was reported that the NRM soldiers adopted a scorched earth policy that saw the destruction of houses, economic livelihood sources, food stuff and water sources; as a result of this, many Ugandans Northern Ugandan were at the brink of starvation. These have been corroborated by the reports contained in a Human Rights report, it was indicated that

That soldiers had completely destroyed houses, grain stores, and bore-holes in some areas, with the result that many in northern Uganda were living in the open and facing starvation. To make matters worse, travelers were subjected to painstaking and sometimes degrading searching's at many roadblocks.<sup>54</sup>

In addition to the foregoing, reports indicate that a great number of civilian population in Acholi were incarcerated in camps akin to concentration camps. An estimate of 18,000 were held in camps in Kitgum, Karuma and Gulu respectively.<sup>55</sup> These actions caused great uproar

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<sup>53</sup> Africa Contemporary Record: *Annual Survey and Documents*: Vol. 21, 1988-89 by Legum, Colin

<sup>54</sup> Uganda Human Rights Activists Organization, *Report on Human Rights Violations in Uganda, July-December 1986* (Kampala, 1986), pp. 13-15).

<sup>55</sup> New African (London), July 1987.

and resistance from religious leaders both from Northern Uganda and beyond. Notably among them were the Gulu Catholic Diocese Bishop Kihangire Kipriano, and Northern Uganda Diocese Bishop of the Anglican Church.<sup>56</sup> The account of government brutality in Acholi land was corroborated by civilians who witnessed these atrocities, in an interview with a community leader he had this to say.

The NRA was hell bent at killing all of us (Acholi) they rounded us up, locked us in camps, tortured use and left us for dead. All this was because they assumed we associated with Obote. Not all of us were Obote people. They couldn't take any of that.<sup>57</sup>

The actions didn't only stop with the civilians, The NRA ordered catholic missionaries to evacuate Kalongo - upon which an Italian Catholic Priest, wrote in Feb 1987 that:

It is painful to report that the NRA soldiers started burning all the medicines. And practically all the food of the Hospital, Mission, Sisters even while the convoy was just leaving Kalongo. In Padibe very bad things happened: one hundred houses or more were burnt in two zones alone; all food was burnt in the granaries. The aim is to leave nothing for the enemies; but of course this leaves no food for the population as well. The system of 'scorched earth' had been used everywhere...; there is therefore the prospect of real starvation for thousands of people in the very near future. In all places, the water-pumps are broken many have been put out of order on purpose. The evacuation of the Missions aims at removing unwanted witnesses so that the NRA can do what they want. There are rumors that soon helicopters will be used to bomb the positions of the rebels; and in any case all persons, whether men or women or children, will be considered.<sup>58</sup>

Such inhumane and harsh approach resulted in resentment and rebellion as is now accounted below.

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<sup>56</sup> Cipriano Kihangire *Let Us Fix Our Eyes on the Risen Lord: He is the source of new life* Gulu, 1987

<sup>57</sup> Interview with community member, Lacor, 10<sup>th</sup> June 2018, conducted by Author.

<sup>58</sup> Giulio Andreotti *30 Days in the Church and in the world* International Monthly Magazine 1993.

## **2.2 Northern Uganda Conflict.**

The Northern Uganda conflict began in 1986 when remnants of Milton Obote and later Tito Okello who were mostly Acholi, Langi, Lugbara, and Luo, upon being ousted by NRA fled to the North. They were known as UNLA. It's reported these action were instigated by Museveni backtracked on a power sharing agreement brokered in Nairobi on December 1985 with Tito Okello, <sup>59</sup>an event that is still resented by many people from Northern Uganda.

Museveni is not a man to be trusted. He only has his interest at Heart, the agreement that was well designed was reneged by him purely for his gain. He treated Tito with so much mistrust and indeed the entire Acholi community. He was arrogant, he cared less about anyone but him. <sup>60</sup>

The Acholi having been overthrown by the army of Museveni, made way to the North from Kampala. They joined force with the kin from the same region and took up arms against the newly formed government.

### **2.2.1 Uganda People's Democratic Army**

Upon consolidation of it authority in Kampala, the NRA made two directives. First that all ex UNLA rebels turn in their weapons to the government. Secondly that former UNLA soldiers report to the NRA. Many ex UNLA surrendered their weapons as requested, however many refused to turn themselves over to the NRA for fear of a massacre similar to one that had been orchestrated by the Amin army against the Acholi in 1971. To avoid the risk of Arrest most made way to Sudan to join the UPDA.

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<sup>59</sup> Kisekka, N. F. (2007). *Roots of the conflict in Northern Uganda*. The Journal of social, political and Economic studies 32(4), 421

<sup>60</sup> Interview with Catholic Priest St Mary Church Lacor, 10<sup>th</sup> June 2018, conducted by Author.

To provide context to this, most of the former UNLA soldiers constituting mostly of Acholi who retreated from Kampala heading north from March 1986 ending up in Sudan. The government of Sudan not only provided them with a base but also refuge. The UNLA ceased this opportunity to reorganize themselves. However the government of Sudan failed short in providing them with arms nor any form of military support.<sup>61</sup> It's reported that upon crossing the border into Sudan, their weapons were confiscated by the Sudanese army and only returned to them as they crossed into Uganda.

As reported by Makerere University study<sup>62</sup> that upon the NRA taking over, officers from Acholi region started their military campaign immediately. This report finding is further corroborated by the finding of an interview where it was stated that

May 1986 key Acholi military leaders, at a meeting in Sudan, identified locations throughout Gulu and Kitgum which the UPDA would attack in mid-August. If these reports are generally accurate, it appears that the UPDA was organized just as the NRA arrived in Gulu, and that its battle strategy was determined during a period in which almost all of the assessment's interviewees characterized the NRA's conduct as exemplary.<sup>63</sup>

According to the same study,<sup>64</sup> the UPDA participants were in three categories; those who had crossed into Sudan, these constituted the group that were resolved to take up armed struggle at all cost. They had both political and military wing. The second group were those comprising of former UNLA soldiers who returned home, kept their weapons and observed the development from afar. Lastly were Acholi youth who though weren't part of the UNLA mainstream army supported the cause and were potential recruits. The former and latter where

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<sup>61</sup> Makerere University in conjunction with ActionAid Emergencies Response Information Centre (ERIC); January 1997.) Asserts that the anti-government Uganda People's Democratic Army (UPDA) was established in Juba in March 1986.

<sup>62</sup> Ibid, 10.

<sup>63</sup> Key Informant Interview with Army Officer, Kampala City, 30<sup>th</sup> May 2018, Conducted by Author

<sup>64</sup> Supra Note 61.

the target group of the UPDA activities who employed different tactics to lure them into the rebellion. The second and third group became the major target group for recruitment by the UPDA activities based in Sudan.

It is reported that the UPDA conducted well-coordinated attacks against the NRA position in Kitgum and Gulu. In August 1986, they overrun an NRA unit stationed in Ukuti, a small town North of Namu okora. The NRA unit were defeated and over run. The defeated soldiers were forced to retreat to Namu Okora. The repercussion for the attack on civilian was dire. In an interview, it is stated that.

Immediately following this defeat, the NRA forces threatened brutal reprisals against the Namu-okora civilian population, invoking the Luwero atrocities as well as the Ukuti defeat. They arrested 44 men and one woman and placed them in the back of a truck. Soldiers armed with automatic weapons in the bed of a pick-up seized from the Catholic parish followed the truck as it departed west on the road to Kitgum. Fearing the worst, some of the detained civilians attempted to escape from the truck. The NRA forces fired on and killed all of the prisoners. UPDA forces, galvanized by this incident, attacked and over-ran the NRA forces in Namu-okora and for more than one month controlled the town, the only occasion of the sustained occupation of a town anywhere in Gulu and Kitgum during the decade-long war, according to several sources.<sup>65</sup>

Angered by the event of Namu Okora, President Museveni ordered the arrest of the perpetrator of the abuses. They were reported locked in a truck some died as a result of suffocation. Other were imprisoned through the mid of 1990.<sup>66</sup>

The event of Namu Okora had an impact on the youth who had waited for a cause to join the UPDA. Excited by the success and angered by how their kin were treated, many joined the rank of UPDA. Included in those were Ex UNLA fighters. Despite these development as

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<sup>65</sup> Interview with Catholic Priest St Mary Church Lacor. 10<sup>th</sup> June 2018, conducted by Author.

<sup>66</sup> Report available at <https://www.globalsecurity.org/index.html>

accounted for above, it's reported that the Acholi had no intention of joining the rebellion prior to the event. Nor did they have intention of opposing the NRA government. They argue that the event of Namu okora galvanized the rebellion which hitherto was in a rather disorganized opportunities and spontaneous form of rebellion.<sup>67</sup>

The UPDA initially posed a threat to the newly formed government of Museveni, however his "carrot and stick" approach resulted in The Gulu Peace Accord of June 1988 that resulted in most fighter surrender to the government. Brokered by Museveni's brother Caleb Akandwanaho, the terms of the agreement were such that an amnesty was granted to ex combatants. It reported that close 2,000 rebels were granted and integrated into the NRA army. The agreement also made attempts to address key economic and political issues through a call for new constitution and a northern Uganda reconstruction programme.<sup>68</sup> Although these efforts were successful, there were small rebellion and groups that began to capitalize on the anti-government feelings of many the Acholi to continue fighting.

### **2.2.2 Popular Support/NRA Brutal Response**

Report reviewed for this study,<sup>69</sup> for this study demonstrates that the UPDA was very popular amongst the community in Kitgum and Gulu, in part because the Acholi associated with the cause of the rebellion. Many civilian joined the cause voluntarily, contributed food in form of livestock, dry ration to the fighter, offered shelter to them and shared with them intelligence. Although the UPDA were able to capture key town and trading centers, they

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<sup>67</sup> Robert Gersony, *The Anguish Of Northern Uganda Results Of A Field-Based Assessment Of The Civil Conflicts In Northern Uganda*, United States Embassy, Kampala USAID Mission. Kampala, 1997.

<sup>68</sup> CCM Lamwaka, "Civil War And The Peace Process In Uganda" 1986-1997, *East African Journal of Peace and Human Rights* 4(2), 1998) p. 155

<sup>69</sup> Such report as ActionAid Emergencies Response Information Centre (ERIC): January 1997.

nonetheless were able to control most of the villages and country side. They launched attacks on small NRA posts and were occasionally successful.

The NRA response to these were predictable. They reacted angrily against the civilian population accusing them of being sympathetic to the cause of the UPDA. In a barbaric manner the soldiers executed suspected collaborators, torture and raped women. Amnesty international report states as follow;

During certain stages of the 1986 - 1991 period, its conduct included the execution of suspected collaborators, prisoners and the killing of groups of victims, harsh beating during questioning, and widespread destruction of granaries, mass detentions and other such practices. Rape was also a frequent complaint. As a result, particularly during the 1986 - 1988 period, relief workers report that civilians fleeing army operations frequently sought protection in rural areas under predominant UPDA control.<sup>70</sup>

However despite its popular support, countable successes, in the late 1986, the UPDA army lost support, its army dwindles as did its arms. There were unsuccessful, costly military operation that saw their ammunition dwindled. With such defeat and low supply the moral of the soldiers diminished and many deserted. Into the vacuum created by this collapse arose a rebel, Alice Lakwena a female spiritual leader who revitalized and transformed the Acholi resistance movement.

### **2.2.3 The Holy Spirit Movement**

Despite the defeat of the UPDA and less than a year of assuming power, the NRA Government was posed with yet another threat from a 'movement' of an illiterate woman known as Alice Lakwena. This movement became known as the Holy Spirit Movement (HSMF). Alice a peasant aged not more than 30 years, was a member of the UPDA. She is believed to have

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<sup>70</sup> *The Failure to Safeguard Human Rights, Amnesty International 2001*



been an insignificant of the group. Born in a poor family, she converted into Catholicism at a very tender age. Alice was her baptismal Christian name. She adopted the name Lakwana meaning God messenger, to be known as Alice Lakwena.

The Acholi community prior to the NRA takeover of Uganda in 1986, were grappling with moral decay, social fabric completely broken, HIV on the rise, increasing distrust within, inter communal conflict but most importantly the lack of leadership structure to unite them. It was paramount to turn the situation around, the task was placed on a God ordained Person. Thus, Lakwena was seen within the community and widely believed to be a symbol that represented the most disadvantaged sectors of Acholi community, the struggle for democracy, of a broken socio-political relations and interactions<sup>71</sup>

Alice Auma, a medium in Kitgum, proclaimed that the spirit Lakwena had ordered her August 1986 to stop healing and raise an army called the Holy Spirit Mobile Forces to wage war against the evil overtaking the land, led range of spirits, chief among them Lakwena. The blueprint Alice Lakwena laid out was novel comprising both religious and military, it contained both aspect but also transcended both. To address the social decay, the formation of the HSMF by Lakwena were attempts to reconstitute decaying moral order based on the establishment of an alternative theory of social tensions and power relationships, which the idiom of religion and ritual.<sup>72</sup>

Thus fighting a war constituted a process of purification and cleaning, it was in other words as an ordeal.<sup>73</sup> In waging war, the just people were separated from the unjust. Alice looked within her own community for people to fight her war. She mobilized, rehabilitated, reintegrated those she deemed as internal enemies and rallied them against the external evil forces known as the NRA. Central to her message was the promise of salvation from the evil

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<sup>71</sup> Heike Behrend. *Alice Lakwena and the Holy Spirits: War in Northern Uganda 1985–1997*, Ohio University Press and Swallow Press, 1999.

<sup>72</sup> Interview with Catholic Priest St Mary Church Lacor 10<sup>th</sup> June 2018, conducted by Author

<sup>73</sup> Behrend, *Alice Lakwena and the Holy Spirits*, Boydell & Brewer. 29-30

force and lasting peace when the evil forces were completely overrun. This instilled in her fighter the message of resistance and enhanced their belief that their righteous cause would hand them victory. The message resonated with rather ignorant followers who were neither militarily well trained nor political well organized. Alice created passion within her forces, who saw the fight against the NRA as a God ordained task.<sup>74</sup> A community like the Acholi who only knew nothing but marginalization, suffering, and despair, saw this as a god sent opportunity that they quickly embraced.

Alice alleged that she has been instructed to launch a war against NRA government. She purported to have been influenced by the soul of an Italian soldier who was killed during World War 1, the spirit of the soldier handed down her orders. In the said order, the Italian soldier asked her to revenge for the mistreatment of the Acholi people.

It reported that Alice was a symbol of hope. She brought hope where there was hopelessness, in the form of spiritual and worldly redemption in an hour of pain and despair.<sup>75</sup> Her intervention was timely for a community that believed they were being persecuted and targeted for extinction. They believed having lost power they were vulnerable. Alice was there for a symbol of hope. Behrend writes that

Alice Lakwena, in her warfare mission, preached a wide understanding of "cen", now generously defined as 'the spirits of enemies killed in war'. She writes: While the purification from witchcraft and sorcery followed Christian models by burning the magic charms and by sprinkling and immersing water, i.e. baptism, the elimination of cen was a new invention. Running through, chopping up, and burning the clay figures [of enemy soldiers] follows a logic that reflects killing with rifle, panga, and fire. The weapons used to kill the original owner of the cen were now used to eliminate cen, which were killed three times and thus removed once and for all.<sup>76</sup>

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<sup>74</sup> Uganda's mystic rebel dies, BBC News

<sup>75</sup> Doom, R. and Vlassenroot, K., Kony's message: A New Koine? The Lord's Resistance Army in Northern Uganda. (African Affairs, 1999) p. 7-16

<sup>76</sup> Behrend, H. 1991. 'Is alicelakwena a witch? The Holy Spirit movement and its fight against evil in the north of Uganda', in H. B. Hansen and M. Twaddle (eds). *Changing Uganda: the dilemmas of structural adjustment and revolutionary*

Alice soldiers comprised mostly of the Acholi but included Teso and Langi. Her fighting force is believed to have numbered a little over 10,000 soldiers comprising of both men and women. Alice won the hearts and mind of the Acholi people, it's believed she enjoyed wide support from the local population.

Many were inclined to believe her claims of spirit power, especially after her early victories. Her effort to "remove the stain" from the reputation of former UNLA combatants resonated positively. Many Acholi particularly after the NRA human rights abuses felt that aliens were indeed ruling in Acholi. A number of the attitudes and perceptions which motivated the formation of the UPDA and its popular support at the outset remained undiminished. Alice's methods were different, but her fundamental objectives were similar to those of the UPDA. The Alice Lakwena movement emerged and was completely destroyed within the period of the UPDA's activities. The UPDA's "Lakwena gambit" had spun out of control, led to the death of many Acholi youth and to more ruin and humiliation for an already demoralized group.<sup>77</sup>

Lakwena instilled strict rule and guidelines for moral behavior. Her soldiers with highly energized and highly disciplined unlike the NRA soldiers. The HSMF soldiers went through a ritual of cleansing and she shared with them a list of 20 Holy Spirit precautions which included amongst others not eating foods banned in Bible, and living in accordance with the Old Testament commands, in return she received frequent donations from civilians as a result of her popularity. Haynes notes that;

Some of the former of UPDA rebel group decided to join Alice and her Spirit that could heal soldiers- in her campaign to overthrow the Museveni government.<sup>78</sup>

Despite winning the heart and mind of the People. Her success was short lived resulting into defeat in Jinja as Petropoulos writes that

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*change*. London, Kampala, Athens and Nairobi: James Currey, Fountain Press, Ohio University Press and Heinemann Kenya.

<sup>77</sup> FGD with Acholi Men, Kitgum District. 1<sup>ST</sup> July 2018 by Author.

<sup>78</sup> Jeff Haynes. Religion and Politics in Africa, (East African Educational Publishers LTD, 1996). P.185

At first they seemed to be successful, winning a skirmish at Kilak Corner in 1986. The victory ensured that others who first doubted Alice and her magical powers now joined the mission.<sup>79</sup>

A report of HURIPEC states that;

She led the movement all the way south to Jinja, allegedly because NRA soldiers feared her spiritual powers and therefore allowed her to pass through much of the country, but was eventually defeated by a revitalized NRA military force in 11 November 1987.<sup>80</sup>

Upon the defeat and fear of complete failure, Alice father, Severino attempted to take over and marshal the support of her remaining soldiers. Severino, however in an attempt to gain popular support from the community is reported to have committed atrocities against their own civilians. These atrocities are attributed to the time of his leadership in 1987. He turned to attacking the civilian targeting mostly children as a backlash for their failure to rally behind his cause. A move that made him unpopular amongst the community.<sup>81</sup> Poor leadership and lack of well structure organization, however, meant the group quickly dissolved.

The UPDA and HSM were similar in that they tried to mobilize popular grievances in a struggle against the new government. Although the former was more about capturing political power and the latter more about rejuvenating Acholi society, they both articulated reasons for rebellion with which most Acholi sympathized at the time.<sup>82</sup>

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<sup>79</sup> Petropoulos, A. (2015). *Uganda- What are the main causes of the emergency of the Holy Spirit Mobile Force?* [web log post] Retrieved 10/24/2018 from <https://socratic.wordpress.com/politics-and-religion/uganda-what-are-the-main-causes-of-the-emergence-of-the-holy-spirit-mobile-force/>

<sup>80</sup> HURIPEC. (2003) *The hidden war: The forgotten people*. Makerere University Faculty of Law. Liu Institute for Global Issues

<sup>81</sup> Ibid 10

<sup>82</sup> Interview with Catholic Priest St Mary Church Lacor 10<sup>th</sup> June 2018. conducted by Author

This lays credence on the argument of this work- that the seed on rebellion are to be found in the policy colonial legacy.

On the government side of the story, Museveni rubbished the rebel group as

Backward, uncultured arguing that it was unavoidable and necessary that a clash of this type was to happen so as to distinguish between the forces of patriotism and modernization, on the one hand, and the remnants of colonialism and backwardness.<sup>83</sup>

Upon the defeat of Lakwana and subsequently her father, a power vacuum was created in Northern Uganda. This gap was quickly filled up by yet another rebel group led by the Joseph Kony.<sup>84</sup> The LRA under the leadership of Kony saw their armed struggle as divine. The LRA was considered a radical structure of rejection. Like the HSMF, the LRA struggle was a reflection of transcendent moralism justifying the conventional principle of secular necessary, and the ritual intensity

#### **2.2.4 The Lord's Resistance Army**

The LRM/A, is headed by Joseph Kony, a cousin of Alice. His leadership was characterized by same charisma and talent for theatrical gestures as that of Alice. Kony was viewed initially as a successor to the famous Holy Spirit Movement of Alice lakwena but over time adopted element from other rebel factions.<sup>85</sup> Based in Sudan, the LRM/A mostly used guerrilla tactics and terror warfare in it campaign, using abduction of children as fighters and wives at the height of their war.

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<sup>83</sup> Amii Omara-Otunnu, *The Journal of Modern African Studies*; Vol. 30, No. 3 (Sep., 1992), pp. 443-463.  
<https://www.jstor.org/stable/161167>

<sup>84</sup> *The Lord's Resistance Army*, BBC news

<sup>85</sup> Dooin. R. and Vlassenroot, K. 1999. 'Kony's message: a new Koine? The Lord's Resistance Army in northern Uganda'. *African Affairs* 98 (390)

According to Kony, the only salvation of the Acholi society was a moral crusade that included the rejection of infiltration by the people he deemed were outsiders, however as argues by Paul, how such moral crusade was to be achieved still remained ambiguous.<sup>86</sup> Kony exploited the division with the UPDA, convincing soldiers to join his force and forcing abducting the rest. He further lured a sizable number of UPDA soldiers who declined to surrender pursuant to the 1988 Gulu peace accord.<sup>87</sup>

Kony strongly believed that using his spiritual power and divine guidance, we would lead the Acholi out of the moral decay and such a difficult time. However this was prophecy was rejected by a section of the Acholi community. Kony, took the rejection in bad faith. The situation was even worse when it reported that his request was rejected by Alice Lakwena when asked for her support.

After he asked Alice for support, for example, she mocked him and told him he should use his limited spiritual powers to become a doctor or a healer, but not to lead a rebellion. Kony reportedly left in silence following Lakwena's monologue and later allegedly told his followers that he was deeply insulted by her rebuff.<sup>88</sup>

The strong cultural belief of the Acholi partly explains the LRA's spiritual dimension. In Acholi community as is in most African communities, individuals resort to spiritual media to make sense of social and cultural problems. Such problems as calamities are seen as a punishment for wrong that have been committed. Earth quakes, thunder drought and any

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<sup>86</sup> Paul Jackson, *Politics, Religion and the Lord's Resistance Army in Northern Uganda*, (University of Birmingham, unpublished), 12

<sup>87</sup> Behrend, H., *Alice Lakwena and the holy spirits*, Fountain Publishers, Kampala, 1999

<sup>88</sup> Focus group discussion with men in Kitgum, 8<sup>th</sup> June 2018 conducted by Research Assistant.

unexplained phenomenon is attributed to a wrong, to make right the wrong, there was need for cleaning and ritual of atonement that would reject the evil spirit disturbing them.<sup>89</sup>

Kony believed that to address the wrong within Acholi land, there was need to engage in spiritual cleaning. He believed there was something wrong with Acholi land.

However, while he interpreted the problem within this traditional spiritual worldview, he then perverted it to fit his own views rather than the accepted Acholi standard. His justification of violence came because the people refused to back him. This is where he departed from the Acholi tradition whereby life is held sacred, to his personal interpretation of the Bible where he can select certain verses to justify the use of violence on those who have refused to support him.<sup>90</sup>

Kony's strategy of warfare was concentrating attacks mainly on NRA Soldiers or troops. This however changed onwards of 1991 to include civilians. This change was due to the government support of the community based initiatives of arming them in infamous bow and arrow, civil defense militias in Gulu and Kitgum.

At the same time, the government launched its first offensive in an operation code named Operation North. This offensive was successful as the LRA capacity was damaged. In the same measure this operation created a lot of resentment from the community because of the arrest of key Acholi politicians. At the height of the military operations, a parallel peace process was pursued, The 1994 Gulu ceasefire. Arguably the most fruitful peace initiative to date, it was led by then-Minister for the Pacification of the North, Betty Bigombe.<sup>91</sup>

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<sup>89</sup> Lomo, Z. and Hovil, L., 2004, *'Behind the Violence: The War in Northern Uganda'*, Monograph No 99, Institute for Security Studies, Pretoria, South Africa

<sup>90</sup> Interview with Catholic Priest St Mary Church Lacor 10<sup>th</sup> June 2018, conducted by Author

<sup>91</sup> Bigombe was an Acholi from the North.

The talks made tremendous progress with ceasefire agreed and face to face talk with Kony himself. However despite the progress, the initiative failed as a result of miscommunication, vested interest of key government figures and politicians. Furthermore the strict deadline that was imposed by Museveni's made it a challenge to comply with. Museveni stipulated tight turnaround period of seven days for negotiations. With no option left the LRA's alternative was to go into Sudan for armament.<sup>92</sup>

In 2002, the government launched a second phase of military operation, Operation Iron Fist was launched. The operation spread into the jungles of Southern Sudan. Under this operation, in which Uganda People's Defense Forces troops attempted to drive the LRA out of Sudan bases. The result of this operation was a worsened the humanitarian situation characterized by a dramatic increase in the number of internally displaced persons (IDPs) across northern Uganda.<sup>93</sup> The war spread to a different Geographic location of east Teso and Lango regions in 2003. As the war progressed, new government-sponsored militias called the Arrow and Rhino groups began to counter the LRA in these areas.

Despite these event, the Acholi under the auspice of Acholi Religious Leaders Peace Initiative (ARLPI), lobbied the government to pass the Amnesty Act in 2000. The amnesty act gave comprehensive reprieve to all LRA fighters who returned from the bush.

### **2.3 The Role of Regional, National and Local Politics**

One of the key component of the conflict in Northern Uganda is that, it is fueled by hostility between Uganda and Sudan. These two neighbors have for long supported insurgences on

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<sup>92</sup> Afako. B. *Lessons from past peace initiatives*, monograph commissioned by the Civil Society Organizations for peace in Northern Uganda, 2002

<sup>93</sup> Following the 11 September terrorist attacks in the United States, the LRA was included on the U.S. 'Terrorist Exclusion List'



each other's territory. For instance, Amanda Reinke notes the 1990s was marked by Uganda and using the rebels to fight proxy wars.<sup>94</sup> Finally, it continues the North-South conflict that has marked Ugandan politics and society since independence.<sup>95</sup>

Internal within Uganda has been the issue of regional divisions. These division were heightened by post-independence regimes that this work makes reference to.<sup>96</sup> Central to these has been the government approach which fails to either to identify and priorities the issue of nation-building. Furthermore has been deliberate use of approaches that failed to address the problem or reinforce disunity. Narrow separate political interests including segregation and prejudice to alternative ideas and groups were the root causes of tension in these regimes. Most government regimes have been known for politics of patronage, where they have rewarded loyal supporter and punish those who aren't in favor of them. Regime have been known to promote into government positions people from their regions, employed and surrounded themselves with relatives, in-laws and friends and people from their own ethno-regional-religious group. They have used these to play against each other for example Tito Okello's government is still remembered for it looting on the areas of Lango and Teso. This is distinctly remembered by communities from the Lango and Teso areas, such sentiments have with serious implications for the current conflict. As member of the community said:

From time memorial, the Acholi are known not to be very kind hearted people.<sup>97</sup>

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<sup>94</sup> Amanda J. Reinke *Gendering Peacebuilding in Post-conflict Northern Uganda*. Journal of Global Initiatives: Policy, Pedagogy, Perspective (2016), p. 76.

<sup>95</sup> International Crisis Group, *Northern Uganda: Understanding and Solving the Conflict* (14 Apr 2004)

<sup>96</sup> Sec chapter 2.

<sup>97</sup> Interview with Local Counsellor Member, Gulu District, 4th June 2018, conducted by Research Assistant.

## 2.4 Conclusion

In Conclusion, the origin and evolution of the conflict post-independence unearths many issues regarding peace, justice, politics, law, livelihoods, humanitarianism among others. To begin with, the war in Acholi land has become an extension of international, regional and national power dynamic.

Colonial policies and legacy has hounded Acholi community to date. Successful governments with an exception to Obote spared no efforts in addressing the division. It is evident that all rebellions were due to policies of marginalization and Museveni failure to rally support and organize the aspirations of those living eastern Uganda.

Although it has been argued that the two major rebellion in Northern Uganda, LRA and Alice Rebellion were seen as viewed not as political motivated but rather a peculiar and outlandish phenomenon, these two demonstrate responses in similar situations of political resistance that resort to religious dogma and justification to secure allegiance stand against repressive authorities, this is characteristic situation where the arena for the expression of legitimate concerns are foreclosed by those in power, and when the continuing nightmare for those left out of the latter often adopt desperate means such as rebellion to survive.<sup>98</sup>

The Nature of conflict in Northern Uganda has characterized by a fighting between the Acholi tribe and Museveni government. The second aspect is that the conflict in an intercommunal conflict that occurs within the Acholi tribe.

The predominantly Acholi LRA and the wider Acholi population, who have been victims of rights violation through systemic violence, indiscriminate killings, child abduction for fighting and sex slave or auxiliaries, and sex slaves. All these are aimed at cowing the Acholi and putting the government into disrepute.<sup>99</sup>

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<sup>98</sup> Key Informant Interview with Army Officer, Kampala City, 30<sup>th</sup> May 2018. Conducted by Author

<sup>99</sup> Key Informant Interview with Army Officer, Kampala City, 30<sup>th</sup> May 2018. Conducted by Author

Thirdly, the regional dynamics has to the conflict, animosity between Uganda and Sudan, who support rebellions on each other's territory has played a major contributing factor. Finally, it continues the North-South conflict that has marked Ugandan politics and society post-independence.

This chapter has further shows that the conflict in Northern Uganda is one coordinated by the well-educated Acholi leaders who seek to promote the interest of the marginalized community. Furthermore, the three major rebellion have one thing in common, they don't seek to promote the general population rather interest of a few elites as the world is led to believe. Finally the possible strategy to address conflict in Northern Uganda will have to be a deliberate move to address the root causes of the conflict which is to be found in its colonial history. The narrative need to change, the Acholi should be deliberately included and feel part of the larger country. The NRM has failed to unite the country after all division that was created by the colonial masters. The government has rather exacerbated the situation and played into the politics of divide and rule. As what stated in an Interview

It has promoted the colonial policies of ethnic division and decades of armed conflict. There is need to specific economic, social and Political initiatives that aim at reinforcing the north position at the central government and enhancing local decision-making. It is also incumbent on the Acholi leaders and politician to develop platforms and systems for articulating the views of their people, and it is in the interest of government of the day to promote the rise of active and reliable Acholi leaders. <sup>100</sup>

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<sup>100</sup> Interview with Local Government official, Gulu 28<sup>th</sup> June 2018 by Author

## **CHAPTER THREE.**

### **PROACTIVE EFFORTS TO END THE CONFLICT**

#### **3.0 Introduction.**

The gross violation of international, humanitarian law, high costs of conflict have caused Ugandans and indeed the international community to call for re-assessment of the approached adopted thus far to end the war. Amongst the Acholi, civil society, religious leader and section of the international community, the terrible experience of unending war has generated a call and pressure on the government to adopt a more reconciliatory and peaceful approach to ending the conflict as opposed to military or retribution against the perpetrators of serious abuses. Through their civic and religious leaders, the government has been called upon to pursue dialogue, enact amnesty as a confidence building measure. The public have held several peace initiatives, which call for peace to be given a chance.

Heeding to these calls and seeing an opportunity to bring the conflict to an end, in mid-2006 the Ugandan government, adopted a more cooperative approach that favored a more reconciliatory form of justice and accountability mechanisms rather than the ICC form of justice which is retributive. This same period, northern Uganda was put on the spotlight, it became highly visible and center for international community attention. This was in sharp contrast from what it was previously, labelled a forgotten conflict.

During this era, with several peace initiatives were aimed at ending the war, the International agendas on humanitarianism, Peace and justice discussion influenced the strategic choices of the Lord's Resistance Army and the Government of Uganda. The need to resolve the conflict gained traction, several peace initiative led by different stakeholder were developed. With the

sudden interest in the conflict, different stakeholders reacted and proposed different approach to the conflict resolutions as will be highlighted below. This chapter will provide an analysis of the various attempts at peaceful resolution have failed.

### **3.1 Government of Uganda.**

The Government of Uganda is a key stakeholder in the conflict, its interest is not only to secure its border but also protection of its citizens. Its approach to the resolution of conflict has been a mix of carrot and stick. In the initial stages of the war- the government adopted a stance of non-negotiation. This comprised of fully fledged military operation against the LRA and as later discussed a more peaceful stance through peace initiatives.

Military Operation, in March 2002, the government launched a military offensive against the LRA called Operation Iron Fist. The operation was expected to last only a week but extended to several times. This operation was against the backdrop of a US lead military drill of UPDF soldiers numbering up to 6,000. The operation was a fully-fledged military action against the LRA. It comprised of military as well as civilian para militant group. As part of the operation, many Acholi were armed with bows and arrows, the group that was to be known as the Arrow Groups.<sup>101</sup>

Community leaders in northern Ugandan districts Gulu and Kitgum were ordered to recruit at least five men each from their respective wards, and the formation of ethnic militias in all the conflict affected regions resulted in an additional 30,000 men being put under arms, though with only the briefest training.<sup>102</sup>

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<sup>101</sup> Apuuli, K. P. (2005), "The International Criminal Court (ICC) and the Lord's Resistance Army (LRA) Insurgency in Northern Uganda," *Criminal Law Forum* (2004), 15: 391-409

<sup>102</sup> Key Informant Interview with Army Officer, Kampala City, 30<sup>th</sup> May 2018. Conducted by Author

The Arrow Groups formation and their operation angered Kony for his deem this as an act of betray by the Acholi people. In Reaction, the LRA mutilated the Acholi.

Kony is believed to have said. If you pick up an arrow against us and we ended up cutting off the hand you used, who is to blame? You report us with your mouth, and we cut off your lips? Who is to blame? It is you! The Bible says that if your hand, eye or mouth is at fault, it should be cut off." This operation made the situation worse. The Acholi were suspicious of the government approach. The looting by the general even made it worse. People viewed this as an attempt to wipe out the Acholi community. The LRA hit back with much vengeance that before. We estimated 5,000 new abductions in the period June 2002 to March 2003 alone. The phenomenon of children commuting into towns for better security on a nightly basis re-emerged on a massive scale.<sup>103</sup>

The Arrow group operation's impact was counter Productive, The LRA expanded it area of attack to include Teso and Lango sub regions. These regions hadn't been much affected by the conflict hitherto.<sup>104</sup>

Human Rights Watch reports that, the operation didn't achieve the objective it sought i.e. to eliminate LRA despite the fact that the NRM government claimed victory, arguing that Kony was no longer a threat and lack a permeant base in the neighboring Sudan, a base that he used to coordinate attack into Uganda. <sup>105</sup> The offensive resulted in massive displacement, and significant suffering to the civilians. As an local NGO worker stated;

The LRA, which evaded the Ugandan army in Sudan, "moved back into Uganda, where it stepped up its abduction, killing, looting, and destruction aimed at civilians and their property. In my view that was the greatest mistake the government did. It should have thought through it decision and not merely danced to the tune of the US pressure. The cost was too high for the Acholi community. The LRA returned more resolved to kill the people than before. It was Massacre.<sup>106</sup>

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<sup>103</sup> Key Informant Interview with Army Officer. Kampala City, 30<sup>th</sup> May 2018. Conducted by Author

<sup>104</sup> Human Rights Watch. "*Abducted and Abused: Renewed Conflict in Northern Uganda.*" Vol. 15, No. 12 (A), Jul 2003, 3

<sup>105</sup> Ibid, 4.

<sup>106</sup> Key Informant Interview with an NGO worker. , Kampala City, 29<sup>th</sup> May 2018, Conducted by Author

Alongside the Military Operation, the Ugandan army responded with extensive forced displacement of people into camps and increased arrests of the local population. The government forced the Acholi into protected camps. Human Rights Watch<sup>107</sup> states that, it is estimated that the number of IDPs rose to 1.5 million from an initial number of 400,000 prior to the offensive, ranking it the third biggest internal displacement crisis in the world.<sup>108</sup> The situation in these camps were dire, they had limited access to life saving services such as clean water and food, the camps were over crowded, crime was a rift and human Rights Violation were a common place. In an interview to get a proper sense of the situation, it was reported as follows.

People were herded into camps without food, health care, etc. for days at various locations purportedly for screening. Many people died and there were human rights abuses all over. Some innocent civilians were buried alive in Bucoro, while others were shot, crops in the fields were destroyed by the National Resistance Army. The NRA Mobile Battalion nicknamed 'GUNGA' committed homosexual acts even with very old men, raped wives, mothers and daughters in the presence of their families. This painted a terrible picture of the National Resistance Army. At the same time, Kony had also started abducting, raping, and killing of innocent people using pangas.<sup>109</sup>

In a second interview with an INGO worker;

The IDPS were exposed to severe protection threats that undermine their safety, physical integrity and wellbeing. Their ability to access services including education, welfare, and livelihood and justice system is limited by legal, economic and informational barriers. IDPs faced challenges in accessing legal assistance, resulting in persistent risks of arbitrary arrest, detention and movement restrictions.<sup>110</sup>

However despite the counter productivity of the operation, there seems to have been success in the area of amnesty. It stated that the number of rebels reporting to Amnesty commission

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<sup>107</sup> Human Rights Watch, "Unsettled and Divided: Human Rights in Northern Uganda," Vol. 13, Jan 13 (R), pp 1003

<sup>108</sup> Ibid

<sup>109</sup> Key Informant Interview with Acholi Member of Parliament, Kampala City, 31<sup>st</sup> May 2018, Conducted by Author

<sup>110</sup> Key Informant Interview with an INGO worker Kampala City, 31<sup>st</sup> May 2018, Conducted by Author

significantly increased. The pressure exerted by the military offensive forced rebels to surrender. The reports at Amnesty commission increased from to 3,601 in 2004 from a small number of 1,086 in 2002 however this number decline again to 90 in 2007.<sup>111</sup> Effectively these military offensive had the effect of exerting pressure on the rebel group. When the pressure reduced, they took up arms to fight.

As these operation carried on, the government had to deal with the threat in the west Nile National Rescue Front (UNRF II), these were a rebel group that included the UNRF who refused to engage in peace talk with Museveni. At the time of the military offensive, the government of Uganda engaged them in peace talks in the west Nile region. These talks sought to end a conflict that had started in 1979 between the UNRF against the Government of Uganda following the overthrow of the dictator Idi Amin Dada.

The final ceasefire was signed in June 2002. The government attributed it to the operation Iron fist pressure. There was a small number of demobilization as a result of the peace talks which though negligible was a big win compared to recruitment pattern and impact of ceasefire elsewhere.

### **3.2 Peace Initiatives**

Despite the military offensive, the government gave peace a chance. It gave approval for various peace initiatives an opportunity. But these were not fully supported as it was stated in the interview below.

Its support for these initiatives was however often half-hearted. Since Museveni saw the LRA problem as essentially a military one. The LRA

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<sup>111</sup> Schmitz, H. (2013). Rebels without a cause? Transnational diffusion and the Lord's Resistance Army, 1986–2011. In J. Checkel (Ed.), *Transnational Dynamics of Civil War* (pp. 120-148). Cambridge: Cambridge University Press. doi:10.1017/CBO9781139179089.008



argued that Museveni has always been more interested in negotiating surrender than the causes of the conflict.<sup>112</sup>

Although attributed to its own initiatives, it's important to note that Government effort were informed by the pressure from the Northern constituencies and the international community at least to give peace a chance. A pressure that the government had to yield to. Despite the fact that Museveni often used these peace overtures to facilitate military strikes.

This use of the 'carrot' and the 'stick' did not succeed in defeating the LRA or force it to talk or seek surrender under GoU's terms, rather, it contributed to the LRA's further suspicion and distrust of the government and, in all likelihood, LRA reprisal attacks targeting civilians in north and eastern Uganda, and parts of Southern Sudan.<sup>113</sup>

### 3.2.1 Amnesty

With military option to end the conflict failing, the government resorted to pursuing other political initiatives as discussed below. After year of conflict, the Government of Uganda was confronted with the predicament when the Acholi community through it religious leaders demanded for enactment of a law that would provide amnesty to rebels who abandoned rebellion and returned home. As noted.

Conflict-affected communities started to make strong demands for the enactment of an amnesty law. They saw in an amnesty the possibility of bringing an end to the numerous rebellions, which were blighting their communities, and the unfolding national history. For them, an amnesty would create the space for reconciliation, restoring social and political cohesion at the community and national levels.<sup>114</sup>

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<sup>112</sup> Key Informant Interview with Acholi Member of Parliament, Kampala City, 31<sup>st</sup> May 2018. Conducted by Author

<sup>113</sup> Hendrickson, Dylan, Kennedy Tumutegyereize *Dealing with Complexity in Peace Negotiations: Reflections on the Lord's Resistance Army and the Juba Talks*, London: Conciliation Resources, 2012

<sup>114</sup> Key Informant Interview with an NGO worker. . Kampala City, 29<sup>th</sup> May 2018, Conducted by Author

The demand for an alternative and specifically amnesty was informed by its advocates on the basis that the community had grassroots capacity and institution such as cultural institution that can effectively manner conflict resolution even in cases of serious crimes and offences.<sup>115</sup>

According to in-depth interviews with civil society groups and sections of the Acholi population, this is was the constant message received.

Amnesty is compatible with traditional Acholi dispute resolution mechanisms. Culturally, the argument goes, the Acholi's ideas of forgiveness are entrenched as they believe that the bitterness of revenge does not solve the problem. Amnesty it is argued, is rooted in the cultural values of the Acholi people, and is therefore compatible with the context of the LRA insurgency.<sup>116</sup>

As one religious leader interviewee posited,

I was very proud of amnesty when it was announced. Some people say you can't give in to Kony. But when you look at the Acholi people, they believe in "Mato Oput", which is a reconciliation ceremony here. In Acholi culture, there is no death sentence, because they know that the death sentence increases violence. They practice that in their culture, so why not this<sup>117</sup>

Furthermore, a case by those in favor of the amnesty was that the Acholi community should be allowed to use their own traditional mechanism for dispute resolution. They argue that the Amnesty is in line with these, as it recognizes the fact that alternative mechanism for dispute resolution is an option. This study established that while the victims were ready to forgive the combatants, the same would not apply to Kony. From the amnesty perspective, he should only be given conditional amnesty.<sup>118</sup>

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<sup>115</sup> Barney Afako. *Reconciliation and Justice: Mato oput' and the Amnesty Act*. ACCORD Conciliation Resources, 2002

<sup>116</sup> Garth Meintjes. *Domestic Amnesties and International Accountability. International Crimes, Peace, and Human Rights: The Role of the International Criminal Court* (New York: Transnational Publishers)

<sup>117</sup> Key Informant Interview with a catholic Priest , Kitgum , 20<sup>th</sup> June 2018. Conducted by Author

<sup>118</sup> P Tom. *The Acholi Traditional Approach to Justice and the War in Northern Uganda, Beyond Intractability*, 2006

Kony needs to be given amnesty subject to him going through our tradition Justice mechanism, he need to be cleansed. The Amnesty can't do that. It has to be two way approach. He has to own up and be forgiven by the clan and community. <sup>119</sup>

The call for Amnesty was initially rejected by the government. Arguing that the rebels had committed crimes that had to be tried in a competent court. However following intense lobbying and pressure from a cross section on the community both at domestic and internal level, the government compromised, examined the demand and eventually relented. It adopted the proposal of an amnesty package that was comprehensive, which was known as the Amnesty Act of 2000. This act, passed by the Parliament paved way for many rebels including their families to surrender and receive resettlement allowances from the government. In four to five years the number of rebels seeking amnesty grew in significantly. According to Human rights watch report.

It is a mark of its relevance that since 2000, over 26,000 people have responded to the amnesty, abandoning armed rebellion and returning home under the oversight of an Amnesty Commission. <sup>120</sup>

The defection of rebels are a result of the amnesty greatly affected the rebel operations and capability. So many defected and as a result there were less number of fighting forces. On the merit of the Amnesty, an interview with a local council chairman revealed as follows.

An amnesty was declared in respect of any Ugandan who at any time since the 26th day of January, 1986, engaged in or was engaging in war or armed rebellion against the Government of the Republic of Uganda by: actual participation in combat; collaborating with the perpetrators of the war or armed rebellion; committing any other crime in the furtherance of the war or armed rebellion; or assisting or aiding the conduct or prosecution of the war or armed rebellion [and who renounces and abandons war. In my view, for a deeply divided country, therefore, an amnesty for conflict-related crimes represented a necessary first step in a journey out of conflict <sup>121</sup>

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<sup>119</sup> Key Informant Interview with a community Leader . Kitgum , 20<sup>th</sup> June 2018. Conducted by Author

<sup>120</sup> Human Rights Watch, *State of Pain: Torture in Uganda*. March 2004, Vol. 16, No. 4.

<sup>121</sup> Interview with Council Chairman. Gulu District. 18<sup>th</sup> June 2018, conducted by Author

Despite the enactment and passing of the Amnesty act, The Amnesty act came with it challenges. The enactment of the Anti-Terrorism, which is believed to have been informed by the US decision to put the LRA on list of terrorist group, limited the operations of the amnesty making any association with the LRA a criminal act. Furthermore the US-led operation accepted a lot of pressure on the LRA forcing them to rethink their surrender. Further blow to this was the ICC, set further limits on the Amnesty and issued warrants for the arrest of five senior LRA commanders, including Kony himself dealt the final blow.

Although it is an international mechanism intended to reduce impunity for war crimes, many saw the ICC's involvement as at odds with the Amnesty Act and as an obstacle rather than an aid to nationally led peace efforts.<sup>122</sup>

The withdrawal of core provision of the act in 23<sup>rd</sup> May 2012, on account that the war had come to an end dealt a final blow to the amnesty. This argument wasn't sustainable as the war had not come to an end. The government withdrew these provision under controversial circumstance drawing mixed reactions. Those in favor of a peaceful resolution saw this as a lost opportunity whilst, having seen this an opportunity for justice and peace. The withdrawal drew particularly sharp criticism from the conflict affected populations.

The principal concern is the same as 12 years ago; that by removing the amnesty, Uganda has deprived the fight against the LRA of an important tool for encouraging defections. Its defections that could hasten the end of the conflict and prevent further violence. The legal debates about the scope of permissible amnesty will continue to run, but legitimate as it is, debate should not be allowed to paralyze decision-making and sound responses to conflict. For there is, in fact, considerable common ground between proponents and opponents of amnesties: that the majority of combatants who do not bear particular responsibility for the most serious international crimes can lawfully be amnestied and reintegrated into society.<sup>123</sup>

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<sup>122</sup> Key Informant Interview with UNHCR worker, . Kampala City, 28<sup>th</sup> May 2018, Conducted by Author

<sup>123</sup> Key Informant Interview with Human Rights Lawyer, Kampala City, 28<sup>th</sup> May 2018, Conducted by Author

The Amnesty act despite its push for enactment by the Acholi community served only a purpose for which it was established which was to draw as many fighting forces out of the rebellion and integrate them. It never was in the interest of the Acholi population. It never served the purpose of ushering peace and justice that had eluded the North for a long time.

### **3.2.2 Juba Peace Talks.**

The Juba peace talks was dubbed the biggest initiative that attempted to resolve the conflict in Northern Uganda through a peaceful dialogue. The Juba talks were applauded as the best avenue end the conflict . The conflict that had carried on for more than 20 years. Chaired by Riek Machar, south Sudan Vice President. These talks were held from July 2006 through December 2008. Despite its glorification the talks didn't yield much, agreements weren't made drawn on key issues as will be articulated herein later.<sup>124</sup> The delegations at the meeting quickly agreed to an agenda for negotiation. The agendas comprised of key issues names, Justice and Accountability to those affected and the perpetrators; Comprehensive political solutions to the problem of the north; Cessation of hostilities by all warring parties; demobilization, disarmament and reintegration of formers combatants; a permanent ceasefire. Against each of the agenda items, comprehensive and important agreements were arrived at, those only short lived.

The role of Riek Machar as mediator was never contested by the delegation however he faced an enormous task of uniting the parities and overcoming the mistrust that existed amongst the delegates. His task was further complicated by the fact that a key figure in the negotiation, Joseph Kony didn't directly engage in the talks, choosing to attend remotely. This work will

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<sup>124</sup> Institute for security studies.

only focus on two amongst many reason why the Juba talks failed notably the lack of trust amongst the delegates and the ICC indictment, including it implication to the parties involved in the war.

The progress at the talks were quick, however creating traction and political buy in proved a daunting task to the mediator. The talks struggled to achieve a fair and leveled field of play necessary to build trust between the parties, culminating to its failure.

To start with, the government delegation refused to expand the parameter of the talks to include broad social and political issues that had underpinned the LRA rebellion or indeed all rebellion in the North. The government insisted on addressing issues at hand, without looking beyond the conflict to address underlying issues such as marginalization. The faltered position of the government was that all issue spelt out in the agenda needed to be addressed together. The government on its part was keen to negotiate LRA surrender as opposed to negotiating around the causes. This speaks to the approach and the position of Uganda in addressing the conflict from the past. They are keen to find a quick fix solution to the problem failing to address the root cause of the problem.

The government resisted an approach to negotiations that required equal treatment with the LRA, something that Kony insisted on repeatedly. It is reported that Kony stated categorically when informed about the possibility of establishing a special court; He stated bluntly, when the possibility of establishing a Special Court, that unless the Special Court also tries UPDF soldiers he would not sign any peace agreement.<sup>125</sup>

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<sup>125</sup> Key Informant Interview with Human Rights Lawyer. Kampala City. 28<sup>th</sup> May 2018. Conducted by Author

The foregoing brings forth the first complexity of the talk in Juba, which is, lack of understanding and agreement to what the LRA problem was, let alone how to address it. This exposed the first crack in the Juba architecture.

The fact that the talks failed to take into account the LRA issue, the pressure mounted on the delegates as Afako writes

It became subject to contradictory pressures to make it more inclusive and open-ended so the LRA's wider political grievances could be aired, but also to keep it time-bound and focused on working out the technicalities needed to neutralize the LRA military threat, which was GoU's overwhelming priority.<sup>126</sup>

The approach of Museveni and his delegation was one of getting quick wins. They were more interested in the mere absence of war in Northern Uganda, as described by Galtung as Negative peace. For as long as the guns were silent, he Museveni would have claimed victory. He never was keen to address the fundamental question of causes, causes which can be found in his policy of marginalization. According to Warner in her interview with participant at the talks, she reports that

The clash of LRA narratives was apparent in Juba, with a proliferation of actors, mediation initiatives and political agendas at play. The intensity of the rivalries or disagreements among many of those involved in the Juba talks became in itself a significant obstacle to peace.<sup>127</sup>

Another bottleneck and a contributory factor to the failure of the Juba talks was the issues of accountability and reconciliation dubbed the infamous Agenda Item 3, couple with this was the ICC indictment question. The position of LRA in relation to the ICC was that the

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<sup>126</sup> Barney Afako, *Negotiating in the Shadow of Justice*, in *Initiatives to End the Violence in Northern Uganda: 2002–09 and the Juba Peace Process in Accord: An International Review of Peace Initiatives*, published by Conciliation 2010

<sup>127</sup> Warner ten Kate, "Negotiating Peace", talk given at an Expert Meeting on The Lord's Resistance Army: In Search of a New Approach, organized by Clingendael, 25 June 2010

indictment should be withdrawn as a condition for the peace talks to progress. Be that as it may, in its argument that LRA was willing to be subjected to a traditional justice mechanism. In a more of concession they even proposed the possibility of a truth and reconciliation commission.

The Government delegation argued that withdrawal of the indictment was only possible upon successful conclusion on the Peace talk. The approach of carrot and stick is consistent with the approach that the government has used in the past to deal with rebel and lure them out of the bushes, as noted in chapter 2, the Gulu peace accord adopted a similar approach, although it did register some successes, it question the intention and goodwill of the government in resolving conflict but more so in recognizing the legitimacy of LRA.

With such pre condition in place, the parties agreed to a two phased approach to accountability and reconciliation. This approach meant have to deal first with the principles and then the mechanisms. <sup>128</sup> Whereupon the parties signed the Agreement on Accountability and Reconciliation, on 29 June 2007 the parties signed the.

This agreement was important on two folds, firstly it set the framework on moving forward at national level statin that formal criminal and justice measure to be applied to any individual who is alleged to have committed serious crimes or human rights violations in the course of the conflict.” For LRA deemed non state actors the agreement provided for alternative penalties to be introduced taking into full account the gravity of the crimes but with the need for reconciliation been addressed or taken into account.

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<sup>128</sup> Barney Afako, *Negotiating in the Shadow of Justice* ’



The agreement is important to the issue that this work seeks to highlight. i.e. taking into account the view and need to community in as far as Justice and Peace is concerned,

For the first time, in all peace initiatives with exception of amnesty, the agreement referred to the need for effective legal representation, reparations for victims, victim participation in accountability processes, highlighting the special needs of women and children to be taken into account, and the need for an deep analysis of the root causes of the conflict. <sup>129</sup>

The agreement in it context further stated and recognized the importance of traditional justice in achieving some of the goal articulated. Finally, under the same Agreement the government undertook to “deal conscientiously” with the issue of the ICC arrest warrants that had been a looming issue over the crisis. These terms were the most comprehensive and a reflection of the wish of the Acholi community. It’s the author considered opinion that, has these terms implemented then the conflict in Northern Uganda would have perhaps been addressed once and for all.

Despite the momentum and progress at the Talks, The Court issued arrest warrants for the top most LRA leaders, comprising of 5 top commanders Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen and Raska Lukwiya. The Indictment according to a key informant, cast a shadow over Juba, constraining the nature and direction of talks that could take place in the formal mediations. In this interview, he stated that,

The ICC’s intervention caused a storm of controversy. Subsequent to the Prosecutor’s joint appearance with President Museveni, many respondents from the Acholi ethnic community felt that the ICC was associating too closely with one party to the conflict, thus undermining perceptions of the Court’s impartiality. It was also believed that arrest warrants constituted support for a military rather than a peaceful solution to the conflict. <sup>130</sup>

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<sup>129</sup> Interview with Lecturer. Gulu University. 19th June 2018, conducted by Author

<sup>130</sup> Interview with Lecturer. Gulu University. 19th June 2018. conducted by Author

The interview with the academician quoted above revealed that, It was the view of the delegates that the traditional justice mechanism tabled for discussion was the most appropriate form of justice which should have been viewed in parallel to formal justice rather than an alternative to it. As noted in the literature review, this position is similar to one articulated by Tim Allen<sup>131</sup>, who argues that the traditional mechanism is not sufficient to address capital offence or violation of international law and therefore should complement the traditional mechanism. However as has been pointed out in the Literature review, those are opinion of pundits based not on anecdotal evidence by rather subjective personal sentiment devoid of empirical evidence nor backed by community opinion. Opinion that this work highlights in the next chapter.

ICC sidetracked the discussion and instead focused on addressing the needs of either victims or lower rank LRA fighters.

The discussion took a different twist, question of how to provide security guarantees or welfare for Kony and his indicted senior commanders was not on the formal agenda, although addressing these issues would be necessary if a peace agreement were to be signed.<sup>132</sup>

At the cross road of ICC indictment of key LRA leaders, accountability and Justice in the shadow of the ICC indictment, relationship between peace and justice into sharp focus in Juba. For the Acholi community that had been victims of the many decades of war and suffering, they wanted peace to be given a chance. This would only have been achieved through a process that widely accepted. The ICC to them was an impediment to achieving this.

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<sup>131</sup> Allen, Tim. *War and Justice in Northern Uganda: An Assessment of the International Criminal Court's Intervention*, Crisis States Research Centre, London School of Economics, London, February 2005

<sup>132</sup> Interview with Lecturer, Gulu University, 19th June 2018, conducted by Author

One of the victims reported that;

We are tired. This thing should just die off completely. But this does not mean a mere end to the sounds of guns. We need those who did bad things to us to admit and take responsibility as well as reparations for their heinous acts. Since the government is not jailing many of them and the ICC did not jail the main man, the government should provide adequate services to us. We need to feel useful; we need to farm, we need better hospitals and services, we need better schools for our children. The ICC can arrest as much as they can, the government as well; but since not all people can fit in jails, the others must drink the most bitter herb that exists in the forest. We just hope we still have elders who are not corrupt to administer this. If the ICC, the government and the elders cannot take up their role, then these visitors South Sudanese refugees should go back home so that we can get space to struggle on our own. It would also be useful if those young men who want to take us back to those dark days are given something to do with their lives.<sup>133</sup>

On the justification and reason why the government referred the case to the ICC, scholars such as Adam Branch contended that the

Ugandan government was in effect using the ICC in order to justify and legitimize a military campaign against the LRA.<sup>134</sup>

In response, the ICC insisted that it is being made a scapegoat. But according to Uganda's Foreign Affairs Minister, Oryem Okello, Tim is cited as saying;

The most important thing is the acceptance of the justice system by the victims, adding that Most Acholi want Kony to be forgiven after going through "Mato Oput".<sup>135</sup>

On a constructive side, at the discussion on the war crimes, and accountability of the same, the presence of the ICC united the delegates, creating consensus on the fragile issues that affected the Acholi people, based on a shared desire to manage the jurisdiction and reach of

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<sup>133</sup> Key Informant Interview with Victim, Kitgum, 28<sup>th</sup> June 2018, Conducted by Author

<sup>134</sup> Nick Grono and Adam O'Brien, "Justice in Conflict? The ICC and Peace Processes" in Waddell and Clark (ed) *Impunity and human rights in international law and practice*. Oxford: Oxford University Press, 1995.

<sup>135</sup> Cocks, Tim. May 30, 2007. *Uganda Urges Traditional Justice for Rebel Crimes*. Reuters. Retrieved on July 21, 2007 from <http://lite.alertnet.org/thenews/newsdesk/L30706130.htm>

international criminal justice. This culminated in the crafting of the Accountability accord.

According to Anna,

The procedural and substantive aspects of the accords masked the highly complex dynamics at play at Juba, and represented a simulation of what a set of accountability agreements perhaps, might, or should, look like. In reality, they comprised a pragmatic and self-interested bargain: a maze of protective possibilities and narrative shaping opportunities; and a means by which to overcome frustrating constraints imposed by warrants. Both delegations could ultimately agree on the importance of these objectives. For donors and activists, the agreements were presented as a game-changing commitment to transitional justice during peace talks. Outside of the Juba role-play, though, Museveni was plotting his military Plan B and Kony was increasingly distant from his delegation and concerned with self-preservation. By the end of 2008, the war was exported to neighboring regions of DRC and South Sudan, creating a fragile peace in northern Uganda.<sup>136</sup>

This work associates itself with that of, Anna Macdonald,<sup>137</sup> she has argued that the nature of domestic politics that had to be addressed at the peace talks was far significant than the ICC issue or indeed the arrests. Yet despite these the warrant came to denote the intractability of existing power asymmetries in Uganda. The court for the LRA still in the battle field the presence of the court gave them a sense that any political opportunity wasn't viable, to Kony he never believes the court would accord him a fair trial. The court was an alien and creation of the colonialist. Therefore the notion of fair trial was spread-out— "it was not just linked to legal proceedings in a courtroom but, more broadly, to the potential for the LRA high command to get what they wanted out the peace talks". The court presence presented a stumbling block.

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<sup>136</sup> Anna Macdonald (2017) "In the interests of justice?" *The International Criminal Court, peace talks and the failed quest for war crimes accountability in northern Uganda*, *Journal of Eastern African Studies*, 11:4, 628-648. DOI: [10.1080/17531055.2017.1379702](https://doi.org/10.1080/17531055.2017.1379702)

<sup>137</sup> Ibid.

In an interview, on what the perception of the ICC was,

An inscrutable international organization, the ICC was linked inextricably to the NRM and carried with it an apparent power to shape narratives and allocate blame and punishment. It represented, in extreme form, the spectre of absolute silencing and total renunciation; a complete disregard of the community desire for peaceful resolution.<sup>138</sup>

As state above, despite it impediment to the talk, the court presence accorded an opportunity to the parties to agree to develop and agree on a road map for transitional justice as subterfuge.<sup>139</sup>, the complexity of the justice for war crimes couldn't be understood till the delegate engaged in the discussion around political priorities, that was apparent at the discussion on in response to the ICC intervention.

A key, enduring ICC legacy in northern Uganda is not justice, nor peace. It is something more modest but no less significant: a set of domestic transitional justice accords designed to protect both government and rebel leaders from ICC style accountability.<sup>140</sup>

As highlighted in the subsequent discussion, and in the aftermath of the failed Juba talks, the dilemma in pursuing western form of criminal justice such as the ICC in the context of war or post war context took center stage. Several discourses and debates in northern Uganda were based on the above predicament. Whether it was worth pursuing international criminal justice in the context of fragile peace processes at the expense of the traditional mechanism that brought the perpetrators to account and the victim a sense of closure.

While the so-called 'peace versus justice' debate emerged during the work of the International Criminal Tribunal for the Yugoslavia, the case of Uganda convinced many that the debate

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<sup>138</sup> Interview with Lecturer, Gulu University, 19th June 2018, conducted by Author

<sup>139</sup> Brown, *Transitional Justice as Subterfuge*, 'Open Canada.org, 2012. <https://www.opencanada.org/features/transitional-justice-as-subterfuge/> (accessed 25<sup>th</sup> March 2018)

<sup>140</sup> Interview with Lecturer, Gulu University, 19th June 2018, conducted by Author

would become a permanent feature of discourses regarding international justice. In the wake of the public debate about the relative benefits of the ICC prosecution and Acholi traditional justice, some popular assumptions have developed about precisely what Acholi justice has gradually become “a kind of ‘received wisdom’ that the Acholi people have a special capacity to forgive, and that local understandings of justice are based upon reintegration of offending people into society.”<sup>141</sup> He continues that it has become such an institutionalized perspective that it is expressed as a matter of course at virtually every public meeting on the conflict, and appears in most reports and articles. For example, Adam Branch<sup>142</sup> criticizes the ICC intervention on the grounds that it “seek[s] justice through punishment” rather than “forgo punishment in favor of justice through reconciliation”, as he implies is the Acholi way.

The reality, however, is not quite so simple. Although Acholi citizens do regularly insist that forgiveness must be an important element of any justice process dealing with the conflict, the same citizens are also interested in retribution. A 2005 population-based survey in northern Uganda, for example, found that a majority of the respondents believed that LRA leaders should be punished.<sup>143</sup>

Allen similarly reported that the Acholi individuals he interviewed consistently expressed an interest in retribution.<sup>144</sup>

The reason for this apparent contradiction may lie in our use (or misuse) of language: whereas notions of ‘reconciliation’ and ‘forgiveness’ are generally seen as the diametric opposites of ‘retribution’ and ‘punishment’ in western frameworks, they appear to be much more closely related within Acholi understandings. Acholi citizens don’t the difference between retribution and restoration, and spoke of both as being equally important.<sup>145</sup>

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<sup>141</sup> Allen, Tim, *Trial Justice: The International Criminal Court and the Lord’s Resistance Army* London, New York: Zed Books, 2006.

<sup>142</sup> Ibid.

<sup>143</sup> Pham, Phuong and Vinck. Patrick and Stover, Eric. *Forgotten Voices: A Population-Based Survey of Attitudes about Peace and Justice in Northern Uganda* (July 1, 2005).

<sup>144</sup> Supra Note 34.

<sup>145</sup> Allen, Tim, *Trial Justice: The International Criminal Court and the Lord’s Resistance Army* London, New York: Zed Books, 2006.

### 3.3 Religious Groups

Notably for playing a key role in seeking to peacefully resolve the conflict were the Acholi traditional and religious leaders. Through their organization such as Acholi Religious Leaders Peace Initiative and the Acholi traditional leaders (Ker Kwaro Acholi), supported by their counter parts from Lango and Teso counterparts. The Religious groups embarked on advocacy on various issues including. Amnesty and programme to reunited formerly abducted children. On Amnesty the group from Acholi sub region, faced by the huge problems of formerly abducted children and their predicament, the religious leader lobbied the government to unconditionally pardon them and those who intended to return from the bush. A push for a blanket amnesty for such children and the top LRA leadership yielded results when the government passed a comprehensive Amnesty Act was in 2000.

Thanks God, the GOU heeded the appeal from the religious leaders and granted the amnesty unconditionally to all the formerly abducted children and the LRA top leaders inclusive. This was a landmark in an effort to bring to an end the war of insurgency between the LRA and the GOU. by a peaceful means. Amnesty Law, therefore, becomes one of the mechanisms for conflict resolution in Northern Uganda. However, this does not mean that Amnesty Law in Uganda condones impunity. Amnesty Law was put in place specifically to bring an end the war of insurgency between the LRA and the GOU.<sup>146</sup>

The rebels from the ranks within the LRA and other rebel movement heeded to the Amnesty, its reported as of June 2007, nearly 8,000 rebels from the LRA returned from the jungles of south Sudan and granted full amnesty<sup>147</sup> Despite its good intention and drawing rebels from the bush. the Act on its own accord didn't bring the war to an end. However it should be noted that the amnesty in a way portrayed the government position and wiliness to forgive

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<sup>146</sup> Interview with a religious Leader, Gulu. 18<sup>th</sup> June 2018. conducted by Research Assistant.

<sup>147</sup> Amnesty international Report 2007

the rebels and reintegrated them, a significant number returned which had an impact on the moral of the remaining fighting forces.

Besides lobbying on government to pass the amnesty act, the religious leaders and Acholi were involved in other initiatives that reached out directly to the rebels with an urge for them to return home; in a programme dubbed- “home back home”

The Dwogo cen paco (Come back Home) Programme had become very popular throughout Acholi and Lango sub--regions, simply because the response from the formerly abducted children was overwhelmingly unexpected. As a result of these overwhelming numbers of the formerly abducted children from the LRA captivity seeking amnesty, quite a number of Local Organizations sprung up in readiness and willingness to deal with these unexpected situations. Surprisingly, the community’s attitude towards the formerly abducted children from the LRA captivity was very healthy and positive.<sup>148</sup>

On their side, the Acholi traditional leaders over saw ceremonies a mechanism for pursuing justice and reconciliation within the community, in part as negotiated settlement. Ceremonies and cultural practices such as the “Mato Oput” or “bitter root” were within the domain of the traditional leader. The “Mato Oput” is a vision of a localized, non-punitive solution gained support from within and outside the Acholi community to include civil society, many international humanitarian organizations active in northern Uganda, as well as by local NGOs.

The critics of the process however, have argued such ceremonies failed the threshold of human rights and international justice standard. They further argues that the traditional leaders who mediated such a ceremony lacked legitimacy and indeed the interest of the

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<sup>148</sup> Interview with a religious Leader, Gulu. 18<sup>th</sup> June 2018. conducted by Research Assistant.



women and youth weren't taken into account. The traditional leaders, they argued weren't representative of everyone in the community. Women and youth were left out

While there have been numerous attempts to broker peace between the GoU and the LRA over the years, such attempts have always ended in the use of full scale military offenses, all which claimed to eliminate the LRA threat once and for all. Unfortunately, all such attempts failed to realize this lofty objective and instead dissolved all headway made during dialogue.<sup>149</sup>

This work recognizes this and makes a strong case for adaption of the process to include marginalized groups such as woman and youth.

### **3.4 The United Nations**

The UN and OAU involvement can be seen in its support of the peace Process in Juba. The OAU support was a key player in the Juba process, providing political support and lobbying international community to support the process. Like the OAU, the UN provided political support to the process but also forced the international community to pay attention to the process. The support of the United Nations was through its undersecretary Jan Egeland. His provided political support to the Juba peace and appointed former Mozambican Prime Minister, Joaquim Chissano, as the UN Secretary-General's Special Envoy for the LRA-affected areas.

His assertion that northern Uganda was one of the worst humanitarian crises in the world drew attention from the Security Council, which condemned LRA atrocities. It also prompted a significant increase in external intervention from early 2004. This increase in international awareness through UN envoys went hand in hand with a number of wider developments in the humanitarian and international justice fields. Uganda became something of a test case for new international agendas and strategies.<sup>150</sup>

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<sup>149</sup> Wade Snowdon, *Pursuing Peaceful Means to End the LRA Conflict: Recommendations by ARLPI*, ARLPI

<sup>150</sup> Interview with NGO worker, Gulu 18th June 2018, conducted by Research Assistant.

Upon Jan referral to the Council- the Council response to the referral was in its UN classic non aggressive style of condemning the LRA attacks and it violation of international Human rights and Humanitarian law. They demanded and immediately cessation of hostility and attack on civilian. In his report to the UN, Abou Moussa, the Secretary-General's Special Representative and head of UNOCA, told the Council the LRA remained a threat to region peace. He acknowledged development such as capturing its commanders but was quick to note the capacity of them to cause suffering had diminished as a result of the development. That they would likely cause more suffering in the North unless a solution was found.

The strategy must only represent the beginning of vigorous attention by the Council to address the LRA issues, in order to put an end to these atrocities once and for all, he said. Its successful implementation will depend on the level of cooperation and engagement among the affected countries and resource mobilization to address funding gaps.<sup>151</sup>

On the LRA issue, the UN Regional Office for Central Africa (UNOCA), developed a strategy that focused on five key strategic objectives to sough the deal with the LRA threat. The strategy focused not only in Uganda but expanded to address the suffering of people in the neighboring countries of South Sudan, the Central African Republic and Democratic Republic of the Congo. The strategy included the following;

Full operationalization and implementation of the African Union regional cooperation initiative against the LRA; Enhancing efforts to promote the protection of civilians; and Expanding current disarmament, demobilization, repatriation, resettlement Reintegration activities to cover all LRA-affected areas.<sup>152</sup>

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<sup>151</sup> Statement by the UN available UN Security Council website.

<sup>152</sup> UN Security Council website.

In addition to this the population affected were set priority, IDPs situation became a higher priority. At about the same time. In expansion to its mandate of Refugee Protection. UN High Commissioner for Refugees was given the oversight of IDP protection. Under its new mandate, working with the relevant government entity, which was the UN High Commissioner for Refugees develop a guideline for IDP that later was adopted at the National Internally Displaced People Policy, a policy aligned to the UN Principle.

In addition to this, Northern Uganda was used as a test country for the newly developed cluster approach system for UN operation. Through this approach, UN agencies assume responsibility for the humanitarian emergency coordination.<sup>153</sup>

The other objectives were to support the government of Uganda in aspect of rule of law, peace building, human rights and development. They sought to promote a coordinated humanitarian and child protection response in these areas, and to support LRA-affected governments to establish State authority across their territories.<sup>154</sup>

The UN also played a huge role in rallying donor support, funding to the cause in Northern Uganda. In a detailed conversation with a United Nation field officer, it was revealed that

The UN Office for the Coordination of Humanitarian Affairs (OCHA) took the lead in facilitating and coordinating wider donor support for Juba, though faced huge operational challenges in fulfilling this role effectively. Active UN endorsement for the process was nonetheless vital in silencing any doubts about the legality of the process raised by the ICC's issuing of arrest warrants for the LRA the year before. This he said, Opened the way for other donors to put funds into a UN managed donor trust fund, though most had serious reservations post-ICC in supporting a process of dialogue and providing humanitarian aid to indicted war criminals and proscribed 'terrorists.'<sup>155</sup>

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<sup>153</sup> A cluster is when agencies come together in an emergency to achieve a common objective.

<sup>154</sup> Key Informant Interview with UNOCHA staff, Gulu, 20<sup>th</sup> June 2018, conducted by Research Assistant.

<sup>155</sup> Key Informant Interview with UNHCR staff, Gulu, 20<sup>th</sup> June 2018, conducted by Authour.

The UN role was limited to the above. There wasn't significant impact of its support to the peace process. They however were able to support immensely in the humanitarian front, offering lifesaving support and development projects in Northern Uganda.

### **3.5 International Criminal Court.**

Another Key stakeholder was the International Criminal Court (ICC). Its role is seen in its involvement in the Juba peace talks, its indictment of the Key rebel figure has been attributed to the collapse of the Juba Process. The ICC in its website describes itself as a tribunal based in Hague. The court is bestowed through the Rome statute jurisdiction to investigate, bring to trial individuals for the international crimes of violation of international humanitarian Law.

In its operations, the ICC seeks to compliment and step in where National courts are unwilling or unable to try such crimes as listed above. Its stated in its portal that it's The ICC is intension to balance existing domestic justice systems and the ICC therefore only comes into play when condition such as though listed above are met, these include the national courts reluctant or not in position to prosecute criminals.

The ICC operation commenced on 1 July 2002, when the Rome statute was enacted. The statute is a multidimensional treaty which serves as the ICC's basis and governing document. States become member states of the ICC through ratification of the ICC statute. According to information available on the website, Party members currently stand at 123 states.<sup>156</sup>

Its role in the conflict and reaction is important because the ICC issued warrant of arrest amidst Juba peace talks, an action that derailed the talks. The warrants were for the key LRA figures including, Vincent Otti, Raska Lukwiya, Dominic Ongwen. and Okot Odhiambo The

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<sup>156</sup> [https://en.wikipedia.org/wiki/International\\_Criminal\\_Court](https://en.wikipedia.org/wiki/International_Criminal_Court)

background to this was that the president of Uganda, Museveni in December 2003 referred the matter to the ICC, The LRA having labelled a terrorist organization and accused of gross violation of international and humanitarian law.<sup>157</sup> The warrant and ICC intervention generated a lot of interest with both international and national actors looking to see whether the ICC would indeed deliver on its promises of upholding international humanitarian and human rights law, by holding to account those accused of crimes against humanity and war crimes.

This sparked considerable controversy in Uganda. In an interview with civil society actor it was pointed out that

The referral was at odds with the provisions of Uganda's Amnesty Act, which LRA fighters had begun to take up in significant numbers. Their skepticism received an angry response from proponents of international justice, but subsequently prompted a more in-depth discussion both within Uganda and internationally about the role of traditional justice and mechanisms such as truth-telling processes and reparations.<sup>158</sup>

As Barney Afako pointed out,

That this was not an auspicious start to the talks: Influenced by the ICC arrest warrants, international and regional actors, who would normally prop up peace processes, became at best ambivalent about the LRA. The group was now viewed not as a legitimate political force but as a security threat (or nuisance) in the region. Its leaders are seen as mere war criminals. No one wants to touch the LRA.<sup>159</sup>

On the opposite side, those in favor of the ICC intervention argues that it was necessary for such an intervention because it sent a clear message that impunity must not go unpunished.

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<sup>157</sup> see The International Criminal Court. "Warrant of Arrest Unsealed Against Five LRA Commanders." ICC-20051014-110-En. October 14, 2005.

<sup>158</sup> International Center for Transitional Justice & the Human Rights Center. *Forgotten Voices: A Population-Based Survey on Attitudes about Peace and Justice in Northern Uganda* University of California, Berkeley (July 2005) at 9.

<sup>159</sup> Barney Afako. *Negotiating in the Shadow of Justice*.

They based their argument that the intervention drawn attention to the conflict and pressure on the rebels to surrender.

a positive impact, facilitating prospects for realizing sustainable peace, primarily by drawing greater international attention to the conflict and pressuring conflicting parties to resolve it.<sup>160</sup>

International human rights organizations viewed the indictment as the right move to end impunity in the region.

On the other side, the fear of undermining the peace process and indeed alternative such as traditional justice mechanism formed the argument of those that opposed the indictment. The further were concerned that the ICC intervention would compromise the Amnesty process that had a positive impact in drawing rebels from the bus. Scholars such as Adam branch have made case for the traditional approach to Justice being better placed to address the problems created by the conflict. This view is shared by influential Acholi traditional leaders interviewed for this study who against the indictment of the LRA, since they feared that this will prolong the war.<sup>161</sup> When asked for their thought on this, they had this to say

There is no alternative to peaceful resolution to this conflict- War is not an option!<sup>162</sup>

However despite the argument in favor of dropping the warrants of arrest, the ICC pursued it cause to seek justice.

Despite the increased pressure from NGO, Academia and aid workers on the ICC to drop the indictment, so as to give peace a chance, the prosecutor made it clear that the indictments issued by the Court would 'remain in effect and have to be executed.'<sup>163</sup>

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<sup>160</sup> Key Informant Interview with Acholi community Leader, Gulu, 20<sup>th</sup> June 2018, conducted by Research Assistant

<sup>161</sup> Key Informant Interview with Acholi community Leader, Gulu, 20<sup>th</sup> June 2018, conducted by Research Assistant.

<sup>162</sup> Key Informant Interview with Acholi community Leader, Gulu, 20<sup>th</sup> June 2018, conducted by Research Assistant

<sup>163</sup> *ICC Rejects Uganda Rebel Overture*, BBC News, 5 March 2008.

### 3.6 Conclusion.

The interest and reaction of stakeholders to the Peace process has been varying based on political, economic interest. Despite the efforts, the GOU has always been reluctant and opted for military solutions. The Juba Peace process offered the best solution but was complicated by the ICC indictment. However what is notable in the process was the constant demand by the Acholi representatives seen through the various religious initiatives, calling for a peaceful, and Acholi based community led process.

Whilst several attempts have been made to resolve the conflict, one crucial stakeholder has been side-lined, the Acholi community, their values and practices need to be given utmost great consideration. The failed peace attempts leave one alternative at hand or makes case for reconsideration of traditional justice mechanism.

The Acholi people should listened to, they should be given an opportunity to respond to the legacy of present and past atrocities in their own way and employ means that resonate and in line with local traditions.<sup>164</sup>

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<sup>164</sup> Phum, P. et al *Forgotten Voices: A Population-based Survey on Attitudes about Peace and Justice in Northern Uganda*, International Center for Transitional Justice and Human Rights Center, University of California Berkeley (2005).

## CHAPTER FOUR.

### THE TRANSITIONAL JUSTICE MECHANISM

#### 4.0 Introduction

Societies that have experienced protracted civil conflict are often faced by an enormous task in their attempt to address post conflict dilemmas such as accountability. They also face enormous task in forging a headway from decades of gross rights violation, economic upheaval and political turmoil. The challenges include restoration of interpersonal relationship and trust, rectify injustice of the past and amend entrenched divisions within the society but most importantly how to prevent future abuses. For the case of Uganda, an impoverished and rather politically unstable, these task are daunting.

Although the hope of moving forward has been positive, the process of doing has shown is complex as is the conflict. The processes have been marred by criticism, alteration and modification. This chapter will provide detailed discussion of the concept of Transitional Justice, analyze the process, mechanism of reconciliation and address the fundamental question as to whether the transitional Justice mechanism are in line with the aspiration of the community, relevant and meets the threshold of Justice.

#### 4.1 Transitional Justice

There is no universally accepted definition to Transitional Justice, however it involves

Multiple approaches with society that is adopted to deal with injustice of the past such injustice include fundamental violation of rights. The ultimate goal is to restore a democratic society that is governed by rule of law, respect of right both collective and at individual level. <sup>165</sup>

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<sup>165</sup> Robins. Simon. *Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations* Human Rights and International Legal Discourse. (2017) pp. 41-58.



To expound on the above, International Center for Transitional Justice defines it as,

Transitional justice is rooted in accountability and redress for victims. The process puts the victims and their dignity at the forefront by so doing, it signals the way forward for a renewed commitment to make sure ordinary citizens are safe in their own countries from the abuses of their own authorities and effectively protected from violations by others.<sup>166</sup>

Martha Minow unpack the definition above by articulating that justice in the context of the definition amounts to replacing “violence with words and terror with fairness” and “steering a path between too much memory and too much forgetting.”<sup>167</sup> It recognizes victim’s dignity as citizens and as human beings. To understand this in detail, an interview with a lecture on specializing transitional justice revealed as follows.

Transitional Justice explores most tough questions imaginable about law and politics. Thus justice is pursued during this transition period through institutions carefully designed to both address past wrongs and be attentive to the needs of the present and future. A number of judicial and extrajudicial transitional justice approaches have been used to help societies strike the right balance between past wrongs, the needs of the present and future. Those that are most commonly invoked include domestic, hybrid and international prosecutions; truth-telling initiatives; reparations; institutional reform; public apologies, memorials and museums; and blanket and individualized amnesties. In recent years, traditional justice mechanisms have also gained some traction internationally such as Colombia, Guatemala, El Salvador, Sierra Leone, Democratic Republic of Congo, Liberia, South Sudan, the Philippines, Nepal, and other countries.<sup>168</sup>

Justice take different forms, these include but not limited to deterrent, compensatory, rehabilitative, exonerative, restorative retributive justice. Each has its place of application and appropriate time for application and no one model of justice covers all needs. It worth

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<sup>166</sup> “What is transitional Justice?” International Center for Transitional Justice

<sup>167</sup> Martha Minow. *Forgiveness, Law, and Justice*. 103 Calif. L. Rev. 1615 (2015).

<sup>168</sup> Interview with a Lecturer at Gulu University, Uganda on 13<sup>th</sup> June 2018.

noting though that these process have both advantage and disadvantages. This work focuses on two which are, Retributive and Restorative Justice.

#### 4.1.1 Justice Defined

Concepts of Justice is broadly define in two categories, restorative or retributive. To seek further clarity on this, an interview with an academic revealed that.

Whilst retributive justice is primarily concerned with accountability and ensuring that perpetrators do not go unpunished, restorative justice involves active victim, perpetrator, and community participation in a process that ultimately aims to restore relations as far as possible.<sup>169</sup>

The latter has been adopted in context of post war where, there is impoverished, unstable states but more so, the community seeks to bring foreclosure and move past the crimes. This position has been supported by communities as one stated.

The court process is long, it is costly and doesn't bring about Peace. All we want is that this war comes to a complete end. Let them come home, apologize and we hug, cry and make peace.<sup>170</sup>

In an interview, the author sought to know the objective behind formal process and attempt to trace it history. This would help understand why the process doesn't find favor among the community. He said,

Formal Justice Systems is always defined by its retributive outcome. In the specific context of transitional justice, the retributive model has been determinant factor in trying human rights violators.<sup>171</sup>

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<sup>169</sup> Interview with a Lecturer at Gulu University, Uganda on 13<sup>th</sup> June 2018.

<sup>170</sup> Interview with a community Leader- Gulu, Uganda on 13<sup>th</sup> June 2018.

<sup>171</sup> Interview with a Lecturer at Gulu University, Uganda on 13<sup>th</sup> June 2018.

The origins of transitional justice can be traced in Nuremberg trials in the aftermath of the Second World, subsequently to tribunal in Rwanda, Former Yugoslavia and finally the International Criminal Court.<sup>172</sup>

However Traditional models of justice are based on restorative principles.

Restorative justice is a theory of justice that emphasizes repairing the harm caused by criminal behavior. It is accomplished through cooperative processes that include all stakeholders. This can lead to transformation of people, relationships and communities.<sup>173</sup>

Asked what how the it functions, a pundit explained that Traditional Justice essentially seeks to respond to crimes by pointing out the crime and taking steps to repair them by involving all concerned parties. By doing so, it transforms traditional relationship between communities and their governments in responding to crime.<sup>174</sup>

Example of such as the *Gacaca* courts in Rwanda, a traditional system of community-based conflict resolution and justice being adapted to oversee the trials of citizens accused of lower-level involvement in the 1994 genocide; Community ceremonies in East Timor, led by village elders and intended to facilitate the return of those who collaborated with the Indonesian military during their bloody campaign in 1999; and healing rituals in Sierra Leone, conducted to assist the reintegration of child soldiers.<sup>175</sup>

It should be noted though that some traditional justice mechanism incorporate retributive, rehabilitative, compensatory and reconciliatory depending on the Circumstance and the need of the community in which the mechanism is grounded or seeks to address.

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<sup>172</sup> Otley, Bruce L., and Theresa Kleinhaus. "Confronting the Past. The Elusive Search for Post-Conflict Justice." *Irish Jurist* (1966). New Series. 45 (2010): 107-45. <http://www.jstor.org/stable/44027114>.

<sup>173</sup> Centre for Justice and Reconciliation

<sup>174</sup> Ibid.

<sup>175</sup> Interview with a lecturer. Gulu University 10th June 2018 by Author.

## 4.2 Northern Uganda; Traditional Justice Mechanism.

Traditional justice mechanisms has been utilized and being advocate for to encourage recovery and society reconstruction as part of transitional justice processes An interview with a clan leader revealed that

The traditional justice mechanism in Acholi is not retributive, having five key criteria. Talking about the process he articulated that all parties involved trust the officials leading the process. Second, the process is voluntary. The perpetrator will be motivated by the spirits to come forward on his or her own behalf and if not, will suffer the consequences of cen. Spirit of the Dad Third, truth telling to determine the required amount of compensation, identify the proper ritual or ceremony required, and promote reconciliation between the parties. Fourth, compensation to restore balance between the parties. The level of compensation varies according to the category of crime, this is normally paid in the form of livestock or its monetary equivalent, and is received by a chief Elder from the perpetrators clan. Fifth, and finally, the process is restorative. Because a perpetrator's crime and the victim's injury each extend to their respected families within Acholi society, a single wrongdoing harms the entire community. This harm can only be repaired and cen chased away if truth is established as part of a voluntary process, compensation paid, and the proper rituals or ceremonies are performed.<sup>176</sup>

The whole process is complex but generally accepted within the community because they anticipate that they will carry greater acceptance and significance than the formal process. As was pointed out by an elder.

The traditional way of resolving conflict is as old as our community- its Acholi, it's our way, it's our forgiveness it our freedom, it's our justice. The basis of the process is premised on the fact that traditional society is bound by the doctrines of harmony, good health and unity of the clan. These notions were highly valued.<sup>177</sup>

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<sup>176</sup> Interview with A traditional leader, Gulu 13<sup>th</sup> June 2018 by Author.

<sup>177</sup> Interview with An Acholi Clan leader 13<sup>th</sup> June 2018. Interview by Author. Gulu.

The sentiment above were further shared in another interview where the society is seen as interlinked. Linkage between the spirit of the god and those of human. There is need for harmonious relationship. These relationship involved peace with oneself and his neighbors.

To maximize the wellbeing of the clan as a whole, each member was expected to fulfill different but complementary cultural, productive, and reproductive functions within the hierarchically structured collective. Furthermore, the conduct of each Acholi individual was seen as shaped by, and deeply connected to, the spiritual world. Gods (*Jok*) and ancestor spirits directed the overall Acholi moral order, and these spirits were believed to deliver illness and misfortune (*cen*) whenever a wrong was committed. The *cen* would persist until the offender took appropriate action. These complex spiritual beliefs continue to be held by the majority of Acholi people, and deeply influence Acholi notions of justice.<sup>178</sup>

Acholi tradition ceremonies has been fairly well written about.<sup>179</sup> This work however will focus on two namely; stepping on the Egg which translates to *Nyono Tong Gweno* and "*Mato Oput*" in Luo meaning drinking the bitter root. The choice of this is because of their relevancy in Acholi's quest for justice.

#### 4.2.1 Stepping the Egg- *Nyono Tong Gweno*

Stepping on the Egg or in Acholi language *Nyono Tong Gweno* is a welcome home ceremony that accepts a member back into the family, who has been away from home for an extended period and to repair any problems or feelings of alienation that may have arisen as a result of their absence.<sup>180</sup>

The ceremony involves the returnee stepping on an egg (*tongweno*) placed on a slippery branch (*opobo*) and a stick with a fork (*layebi*), traditionally used to open granaries.

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<sup>178</sup> *Traditional Ways of Solving and Preventing Conflict in Acholi*, Working Paper, January 2005.

<sup>179</sup> *Ibid.*, 26.

<sup>180</sup> *Ibid.*, 26

He went further to explain what the symbols meant and linking them to the ceremony. When asked why the egg and the use of the specific tree branch, he said

The egg is said to symbolize purity. ‘The egg has no mouth, and cannot speak ill of others’. The egg also symbolizes that which is ‘soft’, ‘fragile’, suggesting a restoration of innocence. The *opobo* is a soapy, slippery branch, which helps to cleanse the returnee from any external influences he or she might have encountered in the bush that might be calling them back. The *layebi* is a symbol of welcoming a person back into the home, where the family members will once again share food together. These steps were generally carried out in a private domain or compound, and normally to receive individuals who had been away because of domestic disputes, education, and work or hunting.<sup>181</sup>

This ceremony has been widely used and adopted in Kitgum and Gulu. It has been credited for luring rebel from the bush. Knowing that the process is available and a guarantee that they shall be accepted, many have turned up and be subject to the process. In response to a questionnaire, Acholi traditional leader had this to say;

This ceremony has been put to use to deal with the effects of the LRA conflict. It was first considered as a possible response to the requirement within the 2000 Uganda Amnesty Act that the Amnesty Commission consider and promote appropriate mechanisms of reconciliation in affected areas. Since 2003, traditional leaders have conducted approximately 30 family and communal Stepping on Egg cleansing ceremonies. The ceremony is accompanied by musical and dance performances, the communal sharing of food, and speeches by local officials, traditional leaders, and elders. In total, over 2,500 adults and formerly abducted children are estimated to have participated in one of these communal ceremonies in some capacity.<sup>182</sup>

The process seems to have been well accepted in the community, which points to that face that the Acholi community is a flexible society that is willing to adapt to change even though

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<sup>181</sup> Interview with Acholi Leader. By Author. Key Informant Interview. Gulu June 15<sup>th</sup>, 2018.

<sup>182</sup> Interview with Acholi Leader. Gulu June 15<sup>th</sup>. 2018 by Author

it could adjust its cultural practice. When asked what the reaction of people has been to the modified Process.

He said, the support and reaction to the process has been great and generally acceptable within the community. Those who were associated with rebels and returned, have been accepted within the society they seem to live in harmony with neighbors and making all effort to reintegrate. Stepping the egg, brings a sense of peace in the perpetrator. They feel a heavy burden lifted from their shoulder. There is general harmony in the community after the process.<sup>183</sup>

*According to the Acholi notion of Justice. There is general acceptance once someone goes through the process of cleansing. Central to this is community healing. For the case of the Rebels, the process is reflected in the final integration of the rebels into society. This process is broadly reflected in the "Mato Oput".*<sup>184</sup>

The Acholi people generally fully support this, they are wholly in favor of the process of "Mato Oput" and other rituals that will bring peace and justice. Many of the Acholi people, who had suffered the most at the hands of the LRA, supported this approach. They favored the "Mato Oput" and other traditional rituals that focus on reconciliation, forgiveness and integration as an alternative to the ICC.<sup>185</sup>

The importance of this process is not undermined in the community. There is a strong sense of its importance whilst recognizing that there may be a need to alter the process without losing the fundamental essence of it, which is ushering peace. In the course of discussion with the community, it was pointed out that the process is very important in the society for the reason already made in the work. They believe all those who are no longer taking part in rebellion

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<sup>183</sup> Interview with Acholi Leader, Gulu June 15<sup>th</sup>, 2018 by Author

<sup>184</sup> "Breaking Eggs / Re-Building Societies: Traditional Justice as a Tool for Transitional Justice in northern Uganda" LAW 372 Public Policy & Dispute Resolution

<sup>185</sup> Helena Cobban. "Uganda: When International Justice and Internal Peace Are at Odds." Christian Science Monitor (Boston, MA: 2006)

and returning should undergo. They point out that there need to be adaption to have it suited to the present day situation.

A single ceremony will of course be unable to accomplish all of the healing that the Acholi society so desperately requires. As required by Acholi norms of justice, the Stepping on the Egg ceremony is restorative and voluntary, but it does not satisfy the need for compensation and truth telling. These elements will need to be fulfilled through other justice initiatives, traditional or otherwise. Some of these initiatives will need to focus on the particular situation of former abductees, but others will need to be designed to assist an entire population that has endured appalling structural violence for nearly two decades. Further, much of the transitional justice process will not be able to occur until the conflict has ended and communities feel ready to work towards meaningful reconciliation. From this perspective, the Stepping on the Egg ceremony is only a part measure.<sup>186</sup>

Despite its wide usage, general acceptance the ceremony has had it challenges. These challenges questions it validity. An example to illustrated this was provided in an interview where a key informant stated that.

The sheer number of returnees has led to the performance of the ceremony for groups rather than for individuals, and in towns and IDP camps rather than in private homes. Individual ceremonies are not only logistically difficult because of the number of returnees, but also prohibitively expensive given the impoverishment and displacement that most Acholi communities have suffered.<sup>187</sup>

There has been modification made to the process in response to some of it shortcoming. Among the adaption include adaptation of material used in the ceremony to include alternative means of compensation such as use of cash instead of cattle or indeed in-

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<sup>186</sup> Interview with Community Women Focus Group Discussion. Kitgum. June 20<sup>th</sup>, 2018 by Author.

<sup>187</sup> Women Focus Group Discussion. Kitgum. June 20<sup>th</sup>, 2018 by research assistant



expensive materials. There has also been an expansion in the size of people who can go through the ceremony in one go.

In relation to this, adjustment has been made to the location. These can now be conducted in the privacy of homestead and camp setting. The adaption in the process speaks to the fact that cultural and its process evolve over time and need to respond to the changes within the community and society. This is true for the traditional justice mechanism. The process should be driven by the society expectation and accordingly adapted with time. In the context of Acholi, many rituals have over time declined because of abject poverty and conflict. In a Focus Group Discussion it was noted,

The camp is like a tree where you are getting a shelter, it is not like a home where cultural things can be carried out. One of the most meaningful Acholi customs formerly centered on communal fireplaces, where extended families gathered every evening to listen to Elders share stories and proverbs. Since the conflict began, however, this practice has been suspended and the younger generation no longer benefits from the teachings of the Acholi oral tradition. With few economic or educational opportunities available, alcohol abuse and violence have become widespread in the camps.<sup>188</sup>

This work notes that this ceremony is individual focused and ideal for resolving individual conflict it thus fails to recognize and clarify societal norms and values. This argument has been supported by the work of Koulen, who has argued that this process is aligned with Acholi understanding of Justice. It he argues, in sense addresses core issue of traditional justice notably reconciliation but doesn't broadly cover the entire spectrum of Justice.

The key issue that has been apparent from this conflict is that there is a very thin line that separates the victims from the perpetrators. Children who are now deemed perpetrators

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<sup>188</sup> Women Focus Group Discussion. Kitgum. June 20<sup>th</sup>, 2018 by research assistant

have in fact been victims of abduction. The society acknowledges that most returnees were actually abducted yet “it is still extremely hard and painful for individuals who have lost close family members to accept back those who have killed.” The stigmatization by those who have abandoned rebellion or escaped from the fighting forces is still apparent.<sup>189</sup>

On whether the youth respect the process, it was revealed that the youth hold tradition institution in high regard and have a good understanding of its function. A testament that despite the challenges such as the war, breakdown in social norms, the tradition of the Acholi has withstood all and is still relevant. This position has been further strengthened by the constitution of Uganda and further the institution of the Acholi traditional institution. These institutions responsible for among other things overseeing the process of traditional justice mechanism such as the Egg stepping; a tradition is a cultural pride to the Acholi.

The stepping of the egg ceremony is still relevant today. This is demonstrated in that fact that the ceremony is still on going. There is call and demand for the process to be administered within the community. Privately arranged, the families uphold the process. This is notwithstanding that the process is not well known to all Acholi. This should however be seen a case for its relevancy today.

There concentrating effort on such process both now and in the future will ensure that the process is carried on to the future generation. It will also help the Acholi to regain their dignity

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<sup>189</sup> Koulen, S. *Traditional Justice and Reconciliation After Violent Conflict Learning from African Experiences*, Luc Huyse and Mark Salter (eds) Stockholm, International Institute for Democracy and Electoral Assistance (IDEA), 2008.

that has been lost by the way, the cultural institution and the identity that they hold very dear and proud of.<sup>190</sup>

The stepping of the egg is one of the many initiatives that will be essential in the healing process and bringing peace to the North. This makes the case for exploring multiple effort to bring the conflict to an end. The fact that there is a mechanism in place, despite its flaws is better than having not mechanism in place.

An Acholi elder reported as follows;

We have to understand our culture and know what kind of people we are. Are we the kind that are willing to accept other people's mistakes without pointing fingers? Are we the kind of people who can confess truthfully and forgive wholeheartedly? Acholi traditions embody the principles and practices which have been central to the support for reconciliation and amnesty within that community. Forgiveness and reconciliation are said to be at the center of the traditional Acholi culture. However, it is as if the government does not want us to forgive each other. If we as the people of this land say we want to forgive them (LRA) and move on, whose justice is the government pushing for<sup>191</sup>

#### 4.2.2 “Mato Oput” “drinking the bitter root”

The second transitional justice mechanism is “Mato Oput” translated into English to mean drinking the bitter root. “Mato Oput” is a mechanism that is used to forgive and reconcile clans that have fallen out on account of wrong doing. This famous in amongst the Acholi community. The process of drinking the Oput, i.e. bitter herb is symbolic in a sense are at peace and vow not to taste such bitterness again.<sup>192</sup>

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<sup>190</sup> Liu Institute for Global Issues and Gulu District NGO Forum, “*Roco Wati Acoli: Restoring Relations in Acholi-land Traditional Approaches to Reintegration and Justice*”, September 2005. available: <http://www.ligi.ubc.ca/admin/Information/543/Roco%20Wat%201%20Acoli-20051.pdf>. Accessed in July 2018.

<sup>191</sup> Interview with Acholi Elder. Kitgum. June 20<sup>th</sup>, 2018 by Author.

<sup>192</sup> Supra Note 190

The ritual is performed in cases where there has been intentional or accidental killings. In the western sense and legal jurisprudence, these would be akin to murder and manslaughter. The process encompasses the notion of accountability, truth telling and compensation. In doing so, "Mato Oput", seeks to restore broken relationship within the community. It does so by embedding in the process key aspect and principles of truth telling, restoration of loss through compensation and accountability by the person offended. The process is very transparent and independent. The traditional leaders or elder often served as the neutral mediators of the process.

The process is an elaborate yet not complicate process, its starts with intervention of clan elders once an offence is committed. The elder intervene with an objective of defusing tension or allowing for cool off period. The cool down period is important as it prevent the idea of revenge from consuming the aggrieved party. Once established, the elder engage in shuttle diplomacy, during which period the elders determine the fact of the case based on evidence adduced by each party. The elder seek to talk to witnesses as well, these would have been provided by each side of the divide.

The elder upon collecting and evaluating the evidence would invite the two clans with a view of reaching a consensus on what exactly transpired. Upon which they would agree on the nature of compensation that would be adequate based on the crime. The compensation would in principle be paid to the clan that has been offended by the perpetrators clan. The community had established amount of compensation for a given crime based on unwritten by laws. These compensation were often commensurate with the gravity of the crime. Upon payment of adequate compensation and in full, the ritual of "Mato Oput" would commence with the objective of relationship restoration between clans.

It was revealed that nearly universally called “*Mato Oput*”, is held as a means of promoting reconciliation between the clans of the victim and the perpetrator.<sup>193</sup>

Once the process is complete, the two clans resume relationship and put the past behind them. The ceremony is an often whole day, elaborate process. It’s normally accompanied by merry and feasting. As a requirement for the process, each clan is expected to contribute to the ceremony either food or drink or both.

These are cooked, consumed and exchanged to seal the reunification and peace amongst the two clans. The climax of the event is normally the drinking of the bitter root normally mixed with a *kwete*, a local brew. This act symbolizes that both clans are willing and able to swallow bitterness between them. One of the final acts of the ceremony is to channel the power of the spirit medium to determine which family member of the victim’s clan should receive the bulk of the compensation, which is then to be used for bride price and the conception of a child, who will be named after the deceased. Only then will the reconciliation process be formally complete<sup>194</sup>

Nobel as it maybe, this process has come under critic, with argument that in the Magnitude of and scale of crimes in Northern Uganda, the process may not be applicable. Erin Baines<sup>195</sup> has made strong argument and insight on this process stating that, in light of the gross violation of rights, characterized by murder, rape and kidnap, the use of traditional mechanism of “*Mato Oput*” as a form of justice mechanism raises fundamental questions which need to be examined and addressed; she points asks and questions the fundamental aspect of the process for example in such a case who would mediate the process; who would administer the ritual, who would in the circumstance lead the diplomacy process, and own up to atrocities committed, she point out even more complex would be the issue around compensation, noting that

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<sup>193</sup> Interview with Community Woman. By Author. Women Focus Group Discussion. Kitgum. June 20<sup>th</sup>, 2018.

<sup>194</sup> Interview with Community Woman. By Author. Women Focus Group Discussion. Kitgum. June 20<sup>th</sup>, 2018.

<sup>195</sup> “Baines, Erin. The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda. International Journal of Transitional Justice (2007)”

Traditionally, the responsible clan raises compensation as a means of punishment but also as a symbolic act of replacing the life that was lost. It is improbable if not impossible that the clans of those who bear greatest responsibility, the commanders of the LRA, could pay such amounts.

She poses other questions that require consideration, for example on the application of the process to crimes that don't fall under murder. She notes that how would the community address sexual crimes, forced recruitment, abduction, mutilation, mass looting, arson and property destruction. These are pertinent issues which when put to the community in interviews, they responded that the crimes that she lists are addressed in different and elaborate process. Each crime is unique and has a prescribed procedure. The Bone of contention in this discourse is dealing with the most serious crime of murder.

The community further noted the process is important as an individual is considered a member to a clan, therefore the clan takes responsibility for the act of their child, that way the perpetrator is not stigmatized.

Despite the argument that the research finds sustainable, it should be noted that cultural practices and process as articulated above, does indeed address some of the crime but has its limits in as far as crimes of an international nature that fundamentally violates the rights of an individual and classified as war crimes. Local cultural practices and norms apply in few extraordinary crimes committed during war.

In their response, the community notes that

Each specific crime usually requires a unique reconciliation ceremony. Rape, for instance, generally involves compensation and a ceremony called *Moyo Kum*, the cleansing of the bodies of the woman who was raped and of the perpetrator.

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Critics of the process inclusive of Erin, casts a doubt as to whether there are traditional laws that are sensitive to gender for example whether there are law to address rape of the male yet such a crime does exist and we committed during the war. They further note that what would be the fate of other perpetrator such as the UPDF who are known perpetrator. In response to this the community simple said

The UPDF are not Acholi, they are not part of our community, and they shall find justice in their own community and in a manner that is laid down. We can't concern ourselves with people from the outside. Each group has its own procedure that they should adopt. Each to their own.

It worth noting that regardless of whether Acholi within the ranks of UPDF are subject to the traditional mechanism or indeed how such mechanism would be adopted to suit their situation especially when the victim is not of the Acholi community is yet to be seen.

The same question applied to the LRA top official and the NRM government officials. Whether the process or any local process meets and satisfy the interest of the victim and meet the threshold of Justice, Responding to this issue, an elderly woman expressly said that;

Even if the ICC cannot arrest everyone who made out lives deplorable, Kony must be arrested. The rest can be dealt with by the elders and the tradition. If that man is arrested and jailed, I would gladly participate in "Mato Oput" with the smaller criminals.<sup>196</sup>

Finally, it has been said that the process and indeed any other process is not representative, it doesn't reflect the desire of a section of the Acholi community, notably are the Christian who deem the process evil. It has been further noted by feminist that the process is not gender

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<sup>196</sup> Women Focus Group Discussion. Kitgum. June 20<sup>th</sup>. 2018 by Author

sensitive, women are not involved the ritual nor consulted on compensation in the "*Mato Oput*" process.

Since women and girls were targeted in sexual and gender-based ways, and since their needs and aspirations in a justice process differ from those of men because of their gender roles, it is unlikely that "*Mato Oput*" will be able to reflect their interests without significant modification. Additionally, the youth have little knowledge of traditional mechanisms.<sup>197</sup>

Asked about sustainability of the process, the community responded that there is a process that is laid down and how the knowledge is passed on.

Prior to the conflict, traditional education was a nightly process; elders, women and youths would sit around the compound fireplace, elders imparting wisdom on cultural laws and traditions (*wang-oo*). Living in overcrowded camps and fearing LRA attacks and the UPDF curfew, *wang-oo* was discontinued as a practice. Yet youths are the majority of the Acholi population, and were the main perpetrators as well as the main victims of LRA and UPDF violence<sup>198</sup>

#### 4.3 Conclusion

Having experience war for many year, over 20 year to be exact. Tradition justice mechanism is still valid and legitimate within the Acholi society. The British colonial master had for example stripe the Acholi leader of their traditional power. Subsequent governments didn't recognize them either. These precarious situation has further been exacerbated by the conflict.<sup>199</sup> At height of the war and after the conflict. The chief no longer have the privacy of their homes, or the privilege of living within their community. They have migrated to live with relative in towns. Such living arrangement makes it hard for them to execute their role of mediation, cultural rites and most importantly unifying the community. In addition to this, they have lost respect from

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<sup>197</sup> Interview with Acholi Clan leader, Gulu. 13th June 2018 by Author.

<sup>198</sup> Interview with A traditional leader Gulu 12<sup>th</sup> June 2018 by Author.

<sup>199</sup> See Chapter Two of this work.



the young generation. Their role as role model and counsellor to the younger generation has been completely disregarded.

The young generation don't feel obliged to respect and revere the elders in the community. This is attributed to their diminished role in the community but more so because the youth feel self-empowered. They provide for themselves and seldom look to the elder for any form of support. The elder are in live in abject poverty and can hardly procure basic items to enable them effectively execute their duties. This situation needs to be overturned if they are to regain their status. Financial support need to be provided to them, in addition to recognition of their important status by the political power holders.

Given the development in the process and the number of case to deal with, it questionable whether the Acholi elder and traditional elder are up to the task of mediating and arbitrating the process. Consideration of having them trained should be given a thought.

Based on the numerous interviews held during the field work, this work argues that When compare with retributive Justice, Its not in doubt that community based justice mechanism are less effective for it fails to accord an opportunity to the community to express outrage. However the general feeling is that it is better suited to furthering reconciliation development and an end to the conflict. Restorative justice lays emphasis on communication between parties with an aim of reaching a settlement, there are negotiation, and the parties reach a compromise and assume the responsibility for the crime committed. Traditional Justice Mechanism reflects norms held within individual societies, whilst criminal justice focuses more on the universal norms. In Acholi, restorative processes has been fundamental in helping the community understand and clarify norms and values that unites the community.

## CHAPTER FIVE

### DISCUSSION AND CONCLUSION

This chapter provides the conclusions of the study and the recommendations that are aligned with the objectives of the study.

The conflict has come to an end and the region is no longer an arena of active rebellion. However despite this development, the region is riddled by social tension that may erupt into violence, these coupled with the high rates of poverty threatens the delicate peace, development and peacebuilding efforts. This study has shown and as stated to describe the region as a post conflict regions falls short of portraying the reality on the ground. The harsh legacy of the many years of the rebellion lingers on, it remains in the minds of people, through the ongoing post conflict peace efforts. They still talk about marginalization, neglect and political exclusion by the authorities and the need for foreclosure, the need to reconcile the region. The need for lasting peace and meaningful justice.

The root causes of the conflict include militarization of society, de-institutionalizing politics, a history of violence with impunity, and a north-south divide. The second underlying cause for the GoU-LRA conflict is a north-south division. This sub-national divide was exacerbated during the colonial period with Britain's policy of divide and rule. During the colonial period, the southern region of Uganda and its inhabitants were targeted for economic production, location of the capital and university for their collaboration. The result is escalating feelings of betrayal and mistrust that contribute to and characterize the cyclical violence. Yoweri Museveni, native to southwestern Ugandan. and his conflict with Joseph Kony is a continuation of this north-south divide. Furthermore, Museveni's placement of northern

Ugandans into poorly guarded internally displaced persons camps with deplorable conditions continued to perpetuate the north-south divide and mistrust of the GoU.

Furthermore, with no all-inclusive and comprehensive transitional justice process that incorporates traditional mechanisms and sufficient compensation of community is a risk of outbreak of violence. The lack of comprehensive policy of government initiative to address the effects of the LRA war, fueled by new and long-standing grievances, ICC question are keeping northern of temporal peace where trigger to conflict such as marginalization or youth exclusion would likely ignite violence in the event that a trigger is sparked.

The legacy of the war can be seen from the interest that has engulfed the community over the trial of Dominic Ongwen, a senior officer in the LRA. Who is currently under trial, his trial brings to question and indeed to the community concerns about what is really paramount, the notion of western justice of community based justice mechanism. His trial seems to depart from the thoughts and wishes of the community as articulated in the chapter before. .

As demonstrated, there are mixed reactions regarding how justice and peace can be achieved taking into account ICC question and proposals for traditional justice/reconciliation approaches. Interviews with NGO and academic experts suggest that the ICC involvement heightened the Juba process whilst others feel that made it collapse. Before the later stages of the Juba peace process, even the GoU was opposed to traditional mechanisms. Nevertheless, the government passed a legislation in 2000 for amnesty of criminals. The difference between the international perspective and the traditional perspective is that while the latter would forgive the offenders, the former does not see fairness in such a move.

From this work, there are apparent gaps that attention needs to be paid to. The first being whether the process meets the threshold of international justice standards. The second aspect

is how to adapt the process to the current context, where there are many people involved, the nature of crime, may perpetrators involved. To legitimize this mechanism, there needs to be wide consultation within the community and key stakeholder involved in the process. The cultural leader's position will require reinstatement, and fortification within the society. This can only be achieved through significant and deliberate building of consensus within the community.

The work proposes to adapt the current process to address concerns such as considering a single process to deal with crimes that are capital in nature and those considered misdemeanors. In line with the above, the issue of accountability key LRA soldiers, who have committed crimes and atrocities that broad, affecting different people, calls for alteration and forward thinking. Thought should be given on how the process can conform to international standard threshold. Even more consideration should be given on how it will respond and meet the needs of the affected people.

Bearing in mind that the conflict didn't only affect the Acholi nor was it only the Acholi involved in the conflict, therefore thought will need to be given to a complementary mechanism whether traditional or non-traditional, a process modified to achieve Integrity Nationwide, holding all parties, non-Acholi or Acholi to account. The Juba talks which unfortunately failed gave an opportunity for such discussion. They set a good premise upon which such conversation can happen. It is therefore a recommendation on this work that the government revisit the discussion that were held in Juba and implement part of it, especially the discussion on accountability based on Acholi processes. This will set a new, yet important example in both Transitional Justice and international law

The apparent tension between cultural leaders and the government is noted as one of the national-level conflict driver in the country. This is because the government seems to buy into the international law that universal principles of human rights, for instance, should be upheld hence no need to consider traditional justice systems. Pressures are obvious at grassroots level who legitimately represents the interests of Acholi community. The relationship between the two parties i.e. government and cultural leaders have been further strained, as the government perceives the latter as challenging their authority. The above data provides evidence that the relationship between the national government and the traditional systems is already strained. This makes the consideration of the traditional systems by the international legal instruments near-impossible. Nevertheless, this does not downplay the importance of traditional systems of dispute resolution.

The analysis of international law against traditional justice mechanisms indicates that there is a clash of norms for example crimes against humanity under international law can't be pardoned. It therefore follows that any violation of such legislation must be tried in a competent court of Law. There are no option amnesty to a violator of these provisions. This is fortified by the ICC treaty that provides that no amnesty can be provided for crimes that fundamentally violate the law. In its preamble, the treaty spells out that it could be against the purpose of court if prosecution not pursued because of amnesty. The court role, it add is to prosecute rights violators. From a human rights perspective, amnesty does not grant justice to the victims of rape, abductions and the like. On the basis of the foregoing it arguable therefor that the duty to prosecute the LRA falls squarely on the ICC.

However this works argues that Justice should considered the thoughts of the community as well, its aspiration and world view. For the ICC the objective is to punish the offender for the

community it's to restore relationship. In the context of Northern Uganda, a community that is grappling with reconstruction, coming to terms with years of bitter war, the least that can be done is to usher in a system that would likely exacerbate the feeling of hate.

The argument is justified by examining the process in which the Acholi handle offences, like manslaughter. These are determined through the institution of the Chiefs, with the overall objective of the process being to promote harmonious relationship in the community, promote reconciliation. As detailed in the previous chapter, the process is elaborate which involves, intervention to cool down the situation amongst other process. The ICC and indeed critic of the traditional process need to appreciate the role of the chiefs and give them a chance to mediate the process, their capacity need to be built through training, provision of resource to effectively manage the process. The process need to be expanded to include women, youth and groups within the community that are often marginalized. The leader position as peace builders should be exploited to achieve peace and Justice. The community still have respect for their position and thus makes them credible in mediating reconciliation.<sup>200</sup>

In the post conflict Acholi land, a robust post conflict reconstruction roadmap is required. The approach to be adopted need to be as holistic as possible. Justice and Reconciliation procedure and mechanism needs to take into account and include the desires of the victims of the conflict, societal traditions. Therefore, processes such as the "Mato Oput" will see to it that broken and severed relationship within the community are mended, that wounds from war are healed and most importantly that the reconciliation is strongly cemented with the fabric of

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<sup>200</sup> W Schabas. "Genocide in International Law: The Crime of Crimes" Cambridge University Press, 2009.

the society, where by the risk of breaking is very minimal. These are the thoughts of the community as discussed in chapter three.

The study of the conflict Uganda has demonstrated that there are enormous body of traditional process that underpin conflict management which contain both retribution and restoration. The overriding objective is to, repair relationship, reintegration, reconciliation of warring parties. The can be only achieved through ““Mato Oput””

These traditional process rely a lot on locally known process, this makes them sustainable. They are sensitive to context and respond to cultural demands. They are broad enough to compass the demands for victims and give the perpetrator a chance to tell their truth and seek forgiveness. This will make the process acceptable.

To the Acholi, on the notion of Justice, simply is restoration of social relationships that have been strained. Justice therefore is restorative. As pointed out by a cultural leader

Acholi can only seek and be at peace, with anger of the conflict forgotten if we are given the chance to go through a process that is known to all of us. Approach that is not imposed nor alien to us.<sup>201</sup>

Justice lays emphasis on harmonious living with member of the community, a reflection that the Acholi are peace loving people. The society encourages people to accept their mistake and own them voluntarily. Individuals are encouraged to forgive and not to seek revenge. This is in line with the theoretic framework of this work, the SCT The Social Capital Theory (SCT) posits that social bonds, trust, networks and reciprocal duties bind members of the society together hence make them to co-exist amicably.. One who was not at peace with the others

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<sup>201</sup> Interview with A traditional leader 12th June 2018. Interview by Author. Gulu.

was considered not in communion with them and therefore, technically, not part of the community. Making peace was a way of becoming part of or coming back to the community. The SCT identified two components of the social capital to wit

The results of this study is consistent with past research and justice theory. The mechanism does have many positive attributes such as enhancing dialogue, and community involvement hence playing an important role in achieving peace.<sup>202</sup> Traditional process in Acholi is functional and hard to abuse for personal gain. Linked to this is the transparent nature of the process makes it even harder to manipulate.

The Acholi Process is a unifying factor and process as it gives the community a chance to bear witness to the process in doing so, the accusation of unfairness is eliminated. The outcome of the process is community driven. The outcomes are sanctioned by the community. The agreement are implemented to the satisfaction of all parties and normally are unquestionable with the entire community satisfied. The degree of compliance is very high. With very low degree of perpetrators avoiding the process. On the other hand, international law does not always take into account local perspectives.<sup>203</sup>

In conclusion the Debate on this issue of Justice in Northern Uganda is heightened. Although this work has demonstrated that the traditional justice mechanism is functional and accepted albeit needs adaptation. The findings of this study show that each part of the divide is important. The study did not seek to determine which mechanism is better- Traditional or International but certainly did highlight that the voices of the Acholi needs to be taken into

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<sup>202</sup> James Ojera Latigo, "Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences" International Idea, 2008

<sup>203</sup> Pham, P. et al. "Forgotten Voices: A Population-based Survey on Attitudes about Peace and Justice in Northern Uganda," "International Center for Transitional Justice and Human Rights Center, University of California Berkeley", 2005.



account. Recognition need to be given to and recognition made to the fact that there is a need to make use of the valuable wealth in traditional approaches to conflict resolution.

Accountability is a fundamental in the context of acceptance of children associated with the conflict. The acceptance of children who had been abducted or involved in war would be beginning of the healing and unifying process in the community.

The second aspect is that Northern Uganda provides an opportunity to implement so aspect of transitional justice that hasn't been tried in the past. For example modification of the process that initially involved a single person to involve many people would be the first of its kind. The conflict in the Northern has indeed drawn significant discussion and question around these concepts. Notwithstanding that the conflict hasn't come to end there are great opportunities to explore these concepts concurrently.

International Justice Mechanism reinforces universal norms, however the traditional system creates an opportunity for restoration and consensus which creates community healing. Warring parties are representative of their community, a community bound by common interest. Traditional system bring about good learning, a learning that is achieved through participation in the absence of formal rules and procedures The value of traditional system is it bring about moral learning, a learning that is achieved through participation in the absence of formal rules and procedures.

Despite the fact that conflict in Uganda has stopped, there is still a strong sense within the community of denied justice. The failure to acknowledge the crimes committed, the lack of a comprehensive compensation program by the government hinders community attempt to rebuild their society and progress past the narratives that divide the nation.

Amidst a culture of silence and impunity for state-led crimes during the war, the truth of several atrocities remains withheld and acknowledgement for sufferings is denied, which continues to perpetuate broad misconceptions such as ‘all Acholi people as perpetrators’ during the war, and denies exposure of other communities to the nuances and layered complexities of sufferings experienced on all sides, particularly in the Acholi sub-region. Furthermore the lack of government institution commitment in proactively address the need of the community dampens the hope of regional reconciliation.<sup>204</sup>

In the transition to a multi-level approach involving different actors will be important. This is particularly important in the discussion of peace building and reconstruction. As explained by one key informant,

Constructive social change is the art of strategically and imaginatively weaving relational webs across social spaces within setting of protracted conflict to build sustainable structures of just peace. In the context of northern Uganda, a ‘lasting and even reasonably just peace depends on a wide array of actors and activities, at all levels of society and between societies, oriented toward the past, the present, and the future.’<sup>205</sup>

To achieve the above will require an approach that which emphasizes inclusivity, integration international instruments with local systems of justice, and the consideration of what justice and peace mean to different stakeholders.

The international instruments should not neglect the traditional systems of peace, justice and reconciliation. Instead, these should be central in arriving at decisions on whom to convict in the ICC as such arrest warrants negatively affect the peace process;

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<sup>204</sup> Interview with A traditional leader 12th June 2018. Interview by Author. Gulu.

<sup>205</sup> Interview with Local Council Chairman. Gulu 13th June 2018. Interview by Author. Gulu.

Traditional leaders should not oppose the formal legal and international systems whose aim should be to deal with criminals whom the traditional justice systems cannot handle;

Finally, there is a need to develop and mobilize community into structure at grassroots that champion peace and reconciliation. These should be composed of respected and trusted community leaders. These structures should use platforms such a community bazars to listen to the voices of the community, identify their needs and collectively use their voice to demand for change.

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