

## CHAPTER ONE

### INTRODUCTION

#### 1.1 Background

Uganda's history since independence in 1962 has been dominated by a series of military coups and brutal regimes that were responsible for grave and systematic human rights violations. The first post-colonial president of Uganda was the Kabaka of Buganda, Sir Edward Muteesa II. Milton Obote, from Northern Uganda and long-time opponent of autonomy for kingdoms in Southern Uganda, including the kingdom of Buganda, was prime minister. On 24 May 1966, Obote ousted Muteesa and assumed his offices of president and commander in chief. Obote further suspended the 1962 constitution, abolished kingdoms and consolidated his control over the military by eliminating several rivals.<sup>1</sup>

The first regime of Milton Obote ended in 1971, when his army commander, Gen Idi Amin Dada took over power in a coup. Amin lasted for eight years and after his fall in 1979, Prof Yusuf Lule and Godfrey Lukongwa Binaisa had short tenures.<sup>2</sup> Uganda held elections in 1980, although disputed; the election ushered in the second rule of Milton Obote. In July 1985, Obote's army general, Tito Okello Lutwa, overthrew and assumed his position in government.<sup>3</sup> Lutwa's rule ended in January 1986, when Yoweri Kaguta Museveni, the incumbent, took over power in a coup.<sup>4</sup> During these various regimes, rule of law was suspended and a series of crimes were committed against civilians by both state and non-state actors. The crimes usually depended on ethnic or regional background, religion and/or societal status of the victim. The various governments subjected Ugandans to systematic

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<sup>1</sup> PM Mutibwa *Uganda since Independence: A Story of Unfulfilled Hopes* (1992) 42 – 64.

<sup>2</sup> Mutibwa (n 1 above) 78 – 96.

<sup>3</sup> Obote, Amin and Lutwa were all from Northern Uganda and their governments and military largely consisted of people from Northern Uganda.

<sup>4</sup> T Allen & K Vlassenroot 'Introduction' in T Allen & K Vlassenroot (eds) *The Lord's Resistance Army: Myth and Reality* (2010) 7.

violations of human rights including arbitrary arrest and detention, extrajudicial killings and torture since independence.<sup>5</sup>

Yoweri Kaguta Museveni (a Munyankole from western Uganda) and his National Resistance Army (NRA) seized control of the government in 1986 after nearly five years of bush warfare, from General Tito Okello Lutwa (an Acholi from Northern Uganda).<sup>6</sup> Museveni's army consisted of mostly Banyankole senior and Baganda junior officers, commanding mostly Baganda veterans and people from western Uganda recruited in the last months of the war. In other words, Museveni's power base was a largely southern army replacing the northern political and military rule known since independence.<sup>7</sup>

In the first decade of his rule, many considered President Museveni successful, as he seemed to follow a more inclusive democratic path by supporting a new political formula to restore civilian control, rule of law and economic growth. His government created a non-partisan 'democratic' system that many enthusiastically embraced. His army was more disciplined and responsive to civilian control than its predecessors and he restored kingdoms that Obote had had been abolished in 1967.<sup>8</sup> An elaborate consultative process led to the 1995 constitution that entrenched rule of law and human rights in its provisions.<sup>9</sup>

President Museveni's government further showed considerable dedication to liberalising the economy and disciplining expenditures. The economy grew steadily, becoming more diversified and with a lower percentage of poverty.<sup>10</sup> However, the success of the first decade of Museveni's rule was marred in the second decade and many felt he was repeating disruptive patterns of past presidents. Like them, he has failed to overcome the ethnic,

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<sup>5</sup> PG Okoth 'The Military in Transition to Democracy in Uganda' in P Langseth et al., (eds) (2<sup>nd</sup> ed) *Uganda: Landmarks in Rebuilding a Nation* (1997) 258–265.

<sup>6</sup> Allen & Vlassenroot (n 4 above) 6.

<sup>7</sup> International Crisis Group 'Uganda: No Resolution to Growing Tension' Africa Report No 187 (5 April 2012) 6; referring to N Kasfir "'Movement" Democracy, Legitimacy and Power in Uganda' in J Mugaju & J Oloka-Onyango (eds) *No Party Democracy in Uganda: Myths and Realities* (2000) 281.

<sup>8</sup> The kingdoms were however, recognised as cultural and not political bodies.

<sup>9</sup> BJ Odoki *The Report of the Uganda Constitutional Commission: Analysis and Recommendations* (1993); in this publication Odoki argues that the Constitution of Uganda must be seen as a 'human rights charter' since human rights serves as the basis for all its provisions.

<sup>10</sup> International Crisis Group (n 7 above) 6; newly discovered extensive oil reserves will generate additional revenue that could stimulate additional development if used properly although to-date Uganda relies heavily on donor funds.

regional and religious divisions that marred Uganda's politics since independence and he has increasingly relied on centralisation, patronage and coercion to maintain control. In addition, the President Museveni's government has confronted more rebellions in many regions of the country than his predecessors have, the longest running being the LRA conflict.<sup>11</sup>

After the coup by Museveni in 1986, Lutwa's ousted army and the many civilian supporters grouped and formed the Uganda People's Democratic Army (UPDA) that led a popular revolt from Northern Uganda. The UPDA was defeated in 1987 and some of the fighters received amnesty in accordance with the Amnesty Statute of 1987 that provided for general and specific pardons to groups that were engaged in rebellion.<sup>12</sup> However, remnants and other dissidents came together to form the Holy Spirit Movement (HSM), led by Alice Auma 'Lakwena.'<sup>13</sup> For almost a year, Lakwena maintained the HSM insurgency, coming within 80 kilometres of Kampala, the capital of Uganda, before being defeated and fleeing into exile.<sup>14</sup>

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<sup>11</sup> International Crisis Group (n 7 above) 6; other rebel groups that cropped up to oppose Museveni's rule include the Uganda Peoples' Army (UPA) composed of the Iteso and closely allied to the Langi; the West Nile Bank Front (WNBFF) formed by Juma Oris in 1998 and defeated by the NRA with the assistance of the Sudanese People's Liberation Army (SPLA) in 1998; some remnants thereafter formed the Uganda National Rescue Front II which operated with Sudanese support in Aringa county in Arua district until it signed a cease fire with the government in 2002; the Allied Democratic Forces (ADF) formed in 1996 by puritanical Muslim Ugandans of the Tablighi Jamaat Sect after a merger with the remnants of the rebel National Army for the Liberation of Uganda. The ADF rebel group was based in the Rwenzori mountains range along Uganda's western border with the DRC and by 1998 had carried out several attacks on civilians leading to large displacement. The group was defeated in December 2005 with assistance from the Congolese government and the UN Peacekeeping mission in Congo.

<sup>12</sup> The National Resistance Council passed this Statute in 1987; under this Statute, four offences; genocide, murder, kidnapping and rape were considered to be heinous to be included within the ambit of the amnesty. The Amnesty Statute professed to encourage various fighting groups and sponsors of insurgency to cease their activities; it in particular targeted Ugandans in exile, many of whom were afraid to return home due to fear of prosecution. Several people were detained but none was prosecuted for crimes excluded from the ambit of the Amnesty Statute.

<sup>13</sup> Allen & Vlassenroot (n 4 above) 8; see also 'Northern Uganda Chronology' Conciliation Resources <http://www.c-r.org/our-work/accord/northern-uganda/chronology.php> (accessed 14 Nov 2011). 'Lakwena' is an Acholi word meaning prophet and Alice Auma Lakwena claimed to be a prophetess sent by God, possessed by a spirit that was guiding her for the good of the Acholi people. She claimed that she named her political grouping the HSM because whatever action the group undertook was under the guidance of the Holy Spirit. For further reading see, R Schlenker *Witchcraft and the Legitimation of the State in Uganda* MA Dissertation, School of Oriental and African Studies, University of London (1999) 15-16; H Behrend 'Alice Lakwena and the Holy Spirit' (1999) *Ohio University Press* 43; R Gersony *The Anguish of Northern Uganda: Results of a Field Based Assessment of the Civil Conflict in Northern Uganda* (1997) 24 – 25; R Doom & K Vlassenroot 'Kony's Message: A New Koine? The Lord's Resistance Army in Northern Uganda' (1999) 98 (390) *African Affairs* 27.

<sup>14</sup> 'Alice Lakwena, 51, Dies in Kenyan Refugee Camp' *Daily Nation* 19 January 2007; for a long time, there were talks and negotiations with the government to resettle Alice Lakwena in Uganda but this never happened and died in Dadaad, a refugee camp in Kenya.

In 1988, Joseph Kony, a young relative of Lakwena claimed that the Holy Spirit had anointed him to continue and complete the work that Lakwena had started.<sup>15</sup> In 1994, Kony's small group of rebels came to call itself the Lord's Resistance Army (LRA).<sup>16</sup> Like Lakwena, Kony promised to overthrow President Museveni's government and to purify the Acholi people from within. He also claimed that the Holy Spirit had revealed that both goals would be accomplished through violence.<sup>17</sup> Kony's early campaign was not a particularly significant affair, although with a small mobile group he maintained a degree of insecurity in Acholiland.<sup>18</sup> This changed in 1994 when the National Islamic Front (NIF), the military junta ruling the Sudan, began supporting the LRA in retaliation for the alleged support that President Museveni's government was giving to the Sudan People's Liberation Army (SPLA).<sup>19</sup> The LRA from then on got a sound base in South Sudan where they received training and weaponry, stepping up operations in Northern Uganda – mainly attacks against the civilian population.<sup>20</sup>

## 1.2 Consequences of the LRA conflict

The LRA's central strategy is the abduction of civilians, mostly children. The abducted are used to carry items looted from raided villages; most are taken to the LRA bases to be trained as combatants and deployed in the frontline while some others, especially the girls

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<sup>15</sup> 'Profile: Joseph Kony' BBC News, 7 Oct 2005 <http://news.bbc.co.uk/2/hi/africa/4320858.stm> (accessed 15 Jan 2009); Allen & Vlassenroot (n 4 above) 9; Gersony (n 13 above) 26; Kony claimed that he inherited the spiritual power from Lakwena and that he was anointed by God to continue with the work she had started. For a long time, little was known about him. He used spiritualism and biblical revelations to maintain support and terrorize his forces that are mainly abducted children. While it is clear the LRA is antigovernment, the group never articulated a coherent political agenda until 2006 Juba peace negotiations when it claimed to be representative of the people in Northern Uganda that it constantly terrorizes.

<sup>16</sup> 'Northern Uganda: The Forgotten War' Catholic Relief Service 2004 <http://icar.gmu.edu/ICC/NorthernUganda.pdf> (accessed 15 June 2009).

<sup>17</sup> Amnesty International 'Breaking God's Commandments: The Destruction of Childhood by the Lord's Resistance Army' AFR 59/001/1997 (1997) 4.

<sup>18</sup> Gersony (n 13 above) 6; Acholiland is the area comprised of the original districts of Gulu, Pader and Kitgum; occupied by the ethnic Acholi; these districts have in recent years been subdivided to include new districts such as Amuru and Nwoya.

<sup>19</sup> Allen & Vlassenroot (n 4 above) 9 – 10; Gersony (n 13 above) 35; Z Lomo & L Hovil 'Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda' (2004) 11 *Refugee Law Project Working Paper* 5; SPLA was the southern Sudan rebel movement (now in government of the newly created state of South Sudan) that was fighting for the independence of South Sudan from the Islamic dominated government in Khartoum.

<sup>20</sup> As above; see also CR Soto *Tall Grass: Stories of Suffering and Peace in Northern Uganda* (2009) 31 – 35.

become sexual slaves and/or domestic workers. The abductees are tortured or killed if they attempt to escape.<sup>21</sup> The World Development Report of 2007 estimates that 66,000 children have been abducted by the LRA since the conflict began in 1986.<sup>22</sup> In 2003 because of the increasing number of abductions, tens of thousands of children in Northern Uganda commonly referred to as 'night commuters', travelled miles on foot to towns and city centres to sleep in bus stations, churches, storefronts and on the street. By 2005, at least 50,000 children made this nightly sojourn.<sup>23</sup> Parents who were afraid that the LRA would attack or abduct their children if they stayed in the villages or IDP camps overnight sent them to the towns.<sup>24</sup> The children, particularly girls, risked sexual violence and other forms of abuse; they were attacked on the way to or at their night time sleeping places, as there was no protection offered during the journey and no supervision in the night.<sup>25</sup>

In April 1989, the government ordered the people out of their homes into 'protected villages' or Internal Displaced Persons (IDP) Camps that worsened the crisis.<sup>26</sup> The government forced nearly two million people from their homes to IDP camps, entire villages and gardens were razed to the ground to cut off means of subsistence and ensure that

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<sup>21</sup> P Pham et al., *Abducted: the Lord's Resistance Army and Forced Conscripted in Northern Uganda* (2007) 18; C Dolan 'Which Children Count? The Politics of Children's Rights in Northern Uganda' in O Lucima (ed) *Protracted Conflict, Elusive Peace Initiatives to end the Violence in Northern Uganda* (2002) 68; Human Rights Watch *Abducted and Abused: Renewed Conflict in Northern Uganda* (2003) 15(12A) 16 – 28; RE Anderson et al., 'Pawns of Politics: Children, Conflict and Peace in Northern Uganda' (2004) *World Vision Report* 17 – 18.

<sup>22</sup> See also Pham et al., (n 21 above) 20; estimate the number of abducted children between 1986 to 2006 at 24,000 to 38,000 children, and suggests that for every three children in the official reception count, ten youth were actually abducted, suggesting a figure of at least 66,000 abductions in total; see also c Blattman & J Annan 'On the Nature and Causes of LRA Abduction: What the Abductees Say' in T Allen & K Vlassenroot (eds) *The Lord's Resistance Army: Myth and Reality* (2010) 134 – 135.

<sup>23</sup> Irin 'Uganda: When the Sun Sets, We Begin to Worry' IRIN in-depth - Life in Northern Uganda 5 January 2004 1.

<sup>24</sup> As above; Soto (n 20 above) 162 – 186 gives a detailed account of the night commuter phenomena; Anderson et al., (n 21 above) 19.

<sup>25</sup> Soto (n 20 above) 171 – 176; from 22 to 25 June 2003, Acholi religious leaders, most notable, Bishop Odama, Bishop Nelson Onono-Onweng, Bishop Baker Ochola, and Sheik Musa Khalil of the Acholi Muslim Community, Fr. Carlos Rodríguez and Fr. Julius Orach spent the nights in the streets with the children trying to highlight their suffering to the government and the international community. This to some extent highlighted the plight of the children to the international community but drew a critical response from the government of Uganda that wanted the international community to believe that the situation was firmly under its control and did not warrant international scrutiny.

<sup>26</sup> O Otunnu 'Causes and Consequences of War in Acholiland' in O Lucima (ed) *Protracted Conflict, Elusive Peace initiatives to end the Violence in Northern Uganda* (2002) 13; 'Uganda Chronology' Conciliation Resources <http://www.c-r.org/our-work/accord/northern-uganda/chronology.php> (accessed 21 Jan 2009); there were at least 59 IDP camps created in the Acholi sub region as of 2006.

civilians leave.<sup>27</sup> The IDP camps were overcrowded, and they lacked basic social services like, education, health, water, and sanitation. Surveys and reports estimated that about 1,000 civilians died per week in the camps from malnutrition, poor sanitation, and fires that often ravaged the camps. In addition, the confinement of people in the camps without adequate protection made it easier for the LRA to carry out raids and massacres.<sup>28</sup>

One of the most notorious massacres perpetrated by the LRA was carried out at Patongo, Pader district in November 2002, where the LRA murdered 20 people and the commander of the group ordered that 2 bodies be dismembered and boiled in a pot in the presence of survivors.<sup>29</sup> The first massacre perpetrated by the LRA took place in April 1995 in Atyak, when a team of LRA rebels commanded by Vincent Otti, who was born in Atyak, lined up more than 200 people on the bank of a river and shot them in cold blood.<sup>30</sup> In July 1996, the LRA killed at least 150 Sudanese refugees in a succession of attacks in Acholi camp, a Sudanese Refugee camp in Northern Uganda. In January 1997, the LRA clubbed or hacked to death at least 400 civilians in villages in Lamwo County. In July 2002, the LRA killed 90 civilians, most of them children in Pajong village, Mucwini, Kitgum district. In October 2002, the LRA killed at least 120 civilians in Amel village. In February 2004, the LRA killed at least 300 civilians, most burnt to death in Barlonyo IDP camp in Lira district among many other massacres. A central feature in all these massacres is that the Ugandan army that in 1995 had been re-designated as the Uganda Peoples' Defence Forces (UPDF) arrived long after the LRA had gone.<sup>31</sup>

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<sup>27</sup> Soto (n 20 above) 121.

<sup>28</sup> Human Rights Watch *The Scars of Death: Children Abducted by the Lord's Resistance Army* (1997) 29 – 30; A Mwenda 'Uganda's Politics of Foreign Aid and Violent Conflict: the Political uses of the LRA Rebellion in T Allen & K Vlassenroot (eds) *The Lord's Resistance Army: Myth and Reality* (2010) 55; indicates for instance that in a camp of 15,000 people, only 14 soldiers were deployed to protect the people and these soldiers were mainly drawn from the local militia group rather than the mainstream army. Often, the soldiers lived inside the camps, where the civilian population provided them as a human shield against rebel attacks. The government put the people in camps and abandoned them.

<sup>29</sup> Soto (n 20 above) 20.

<sup>30</sup> Gersony (n 13 above) 38; Soto (n 20 above) 33; Vincent Otti was the LRA second in command and one of the ICC indictees. There is an indication that he was executed on Kony's orders in 2006 but his death is yet to be independently verified, more discussion on Vincent Otti and the charges against him is contained in chapter two and five of this thesis.

<sup>31</sup> Soto (n 20 above) 33; Gersony (n 13 above) 39.

All these killings resulted in thousands of children being orphaned and heading households, with only a few able to attend school or find sufficient means for support and protection; girls were forced into early marriages and prostitution.<sup>32</sup> There was little or no access to health care, hospitals and health centres were displaced or closed, and those that existed did not have personnel to operate them. Education was disrupted; schools were closed or displaced, leaving two generations of citizens in Northern Uganda without basic education.<sup>33</sup>

Not only the LRA committed atrocities against civilians; Uganda security agents also reportedly committed multiple violations of human rights in Northern Uganda, including summary execution, torture, rape, recruitment of children in armed conflict, and inhuman conditions of detention in unauthorised detention locations.<sup>34</sup> In response to the LRA conflict, the UPDF carried out three major operations, Operation North, Operation Iron Fist and Operation Lightning Thunder as discussed below.

### **1.2.1 Operation North (1991)**

The government of Uganda first launched an operation code named 'Operation North' in March 1991. In preparation for the offensive and counterinsurgency the entire Northern Uganda was locked down, all humanitarian organisations were forced to leave and a media blackout was imposed. The government allegedly committed serious human rights violations against civilians during this period, including torture of about three dozen prisoners in an underground pit in Gulu, extra-judicial killings and detention of 18 prominent politicians and local leaders among hundreds of other people from Acholi.<sup>35</sup>

As part of the operation, the then Minister for the North, Betty Bigombe, created the Arrow Boys, composed of locally recruited young men mostly armed with bows and arrows as a form of local defence.<sup>36</sup> The creation of this group led Kony to believe that he had lost the

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<sup>32</sup> Human Rights Watch (n 28 above) 35.

<sup>33</sup> Human Rights Watch (n 28 above) 35 – 36; Otunnu (n 26 above) 13; Dolan (n 21 above) 71.

<sup>34</sup> Gersony (n 13 above) 45 – 47; Human Rights Watch (n 28 above) 41 – 47.

<sup>35</sup> Allen & Vlassenroot (n 4 above) 11; Human Rights Watch (n 28 above) 41 – 47; Gersony (n 13 above) 31- 32; Amnesty International 'Human Rights Violations by the National Resistance Army' (1991) *Amnesty International AFR59/20/91* 10 - 15.

<sup>36</sup> Gersony (n 13 above) 31.

population support and he blamed civilians for the cooperation with and perceived support of the government. He therefore escalated the reprisals and intensified killings.<sup>37</sup> The LRA started mutilating civilians; cutting off hands, noses and ears; padlocking mouths shut through holes cut in lips, or simply hacking civilians to death with machetes.<sup>38</sup>

‘Operation North’ did not succeed in destroying the insurgency, so Betty Bigombe, leading a delegation of elders and religious leaders from Acholiland initiated the first face-to-face meeting with representatives of the LRA.<sup>39</sup> The LRA asked for general amnesty for its combatants and stated that they would not surrender but were willing to return ‘home’. There were several meetings and protracted negotiations but the parties failed to reach an agreement.<sup>40</sup>

The LRA broke off negotiations on 2 February 1994 and President Museveni in turn gave a seven-day deadline for the LRA to surrender.<sup>41</sup> These events ended the peace initiative and led to the retreat of the LRA into South Sudan and the continued attacks against civilians in Northern Uganda.<sup>42</sup> There were several other attempts at peace talks after this, mainly spearheaded by the Acholi Religious Leaders Peace Initiative (ARLPI) that managed to keep open a window of communication with the LRA. There was mention of peace negotiations but neither the LRA nor the government of Uganda committed to it.<sup>43</sup>

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<sup>37</sup> Accord ‘Uganda: Northern Uganda Chronology’ <http://www.c-r.org/our-work/accord/northern-uganda/chronology.php> (accessed 15 April 2011).

<sup>38</sup> C Dolan ‘What do you Remember? A Rough Guide to the War in Northern Uganda’ (1986 – 2000) (2000) 33 *COPE Working Paper* 15.

<sup>39</sup> Gersony (n 13 above) 32; states that observers who resided in Gulu at the time indicate that the operation had a significant impact on the LRA; its military strength significantly reduced and its movement was greatly curtailed, therefore question why the UDF did not take that opportunity to destroy the movement.

<sup>40</sup> Accord ‘Uganda: Northern Uganda Chronology’ available at <http://www.c-r.org/our-work/accord/Northern Uganda/chronology.php> (accessed 15 April 2011).

<sup>41</sup> RR Atkinson ‘The Realists in Juba? An Analysis of the Juba Talks’ in T Allen & K Vlassenroot (eds) *The Lord’s Resistance Army: Myth and Reality* (2010) 205; states that the explanation that the government gave for this abrupt announcement was that the military intelligence of the LRA had contacted the Sudanese government that had agreed to give the LRA arms and other support.

<sup>42</sup> As above; see also CCM Lamwaka ‘Civil War and the Peace Process in Uganda 1986 – 1997’ (1998) 4(2) *East African Journal of Peace and Human Rights* 155.

<sup>43</sup> T Allen *Trial Justice: The International Criminal Court and the Lord’s Resistance Army* (2006) 78; the ARLPI and other groups kept pushing for peace talks and in May 2004 Betty Bigombe travelled to Sudan to make contact with the LRA leader, but failed in the endeavour.



### 1.2.2 Operation Iron Fist (2002)

In March 2002, the UPDF launched a massive military offensive code-named 'Operation Iron Fist' against the LRA bases in South Sudan.<sup>44</sup> The government in Khartoum allowed the UPDF over its borders to hunt down the LRA. The US state department had named the LRA a 'terrorist group'. This agreement was therefore part of the Khartoum government's efforts to broadcast its new status as an engaged member of the international community by distancing itself from the LRA. The agreement, coupled with the return of the UPDF that had been deployed in the Democratic Republic of Congo (DRC), created what the Ugandan government felt was an ideal situation in which to end a conflict that had become an embarrassment and a political liability.<sup>45</sup>

The purported aim of the offensive was to eradicate the LRA insurgency; instead, the LRA moved bases from South Sudan into Uganda and the conflict in Uganda intensified. The LRA escalated attacks, abductions, killings, burning, looting and ambushes on vehicles.<sup>46</sup> The LRA also began to move into areas outside Acholiland, in apparent search for support. However, when the local populace resisted, they extended the attacks to Northeast and Eastern Uganda resulting into widespread displacement and suffering in those regions.<sup>47</sup>

Following the devastation caused by the 'Iron Fist' operation, the LRA conflict gained unprecedented international scrutiny and involvement. In November 2003, the then United Nations Undersecretary General for Humanitarian Affairs and Emergency Relief Coordinator, Jan Egeland undertook a field visit to Uganda, bringing attention to the conflict.<sup>48</sup> Total humanitarian funding increased from 19.5 million US dollars to 56 million US dollars in 2007.

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<sup>44</sup> 'Uganda-Sudan: No Rapid Solution in anti-LRA Campaign' Irin Plus News 27 May 2002 <http://www.irinnews.org/Report.aspx?ReportID=32074> (accessed 30 May 2011).

<sup>45</sup> S Perrot 'Northern Uganda: A "Forgotten Conflict" Again? Impact of the Internationalisation of the Resolution Process' in T Allen & K Vlassenroot (eds) *The Lord's Resistance Army: Myth and Reality* (2010) 190.

<sup>46</sup> Human Rights Watch (n 25 above) 3;

<sup>47</sup> Lomo & Hovil (n 19 above) 34 – 35; 'Uganda: Feature – Hope for Peace in North and End to Suffering' Irin News 12 March 2003 <http://www.irinnews.org/report.aspx?reportid=42034> (accessed 14 Feb 2008).

<sup>48</sup> Perrot (n 45 above) 187; see also 'Uganda Conflict Worse than Iraq' BBC News 10 November 2003 <http://news.bbc.co.uk/2/hi/africa/3256929.stm> (accessed 16 January 2009).

In addition, total official development assistance and aid increased from 817 million US dollars in 2000 to 1.2 billion US dollars in 2005.<sup>49</sup>

In December 2003, President Museveni referred the LRA situation to the International Criminal Court (ICC) that promptly started investigations.<sup>50</sup> On 14 April 2004, for the first time, the United Nations Security Council publicly condemned the atrocities committed by the LRA and expressed concern for the plight of the displaced people.<sup>51</sup> In 2005, the ICC unsealed warrant of arrest against five LRA commanders; Joseph Kony, the LRA leader; Vincent Otti, the LRA second in command; Okoth Odhiambo; Dominique Ongwen and Raska Lukwiya who all held senior posts of equal ranks forming the 'Control Altar' that represents the core LRA leadership responsible for devising and implementing LRA strategy.<sup>52</sup> The warrant of arrest contained general allegations that the LRA were responsible for mass atrocities against civilians in Uganda.<sup>53</sup>

Previous attempts to bring international attention to the conflict had been thwarted by the government of Uganda that repeatedly indicated that the conflict was internal and firmly within its control. The government claimed that a military victory against the LRA was imminent and would be achieved in a matter of weeks.<sup>54</sup> It became clearer with passing

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<sup>49</sup> Perrot (n 45 above) 189; referring to World Bank *World Development Indicators Database: Uganda Data Profile* (2007); UNOCHA Financial Track Service: Uganda (2000), (2002) & (2007).

<sup>50</sup> 'President of Uganda Refers Situation Concerning the Lord's Resistance Army (LRA) to the ICC' ICC Press Release ICC-20040129-44.

<sup>51</sup> 'Press Statement on Northern Uganda by Security Council President' UN Security Council Press Release (SC/8057) AFR/900 14 April 2004 <http://www.un.org/News/Press/docs/2004/sc8057.doc.htm> (accessed 10 March 2009); the Security Council has since then monitored the situation of the LRA conflict, for instance in 2006, Security Council Resolution 1653 (Jan 2006) condemned the LRA alongside other rebel forces operating in the Great Lakes region and called upon the government to renew its commitment to end the conflict and respond to the humanitarian situation; Security Council Resolution 1663 (March 2006) called upon the Secretary General to continuously appraise himself of and make recommendations to the Council about the situation; in May 2007, the Security Council reported that the LRA had not released any children, women or non-combatants from its ranks and voiced deep concern over the issue. The Security Council report also stated that government security forces continue to occupy schools in abandoned communities.

<sup>52</sup> ICC Pre-Trial Chamber II Situation in Uganda 'Public Redacted Version: Warrant of Arrest, Joseph Kony, Vincent Otti, Okot Odhiambo, Dominique Ongwen and Raska Lukwiya' ICC- 02/04 (8 July 2005) paras 7, 8 & 9.

<sup>53</sup> As above para 5.

<sup>54</sup> Perrot (n 45 above) 196; the position of the government was supported by its close allies, the US and the UK in the Security Council and also by Russia and China that have consistently advocated for non interference in national sovereignty. Therefore, attempts to place the situation on the Security Council agenda or to mandate a UN military intervention failed. Uganda continued to convince the UN that a military victory in the LRA conflict was imminent. Uganda further committed to giving regular updates on the situation in Northern

years that the government did not have the ability, or at least the willingness to handle the humanitarian crisis and to end the conflict. In 2005, the UN Secretary General in a report on the protection of civilians in armed conflict compared Uganda to Eastern DRC and Darfur and alluded to the Ugandan lack of adequate and sustained effort to handle the humanitarian crisis and security for the affected population. The report also pointed out the forcible displacement of civilians into poorly protected camps without adequate basic social services that worsened the humanitarian situation. Reports like this, the increased international focus on the LRA conflict and the humanitarian situation in Northern Uganda was especially embarrassing for the government of Uganda as exactions and business of the UPDF and other security organs were closely scrutinised.<sup>55</sup> This grudgingly led to a renewed interest in peace negotiations with the LRA.

On 28 June 2006 in an interview aired on BBC, Kony denied committing atrocities and appeared to call for an end to hostilities;<sup>56</sup> this was in response to an announcement by President Museveni that he would guarantee the safety of Kony if peace were agreed to by July 2006. President Museveni pledged to grant Kony total amnesty and call off ICC investigations if he gave up 'terrorism' by that date.<sup>57</sup> In June 2006, the government of South Sudan formally invited Uganda to attend peace talks in Juba - South Sudan.<sup>58</sup> Uganda accepted the invitation to the Juba talks mediated by Riek Machar, the Vice President of South Sudan. The talks began on 14 July 2006. The then, Internal Affairs Minister, Dr. Ruhakana Rugunda, leader of the government delegation, stated that his main priority was

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Uganda and initiated the Joint Monitoring Committee (JMC) that gave regular updates to the development partners and lessened the pressure to put the situation in Northern Uganda on the Security Council agenda.

<sup>55</sup> Perrot (n 45 above) 195; this report came out almost at the same time with the ICJ ruling in December 2005 of the UPDF violations in the territories of DRC.

<sup>56</sup> This interview was conducted by Sam Farmer of Times (London) and was broadcast live on BBC News Tonight on 28 June 2006 at 2130BST/2230GMT; during the interview, Kony denied committing atrocities. Although atrocities committed by the LRA against civilians in Uganda, South Sudan and DRC are well documented and thousands of civilians, including children who returned over the years from LRA captivity have given accounts the atrocities committed against them and others while with the LRA. It is interesting to contrast this BBC story with accounts by Mareike Schomerus who was also present during the interview; M Schomerus 'Chasing the Kony Story' in T Allen & K Vlassenroot (eds) *The Lord's Resistance Army: Myth and Reality* (2010) 93 - 112.

<sup>57</sup> 'Museveni Pledges to Grant Kony Amnesty' Uganda Radio Networks 4 July 2006 <http://ugandaradionetwork.com/a/story.php?s=6351> (accessed 15 Feb 2009).

<sup>58</sup> 'Uganda: Government to send Team to Sudan over Proposed LRA Talks' IRIN News 28 June 2006.

to obtain a quick ceasefire.<sup>59</sup> The LRA delegation, led by Martin Ojul, stated that the LRA did not accept peace talks because they could no longer fight but suggested that the LRA deemed negotiations as the best way to end the conflict.<sup>60</sup>

The Juba talks then commenced with an agreed five point agenda including cessation of hostilities; comprehensive solutions to the problems of Northern Uganda; accountability and reconciliation; official end of war; and disarmament, demobilisation and reintegration (DDR) of LRA combatants.<sup>61</sup> On 26 August 2006, the government and LRA representatives signed a Cessation of Hostilities Agreement. Under the agreement, the LRA forces were to leave Uganda and gather in two assembly areas protected by the government of South Sudan on the understanding that the UPDF would not attack those areas. By mid September 2006, the LRA had begun gathering in the assembly areas.<sup>62</sup> On 29 June 2007, the two sides agreed on the principles of how questions of accountability and reconciliation would be handled. The parties agreed that both formal domestic criminal justice procedures and traditional justice would play a role.<sup>63</sup> Following this, the government of Uganda through a Legal Notice created a new Division of the High Court – the International Crimes Division (ICD) to adjudicate international crimes.<sup>64</sup>

The parties signed an accord on Disarmament, Demobilisation and Reintegration on 29 February 2008, leaving the signing of a comprehensive peace agreement itself as the last missing action. The mediator planned several ceremonies for the signing, but Kony repeatedly failed to appear to sign the deal.<sup>65</sup> Kony demanded that the ICC first drops its warrant of arrest for the LRA to accept signing of a comprehensive peace deal. He also

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<sup>59</sup> Dr. Ruhakana Rugunda later became Ugandan representative in the Security Council, following the selection of Uganda as a non-permanent member. The author conducted an informal discussion with him on his role in the peace talks on 14 April 2009 in New York where he was based. After 2011 elections, he was appointed as Minister in the new cabinet.

<sup>60</sup> 'Ceasefire First on Kony's Agenda' Daily Monitor 15 July 2006 1.

<sup>61</sup> Atkinson (n 41 above) 214 - 217.

<sup>62</sup> 'Uganda: Most Rebels have left Northern Uganda for South Sudan – army' IRIN News 26 September 2006.

<sup>63</sup> Agreement on Accountability and Reconciliation clause 3.1.

<sup>64</sup> Agreement on Accountability and Reconciliation clause 2.1; stipulates that national legal arrangement composed of both formal and non formal measures to ensure justice and reconciliation should be created; the International Crimes Division was thus created through a Legal Notice in 2008 as the War Crimes Division of the High Court of Uganda and in 2011 re-designated, the International Crimes Division; Legal Notice No. 10 of 2011, The High Court (International Crimes Division) Practice Directions 2011 clause 3.

<sup>65</sup> 'Uganda Rebels Delay Signing Peace Deal' Reuters 11 April 2008 <http://www.france24.com/en> (accessed 20 Jan 2009).

stated that he was seeking clarifications on the operation of the traditional justice mechanism and the kind of punishments domestic prosecutions would levy. Kony thereafter claimed that his negotiating team had misled him on the true nature of the agreement and suspended them.<sup>66</sup>

On 11 April 2008, Kony declared in a communiqué that all the signed agreements were invalid, except the Cessation of Hostilities, which he agreed to extend for five days. This marked the end to the peace talks. Since the failure of the talks, the LRA carried out several attacks in South Sudan and the DRC from its new base in Garamba National Park.<sup>67</sup> In one reported attack in 2008, the LRA killed at least 400 people in a number of villages in the DRC on and after Christmas day.<sup>68</sup>

### 1.2.3 Operation Lightning Thunder and ‘exportation’ of the LRA conflict

On 14 December 2008, the armed forces of Uganda (UPDF), the DRC *Forces Armées de la République Démocratique du Congo* (FARDC) and South Sudan (SPLA) with military and logistical support from the United Nations peacekeeping mission in Congo (MONUSCO) and the US Africa Command (AFRICOM) launched a joint military offensive on the LRA. The aim of the offensive was to root out the rebel group that had become a regional problem.<sup>69</sup> The military offensive, code named ‘Operation Lightning Thunder’<sup>70</sup> failed in its stated aim of rooting out the LRA conflict, instead the LRA rebels scattered across the region, conducting ruthless reprisal attacks against civilians in South Sudan, DRC and Central African Republic.<sup>71</sup>

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<sup>66</sup> ‘Uganda Rebels Suspend Talks, Appoint New Team’ the Sudan Tribune 10 April 2008 <http://www.sudantribune.com/Ugandan-rebels-suspend-peace-talks,26715> (accessed 20 Feb 2011).

<sup>67</sup> ‘Congo Terror after LRA Raids’ BBC News 23 Oct 2008 <http://news.bbc.co.uk/2/hi/africa/7685235.stm> (accessed 14 November 2009).

<sup>68</sup> ‘LRA Rebels Commit New Atrocities’ BBC News 16 Jan 2009 <http://news.bbc.co.uk/2/hi/africa/7834242.stm> (accessed 12 Dec 2009).

<sup>69</sup> ‘UN unanimously backs offensive against Lord’s Resistance Army’ Reuters 22 Dec 2008 <http://www.france24.com/en> (accessed 20 Jan 2009); this military offensive was unanimously backed by the United Nations Security Council that released a statement commending the states in the region for their increased cooperation and the joint effort made to address the security threat posed by the LRA.

<sup>70</sup> Allen & Vlassenroot (n 4 above) 19; this operation was based on a security agreement between Uganda, Southern Sudan and the DRC that had been negotiated back in June 2008. At the end of August 2008, an agreement had also been concluded between the members of the Tripartite-plus-One Mechanism (including DRC, Rwanda, Uganda and Burundi) to neutralise the LRA.

<sup>71</sup> Perrot (n 45 above) 209; ‘Living in Fear after LRA atrocities’ BBC News 28 Jan 2009 <http://news.bbc.co.uk/2/hi/7852086.stm> (accessed 20 Dec 2009).

Most LRA fighters shifted to the remote Garamba National Park establishing a secure base from which they now raid the region.<sup>72</sup>

The LRA conflict is one of Africa's longest conflicts and it steadily intensified, spreading from Acholiland to Eastern and West Nile regions of Uganda to the tri-border area of DRC, South Sudan and Central African Republic.<sup>73</sup> The spread of the conflict is a clear manifestation of how an internal conflict can easily be 'exported' to have repercussions on neighbouring countries. Indeed, Africa Great Lakes Region has experienced recurrent and devastating armed conflicts as well as humanitarian crises that sometime spill across borders. In various parts of the region, the legacy of colonialism, ethnic conflict, weak state structures, and the illegal exploitation of natural resources have given rise to a vicious cycle of violence, displacement, and institutional collapse.<sup>74</sup>

In addition, countries in the region have actively extended military, logistic, economic and financial support to irregular forces operating in the neighbouring territories, which has led to suspicion and mistrust among the regional governments. For instance, immediately after the ICC unsealed the LRA warrant of arrest, the government of Uganda announced its

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<sup>72</sup> Human Rights Watch 'CAR/DR Congo: LRA Conducts Massive Abduction Campaign, New Regional Strategy Needed to Protect Civilians and Rescue Children' (11 August 2010) <http://www.hrw.org/en/news/2010/08/11/cardr-congo-lra-conducts-massive-abduction-campaign> (accessed 09 Dec 2010); to date, the LRA continue to conduct highly coordinated and ruthless attacks against civilians; a website administered by the Invisible Children and Resolve 'The LRA Crisis Tracker' provides regular updates on LRA activities in the region, available at <http://www.lracrisistracker.com/#updates> (accessed 16 July 2012).

<sup>73</sup> J Spiegel & J Prendergast 'A New Peace Strategy for Northern Uganda and the LRA (Strategy Paper)' *Enough Project* 18 May 2008 <http://www.enoughproject.org/publications/new-peace-strategy-northern-uganda-and-lra> (accessed 17 Jan 2012).

<sup>74</sup> M Mamdani *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (2011) 36; indicating that the genocide in Rwanda finds roots in the invasion of Rwanda by the Rwanda Patriotic Front (RPF) (composed of refugees and sons of refugees who fled Rwanda due to ethnic purges by the Hutu dominated government) from Uganda with support of the NRM government in Uganda. By providing this support, Uganda exported its first political crisis since coming into power in 1986 to Rwanda; see also 'Congo Civil War' Global Security <http://www.globalsecurity.org/military/world/war/congo.htm> (accessed 22 Nov 2011); 'Congo War Driven Crisis Kills 45,000 a month: Study' Reuters 22 Jan 2008 <http://www.reuters.com/article/2008/01/22/uscongo-democraticdeathidUSL22280201220080122> (accessed 22 Nov 2011); 'Evaluating Peace and Security in the DRC and US Policy in the Great Lakes Region' Africa Faith and Justice Network <http://afjn.org/focus-campaigns/promote-peace-d-r-congo/30-commentary/788evaluating-peace-and-stability-in-the-rdc-and-us-policy-in-the-great-lakes-region.html> (accessed 22 Nov 2011); indicating that from 1996, Rwanda, Uganda and Angola supported the rebel group, Alliance of Democratic Forces for the Liberation of Congo until the overthrow of the then President, Mubutu Sese Seko. In addition the Congo War (1998 to 2003) drew in eight African Nations including Rwanda, Uganda, Sudan and twenty five armed groups becoming the deadliest conflict since World War II killing an estimated 3.8 million people; millions displaced and millions sought refuge in neighbouring countries such as Uganda, Tanzania, Rwanda and Burundi.

intention to re-enter South Sudan to ‘hunt down’ the indicted LRA leaders and hand them over to the ICC.<sup>75</sup> Previous incursion of Uganda into South Sudan intensified the conflict in Uganda and spread it to the eastern part of the country. It also led to unprecedented number of abductions in the country giving birth to the ‘night commuter’ phenomena. Uganda also used the execution of arrest warrants as reason to re-enter the DRC, a move that the Congolese government resisted.<sup>76</sup> The UPDF had prior to this, invaded the DRC with a stated mission of protecting its borders from the militias in the country but, the Congolese government later accused them of aggression, massive looting, and atrocities against Congolese civilians.<sup>77</sup>

Nonetheless, the concerned governments put their mistrust and suspicion aside and together deployed troops to fight the LRA and protect civilians in the affected areas, but these are too few and ill equipped to provide adequate protection. MONUSCO has also deployed about 1,000 peacekeepers in the LRA affected areas in north North-Eastern DRC, a number, which, according to Human Rights Watch, are too few considering the scale and geographical breadth of the problem, so civilians remain vulnerable to LRA attacks.<sup>78</sup>

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<sup>75</sup> ‘US Lawyer to Probe Kony’ the Daily Monitor 5 Feb 2004.

<sup>76</sup> ‘Museveni Wants to Hunt LRA in Congo’ the New Vision 19 June 2006.

<sup>77</sup> Case Concerning Armed Activities on the Territory of Congo (*Democratic Republic of Congo v Uganda*) ICJ (19 Dec 2005) ICJ Reports (2005) 168; the facts in this case were allegations by the DRC that Uganda violated article 2(4) of the UN Charter and committed acts of aggression against it. In the application, the DRC argued that such armed aggression had involved among others a violation of its sovereignty and territorial integrity; violations of international humanitarian law and massive violations of human rights. Uganda disputed the claim and counter claimed that the DRC had committed acts of aggression towards it, when it attacked its diplomatic premises and personnel in Kinshasa as well as other Ugandan nationals. In the judgment on merits, the ICJ recognised the complex and tragic situation which had long prevailed in the Great Lakes region and the suffering by the local populations. The ICJ observed that instability in the DRC had had negative security implications for Uganda and some other neighbouring states and that by actively extending military, logistic, economic and financial support to irregular forces operating in the territory of DRC, Uganda had violated the principle of non-use of force in international relations and the principle of non-intervention. The ICJ also decided that there was credible and persuasive evidence to conclude that officers and soldiers of the UPDF were involved in the looting, plundering and exploitation of Congo’s natural resources and that the military authorities did not take any measures to put an end to these acts. To further demonstrate the complex situation in the Africa Great Lakes, in less than 2 months after issuing this decision, on 3 Feb 2006, the ICJ rendered its decision on the preliminary objections to jurisdiction and admissibility raised by Rwanda in the case concerning Armed Activities on the Territory of the DRC (New Application: 2002) *The Democratic Republic of Congo v Rwanda*).

<sup>78</sup> ‘CAR/DR Congo: LRA Conducts Massive Abduction Campaign, New Regional Strategy Needed to Protect Civilians and Rescue Children’ Human Rights Watch 11 August 2010 <http://www.hrw.org/en/news/2010/08/11/cardr-congo-lra-conducts-massive-abduction-campaign> (accessed 9 Dec 2010).

The LRA maintains its brutal practice that includes; massacres, mutilations, abduction of civilians, mainly children to serve as soldiers and sex slaves, looting and pillage directed at civilian populations. These atrocities have led to massive displacement and humanitarian crisis in a region already devastated by numerous conflicts.<sup>79</sup> Since 2009 the LRA have killed more than 2000 people, abducted more than 2,500 and displaced over 380,000 in the tri-border area of South Sudan, DRC and Central African Republic though no atrocities have been perpetrated by the LRA in Uganda since 2006.<sup>80</sup> A worrying development is that the LRA tucked away in the tri-border of the DRC, South Sudan and Central African Republic is slipping down the priority list for Uganda. The government redeployed at least two UPDF battalions from Central African Republic to the volatile Karamoja region of Uganda in July 2010.<sup>81</sup> Other competing priorities include Uganda's engagement with the African Union Mission in Somalia (ANISOM) where Uganda currently has 4,600 troops and as of April 2011 planned to send 4000 more.<sup>82</sup>

A ray of hope to end the LRA conflict and capture its leaders is the initiative by the African Union (AU) that has set up a regional mechanism aimed at implementing a comprehensive strategy to address the problems posed by the LRA in the region.<sup>83</sup> Since its launch, the AU initiative has generated high expectations and hopes in the affected countries and attracted interest from a number of international partners, including the European Union, the US and the United Nations.<sup>84</sup> In particular, the US President, Barack Obama in May 2009 signed the LRA Disarmament and Northern Uganda Recovery Act. This law promises to renew

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<sup>79</sup> S Paterno 'The Uganda LRA Allowed to Plunder' the Sudan Tribune 12 Feb 2009 <http://www.sudantribune.com/spip.php?article30154> (accessed 23 Nov 2010).

<sup>80</sup> Resolve 'From Promise to Peace: A Blueprint for President Obama's LRA Strategy' (September 2010); the report and statistics are available on the Resolve website [www.theresolve.org/the-crisis](http://www.theresolve.org/the-crisis) (accessed 14 March 2011).

<sup>81</sup> L Cakaj, 'Field Dispatch: Disturbing Developments in the Hunt for Kony' *Enough Project* (29 June 2010).

<sup>82</sup> 'Uganda to Increase its Troops in Somalia' Hiraan 25 April 2011 [http://www.jiraan.com/news2/2011/apr/uganda\\_to\\_increase\\_it\\_s\\_troops\\_in\\_somalia.aspx](http://www.jiraan.com/news2/2011/apr/uganda_to_increase_it_s_troops_in_somalia.aspx) (accessed 17 April 2011).

<sup>83</sup> 'The African Union Regional Cooperation Initiative against the Lord's Resistance Army' was adopted by Peace and Security Council of the African Union in its 321<sup>st</sup> Meeting held on 22 May 2012 in Addis Ababa; see <http://www.peaceau.org/fr/article/321st-meeting-of-the-peace-and-security-council-on-the-au-led-regional-cooperation-initiative-against-the-lord-s-resistance-army-rci-lra?culture=en&changelocale=0&> (accessed 09 July 2012).

<sup>84</sup> 'Report of the Chairperson of the Commission on the Operationalisation of the AU led Cooperation Initiative Against the Lord's Resistance Army' *African Union, Peace and Security Council* 299<sup>th</sup> meeting in Addis Ababa Ethiopia (22 Nov 2011) PSC/PR/(CCXCVIX) para 16 & 23; the AU plans to open an office in the region to keep a close eye on the situation.



commitments to assist civilians susceptible to LRA attacks and bring the LRA leadership to justice by devising an interagency strategy to prevent LRA violence by apprehending LRA leaders; encouraging defections of mid field commanders; demobilising child soldiers; and investing in sustainable peace.<sup>85</sup> In addition, in October 2011, the US sent one hundred ‘combat equipped’ troops to Uganda to help and advice forces battling the LRA.<sup>86</sup>

Religious and traditional leaders in Uganda have also continued a coordinated effort to promote dialogue and ensure a peaceful outcome of the conflict. They are acting in collaboration with religious, traditional and civic leaders in the countries affected by the conflict. A number of these leaders from the affected countries pooled resources across borders and in March 2009 formed the Regional Civil Society Task Force. This taskforce is building on the long experience of Northern Ugandan civil society in dealing with the LRA to develop a collective peace building capacity. Through shared analysis and experiences, the Task Force advocates regional solution to the conflict and face-to-face talks with the LRA.<sup>87</sup>

The two conflict resolution methods that have been prominent from the start of the conflict - military solution or a negotiated settlement – are still being pursued. Both mechanisms will require a sustained commitment and new diplomatic, financial and material resources from the governments and partners at the regional and international level to coordinate a successful regional effort to end the LRA conflict. The success of this endeavour will open up space to address accountability for atrocities perpetrated in the conflict comprehensively. The first step in ensuring accountability would be to arrest the LRA leadership; prevent the LRA from continuing to commit atrocities against civilians in the region and end the LRA insurgency. As a minimum, there is a need to mitigate the effects of the conflict by enhancing protection of civilians, demobilising and reintegrating members of the LRA forces and providing increased humanitarian assistance to communities affected by the conflict.

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<sup>85</sup> Resolve (n 80 above).

<sup>86</sup> ‘Obama Sends 100 US troops to Uganda to Fight LRA’ New Vision 14 October 2011 1.

<sup>87</sup> E Drew ‘Regional Community Peace Building and the LRA Conflict, A Conversation with John Baptist Odama, Archbishop of Gulu, Uganda’ Conciliation Resources Services <http://www.c-r.org/our-work/accord/cross-border-project/regional-community-peacebuilding.php> (accessed 10 Feb 2011); the Task Force faces huge challenges that include developing relationships across great distances with limited resources, little infrastructure and multiple language barriers.

Nonetheless, the Juba talks ensured calm and stability in the affected areas in Uganda and the Agreement on Accountability and Reconciliation signed in 2007 has set the pace for accountability pursuits in Uganda.<sup>88</sup> The Agreement provides for formal criminal and civil undertaking, use of traditional justice, truth telling and other national measures of reparations for victims.<sup>89</sup> Accordingly, in 2008, the government of Uganda through the Justice Law and Order Sector (JLOS) established a high level Transitional Justice Working Group (TJWG) to give effect to the provisions of the Agreement. The TJWG is comprised of five thematic sub-committees including; international crimes prosecutions; truth and reconciliation; traditional justice; sustainable funding; and integrated systems.

In line with the Agreement on Accountability and Reconciliation that calls for wide consultations with all stakeholders,<sup>90</sup> JLOS started a process of countrywide consultations to get views on appropriate accountability and reconciliation forums.<sup>91</sup> In addition, in 2008, the government of Uganda through a Legal Notice created the ICD to adjudicate international crimes and the division is operational.<sup>92</sup> Its first trial began in 2011 against Thomas Kwoyelo, a former LRA commander captured in the DRC in 2008.<sup>93</sup> The Prosecutor arraigned Kwoyelo in September 2010 and his trial at the ICD commenced on 11 July 2011 after several delays. In a November 2011 constitutional petition, Kwoyelo challenged his prosecution as amounting to unequal treatment before the law (Amnesty Act); the Constitutional Court declared the Amnesty Act constitutional, that Kwoyelo's prosecution amounted to unfair treatment and accordingly ordered the ICD to cease his trial.<sup>94</sup> The state is set to appeal this decision.<sup>95</sup>

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<sup>88</sup> Accountability pursuits were launched by the Justice Law and Order Sector in its Third National Forum held between 30 July and 1 August 2008 in Entebbe, Uganda, for more see [www.jlos.go.ug/](http://www.jlos.go.ug/) (accessed 09 July 2012).

<sup>89</sup> Agreement on Accountability and Reconciliation clause 3.1.

<sup>90</sup> Agreement clause 2.4.

<sup>91</sup> JLOS Report *Transitional Justice in Northern, Eastern Uganda and some parts of West Nile Region* (March 2008); JLOS in addition carried out consultations in eight sub-regions including Buganda, Teso, Bugisu, Bugwere, Busoga, Karamoja, Acholi, Ankole, Toro, Bunyoro, Lango and West Nile of Uganda.

<sup>92</sup> Legal Notice No. 10 of 2011, The High Court (International Crimes Division) Practice Directions 2011 clause 3.

<sup>93</sup> Thomas Kwoyelo was detained in the maximum prison of Uganda at Luzira and was in detention for at least two years before his trial commenced.

<sup>94</sup> *Thomas Kwoyelo Alias Latoni v Uganda* Constitutional Petition No.036/11(Reference) [Arising Out of HCT-00-ICD-Case No. 2/10] Ruling of the Court at para 625.

<sup>95</sup> Further discussion of this case is contained in chapter four of this thesis.

Since 2009, the TJWJ has been undertaking a consultative process aimed at a policy on the operation of traditional justice, truth telling, reparations and reconciliation measures. The TJWG is also in the process of developing a comprehensive National Policy on Transitional Justice.<sup>96</sup> The process that began in 2009 has taken a very slow pace. To date there is yet to be a concerted effort on the part of the government to document, investigate, and provide victims with access to relevant information concerning the violations they and others in the region suffered due to the conflict. The government is yet to make progress in the pursuit of justice regarding the mass atrocities perpetrated in LRA conflict and there has hardly been any systematic information, outreach or consultation with victims on any development or planning for reparations mechanisms.<sup>97</sup>

### **1.3 Statement of the problem**

Tens of thousands of people were killed, tortured, or maimed during of the LRA conflict. Millions were (or are still) displaced, confined to areas with little or no basic social services, many lost property and means of livelihood. The LRA abducted thousands of civilians, especially children, to serve as soldiers, sex slaves and or domestic workers. Many more are at risk of abduction and a significant number remain in the LRA ranks. The LRA conflict with the attendant atrocities, spread from Uganda to South Sudan, DRC and Central African Republic and at the time of writing, still rages on. The ability of the LRA to cause such destruction to human life and property for such a long period of time, covering vast territories, indicates a failure by Uganda and the other regional governments to adequately protect and fulfil their obligations towards civilians in conflict situations as provided for in both humanitarian and human rights law regimes.

The Agreement on Accountability and Reconciliation reached in Juba proposes both judicial and non-judicial measures for accountability for crimes committed in the conflict. The

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<sup>96</sup> Interview with Ismene Zarifis Transitional Justice Advisor of JLOS conducted on 24 Feb 2012. The main complaint by civil society groups is that their involvement in the process is very limited and so is the consultation with the local population. This was further discussed during a meeting to ensure more civil society involvement in the process organised by the African Institute for Strategic Research, Governance and Development hosting representatives from 27 different organisations took place in Kampala on 26 Aug 2011.

<sup>97</sup> Uganda Human Rights Commission & United Nations High Commissioner of Human Rights *"The Dust has not yet Settled"*, *Victims View on a Right to Remedy and Reparations: A Report from the Greater North of Uganda* (2011) 61. This is the biggest concern of civil society groups in Uganda today.

government has made some progress on the creation of the some structures and some policies and legislations are in place. However, progress on the ground is slow as the ICC struggles to secure arrest of the ICC indictees. Uganda referred the LRA situation to the ICC not because it was ‘unwilling’ or ‘unable’ to prosecute LRA perpetrators but because it had failed to capture its leadership and because it needed to gain advantage in a conflict that had become a political liability and embarrassment. However, today, Uganda is still where it was in 2003 before it made the referral to the ICC, since the underlying question of arrest of suspects remain outstanding.

The ICD created in 2008 began its first prosecution in 2010 but this came to a standstill due to the operation of the Amnesty Act.<sup>98</sup> The Amnesty Act, passed in 2000, ensured the pardon of at least 13,000 LRA fighters, including several commanders responsible for international crimes committed in the conflict.<sup>99</sup> Part II of the Amnesty Act that granted a ‘blanket amnesty’ to all engaged in armed rebellion against the government of Uganda lapsed in May 2012 but critical issues remain. For instance, there is still a great concern that not all persons responsible for international crimes in the LRA conflict will face trial.

The DPP indicates that, he will prosecute just about ten LRA commanders in the ICD.<sup>100</sup> Furthermore, it is unclear whether the DPP will prosecute culpable LRA commanders granted amnesty in the event that the Supreme Court overturns the 2011 Constitutional Court ruling. It is not clear if all LRA members granted amnesty would be subject to other non-Prosecutory accountability measures envisaged under the Agreement on Accountability

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<sup>98</sup> Since its creation in 2008, the ICD started hearing in the case against Thomas Kwoyelo, a former commander with the LRA for war crimes and domestic crimes committed in Uganda during the conflict. In 2011, Kwoyelo petitioned the Constitutional Court of Uganda asking it to declare his prosecution unconstitutional arguing that he is entitled to amnesty under the Amnesty Act. The Constitutional Court agreed and ordered the ICD to cease Kwoyelo’s trial. The Attorney General has put a notice of appeal to the Supreme Court that may overturn the decision of the Constitutional Court but for now, prosecution of international crimes by the ICD has come to a standstill. Further discussion on this case is contained in chapter four and six of this thesis.

<sup>99</sup> Some of the high-ranking LRA commanders granted amnesty includes; Brigadier Banyana, Onekomon, Sam Kolo among others. According to Joan Kagezi, the senior principal State Attorney in charge of international crimes prosecutions, the DPP will not prosecute these individuals despite the overwhelming evidence that they are responsible for some of the international crimes perpetrated in the LRA conflict. Further discussion on this is contained in chapter four.

<sup>100</sup> For instance, since the capture and detention of Gen Caesar Acellam, one of the LRA five top commanders in May 2012 by the UPDF, there has been no clarity as to whether he will be prosecuted or not though he did not apply for amnesty before the lapse of Part II of the Act. According to Joan Kagezi, the senior principal State Attorney in charge of international crimes prosecutions, the DPP has prepared an indictment for Gen Acellam but it is not clear if the UPDF will release him to the custody of the ICD. Interview conducted on 6 July 2012.

and Reconciliation. There is no clear legal framework on accountability for international crimes in the LRA conflict that increases the risk that the application of justice will be selective and biased on the political interests of the government of Uganda. This limits the ability of Uganda to comply with the principle of complementarity under the Rome Statute and the effectiveness of the proposed accountability measures to ensure that all perpetrators of international crimes in the LRA conflict account and that, the victims receive remedies for harms suffered.

Furthermore, the newly passed International Criminal Court Act of 2010 that domesticates the Rome Statute and is the most comprehensive national legislation dealing with international crimes in Uganda will not be used as a basis for prosecution for crimes committed in the LRA conflict before 2010. In addition, the Agreement on Accountability and Reconciliation shields state actors, including military personnel that perpetrated international crimes during the conflict, from measures envisaged under it.<sup>101</sup> The ICC and the ICD have further not opened any investigations into actions of state actors. Although the ICC has stated that it will investigate both sides to the conflict, it has not issued warrant of arrest for state actors, despite the well-documented atrocities perpetrated by the UPDF during the LRA conflict. The ICD is yet to show inclination to investigate action of state actors during the conflict.<sup>102</sup>

Planning mechanisms, policies and legislations for truth telling, reparations and traditional justice are lagging behind and the affected population have very little understanding of the processes or the government's commitment to the undertakings. In addition, Uganda is conducting accountability pursuits in isolation, yet other regional states have been (and are

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<sup>101</sup> Agreement on Accountability and Reconciliation clause 4.1; provides that state actors will not be subject to accountability measures envisaged under the agreement. See also S Ntale 'ICC to Investigate Ugandan Army' CNN 3 June 2010 <http://edition.cnn.com/2010/WORLD/africa/06/03/uganda.army.icc> (accessed 15 Nov 2011). The ICC Prosecutor, Luis Moreno-Ocampo made this announcement while in Uganda for the ICC Review Conference citing complaints from several of the affected people and human rights activists alleging that the Uganda army had committed atrocities during the LRA conflict.

<sup>102</sup> Joan Kagezi, the senior principal State Attorney for international crimes prosecution in office of the Director of Public Prosecutions (DPP), stated that the DPP has no evidence that state actors were involved in the commission of international crimes, therefore no reason to investigate. Interview conducted in Kampala on 20 Jan 2011. Although atrocities perpetrated by the UPDF in Northern Uganda are well documented, the DPP claims not to have knowledge of them. Further discussion on the nature of atrocities committed by both the LRA and the UPDF is contained in chapter two of this thesis.

still being) affected by the LRA conflict and the attendant atrocities. Victim groups in DRC, Central African Republic and South Sudan have not been consulted on appropriate accountability measures; crimes perpetrated against them have not been investigated and they will not benefit from reparations programs that may be developed. The government of Uganda must tackle all these issues if it is to achieve the aims of accountability for atrocities perpetrated in the LRA conflict.

#### **1.4 Research questions**

How can the multiple accountability measures adopted and proposed to address international crimes committed in the LRA conflict in Uganda be best used to promote justice, truth and reparations?

Sub-questions:

1. What is the normative framework applicable to the LRA conflict?
2. What is Uganda's international obligation in regard to atrocities committed in the LRA Conflict?
3. What is the role of the Amnesty Act and the Agreement on Accountability and Reconciliation in ensuring accountability for international crimes committed in the LRA conflict?
4. What is the role of the International Criminal Court in ensuring accountability for international crimes committed in the LRA conflict?
5. What is the role of the International Crimes Division of the High Court of Uganda in ensuring accountability for international crimes committed in the LRA conflict?
6. What is the role for traditional justice in ensuring accountability for international crimes committed in the LRA conflict?
7. What role can a Truth Commission play in ensuring accountability for international crimes committed in the LRA conflict?

## 1.5 Definition of terms

**Accountability:** in law is synonymous to the terms ‘responsibility’ and ‘liability’ and describes the condition of being actually or potentially subject to a legal obligation or the legal obligation to answer for an act done, and to repair any injury it may have caused.<sup>103</sup>

There is however, no common definition of the term ‘accountability’ in the context of conflict, mass atrocities and the aftermath. Several terms are used to explain it and it is often synonymous to the term ‘transitional justice’ that encompasses mechanisms that can effect justice, offer reparations to victims, establish a culture of respect of human rights as well as contribute to reconciliation of societies recovering from conflict.<sup>104</sup>

In this thesis, the term ‘accountability’ is used to include mechanisms undertaken both at the national or international level to ensure justice, truth and reparations in aftermath of mass atrocities. These specifically include measures that assign individual criminal responsibility for violations and abuse; impose legitimate consequences for perpetrators including payment of compensation and public acknowledgment of guilt; truth telling to generate official historical records; and measures for victim reparations. The focus of this thesis is on measures proposed in the Agreement on Accountability and Reconciliation and its Annexure or ongoing in Uganda that includes domestic and international prosecutions, use of traditional justice, truth telling and reparations processes.

**International crimes/mass atrocities:** are the crimes of serious concern to the international community as a whole. It includes; the crime of genocide, crimes against humanity, war crimes and crime of aggression as defined in the Rome Statute of the International Criminal Court,<sup>105</sup> Geneva Conventions of 12 August 1949, the Additional Protocols of 1977 and violations of human rights treaties that obligates states to investigate, prosecute, punish or

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<sup>103</sup> American Heritage Dictionary of the English Language (4<sup>th</sup> ed) Houghton Mifflin Company (2000) <http://legal-dictionary.thefreedictionary.com/accountability> (accessed 13 Feb 2009).

<sup>104</sup> Report of the Secretary General *The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies* UN Security Council S/2004/616 (24 August 2004) para 8.

<sup>105</sup> Rome Statute arts 5, 6, 7, 8 and 8 *bis*.

extradite offenders such as the Convention against Torture.<sup>106</sup> In this thesis, ‘international crimes’ is used interchangeably with the term ‘mass atrocities’ that characterises such crimes.<sup>107</sup>

**Justice:** as used in this thesis means, ‘regard for the rights of the accused; for the interests of victims and for the well-being of society at large.’<sup>108</sup> This implies the duty of the state to investigate violations, to prosecute perpetrators and punish them if guilt is established and rights of victims to receive fair and effective remedies through courts or other administrative bodies.<sup>109</sup>

**Truth:** as used in this thesis encompass facts on the history, patterns and manifestations of a conflict including details of violations, abuse of human rights and humanitarian law and in the event of death and disappearance, information on the whereabouts and circumstances of death of victims.<sup>110</sup>

**Reparations:** as used in this thesis encompasses a range of measures such as rehabilitation, restitution, compensation, guarantees of non-recurrence and other symbolic measures such as apologies, memorials and commemorations that may be collective or individual.<sup>111</sup>

## 1.6 Objective

The objective of this thesis is to examine the, who, what, when, where, why and how of the accountability measures proposed for the LRA conflict. The thesis examines how the multiple accountability measures, both judicial and non-judicial, could be effectively used to promote justice, truth and reparations. Chapter two examines the applicable international norms to the conflict while chapter three examines the international legal obligation of

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<sup>106</sup> Updated Set of Principles for the Protection and promotion of Human Rights through Action to Combat Impunity’ (Diane Orentlicher) Economic and Social Council E/CN.4/2005/102/Add.1 (8 Feb 2005) B.

<sup>107</sup> Chapter two of the thesis further elaborates these terms.

<sup>108</sup> Report of the Secretary General (n 80 above) para 7.

<sup>109</sup> Updated Set of Principles for the Protection and promotion of Human Rights through Action to Combat Impunity’ (n 105 above) principle 19.

<sup>110</sup> This definition is derived from a reading of clauses 2.2 and 2.3 of the Principle Agreement on Accountability and Reconciliation and clause 4 of the Annexure.

<sup>111</sup> This definition is derived from clause 9 of the Agreement on Accountability and Reconciliation.



Uganda. These two chapters, together with the introductory remarks in chapter one, create a framework for analysis in the chapters that follow. Each proceeding chapter examines a different accountability measure; its strengths and weaknesses and the challenges and opportunities that they present. The analysis is the basis for conclusion and recommendations in the last chapter.

Using lessons learned from other conflict or post conflict states, the analysis of accountability for international crimes committed in the LRA conflict could inspire short-term reforms on the functions and roles that the different mechanisms to remain effective. In the long run, this could serve as lessons learned for other states in the aftermath of mass atrocities. The target audience is key personnel in the different institutions, policy makers working on policy and legislation for accountability measures for international crimes in Uganda, the political leadership in Uganda and other governments in the Great Lakes region, the LRA and all persons concerned or/and interested in matters of accountability for mass atrocities.

## **1.7 Methodology**

The author seeks to accomplish these objectives by undertaking an in-depth desk review of the available literature including a review of primary sources like legal texts and government periodicals. The thesis also relies on reports undertaken in the last two decades that are a result of extensive field research relating to accountability mechanisms and impact of the LRA conflict on civilian population generally. This provides reference material and helps the study to make a comparison between laws, policies and their effects on ground to make suggestions for reform.

The thesis further analyses and highlights lessons learnt from accountability processes in countries such as Sierra Leone, South Africa, Rwanda, Peru, Liberia and Columbia for comparison of the models to the ones being pursued in Uganda. The lessons learnt in the situations highlighted also inform the discussion on the LRA conflict and help to generate analysis, recommendations, and conclusions. This required an extensive review of varied sources of information ranging from newspapers, to treatises, judgments, periodical

literature, commentaries, and other publications relating to accountability for mass atrocities. Government sources, such as statistics, official statements, or interventions before the press, are also used. Other reports, statements, and official documents from international organisations and governments regarding accountability are analysed and factored in accordingly.

The author also held informal discussions and interviews with victims/survivors of atrocities in Northern Uganda, politicians, judicial officials, prosecutors, scholars and policy makers to get a practical insight on accountability processes in Uganda.

### 1.8 Literature review

As a result of the mounting concern about the LRA conflict and the attendant mass atrocities, there has been wide international and national media coverage of the conflict as well as films and documentaries. The most prominent among these are 'Uganda Rising'<sup>112</sup>; 'Rebels without a Cause/Journey into Sunset'<sup>113</sup> and Invisible Children's 'Rough Cut'.<sup>114</sup> There is also a growing scholarship as well as advocacy giving various accounts of the conflict; its history; features; how and why the atrocities occurred and possible resolution measures.<sup>115</sup> Several studies have assessed events in Northern Uganda, before and after independence in search of the root cause of the conflict that is said to be rooted in the history of ethnic politics in Uganda dating back to the colonial era.<sup>116</sup>

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<sup>112</sup> This documentary focuses on the plight of civilians in Northern Uganda and it won seven awards in Canada, France, the USA and Norway <http://www.ugandarising.com/home.html>.

<sup>113</sup> Former special advisor to the president at the International Crisis Group, John Prendergast who now co-chairs the Washington based project – ENOUGH produced this documentary.

<sup>114</sup> This documentary was dedicated to the 'night commuters' in Uganda [http://www.invisiblechildren.com/media/assests/file/online\\_media\\_kit.pdf](http://www.invisiblechildren.com/media/assests/file/online_media_kit.pdf) (accessed 15 July 2011); another video by Invisible Children 'Kony2012' aimed at generating international commitment to capture the LRA leader Joseph Kony, is the most viewed video in 2012. The video has become a media sensation and attracted a lot of criticisms from Uganda and abroad for poor portrayal of the conflict.

<sup>115</sup> T Allen *Trial Justice: The International Criminal Court and the Lord's Resistance Army* (2006); T Allen 'War and Justice in Northern Uganda: An Assessment of the International Criminal Court Intervention' (2005) *Crisis Research Centre* 1 - 100; Citizens for Global Solutions 'In Unchartered Waters: Seeking Justice Before the Atrocities Have Stopped' (2004) [http://gobalsolutions.org/files/general/unchartered\\_waters.pdf](http://gobalsolutions.org/files/general/unchartered_waters.pdf) among others.

<sup>116</sup> A Branch 'Exploring the Roots of LRA Violence: Political Crisis and Ethnic Politics in Acholiland' in T Allen & K Vlassenroot (eds) *The Lord's Resistance Army: Myth and Reality* (2010); C Dolan *Social Torture: the Case of Northern Uganda* (2009); S Finnström *Living with Bad Surrounding: War, History and Everyday Moments in Northern Uganda* (2008); A Branch 'Neither Peace nor Justice: Political Violence and the Peasantry in Northern

The spiritual dimension to the LRA conflict has been a popular focus of the media and has been subject to academic scholarship that also analysed the political agenda of the LRA and its military strategies.<sup>117</sup> Some authors have gone as far as seeking the LRA leader's comments on these issues.<sup>118</sup> For instance, Green describes his journey up and down the Nile in the quest to locate and interview Joseph Kony. He provides, a thoughtful and even-handed exploration of a conflict that has been sensationalised, misunderstood, or ignored and expounds on why President Museveni might not have wanted to end the war, how Sudan is involved and how difficult it is to piece everything together.<sup>119</sup> In an anthropological research, Finnström acknowledges and expounds on the difficulty of researching during war. He argues that war violates cosmologies as well as people and opines that, an intercultural understanding of the conflict at issue and of its local implications provides a framework for dealing with the uncertainties of research in war.<sup>120</sup>

Several reports reviewed the humanitarian and security situation of IDPs and concluded that the government of Uganda and the international community did not do enough to protect the civilians in IDP camps.<sup>121</sup> Some reports even suggested the dismantling of IDP camps,

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Uganda 1986 – 1998' (2005) 8(2)*African Studies Quarterly* 1 – 31; C Mbazira, 'Prosecuting International Crimes Committed by the Lord's Resistance Army in Uganda' in C Murungu & J Biegon (eds) *Prosecuting International Crimes in Africa* (2011).

<sup>117</sup> K Titeca 'The Spiritual Order of the LRA' in T Allen & K Vlassenroot (eds) *The Lord's Resistance Army: Myth and Reality* (2010); S Finnström *Living with Bad Surroundings: War and Existential Uncertainty in Acholiland, Northern Uganda* (2003); H Behrend 'War in Northern Uganda: The Holy Spirit Movement of Alice Lakwena, Severino Lukoya and Joseph Kony (1987 – 1997)' in C. Clapham (ed) *African Guerrillas* (1998); H Behrend *Alice Lakwena and the Holy Spirit: War in Northern Uganda 1986 – 97* (1999); H Behrend 'Power to Heal, Power to Kill: Spirit Possession and War in Northern Uganda (1986 – 1994)' in H. Behrend et al. (eds) *Spirit, Possession Modernity and Power in Africa* (1999).

<sup>118</sup> M Schomerus 'A Terrorist is not a Person like me: An Interview with Joseph Kony' in T Allen and K Vlassenroot (eds) *The Lord's Resistance Army: Myth and Reality* (2010).

<sup>119</sup> M Green *The Wizard of the Nile: The Hunt for Africa's Most Wanted* (2008).

<sup>120</sup> S Finnström 'In and Out of Culture: Fieldwork in War-torn Uganda (2001) 21 *Critique of Anthropology* 247 – 258.

<sup>121</sup> P Diane 'Fulfilling the Forgotten Promise: The Protection of Civilians in Northern Uganda' (Jan 2006) Inter-Action's Protection Working Group; W Weeks *Pushing the Envelope: Moving Beyond 'Protected Villages' in Northern Uganda* United Nations Office for Coordination of Humanitarian Affairs (March 2002); Foundation for Human Rights Initiative *Northern Uganda: Peace at Last? July – Dec 2006* (2006); C Dolan 'Views on the Northern Uganda Conflict from Inside the War Zone' (2000) *COPE Fieldwork Findings*; IRIN *In-depth: Life in Northern Uganda: When the Sunsets, we Start to Worry...* Humanitarian News and Analysis (Jan 2004); Amnesty International 'Uganda: Summary of Human Rights Concerns' (2003); GL Bramucci 'Waiting Games: Growing Up with War in Northern Uganda' (2003) *Associazione Volontari Per il Servizio Internazionale (AVSI)*; Conciliation Resources 'Northern Uganda: One Step Forward, Two Steps Back' (2003) *Kacoke Madit and Reconciliation Project*; D Westbrook 'The Torment of Northern Uganda: A Legacy of Missed Opportunities

return of the population to their original homes and a search for alternative solutions to the issue of security of civilians.<sup>122</sup> While other reports give detailed accounts of the most notorious LRA attacks on villages and IDP camps in Uganda.<sup>123</sup> Other commentators analysed the scale, incidences of abduction, the impact of this, and the conflict on the populations in Northern Uganda.<sup>124</sup> An increasing amount of literature has also considered the return and resettlement experiences of children forcefully abducted by the LRA.<sup>125</sup> Some specifically focus on the situation and the abuse of females during the war.<sup>126</sup> Annan

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(2000) *Online Journal of Peace and Conflict Resolution*; Refugee Law Project & Internal Displacement Monitoring Centre (2 ed) *Only Peace can Restore Confidence of the Displaced: Update on the Implementation of the Recommendation made by the UN Secretary General Representative on IDP's Following his visit to Uganda* ( Oct 2006); this report investigates progress made in the protection and security of IDPs in Uganda. The report uses benchmarks set by the UN Secretary General Representative on IDP's; see also FM Deng 'The International Protection of the Internally Displaced' (1995) *International Journal of Refugee Law Special Issue* 76; that argues that the problems of internal displacement can only be solved by addressing the root causes, often embedded in civil wars. The author further argues that only peace can restore the confidence of the displaced and encourage them to return to their homes and resume normal life and that as long a conflict prevails, not only will deprivation persist, but respect for human rights and fundamental freedoms will remain elusive.

<sup>122</sup> Acholi Religious Leaders' Peace Initiative *Let my People go! The Forgotten Plight of the People in Displaced Camps in Acholi* (July 2001).

<sup>123</sup> See for instance; Justice and Reconciliation Project 'Remembering the Atyak Massacres: April 20<sup>th</sup> 1995' (April 2007) 4 *Justice and Reconciliation Project Field Notes*; this report recounts the struggles faced by civilians in Atyak in Northern Uganda where in one massacre in 1995, the LRA under the command of Vincent Otti killed over 300 civilians. The report advances recommendations to meet the victims needs of justice; G Opobo et al., 'Kill Every Living thing: Barlonyo Massacres' (28 Feb 2009) *Justice and Reconciliation Project Field Notes*; documents the massacre of over 300 civilians in Barlonyo IDP camp in February 2004 by the LRA Okot Odhiambo indicted by the ICC. The report calls for the prosecution of the responsible LRA leaders and accountability of the government of Uganda for failing to protect the civilians; Justice and Reconciliation Project 'The Mukura Massacres of 1989' (March 2011) *Justice and Reconciliation Project Field Note XII*; Justice and Reconciliation Project 'As Long as you live, you will Survive: The Omot Massacre'(Feb 2010) *Justice and Reconciliation Project Field Note XI*; Justice and Reconciliation Project 'The Lukodi Massacre 19<sup>th</sup> May 2004' (April 2011) *Justice and Reconciliation Project Field Note XIII*.

<sup>124</sup> P Pham et al *Abducted: The Lord's Resistance Army and Forced Conscriptioin in Northern Uganda* (2007); Amnesty International 'Breaking God's Commandments: The Destruction of Childhood by the Lord's Resistance Army' (1997) *Amnesty International AFR 59/01/97*; World Vision *Pawns of Politics: children, conflict and peace in Northern Uganda* (2004); Human Rights Watch *The scars of death: Children abducted by the Lord's Resistance Army in Uganda* (1997); Human Rights Watch *Abducted and abused: Renewed Conflict in Northern Uganda* (2003); CR Soto *Tall Grass: Stories of Suffering and Peace in Northern Uganda* (2009); Human Rights and Peace Centre & Liu Institute for Global Issues *The Hidden War: The Forgotten People, War in Acholi and its Ramifications for Peace and Security in Uganda* (2003) 22.

<sup>125</sup> JN Corbin 'Returning Home: Resettlement of Formerly Abducted Children in Northern Uganda' (2008) 32(2) *Disasters* 316 – 335; T Allen & M Schomerus *A Hard Homecoming: Lessons Learned from the Reception Centre Process in Northern Uganda* (2006); J Annan et al., *The State of Youth and Youth Protection in Northern Uganda: Findings from the Survey of War Affected Youth* (2006); P Phuong et al., *Abducted: The Lord's Resistance Army and Forced Conscriptioin in Northern Uganda* (2007).

<sup>126</sup> J Annan et al., *The State of Female Youth in Northern Uganda: Findings from the Survey of War Affected Youth (SWAY)* (2008); K Carlson K & D Mazurana *Forced Marriage within the Lord's Resistance Army, Uganda* (2008); S McKay 'Girls as "Weapons of Terror" In Northern Uganda and Sierra Leonean Rebel Fighting Forces' (2005) 28(5) *Studies in Conflict & Terrorism* 385 – 397; S McKay 'Reconstructing Fragile Lives: Girls Social Reintegration in Northern Uganda and Sierra Leone' (2004) 12(3) *Gender and Development* 19 – 30; S McKay &

et al., for instance challenge the conventional notions that women recruited by the LRA are passive victims, documenting that females play an active role within LRA structures.<sup>127</sup> All the available literature on the LRA conflict agrees to the deploring humanitarian situation and failure of the government to protect civilians in Northern Uganda and call for resolution of the conflict.<sup>128</sup>

There were several on an off attempts at peace negotiations between the government of Uganda and the LRA, and none of these attempts led to a resolution.<sup>129</sup> Some academic literature investigated the reasons behind the protracted conflict and possible solutions. For instance Branch argues that the debates regarding a solution to LRA conflict has failed to take into account the political agency of the Acholi peasantry and their relationship with the government on the one hand and the LRA on the other. He argues that both the LRA and the government failed to realise an effective popular mobilisation among the Acholi and concludes that the solution to end the conflict and violence lies in putting the Acholi peasantry at the centre of conflict resolution.<sup>130</sup>

Van-Acker on the other hand argues that the robustness of the LRA conflict indicates that the forces working against peace outstrip those working for it.<sup>131</sup> While Vinci argues that Kony and the LRA just prefer to continue to survive as an autonomous entity that is why peace offers have been not been accepted.<sup>132</sup> Vinci further investigates the LRA's use of mutilation, abduction, surprise, and unpredictable attacks and concludes that the LRA is

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DE Mazurana *Where are the Girls? Girls in Fighting Forces in Northern Uganda, Sierra Leone and Mozambique: Their Lives During and After War* (2004); S McKay et al., *Girls Formerly Associated with Fighting Forces and their Children: Returned and Neglected* (2006); G Onyango et al., *Girl Mothers of Northern Uganda Conference on Girl Child Mothers in Fighting Forces and their Post – War Reintegration in Southern and Western Africa: Bellagio Italy* (2005).

<sup>127</sup> J Annan et al., *Women and Girls at War: “Wives”, Mothers and Fighters in the Lord’s Resistance Army* (2009).

<sup>128</sup> Civil Society Organisation for Peace in Northern Uganda *Nowhere to Hide: Humanitarian Protection Threats in Northern Uganda* (2004); C Hema ‘Uganda: A Nation in Crisis’ (2007) 37(2) *California Western International Law Journal* 277 – 298; Human Rights and Peace Centre and Liu Institute for Global Issues *The Hidden War: The Forgotten People, War in Acholi and its Ramifications for Peace and Security in Uganda* (2003).

<sup>129</sup> CCH Lamwaka ‘Civil War and the Peace Process in Uganda 1986 – 1997’ (1998) 4 *East African Journal of Peace and Human Rights* 139.

<sup>130</sup> A Branch ‘Neither Peace nor Justice: Political Violence and Peasantry in Northern Uganda 1986 – 1998’ (2005) 8 *African Studies Quarterly* 1 – 31.

<sup>131</sup> F Van-Acker ‘Uganda and the LRA: The New Order no one Ordered’ (2004) 103(412) *African Affairs* 335 – 357.

<sup>132</sup> A Vinci *Armed Groups and the Balance of Power* (2009) 99.

strategically using these methods to create fear, which acts as a force multiplier to further its organisational survival and accounts for the protracted conflict.<sup>133</sup>

Vinci further argues that although the LRA may have begun its war for instrumental goals, such creating political change, it replaced these goals with existential motivations. In the sense that the LRA rebel group fights in order to continue providing security and a vocation to its members, and that this would be lost by a return to wider society. The author posits that the factor allowing for this turn from instrumental to existential motivation is that the LRA has effectively separated itself from wider society and created an autonomous political community. This in essence implies that LRA members must first reintegrate in the greater Acholi and Ugandan community before a political settlement can be achieved.<sup>134</sup>

Finnström addresses the peculiar concern that the LRA rebels had the Acholi elders' ceremonial 'warfare blessing' that has been interpreted as having turned into a curse on Acholiland. He interprets the possible 'warfare blessing' as a critical event regardless of whether it exists or not. He argues that the 'warfare blessing' can be regarded as the mere utterance of words or a blessing performed within the framework of the local moral world. He concludes that as much as the issue of the 'warfare blessing' is a lived consequence of the conflict, it cannot be used as an explanatory model for the cause and protracted nature of the conflict.<sup>135</sup>

Several commentators have expounded on the generous assistance given to the LRA by the government of Sudan that they argue helped to sustain the conflict. Some have argue that the LRA was a *defacto* militia through which Sudan waged war against Uganda in retaliation to Uganda's government support of the SPLA.<sup>136</sup> Prunier suggests that there is an

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<sup>133</sup> A Vinci 'The Strategic use of Fear by the Lord's Resistance Army' (2005) 16 *Small Wars and Insurgencies* 360 – 381.

<sup>134</sup> A Vinci 'Existential Motivations in the Lord's Resistance Army's Continuing Conflict' (2007) 20(4) *Studies in Conflict and Terrorism* 337 – 352.

<sup>135</sup> S Finnström 'Wars of the Past and War in the Present: The Lord's Resistance Army/Movement in Uganda' (2006) 76 *African* 200 – 220.

<sup>136</sup> M Schomerus 'The Lord's Resistance Army in Sudan: A History and Overview' (2007) *Geneva Graduate Institute of International Studies, Small Arms Survey (Sudan Human Security Baseline Assessment Project; Amnesty International 'Breaking God's Commandments: The Destruction of Childhood by the Lord's Resistance Army' (1997) Amnesty International AFR 59/01/97; Human Rights and Peace Centre The Hidden War: The Forgotten People, War in Acholiland and its Ramification for Peace and Security in Uganda (2003).*

undeclared war between Sudan and Uganda with DRC used as an external battlefield. He argues that in the DRC, from the fall of President Mobutu until 2002, proxy guerrilla organisations either fought each other or fought the armies of their sponsor's enemy in a proxy war that morphed into the bigger 'Congolese' conflict.<sup>137</sup> As illustrated in chapter two of this thesis, the sustained and continuous assistance given by the government of Sudan to the LRA between 1994 and 2005, rendered the LRA conflict an internationalised conflict operating alongside an internal conflict.

Schomerus investigates the military history of the LRA in Sudan and prospects for ending the conflict<sup>138</sup> and other studies analyse how the armed conflict by the LRA affected civilians in South Sudan, DRC and Central African Republic while providing an insight on cross-border relations.<sup>139</sup> Some authors argue that it was never the interest of the government of Uganda to resolve the conflict through negotiations,<sup>140</sup> advancing the additional argument that the conflict is beneficial to the government, as it has kept the army occupied and benefitted senior army officers economically.<sup>141</sup>

As a possible conflict resolution measure, the government of Uganda passed the Amnesty Act in 2002, granting a blanket amnesty to all who gave up rebellion against it.<sup>142</sup> Critics of national amnesties argue that honouring amnesties promotes a culture of impunity.<sup>143</sup> Yet,

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<sup>137</sup> G Prunier 'Rebel Movements and Proxy Warfare: Uganda, Sudan and the Democratic the Congo (1986 – 1999)' (2004) 103 *African Affairs* 359 – 383; G Prunier *World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe* (2009).

<sup>138</sup> M Schomerus 'The Lord's Resistance Army in Sudan: A History and Overview' (2007) 8 *The Small Arms Survey: HSBC Working Paper*.

<sup>139</sup> S Gordon et al., 'Reluctant Hosts: The Impact of the Lord's Resistance Army on Communities in Western Equatorial State, Southern Sudan' (2007) *World Vision*; M Schomerus 'Perilous Border: Sudanese Communities Affected by Conflict on Sudan-Uganda Border' (Nov 2008) *Conciliation Resources*; Invisible Children and Resolve 'LRA Crisis Tracker: Annual Security Brief' (2011) LRACrisisTracker.com.

<sup>140</sup> A Branch 'Uganda's Civil War and the Politics of ICC Intervention' (2007) 12 (2) *Ethics and International Affairs* 179 – 198; C Dolan *Social Torture: The Case of Northern Uganda* (2009); S Finnström *Living with Bad Surrounding: War, History and Everyday Moments in Northern Uganda* (2008).

<sup>141</sup> A Mwenda 'Uganda's Politics of Foreign Aid and Violent Conflict: the Political uses of the LRA' in T Allen and K Vlassenroot (eds) *The Lord's Resistance Army: Myth and Reality* (2010); A Branch 'Exploring the roots of LRA violence and ethnic politics in Acholiland' (2010); S Finnström 'An African Hell of Colonial Imagination? The Lord's Resistance Army in Uganda, Another Story' in T Allen & K Vlassenroot (eds) *The Lord's Resistance Army: Myth and Reality* (2010).

<sup>142</sup> Amnesty Act (2002) sec 2.

<sup>143</sup> K Roth 'It's Worth Bringing Tyrants to Justice' International Herald Tribune 10 Aug 2005; argues that it is possible to reach a peace agreement without amnesty provisions citing the case of the former Yugoslavian President Slobodan Milosevic who agreed to end the Bosnian conflict and accept the Dayton Peace Accord

several studies explored the role of amnesty in the wider transitional justice processes in Uganda and cited the need for it.<sup>144</sup> Feldman, however, questioned whether the government should forego justice in order to prevent bloodshed in Northern Uganda.<sup>145</sup> While Souaré assesses the justifications for grant of amnesty and conclude that, any peace agreement should include an amnesty provision. Souaré further argues that the amnesty provision should include the stipulation that any violation of the peace agreement would mean the nullification of amnesty guarantees.<sup>146</sup> Chapter three of this thesis investigates the place of amnesty in international law and finds that unless it contradicts an international treaty, it is not necessary unlawful. Chapter four specifically investigates how Uganda applied the amnesty law and finds that its operation of a 'blanket amnesty' thwarted Uganda's international obligations under treaties that Uganda ratified and domesticated that require prosecution of international crimes committed in Uganda.<sup>147</sup> The chapter concludes that the lapse of Part II of the Amnesty Act opens doors to the government to fulfil its international obligations of investigating, prosecuting and punishing offenders where guilt is established and ensuring that victims receive the right to an effective remedy.

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without obtaining an amnesty, soon after international calls for prosecution; he also argues that the threats of ICC prosecution forced oppressive leaders in Sudan and the DRC to reform brutal practices in order to avoid the Prosecutor's attention; MP Scarf & PR Williams 'The Functions of Justice and Anti-Justice in the Peace-Building Process' (2003) 35 *Case Western Reserve Journal of International Law* 161 – 175; argue that amnesties do not fulfil the cathartic process of retribution and accountability, but instead leads to acts of revenge. The authors further argue that the stigmatising effect of unhindered criminal prosecutions works to isolate and weaken political legitimacy of disruptive actors in the international community.

<sup>144</sup> L Mallinder 'Uganda at a Crossroads: Narrowing the Amnesty?' (2009) *Working Paper: Beyond Legalism: Amnesties, Transition and Conflict Transformation Project*; R Murphy 'Establishing a Precedent in Uganda: The Legitimacy of National Amnesties under the International Criminal Court (2006) 3(1) *Eyes on the ICC*; B Afako 'Promoting Reconciliation: A Brief Overview of the Amnesty Process in Uganda' (Nov 2002) *Civil Society Organisations for Peace in Northern Uganda*; Acholi Religious Leaders' Peace Initiative *Seventy times Seven: The Implementation and Impact of the Amnesty in Acholi* (2004).

<sup>145</sup> RM Feldman 'A Deal with the Devil: Issues in Offering Joseph Kony Amnesty to Resolve the Conflict in Uganda' (2007) 18 *Small Wars and Insurgencies* 134 – 143.

<sup>146</sup> IK Souaré 'Moving the Ugandan Peace Process from the Dichotomy of Criminal Trials vs Amnesty' (2008) 17(2) *African Security Review* 106 – 112; See also the interesting debate advanced by Pensky in M Pensky 'Amnesty on Trial: Impunity, Accountability and the Norms of International Law' (2008) 1(1-2) *Ethics & Global Politics* 1 – 40; arguing that the norm against amnesty is based on a narrowly retributive concept of criminal justice, yet, a broader norm for democratic accountability would continue to prefer prosecutions over amnesties in international law but less for the opportunity for deserved retribution but more for the public enactment of the deliberative procedures associated with the rule of law.

<sup>147</sup> For instance, the Geneva Conventions of 1949 that were domesticated as the Geneva Conventions Act of 1969 of Uganda and it demands the investigation, prosecution, punishment or extradition of persons responsible for grave breaches.



In 2003, the government of Uganda referred the LRA situation to the ICC. The ICC promptly took up investigations and in 2004 issued warrants of arrest for the top five LRA leaders. This ushered in a debate in which some quarters argued for the need for amnesty to end the conflict and others for justice through prosecutions to end impunity.<sup>148</sup> Several scholars argued for the value of amnesty as a peace-building tool, stating that the unrelenting insistence on criminal prosecutions where there is an amnesty in place prolongs a conflict and exacerbates the suffering of civilians. Newman for instance argues that a restrictive rule on amnesties would have significant distributive effects in the ongoing project of international criminal justice.<sup>149</sup>

Ssenyonjo on the other hand considers the question of whether a ‘total amnesty’ to individuals indicted by the ICC is binding on the ICC and found that it does not.<sup>150</sup> Moy argues that the lack of clarity on the question of amnesty in international law leaves some room for amnesty programs like the one in Uganda to prevail over ICC jurisdiction, particularly because the charges against the LRA strictly involve war crimes and crimes against humanity.<sup>151</sup> Ssenyonjo further investigates whether amnesty is counterproductive to the work of the ICC and concludes that those who bear the greatest responsibility for the crimes committed in the conflict must face prosecutions. On the other hand, he opines that since 80% of LRA force either are children or abducted, they deserve amnesty. The difficulty he posits is how to categorise those members that deserve amnesty.<sup>152</sup> Apuuli further

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<sup>148</sup> P Pham et al., *Forgotten Voices: A Population-Based Survey on Attitudes about Peace and Justice in Northern Uganda* (2005); B Afako ‘Reconciliation and Justice: Mato Oput and the Amnesty Act’ in O Lucima (ed) *Protracted Conflict Elusive Peace: Initiatives to end the Violence in Northern Uganda* (2002) 64 – 67; L Hovil and Z Lomo ‘Whose Justice? Perceptions of Uganda’s Amnesty Act 2000: The Potential for Conflict Resolution and Long-Term Reconciliation’ (2005) 15 *Refugee Law Project Working Paper*; E Baines et al., *War Affected Children and Youth in Northern Uganda: Towards a Brighter Future* (2006).

<sup>149</sup> DG Newman ‘The Rome Statute, Some Reservations Concerning Amnesties and a Distributive Problem’ (2005) 20(2) *American University International Law Review* 293 – 357.

<sup>150</sup> M Ssenyonjo ‘The ICC and the Lord’s Resistance Army Leaders: Prosecution or Amnesty?’ (2007) 54 *Netherlands International Law Review* 51 – 80; M Ssenyonjo ‘The ICC and the Lord’s Resistance Army Leaders: Prosecution or Amnesty?’ (2007) 7(2-3) *International Criminal Law Review* 363 – 710.

<sup>151</sup> A Moy ‘The International Criminal Courts Arrest Warrants and Uganda’s Lord’s Resistance Army: Renewing the Debate over Amnesty and Complementarity’ (2006) 19 *Harvard Human Rights Journal* 267 – 273.

<sup>152</sup> M Ssenyonjo ‘Accountability of Non-State Actors in Uganda for War Crimes and Human Rights Violations: Between Amnesty and the ICC’ (2005) 10 *Journal of Conflict and Security Law* 405 – 434.

suggests that the top leaders of the LRA must account for the crimes committed in the conflict, while the abducted and conscripted foot soldiers should be amnestied.<sup>153</sup>

In furtherance of this debate, MacMillan argues that amnesty and justice are not mutually exclusive. She argues that in Uganda, because of the risks of prolonged conflict, decades of authoritarian dictatorship and oppression, increased conflict related deaths and public opinion in favour of amnesty; amnesty will serve the interests of justice better than prosecution. She asserts that amnesty and negotiations might be just as effective as prosecutions in reinforcing to the Ugandan people that their government is finally open to non-military solutions, responsive to public opinion and accountable for its failures.<sup>154</sup>

Rose and Ssekandi looked not only at the Amnesty Act but also examined whether traditional mechanisms aimed at aiding the process of reintegration and reconciliation in Northern Uganda are consistent with the goals pursued by the international community when instituting the ICC of attaining justice and deterring impunity. The authors argue that justice and reconciliation in Northern Uganda would require more than amnesty and the use of traditional mechanisms, which respectively work more towards ending the conflict and fostering reintegration of former combatants than towards justice.<sup>155</sup>

Several other authors seized on the potential of Acholi traditional justice and healing ceremonies as possible accountability and reconciliation measures.<sup>156</sup> Pain, for instance argues that the way forward to achieve justice and reconciliation in Northern Uganda is to

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<sup>153</sup> KP Apuuli 'Amnesty and International Law: The Case of the Lord's Resistance Army Insurgents in Northern Uganda (2005) 5 *African Journal of Conflict Resolution* 33 – 61.

<sup>154</sup> KE MacMillan 'The Practicability of Amnesty as a Non-Prosecutory Alternative in Post Conflict Uganda' (2007) *Policy and Ethics Journal*.

<sup>155</sup> C Rose & FM Ssekandi 'The Pursuit of Transitional Justice and African Traditional Values: A Clash of Civilisations, the Case of Uganda (2007) 1 *African Prospects* 116 – 136.

<sup>156</sup> Refugee Law Project 'Position Paper on the ICC' 28 July 2004 <http://www.refugeelawproject.org/resources/papers/archive/2004/RLP.ICC.investigations.pdf>; L Hovil and JR Quinn 'Peace First, Justice Later: Traditional Justice in Northern Uganda' (2005) 17 *Refugee Law Project Working Paper*; L Hovil and Z Lomo 'Whose Justice? Perceptions of Uganda's Amnesty Act 2000: The Potential for Conflict Resolution and Long-Term Reconciliation' (2005) 15 *Refugee Law Project Working Paper*; JB Odama 'Reconciliation Process (Mato Oput) among the Acholi Tribe of Northern Uganda' Commemorative address made during the ceremony for 21<sup>st</sup> Niwano Peace Prize Award Japan [http://www.npf.or.jp/peace\\_prize\\_f/21/speech\\_e.pdf](http://www.npf.or.jp/peace_prize_f/21/speech_e.pdf) (accessed 8 July 2010); P Bako 'Does Traditional Conflict Resolution lead to Justice? The Mato Oput in Northern Uganda' (2009) 3 *Pretoria Student Review* 103; Mato Oput Project 'Community Perspectives on the Mato Oput Process: A research Study by the Mato Oput Project' (October 2009) 10.

combine formal amnesty and the performance of the Acholi traditional justice mechanisms of *mato oput* (drinking bitter root) and *gomo tong* (bending spears).<sup>157</sup> Further research on this matter broadened the range of Acholi rituals that could be used as conflict resolution measures including *lwako ping wang* (washing away the tears); *mayo kum* (cleansing the body); and *tumu kir* (cleansing abominable acts) among others.<sup>158</sup> Harlacher et al., for instance, give an in depth exploration of the different traditional justice and healing ceremonies in Acholi when and how they were performed in the past and the role the ceremonies are playing in the LRA conflict today. They conclude that symbolic acts of reconciliation and peace building rooted deep in the past can still have relevance in the present, even if weapons of war have changed.<sup>159</sup>

Several other studies were highly critical of the use of Acholi traditional justice and healing ceremonies as an accountability measure for crimes committed in the LRA conflict. Some studies concluded that few people in the affected areas considered the traditional structures a key priority.<sup>160</sup> Bradbury, for example, noted that the tensions between traditional leaders over the possible financial benefits and that external support of traditional practices would be another way to bring the region under the government's control without contributing to improved education and economic development.<sup>161</sup> Some studies pointed out that traditional structure in Northern Uganda is weak and fragmented

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<sup>157</sup> D Pain 'The Bending of Spears: Producing Consensus for Peace and Development in Northern Uganda' (1997) *International Alert and Kacoke Madit*; this report was commissioned by International Alert following the 1997 big meeting (Kacoke Madit) of the Acholi in London. This meeting was a gathering of over three hundred Acholi from Uganda and the Diaspora, including government ministers, church leaders and LRA representatives. This meeting was aimed at raising international awareness of the situation in Northern Uganda and also to generate consensus for peace and reconciliation among the Acholi.

<sup>158</sup> E Baines *Roco Wat I Acholi: Restoring Relationships in Acholiland: Traditional Approaches to Justice and Reintegration* (2005); T Harlacher et al., *Traditional Ways of Copying in Acholi: Cultural Provisions for Reconciliation and Healing from War* (2006).

<sup>159</sup> T Harlacher et al., *Traditional Ways of Copying in Acholi: Cultural Provisions for Reconciliation and Healing from War* (2006).

<sup>160</sup> C Dolan 'Inventing Traditional Leadership? A Critical Assessment of Dennis Pain's The Bending of the Spears' (2000) 13 *COPE working Paper*; Accord 'Background papers presented to the conference on peace research and the reconciliation agenda September 1999' (1999) 32 *COPE working paper*.

<sup>161</sup> M Bradbury *An Overview of Initiatives for Peace in Acholi, Northern Uganda* (1999); EK Baines 'The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda' (2007) *International Journal for Transitional Justice*; JO Latigo 'Northern Uganda: Traditional Based Practices in Acholi Region' in L Huyse & M Salter (eds) *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (2008); P Acirokop 'The Potentials and Limits of *Mato Oput* as a Tool for Reconciliation and Justice' in S Pamar et al., (eds) *Children and Transitional Justice: Truth Telling, Accountability and Reconciliation* (2010).

and that many of the traditional leaders were not sure of how to carry out traditional justice rituals, the studies also question the heritage of some of the traditional leaders.<sup>162</sup>

As illustrated in chapter seven of this thesis, the author agrees with the above observations including the efficacy and challenges to the use of traditional justice. The chapter argues that traditional justice can only play a positive role in Uganda's pursuit of accountability if it is not fashioned as a national tool for accountability. That is if the use of traditional justice is limited to the community level and it is not treated as an alternative to other forms of accountability but rather as a complementary mechanism available to all who desire it.

Nonetheless, in search of a credible national alternative to the ICC investigations, the tendency to promote the use of traditional justice in Northern Uganda remained unabated. Quinn for instance explored the use of traditional justice instead of trials and truth commissions, to bring about societal acknowledgement of what has happened, and offered ideas as to how these traditional practices might augment the rebuilding process in Uganda.<sup>163</sup> Quinn further argues that traditional justice mechanisms were not only used historically, but continue to be used in contemporary society and are therefore relevant as an accountability measure for Uganda.<sup>164</sup> Murithi also argues that local approaches to peace building and reconciliation contain valuable lessons for international peacemakers with respect to rebuilding social trust and restoring communal existence.<sup>165</sup>

Letha opined that local contexts must begin to inform western-based approaches to transitional justice; arguing that without them, external interventions often fail to resonate with the values, norms and beliefs of victims.<sup>166</sup> Other authors have argued that the tension between 'traditional' and 'western' forms of justice in Uganda arises from the varied

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<sup>162</sup> T Allen *War and Justice in Northern Uganda: An Assessment of the International Criminal Court's Intervention* (2005); T Allen 'The International Criminal Court and the Invention of Traditional Justice in Northern Uganda' (2007) *Politique Africaine* 147 – 165.

<sup>163</sup> JR Quinn 'Social Reconstruction in Uganda: The Role of Informal Mechanisms in Transitional Justice' (2006) 8(4) *Human Rights Review* 389 – 407.

<sup>164</sup> JR Quinn 'Beyond Truth Commissions: Indigenous Reconciliation in Uganda' (2006) 4(1) *The Review of Faith and International Affairs* 31 – 37.

<sup>165</sup> T Murithi 'Rebuilding Social Trust in Northern Uganda' (2002) 14 *Peace Review* 291 – 295.

<sup>166</sup> V Letha 'Abomination: Local Belief System and International Justice' (Sept 2007) 5 *Justice and Reconciliation Project Field Notes*; the author illustrates this point by focusing on the Acholi concept of *Kiir* - abomination.

objectives of the two, premised on the paradigm of retributive justice *vis-a-vis* the paradigm of restorative justice. While the former is primarily concerned with accountability and ensuring that perpetrators do not go unpunished, the latter is concerned with ensuring restorative justice involving active participation of the victim, the perpetrator and the community in a process that aims at the restoration of a harmonious relationship between victim and perpetrator.<sup>167</sup> While some quarters supported a resort to traditional justice because the majority of the LRA rebels were forcefully recruited, some as children, and forced to commit crimes against people.<sup>168</sup>

Allen, after an in depth field research, discusses the ICC intervention in the ongoing LRA conflict, the local political circumstances in which it has opted to operate and the attendant controversy it has caused, with impressive detail. He agrees with most commentators on Northern Uganda that rituals of healing are common in Acholi but claims that there is no widespread enthusiasm for *mato oput* or other ceremonies performed as accountability mechanism for crimes committed during the war. He dismisses the role of Acholi traditional justice generally and *mato oput* in particular as hardly a unique system of Acholi justice stating that no such a thing exists. He puts forward a fervent argument for the role of the ICC in the conflict, arguing that the people in Northern Uganda require the same kind of conventional legal mechanism as everyone else living in modern states.<sup>169</sup>

Allen further argues that aid agencies funded the establishment of 'traditional' leaders, including newly created paramount chiefs for the Acholi, Madi, Iteso and Langi peoples, with a stake in promoting the use of local rituals in addressing violent crimes. He argues that the merits of reifying local rituals in a form of semi-official 'traditional justice' have been

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<sup>167</sup> M Maloney & B Harvey 'Breaking Eggs/Re-building Societies: Traditional Justice as a Tool for Transitional Justice in Northern Uganda' (2006) 372 *Public Policy and Dispute Resolution* 4.

<sup>168</sup> L Hovil & JR Quinn 'Peace First, Justice Later: Traditional Justice in Northern Uganda' (2005) 17 *Refugee Law Project Working Paper*; JB Odama 'Reconciliation Process (Mato Oput) among the Acholi Tribe of Northern Uganda' Commemorative address made during the ceremony for 21<sup>st</sup> Niwano Peace Prize Award Japan, available at [www.npf.or.jp/peace\\_prize\\_f/21/speech\\_e.pdf](http://www.npf.or.jp/peace_prize_f/21/speech_e.pdf) (accessed 8 July 2010); P Bako 'Does Traditional Conflict Resolution lead to Justice? The Mato Oput in Northern Uganda' (2009) 3 *Pretoria Student Review* 103; Mato Oput Project 'Community Perspectives on the Mato Oput Process: A research Study by the Mato Oput Project' (October 2009).

<sup>169</sup> T Allen 'Trial Justice: The International Criminal Court and the Lord's Resistance Army' (2006).

oversold and the dangers under-appreciated.<sup>170</sup> While Quinn considers the role and influence of Uganda's religious leaders on the use of traditional practices from the stand point of the six major faith groups and their consideration of the use of neo-traditional practice.<sup>171</sup> Quinn further acknowledges that there are power dynamics at play behind and within traditional practices of acknowledgement in the wider transitional justice framework in Uganda. She concludes that sometimes, traditional practices are carried out by individuals who, at first glance appear to be the justifiable wielders of power, may in fact, be abusing this power.<sup>172</sup>

The role of the ICC in the LRA conflict has without doubt been shrouded with legal, political and practical complexities and subject to numerous debates. Some authors investigate the circumstances of referral by President Museveni and question if the Uganda case was legally admissible by the ICC. Some commentators state that the ICC was drawn into the Ugandan situation by an error of judgment.<sup>173</sup> Arsanjani and Reisman for instance argue that the ICC should never have found the referral by Uganda to satisfy the threshold for admissibility set out in Article 17 of the Rome Statute.<sup>174</sup> Happold considers the various policy and legal issues involved in the ICC referral and the consequent investigations. After examining the legality of Uganda's 'self-referral' and propriety of the ICC Prosecutor's criteria for case selection, he questions the credibility of the ICC and its effectiveness.<sup>175</sup>

Clark argues that the ICC opened investigations in Uganda on an unusual ground that appears to contradict its prosecutorial policies; which is the 'inability of the government forces to capture and arrest the LRA leadership'. He argues that in pursuing its first cases in the DRC and Uganda, the ICC is still struggling to define its identity and purpose and

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<sup>170</sup> T Allen 'Ritual Ab(use)? Problems with Traditional Justice in Northern Uganda' in N Waddell & P Clark (eds) *Courting Conflict? Justice, Peace and the ICC in Africa* (2008).

<sup>171</sup> JR Quinn 'The Thing behind the Thing: The Role and Influence of Religious Leaders on the use of Traditional Practices of Acknowledgment in Uganda' (2010) 8(1) *Review of Faith and International Affairs* 3 – 12.

<sup>172</sup> JR Quinn 'Power to the People? Abuses of Power in Traditional Practices of Acknowledgment in Uganda' *Penal-Disputing Ideas in Transitional Justice* Canadian Political Science Association; Montreal QB 1 June 2010.

<sup>173</sup> A Branch 'International Justice, Local Injustice' (2004) 51(3) *Dissent Magazine*; A Branch 'Uganda's Civil War and the Politics of ICC Intervention' (2007) 21(2) *Ethics and International Affairs* 179 – 198.

<sup>174</sup> MH Arsanjani & WM Reisman 'The Law in Action of the International Criminal Court' (2005) *American Journal of International Law*.

<sup>175</sup> M Happold 'The International Criminal Court and the Lord's Resistance Army' (2007) 8(1) *Melbourne Journal of International Law* 159 – 184.

endeavouring to secure the recognition and confidence of the states that back it. This he argues has led to a situation where the Court sometimes makes inconsistent decisions that undermine its legitimacy. He concludes that the ICC needs a more systematic process of case selection, and a clearer view of how to balance contending legal and political concerns, including the difficult task of addressing government atrocities, if it is to fulfil its mandate and the hopes of its supporters and populations affected by violence.<sup>176</sup>

Schabas while investigating the ICC's first cases argues that from the beginning of its work, the ICC has taken initiatives aimed at attracting cases for prosecution rather than insisting that states fulfil their obligation to prosecute as required by the complementarity principle that is central to the Rome Statute. He further argues that the ICC has been unthreatening to the states concerned because it has targeted rebel groups rather than pro-government militias and others associated with the regimes concerned.<sup>177</sup>

As illustrated in chapter five of this thesis, the author agrees with the observations of most of the commentators on the legal, political and practical complexities around the referral to the ICC and the investigations on only one party to the conflict. The author, however, notes that the government of Uganda has shown no interest in taking over prosecutions of the LRA leaders indicted by the ICC and the ICC has shown no inclination to hand over the prosecutions of these leaders to Uganda. The chapter therefore concludes that the ICC remains an important accountability forum for atrocities committed in the LRA conflict and that the ICC must ensure that meaningful processes of national prosecutions, truth telling, and reparations accompany all its activities, adhering to the notion of complementarity that is central to the Rome Statute.

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<sup>176</sup> P Clark 'Law, Politics and Pragmatism: The ICC and Case Selection in the Democratic Republic of Congo and Uganda' in N Waddell & P Clark (eds) *Courting Conflict? Justice, Peace and the ICC in Africa* (2008).

<sup>177</sup> WA Schabas 'Complementarity in Practice: Some Uncomplimentary Thoughts' (2008) 19 *Criminal Law Forum* 5 – 33; this changed in the Darfur and Kenya situations where the target of the ICC is mainly government officials though these were not 'self-referral' like the first cases of the ICC but referral by the Security Council and instigated by the ICC Prosecutor himself respectively. Perhaps in the cases of self-referral, the ICC will refrain from investigating state actors to encourage more referrals.

Some quarters however, view the ICC as imposing justice in what is comparable to imposed aid with all its negativities.<sup>178</sup> Some commentators went as far as arguing that the ICC process is a neo-liberal imposition of western values of justice in an African context.<sup>179</sup> Nouwen and Werner in addition question the representation of the ICC by its advocates as a legal bastion immune from politics arguing that the ICC is inherently political by making a distinction between ‘friends’ and ‘enemies’ of the international community, which it purports to represent. Using original empirical data, the authors demonstrates how in both Uganda and Sudan warring parties have used the ICC's intervention to brand opponents as enemies of humanity, and to present themselves as friends of the ICC, and thus friends of the international community. The authors observe that the ICC Prosecutor has at times encouraged this friend - enemy dichotomy. They conclude that their observations do not result in a denunciation of the ICC as a ‘political institution’ but underline that a sound normative evaluation of the ICC's activities can be made only when its political dimensions are acknowledged and understood.<sup>180</sup>

The ICC was sore a point during the Juba negotiations mediated by Riek Machar, the SPLA commander and now vice President of South Sudan.<sup>181</sup> The Juba talks were perhaps the best chance for a negotiated settlement but stalled several times due to the looming threat of ICC warrants of arrest. This sparked the peace versus justice debate among scholars and commentators.<sup>182</sup> A Refugee Law Project report defined ‘peace’ as the absence of war and

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<sup>178</sup> C Dolan, ‘Imposed Justice and the need for Sustainable Peace in Uganda’ presentation to Beyond Juba Project/AMANI Project, Transitional Justice Training Programme for Parliamentarians (2008) [http://www.beyondjuba.org/Conference\\_presentations/Imposed\\_Justice\\_and%20the\\_need\\_for\\_Sustainable\\_Peace\\_in\\_Uganda.pdf](http://www.beyondjuba.org/Conference_presentations/Imposed_Justice_and%20the_need_for_Sustainable_Peace_in_Uganda.pdf) (accessed 12 June 2010).

<sup>179</sup> A Perkins ‘Justice for War Criminals – or Peace for Northern Uganda?’ <http://www.guardian.co.uk/society/katineblog/2008/mar/20/justiceforwarcriminalsorp> (accessed 15 June 2010).

<sup>180</sup> SMH Nouwen & WG Werner ‘Doing Justice to the Political: The International Criminal Court in Uganda and Sudan’ (2010) 21 (4) *European Journal of International Law* 941 – 965.

<sup>181</sup> S Perrot ‘Northern Uganda: a “forgotten conflict”, again? The Impact of the International Resolution Process’ in T Allen & K Vlassenroot (eds) *The Lord's Resistance Army: Myth and Reality* (2010); R Atkinson ‘The Realist’ in Juba? An Analysis of the Juba Peace Talks’ in T Allen & K Vlassenroot (eds) *The Lord's Resistance Army: Myth and Reality* (2010); S Simonse et al., ‘NGO Involvement in the Juba Peace Talks: The Role and Dilemmas of IKV Pax Christi’ in T Allen & K Vlassenroot (eds) *The Lord's Resistance Army: Myth and Reality* (2010); R Iya ‘Encountering Kony: A Madi Perspective’ T Allen & K Vlassenroot (eds) *The Lord's Resistance Army: Myth and Reality* (2010).

<sup>182</sup> T Allen *War and Justice in Northern Uganda: An Assessment of the International Criminal Court's Intervention* (2005); T Allen ‘The International Criminal Court and the Invention of Traditional Justice in Northern Uganda’ (2007) *Politique Africaine* 147 – 165; A Branch *The Political Dilemma of Global Injustices:*



‘justice’ as dealing with the past abuses, argues that there is a clear order in which the two should happen, that is; peace needs to be secured before justice can be decided upon and carried out.<sup>183</sup> While other scholars argue that peace and justice are inextricably linked and can be pursued together.<sup>184</sup> Yet, several others disagreed, arguing that although peace and justice are complementary in that justice can deter abuses and can help make peace sustainable by addressing grievances non-violently; the reality of peacemaking sometime requires a deal with perpetrators that is unavoidable and necessary to prevent further conflict and suffering.<sup>185</sup>

Several scholars investigated the extent to which criminal justice should be compromised for the sake of peace.<sup>186</sup> Hoening argues that from a victim’s perspective, ‘peace without justice’ may make decidedly more sense than ‘justice without peace’ would. In addition, he pointed out weaknesses with retributive justice in the context of the ICC, which included its limited scope and reach - it focuses only on a small number of perpetrators of international crimes. He argued that justice of this nature will only ‘scratch the surface of the suffering heaped upon the local population in a war that has lasted two decades’.<sup>187</sup>

Southwick suggests that to help maximise the prospects of peace in Uganda, the ICC should limit its role, applying pressure in a way that reinforces the exit options of amnesty for top

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*Anti-civilian Violence and the Violence of Humanitarianism, the Case of Northern Uganda* (2007); A Branch ‘Uganda’s Civil War and the Politics of ICC Intervention’ (2007) 21(2) *Ethics and International Affairs* 179 – 198.

<sup>183</sup> L Hovil & JR Quinn ‘Peace First, Justice Later: Traditional Justice in Northern Uganda’ (2005) 17 *Refugee Law Project Working Paper*.

<sup>184</sup> E Baines ‘Accountability, Reconciliation and the Juba Peace Talks: Beyond the Impasse (2006) *Justice and Reconciliation Project*.

<sup>185</sup> K Hanlon ‘Peace or Justice? Now that the Peace is being Negotiated in Uganda, will the ICC still Pursue Justice?’ (2007) 14 *Tulsa Journal of Comparative and International Law* 295; N Grono & A O’Brien ‘Justice in Conflict? The International Criminal Court and Peace Process in Northern Uganda’ in N Waddell & P Clark (eds) *Courting Conflict? Justice, Peace and the ICC in Africa* (2008); M Glasius ‘What is Global Justice and Who Decides?: Civil Society and Victim Responses to the International Criminal Court’s First Investigations’ (2009) 31(2) *Human Rights Quarterly* 496 – 520; this report discusses the salient sources of debate and controversy including the perceived selectivity or bias of the ICC, whether the ICC investigations are detrimental to peace-building efforts, the detachment of the ICC from the lived reality of local populations and victims and compensation to victims.

<sup>186</sup> A Greenawalt ‘Complementarity in Crisis: Uganda, Alternative Justice and the International Criminal Court’ (2009) 50 *Virginia Journal of International Law* 108.

<sup>187</sup> P Hoening ‘The Dilemma of Peace and Justice in Northern Uganda’ (2008) *East African Journal of Peace and Human Rights* 338 – 343; B Chinedu, ‘Implementing the International Criminal Court Treaty in Africa: The Role of Non-Governmental Organisations and Government Agencies in Constitutional Reform’ in KM Clark (ed) *Mirrors of Justice: Law and Power in the Post Cold War Era* (2010) 114.

LRA leaders to ensure a negotiated settlement. She further argues that in an ongoing conflict, even after a state's invitation to commence investigations; the ICC must independently analyse what effect its action may have on reducing atrocities and enhancing the prospects for peace.<sup>188</sup> Southwick further argues that to break the deadlock in the justice versus peace debate, all parties should carefully consider practical approaches to provisions of the Rome Statute that would enable suspension of the ICC indictments.<sup>189</sup> While Apuuli observes that although the ICC investigations resulted into the issuance of indictments, the indicted leaders up till now have not been apprehended, yet the warrants of arrest ended all hopes of a negotiated settlement.<sup>190</sup>

Other authors disagree on the impact of the ICC investigations on the Juba negotiations. For instance, Gardner argues that if applied carefully and with the full use of its provisions for victims and witnesses protection, the ICC could play a positive role in furthering the resolution of LRA conflict while laying the groundwork for long-term reconciliation and stability in the country.<sup>191</sup> Pescheke too challenges the view that ICC investigations onto ongoing conflicts will create an obstacle to peace. She argues that that the impact of the ICC investigations depends on the dynamics of a particular conflict and is likely to have both negative and positive effects on a peace process. She concludes that in the Ugandan case, the impact of the ICC on the peace prospects in reality might be quite limited and contends further that undue emphasis on the ICC should be avoided otherwise the ICC may unfairly be made a scapegoat should peace efforts fail.<sup>192</sup>

A Human Rights Watch report furthers this argument and demonstrates that a decision to ignore atrocities reinforces a culture of impunity that may carry a high price. The paper argues that remaining firm on the importance of justice or at least leaving the possibility of justice open does not necessarily impede negotiations but can yield short and long-term

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<sup>188</sup> K Southwick 'Investigating War in Northern Uganda: Dilemmas for the International Criminal Court' (2005) *Yale Journal of International Law* 105 – 119.

<sup>189</sup> K Southwick 'Uganda: Challenges of Peace and Justice' *Refugee International Bulletin* 19 Feb 2008.

<sup>190</sup> KP Apuuli, 'The ICC Arrest Warrants for the Lord's Resistance Army Leaders and Peace Prospects for Northern Uganda' (2006) 4(1) *Journal of International Criminal Justice* 179 – 187.

<sup>191</sup> M Gardner 'In Unchartered Waters: Seeking Justice before the Atrocities Have Stopped: The International Criminal Court in Uganda and the Democratic Republic of Congo' (June 2004) *Citizens for Global Solutions*.

<sup>192</sup> K Peschke 'The ICC Investigations into the Conflict in Northern Uganda: Beyond the Dichotomy of Peace versus Justice' in BS Brown (ed) *Research Handbook on International Criminal Law* (2011).

benefits.<sup>193</sup> Indeed, as illustrated earlier in this chapter, the threat of ICC prosecutions is one of the reasons why the LRA called for negotiations in the first place and during the negotiation period from 2006 to 2008, atrocities dramatically reduced and the LRA have not perpetrated any atrocities in Northern Uganda since. However, civilians in the DRC, South Sudan and Central African Republic now endure the most of LRA brutality despite the pursuit of justice by the ICC.

Other works have looked at the experiences of the ICC in Northern Uganda. Some scholars focus on how the office of the Prosecutor attempted to develop a comprehensive approach in pursuit of his mandate. Brubacher for instance contributes an insider view of the ICC on the peace versus justice debate and the involvement of international criminal tribunals within ongoing conflicts. He elucidates on how the ICC Prosecutor attempted to develop a comprehensive approach in order to pursue his mandate. He concludes that international criminal courts can contribute to efforts to achieve sustainable peace that includes the re-establishment of legal order and the rule of law.<sup>194</sup>

A movement urging the government of Uganda to seek an end to ICC investigations in the 'interests of justice' as provided for in the Rome Statute ensued.<sup>195</sup> In its policy paper, the office of the ICC Prosecutor indicated that it would be misleading to equate the 'interests of justice' to the 'interests of peace' arguing that the Ugandan debate is about 'interests of peace.'<sup>196</sup> The paper states that for cases where a situation should arise whereby ICC involvement directly threatened peace and stability, the right article to deal with this would be article 16, which obliges the court to defer an investigation or prosecution for one year on request of the Security Council by chapter seven resolution.<sup>197</sup>

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<sup>193</sup> Human Rights Watch 'Selling Justice Short: Why Accountability Matters for Peace' (July 2009) <http://www.hrw.org/node/84264> (accessed 15 July 2011).

<sup>194</sup> M Brubacher 'The ICC Investigations of the Lord's Resistance Army: An Insider View in 'The Lord's Resistance Army' in T Allen and K Vlassenroot (eds) *The Lord's Resistance Army: Myth and Reality* (2010).

<sup>195</sup> Interests of Justice are provided for under article 53 of the Rome Statute.

<sup>196</sup> Policy Paper on the Interests of Justice (September 2007) Office of the Prosecutor, International Criminal Court <http://www.icc.cpi.int/NR/rdonlyers/772C95C9-F54D-4321-BF09-73422BB23528/143640/ICC0TPInterestsOfJustice.pdf>.

<sup>197</sup> UN Security Council Chapter VII Resolutions are those that deal with situations that threatens international peace and security.

While Marong argues that to insist on justice at the ICC irrespective of how that might impact on the efforts to find durable peace in Uganda, risks defeating the goals of both peace and justice. The author moves the discussion from the justice versus peace debates instead arguing on the best forum for prosecutions for crimes committed in the LRA conflict. She argues, that the appropriate forum must not only be informed by the legal and moral imperatives of the LRA leadership but must also how it might affect accountability goals such as peace, victim participation, deterrence and legitimacy of the trial. She concludes that in theory, domestic trials offer the best prospect of attaining both peace and justice.<sup>198</sup>

Beyond the debate on amnesty and the use of traditional justice as an alternative to the ICC, several other commentators agree on the need for domestic prosecution. Human Rights Watch in a memorandum enumerates why credible prosecutions of those responsible for international crimes in accordance to international standards are so important in Uganda. The memorandum gives detailed benchmarks that would need to be satisfied before any national alternative to trial by the ICC of the indicted LRA leaders would be adequate or for any other trial for international crimes committed in the LRA conflict.<sup>199</sup>

Other authors argue that trials are far more effective if they are organised in the country where the crimes occurred with more involvement from local individuals and organisations.<sup>200</sup> To cement this argument, Harris opines that the ICC should add a transfer mechanism to shift cases back to the courts of national jurisdiction modelled on a similar rule to that of the International Criminal Tribunal for Rwanda.<sup>201</sup> While other quarters questioned the competence and credibility of Ugandan courts to deal with crimes on the scale committed in the LRA conflict.<sup>202</sup> As illustrated in chapter six of this thesis, Ugandan

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<sup>198</sup> A Marong 'Making Complementarity Work: The Case for Uganda-Based Trials of the Lord's Resistance Army and Lessons from the Rwanda Tribunal' (2010) *African legal Aid Quarterly* 39 – 46.

<sup>199</sup> Human Rights Watch 'Benchmarks for Assessing Possible National Alternatives to ICC Cases Against the LRA' (May 2007) *Human Rights Watch Memorandum*; the benchmarks are said to include credible, independent and impartial investigations and prosecution; rigorous implementation of internationally recognised standards of fair trial; and penalties on conviction that are appropriate and reflect the gravity of the crime.

<sup>200</sup> JM Kamatali 'From the ICTR to ICC: Learning from the ICTR Experiences in Bringing Justice to Rwandans' (2005) 12 *New England Journal of International & Comparative Law* 89.

<sup>201</sup> GH Harris 'Closer to Justice: Transferring Cases from the International Criminal Court' (2010) 19(1) *Minnesota Journal of International Law* 201 – 239.

<sup>202</sup> Amnesty International 'Uganda: Agreement and Annex on Accountability and Reconciliation falls Short of a Comprehensive Plan to end Impunity (March 2008) *Amnesty International* AFR 59/001/2008; 'Report on the

courts and the ICD in particular has the competence to deal with prosecutions of international crimes perpetrated in the LRA conflict and all issues of concern can be ironed out by amendments of certain laws, selection of staff with requisite credentials and a robust outreach. The chapter however, questions whether the executive will allow the ICD to operate without interference in its activities. The chapter further questions whether the ICD will investigate crimes committed by state actors as individuals in government have shown every indication that they do not take lightly any accusation of wrong doing on their part. In addition, the Agreement on Accountability and Reconciliation, specifically shields state actors from prosecutions in the forum envisaged.<sup>203</sup>

Other mechanisms proposed in the Agreement on Accountability and Reconciliation are truth telling and reparations processes. Rose argues that truth telling and reparations processes could play a critical role in Northern Uganda's transition from conflict to peace.<sup>204</sup> Previously, a Refugee Law Project Report analysed the process as provided for in the Amnesty Act from the perspective of those who have undergone the process, those who had received, or were expected to receive ex-combatants in their communities. The report concluded that, despite a number of challenges in its implementation, amnesty is perceived as a vital tool for conflict resolution and for longer-term reconciliation and peace within the specific context in which it is operating as it resonates with specific cultural understanding of justice. The report however, recommended truth telling or admittance of guilt on the part of former combatants as a measure to ensure reconciliation with the community.<sup>205</sup> Matua too argues that reform in Uganda requires the full democratisation of the political society that can be constructed through a truth telling process to overhaul the state.<sup>206</sup>

As illustrated in chapter eight of this thesis, the author agrees with these observations and argue that truth telling process will give Uganda an opportunity to confront it's past, official

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Work of the Office of the High Commissioner for Human Rights in Uganda' (12 February 2007) UN Doc A/HRC/4/49/Add2 para 31.

<sup>203</sup> Agreement on Accountability and Reconciliation clause 4.1.

<sup>204</sup> C Rose 'Looking Beyond and Traditional Justice and Reconciliation Mechanism in Uganda: A Proposal for Truth Telling and Reparations' (2008) 28 *Boston College, Third World Law Journal*.

<sup>205</sup> L Hovil and Z Lomo 'Whose Justice? Perceptions of Uganda's Amnesty Act 2002: The Potential for Conflict Resolution and Long Term Reconciliation' (2005) 15 *Refugee Law Project Working Paper*.

<sup>206</sup> M Matua 'Beyond Juba: Does Uganda Need a National Truth and Reconciliation Process?' (2007) 13 *Buffalo Human Rights Law Review* 401 – 413.

denials and imposed silences, and also will provide victims with public validation of their suffering and that this will make the state's obligation to provide integral reparations unquestionable. The chapter however, questions the extent to which individuals with state authority and the state institutions will give room to a truth telling process to exercise its powers and publicly question their conduct with a looming threat of prosecutions. The author further questions whether the NRM government will accept that its rule has been tarnished by decades of conflict and that state institutions are in need of reform or if it will, like it has done in the past, set sight to justifying policies, hiding complicity and rejecting blame.

The Agreement on Accountability and Reconciliation and its Annexure recognised the need for multiple mechanisms to bring about accountability and reconciliation, in which traditional justice, reparations and truth telling processes were agreed to as parallel and complementary to formal justice systems. Consultations on the different processes are underway, while domestic prosecutions through the newly created ICD have begun. However, challenges to the operation of the ICD are evident. For example, its first trial against Thomas Kwoyelo, the LRA commander captured in Garamba National Park in 2008 was brought to a standstill due to the operation of the Amnesty Act. In addition, Kwoyelo was not been charged with crimes against humanity that was perpetrated in the conflict due to lack of a domestic legislation criminalising such acts prior to March 2010. Human Rights Watch in a briefing paper therefore questions whether the Amnesty Act will ultimately bar cases against LRA members. The briefing paper also questions whether the International Criminal Court Act that implements the Rome Statute in Uganda can be used to prosecute crimes from the conflict as the law only commences in March 2010. The briefing paper further stresses the importance of the ICD in pursuing cases involving crimes committed by both the LRA and the state security organs.<sup>207</sup>

Human Rights Watch further expounds on the existing inadequacies in the Ugandan justice system and the questionable commitment shown by both the LRA and the government of

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<sup>207</sup> Human Rights Watch 'Justice for Serious Crimes before National Courts: Uganda's International Crimes Division' (Jan 2012) *Human Rights Watch Briefing Paper*; this briefing paper also explores the impact of structural inadequacies within the ICD, such as frequent rotation of staff on and off the Division and the lack of a witness and victim protection and support scheme.

Uganda to serious accountability efforts arguing that the true test ultimately lies not in the language of the text, but in the rigors of implementation of the Agreement on Accountability and Reconciliation.<sup>208</sup> Worden further observes that planning mechanisms for accountability and reconciliation are lagging far behind fast moving events on the ground. He suggests that the government and civil society must move now from ideas to action if they are to be prepared to deliver a form of accountability that is acceptable to victims of the conflict and that can form the foundation for a lasting peace in Uganda.<sup>209</sup> In the same tone, Mbazira posits that the Ugandan experience illustrates how perpetrators of international crimes can elude both international and domestic judicial processes; pointing out that despite ICC arrest warrants, the international community has failed to affect the arrest of suspects and that the ICD is idle due to the absence of accused persons.<sup>210</sup>

Otim and Wierda on the other hand opine that the early treatment of accountability and reconciliation dilemmas at Juba set new standards in terms of efforts to meld local demands and international legal obligations and in terms of the process of soliciting the views of affected populations. In these respects, they argue that much can be learnt from experiences in Uganda, regardless of whether the peace process itself succeeds or fails.<sup>211</sup> While Hopwood correctly points out that with or without a concluded peace agreement in Juba, further violence and unrest may continue in the region if longstanding grievances are not addressed. He further states that hidden arms caches, unexploded ordinances, and landmines scattered throughout the region, present a largely unmitigated security threat.<sup>212</sup>

The parties did not sign a comprehensive peace agreement after the Juba talks. Some commentators have called for additional negotiations with a new format. Some have urged the UN Security Council and the African Union (AU) Peace and Security Council mandate a

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<sup>208</sup> Human Rights Watch *Uganda: The June 29 Agreement on Accountability and Reconciliation and the Need for Adequate Penalties for the Most Serious Crimes* (Jan 2008); Human Rights Watch 'Analysis of the Annex to the June 29 Agreement on Accountability and Reconciliation' (Feb 2008) 4 *Memorandum on Justice Issues and the Juba Talk*.

<sup>209</sup> S Worden 'The Justice Dilemma in Uganda' (Feb 2008) *United States Institute of Peace Briefing Paper*.

<sup>210</sup> C Mbazira 'Prosecuting International Crimes Committed by the Lord's Resistance Army in Uganda' in C Murungu & J Biegon (eds) *Prosecuting International Crimes in Africa* (2011).

<sup>211</sup> M Otim & M Wierda 'Justice at Juba: International Obligations and Local Demands in Northern Uganda' in N Waddell & P Clark (eds) *Courting Conflict? Justice, Peace and the ICC in Africa* (2008).

<sup>212</sup> J Hopwood 'With or Without Peace: Disarmament, Demobilisation and Reintegration in Northern Uganda' (Feb 2008) 6 *Justice and Reconciliation Project Field Notes*.

special envoy for LRA-affected areas assisted by the government of South Sudan to negotiate peace directly with Kony and his commanders.<sup>213</sup> Other reports have called for a better-coordinated military pursuit with assistance of the international community to bolster the fight against the LRA to ensure the apprehension or elimination of its leadership.<sup>214</sup> Other reports in addition call for a new strategy that prioritises civilian protection; unity of effort among military and civilian actors within and across national boundaries; and national ownership to bring the LRA conflict to an end.<sup>215</sup>

Nonetheless, LRA conflict rages on and the rebels including culpable LRA leaders have been returning for years to their communities in Uganda and have taken advantage of the amnesty offered by the government. Accountability, nonetheless, remains a prominent legal issue with an ever-increasing literature on the subject and this thesis contributes to that. Most of the available scholarly work focuses on the tension caused by the ICC investigations on the amnesty process and the peace talks. Other literature concentrates on whether or not traditional justice processes are appropriate accountability measures; and what the appropriate forum would be; domestic or international courts. In addition, whether traditional justice or truth telling and reparations process are what is needed and what should come first, peace or justice. In this thesis, the author agrees with Quinn who suggests that in examining the case of Uganda where a myriad of mechanisms have been applied as transitional measures since Independence, what is required is complementarity not sequencing as the different measures can work to reinforce each other.<sup>216</sup> In addition, the author takes the view that there is no 'one size fits all' when it comes to accountability for mass atrocities. The thesis therefore gives an in depth consideration to the unique situation of the LRA conflict and analyses the four different accountability measures underway or proposed to deal with crimes committed in the conflict; investigating where and how they can effectively complement each other to promote justice, truth and reparations in Uganda.

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<sup>213</sup> International Crisis Group 'The Road to Peace, with or without Kony' (10 Dec 2008) 146 *Africa Report*.

<sup>214</sup> J Prendergast 'Let's make a Deal: Leverage Needed in Northern Uganda Peace Talks' (Aug 2007) 6 *ENOUGH Strategy Paper*; A Benner & J Prendergast 'Ending the Lord's Resistance Army' (Oct 2011) *ENOUGH Project; Resolve From Promise to Peace: A Blueprint for President Obama's LRA Strategy* (6 Oct 2010).

<sup>215</sup> International Crisis Group 'LRA: A Regional Strategy beyond Killing Kony' (28 April 2010) 157 *Africa Report*.

<sup>216</sup> JR Quinn 'Chicken and Eggs? Sequencing in Transitional Justice: The Case of Uganda' (2008) *International Law Journal of Peace Studies* 35 – 53.



## 1.9 Overview of chapters

Chapter one gives a brief background to the conflict and provides a review of literature that forms the basis for analysis in the chapters that follows.

Chapter two discusses the international normative standards applicable to the conflict. The chapter concludes that war crimes and crimes against humanity were committed in the LRA conflict and discusses the specific elements of the crimes committed.

Chapter three gives a description of Uganda's international obligation in regard to international crimes. This chapter also examines the place of amnesties in international law and gives an overview of the different accountability measures, national and international, judicial and non-judicial.

Chapter four discusses the Uganda Amnesty Act and the Agreement on Accountability and Reconciliation reached in Juba. This chapter specifically analyses if these two instruments complies with Uganda's international obligations.

Chapter five analyses the ICC intervention in the LRA conflict. It critically analyses the hard questions asked in relation to ICC warrants of arrest, investigations, and response of victim groups in Uganda. It also looks at the ICC reparations regime and discusses its benefits for victims of the LRA conflict.

Chapter six focuses on the International Crimes Division of the High Court of Uganda. It discusses the laws applicable in the division, questions of jurisdiction, and other interlocutory matters likely to come before court.

Chapter seven discusses the challenges to application of traditional justice to the crimes committed in the LRA conflict and gives an overview of the different healing rituals and traditional justice mechanisms practised among the Acholi of Uganda.

Chapter eight analyses the features of a truth commission for Uganda. It gives an overview of the past two investigative commissions in Uganda and uses that and case studies from other transitional states to highlight potential challenges for a new truth telling and reconciliation process in Uganda.

Chapter nine considers all the analysis in the preceding chapters to provide conclusions and recommendations for the thesis.