THE RIGHT TO DEVELOPMENT IN POST CONFLICT SOCIETIES: LESSONS FROM THE ACHOLI PEOPLE IN NORTHERN UGANDA

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Submitted in fulfilment of the requirement for the award of the degree of

LLD (Human Rights)

In the Faculty of Law

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(2021 September)

Annexure G

University of Pretoria

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Dedication

To my mother, who always reminded my siblings and I that 'there is no market for family'. A constant reminder that we always need each other and can only move forward and develop together...

A true reflection of the 'africanness' of the right to development

God is able!

Acknowledgement

Thanking the Lord my God for His never ending love and faithfulness. God is truly faithful for His will definitely did not take me where His Grace could not protect me and see me through this course. Thank you Lord for holding my hand and guiding me. I could not have embarked on it, gone through it or completed it without you. I am eternally grateful. How great is the Lord! You move mountains!

I would like to appreciate Professor Michelo Hansungule, my supervisor. I am appreciative of the guidance you gave; the time you spent; and continued support throughout the course.

Not forgetting the Judicial Service Commission, my employer; particularly Dr. Rose Nassali Lukwago, the Secretary to the Commission, and Mr. Julius Mwebembezi. Thank you for your support in the course of this journey. I will always be thankful.

To my ever loving and supportive family, my unending gratitude for your continued support throughout this journey. Thank you for always standing by me and walking this journey with me. May God always watch over you and bless you.

And my dear late sister Edah Mwake Ngwatu – Ger, thank you for being one of my biggest supporters and walking this journey with me. I wish you were here and made it to the end with me. I will forever miss you!

God is faithful!

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List of abbreviations

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ACODE	Advocates Coalition for Development and Environment
ADR	Alternative Dispute Resolution
AIDS	Acquired Immune Deficiency Syndrome
AU	African Union
CAT	Convention Against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment
CDD	Community Demand Driven
CEDAW	Convention on Elimination of all Forms of Discrimination Against Women
CEMIRIDE	Centre for Minority Rights Development
CESCR	Committee on Economic Social and Cultural Rights
CESCR	Covenant on Economic Social and Cultural Rights
CHA	Cessation of Hostilities Agreement
CMCC	Civil Military Cooperation Centre
COSASE	Committee on Commissions, Statutory Authorities and State Enterprises
CPI	Corruption Perception Index
CRC	Constitutional Review Commission
CSO	Civil Society Organisation
DDPA	Doha Document for Peace Agreement
DDPD	Doha Document for Peace in Darfur
DDR	Disarmament, Demobilisation and Reintegration
DRA	Darfur Regional Authority
DINU	Development Initiative of Northern Uganda
DPP	Directorate of Public Prosecution
ECOSOC	Economic Social and Cultural rights
EOC	Equal Opportunities Commission
EU	European Union
EVIs	Extremely Vulnerable Individuals
FCPU	Family and Child Protection Unit
FIDA	International Federation of Women Lawyers
FODSP	Fundamental Objectives and Directive Principles of State Policy

GoR	Government of Rwanda
GoSS	Government of South Sudan
GoU	Government of Uganda
HDI	Human Development Index
HIV	Human Immunodeficiency Virus
HPI	Human Poverty Index
HRBA	Human Rights Based Approach
HSM	Holy Spirit Movement
IAMCHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICD	International Crimes Division
ICTR	International Criminal Tribunal for Rwanda
IDP	Internally Displaced Persons
IG	Inspectorate of Government
IGG	Inspector of Government
ITMC	Inter Ministerial Technical Committee
JLOS	Justice Law and Order Sector
KALIP	Karamoja Livelihoods Programme
LC	Local Council
LRA/M	Lord's Resistance Army/Movement
MDAs	Ministries, Departments & Agencies
MICT	Mechanism for International Criminal Tribunals
MoFPED	Ministry of Finance Planning and Economic Development
MoH	Ministry of Health
MoLG	Ministry of Local Government
MoJCA	Ministry of Justice and Constitutional Affairs
MRGI	Minority Rights Group International
NAADs	National Agricultural Advisory Services
NDP	National Development Plan
NEPAD	New Partnership for Economic Development
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institutions
NPA	National Planning Authority

NODPoSP	National Objectives and Directive Principles of State Policy
NRA/M	National Resistance Army/Movement
NUMU	NUSAF Monitoring Unit
NURP	Northern Uganda Reconstruction Programme
NUSAF	Northern Uganda Social Action Fund
OAG	Office of Auditor General
OAU	Organisation of African Unity
OBT	Output Budgeting Tool
OPDP	Ogiek Peoples' Development Program
OPM	Office of the Prime Minister
OWC	Operation Wealth Creation
PAC	Public Accounts Committee
PCIJ	Permanent Court of International Justice
PEAP	Poverty Eradication Action Plan
PPP	Public Private Partnerships
PRDP	Peace Recovery Development Plan
RCKN	Rotary Club of Kampala North
RTD	Right to Development
RTR	Right to Remedy
SC	Supreme Court
SERAC	Social and Economic Rights Action Centre
SLM	Sudan Liberation Movement
SPLA	Sudan People's Liberation Army
TASO	The Aids Support Organisation
TJ	Transitional Justice
TJWG	Transitional Justice Working Group
UBoS	Uganda Bureau of Statistics
ULRC	Uganda Law Reform Commission
UNHBS	Uganda National Household Baseline Survey
UDHR	Universal Declaration of Human Rights
UHRC	Uganda Human Rights Commission
UN	United Nations
UN DRD	United Nations Declaration on the Right to Development

UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations International Children's Emergency Fund
UNIFEM	United Nations Development Fund for Women
UNLA	Uganda National Liberation Army
UNOHCHR	United Nations Office of the High Commissioner for Human Rights
UPDF	Uganda People's Defence Forces
UPDA	Uganda People's Democratic Army
UPE	Universal Primary Education
UPF	Uganda Police Force
VAGs	Voluntary Action Groups
WFP	World Food Programme
YLP	Youth Livelihood Programme

International and regional human rights treaties ratified by Uganda

No.	Treaty	Date of ratification
International human rights treaties		
1.	United Nations Charter	26th June 1945
2.	Universal Declaration of Human Rights	10th December 1948
3.	International Covenant on Civil and Political Rights	21st June 1985
4.	Convention on the Elimination of All Forms of Discrimination Against Women	22nd July 1985
5.	Convention Against Torture	3rd November 1986
6.	International Covenant on Economic Social and Cultural Rights	21st January 1987
7.	Convention on the Rights of the Child	17th August 1990
Regional human rights treaties		
1.	African Charter on Human and Peoples' Rights	10th May 1986
2.	African Charter on the Rights and Welfare of the Child	17th August 1994
3.	African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa	29th January 2010
4.	Protocol to the African Charter on the Rights and Welfare of Women	22nd July 2010

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Abstract

The Acholi people have remained poor despite the existence of a legal regulatory framework to guarantee enjoyment of the right to development (RTD) in Uganda. The study, therefore, seeks to explore alternative approaches for the protection and attainment of the RTD for the Acholi; a society that recently emerged from a conflict that lasted over 20 years. The conflict stifled the Acholis' development opportunities and stripped them of their culture, a cornerstone for development in their society, due to forced encampment. The broken cultural system had the effect of limiting access to development opportunities. In the absence of protection from cultural structures, access to land and other sources of livelihood, the Acholi were reduced to a life of abject poverty during and after the conflict.

The objective of this study was two-fold. First, to contribute to the debate on justiciability of the RTD for the Acholi by questioning the efficacy of the legal, policy and institutional framework for the protection of developmental rights in the post-conflict setting. The study also sought to explore the use of alternative approaches, including a clan-based development model, to facilitate development of the Acholi. This is in line with the right to self-determination which recognises the right of all people to freely participate in their development.

From a theoretical standpoint, despite its controversial nature, the study shows that the RTD is indeed recognised under the African Charter, and is, therefore, justiciable in Uganda by virtue of article 45 of the Uganda Constitution. However, the legal basis upon which the RTD can be claimed is weak given that the right is only justiciable at the African regional level, beyond the reach of an ordinary Acholi of limited means. Its justiciability alone has remained contentious not just in Africa but also in the international realm.

The study advocates for the adoption of a clan-based development model to tap into the pre-conflict Acholi clan structure through which development could be communally attained. This process would be state-funded through public-private partnerships in a bid to facilitate sustainable and meaningful development in Acholiland. The study advances the need for legal and institutional reforms; including, constitutional reforms to give formal recognition of the RTD in the bill of rights. The recognition of the role of culture in development

planning and peace processes is also advocated for as it is critical for ensuring sustainability of peace and development.

CHAPTER ONE

1. Introduction

1.1 The 'rape' of the Acholi culture and its impact on the right to development

Every person has an inherent right to development (RTD).[1] The RTD has its foundation in the African Charter on Human and Peoples' Rights (ACHPR) which guarantees the right of all peoples economic, social and cultural development.[2] The ACHPR protects this RTD while taking into account the peoples' freedom, and identity and the need for equal enjoyment of the common heritage of mankind.[3] This RTD offers opportunities for the improvement of livelihood and contributes to the attainment of other human rights.

The ACHPR emphasises the need for special attention to be paid to the RTD; as well as the indivisibility of economic, social and cultural from civil and political rights, since the enjoyment of one set of rights leads to the satisfaction or another.[4] It is on this basis that a case is made for attainment of the RTD for the Acholi, a post-conflict society in northern Uganda. The RTD has been an elusive right for the Acholi to attain and enjoy. This is in light of the human rights impact of the 20-year conflict that the Acholi experienced as a result of the conflict between the government of Uganda (GoU) and the Lord's Resistance Army (LRA), a rebel group.[5]

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[1]United Nations Declaration on the Right to Development adopted at the United Nations Millennium Declaration, General Assembly resolution 55/2, art 1; African Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3, rev. 5, 21 I.L.M. 58 (1982), available at http://www.africa-union.org/root/au/Documents/Treaties/Text/Banjul%20Charter.pdf, art 22.

[2]African Charter on Human and Peoples' Rights (as above), art 22 (1).

[3]African Charter on Human and Peoples' Rights, art 22 (1).

[4]African Charter on Human and Peoples' Rights, the preamble; A Sengupta, 'Realizing the right to development', (2000) Volume 31, *Development and Change*, 553 – 578, 555.

[5]The LRA conflict against the NRM government was a reaction to what was perceived as imminent national marginalisation by the government which was seen to be dominated by western Ugandans. The conflict was also fuelled by anger as a result of alleged NRM-sponsored killings of the Acholi and looting of livestock, among other human rights violations in the northern region.[5]

Uganda has experienced various conflicts since its independence in 1962.[6] Some of these conflicts include: the seizing of power by President Idi Amin from President Milton Obote through a military coup in 1971; and the deposition of President Milton Obote in 1985 during his second regime by General Tito Okello Lutwa.[7] However, none of the conflicts lasted as long as the northern Uganda conflict which ran from 1986 until 2006. The Acholi, an indigenous tribe from the Acholi sub-region of northern Uganda bore the brunt of the over 20-year conflict.

Acholi sub-region is one of the two sub-regions that form northern Uganda. Acholi sub-region is made up of 7 districts in Northern Uganda. These districts consist of: Kitgum, Gulu, Lamwo, Amuru, Pader, Nwoya, and Agago.[8] During the conflict, the Acholi were forced out of their villages by government and herded into internally displaced people's camps (IDP).[9]

The massive displacement of the Acholi, a largely agricultural and civilian population, sought to enable the Uganda Peoples Defence Forces (UPDF) to conduct their military operations against the LRA freely. The displacement also sought to cut-off access to food and support for the LRA.[10] Consequently, the Acholi lost their freedom of movement as they were prohibited from moving out of the IDP camps at will. This is a right guaranteed under the Uganda Constitution.[11] The Acholi could not, therefore, access their property in the villages and sources of livelihood.

[6]FO Adong, Recovery and development politics: Options for sustainable peacebuilding in Northern Uganda, Discussion Paper 61, 7; African Peer Review Mechanism, Uganda second country review report, January 2018, 27.

[7]As above.

[8]Uganda Human Rights Commission, 'Picking up the pieces in Acholi sub-region: A special report on the peace, justice and human rights situation', (July 2011 - June 2012), 3.

[9]Human Rights Watch, 'Uprooted and forgotten: Impunity and human rights abuses in Northern Uganda', September 2005 Volume 17 No 12 (A), 69.

[10]Human Rights Watch's *Abducted and abused: Renewed war in northern Uganda*, 15 June 2003, 61.

[11]Constitution of the Republic of Uganda 1995 (as amended), art 23.

In addition to their inability to access their property, the Acholi's property was looted both by the LRA and the government soldiers, the Uganda Peoples' Defence Forces.[12] This looting had an impact on their access to resources and also the livelihood of the Acholi, especially since they had been geographically displaced and isolated from their communities.[13] As already noted, both government soldiers and the LRA rebels were perpetrators of various human rights violations in the northern region.

Some of the human rights of the Acholi that were violated include: the right to life where numerous lives were lost;[14] the right to property;[15] and the right to freedom from torture, cruel, inhuman and degrading treatment or punishment,[16] through the rape and defilement of Acholi women and girls, among other abuses. Further, a 'scorch earth policy' was employed by the UPDF to deprive the rebels of sources of food.[17] This involved the burning of gardens, homes, and property belonging to ordinary Acholi.

One of the outcomes of the conflict was that the people of northern Uganda were stripped of their dignity, culture and livelihood.[18] These aspects of their lives would have otherwise enabled them develop socially, economically, and culturally. The Acholi were, therefore, reduced to a state of abject poverty. The war tore down Acholi cultural structures and weakened them as a people. The Acholi heavily relied on their culture for order and development. Hence, once the culture was raped, the soul and moral fabric of their society was also raped and destroyed; and the right to life and livelihood violated.

[12]Human Rights Watch, (n 10 above), 9.

[13] Human Rights Watch (as above), 9.

[14]The Constitution of the Republic of Uganda 1995 (as amended), art 22.

[15]The Constitution of the Republic of Uganda 1995 (as amended), art 26.

[16]The Constitution of the Republic of Uganda 1995 (as amended), art 24.

[17] F Kisekka-Ntale, Roots of the conflict in northern Uganda, (Winter 2007) Volume 32, No 4 *The Journal of Social, Political and Economic Studies*, 436.

[18] Invisible Children, 'The LRA, looting, and its life altering effects', https://invisiblechildren.com, (accessed on 16 November 2020).

In the pre-conflict era, it was unheard of that an Acholi would resort to prostitution as a means of survival.[19] It was also unheard of that a mother would be forced to pimp their daughters to put food on the table.[20] The Acholi were deprived of their dignity, a right that is guaranteed under the Universal Declaration of Human Rights (UDHR).[21] The UDHR recognised fundamental human rights, as well as the dignity and worth of the human person; the equal rights of men and women; and the need to promote social progress and improve the standards of life.[22]

The UDHR specifically provides for the right to dignity; and recognises that all persons are born free and equal in dignity and rights.[23] There is no clear definition of what the right to dignity entails. However, from a moralist perspective as espoused by Kant, with dignity as a feature of humanity, people are forced to act out of respect 'for a universalised law-like conduct of themselves and others'.[24]

Kant defined this need to act because of reason as acting out of a moral duty.[25] Kant, therefore, linked this notion of duty to respect for the human dignity of oneself and others; with dignity being the ultimate supreme value to be respected as an end in itself.[26] Human dignity, therefore, provides the legal basis upon which relative and universal characteristics of human rights are founded.[27]

According to Beyleveld and Brownsword, among other interpretations, human digni-

[19] Z Lomo & L Hovil, 'Behind the violence: The war in northern Uganda', Institute for Security Studies (2004), 39.

[20]Informal discussion held with Mr. Ambrose Olaa the Prime Minister of Acholi Kingdom on 9 June 2017 at Ker Kwaro (Acholi Cultural Institution).

[21]Universal Declaration of Human Rights, art 1.

[22]Universal Declaration of Human Rights, preamble.

[23]Universal Declaration of Human Rights, art 1.

[24]I Englard, Human dignity: From antiquity to modern Israel's constitutional framework, (1999-2000) *Cardozo Law Review*, 1903-1928 in AC Steinmann, The core meaning of human dignity, (2016) 19 *Potchefstroom Electronic Law Journal*, 1-32, 8.

[25]I Kant, 'Foundations of the metaphysics of morals', in AC Steinmann, The core meaning of human dignity, (2016) 19 *Potchefstroom Electronic Law Journal*, 1-32, 8.

[26] As above.

[27]Steinmann (n 24 above), 4.

ty includes empowerment which accrues in light of the right to respect for one's dignity as a human, and the right to the conditions in which human dignity can flourish.[28] The Acholi were devoid of conditions that empowered them to enjoy their dignity and facilitate the fulfilment of their developmental rights during and after the conflict. In the post-conflict era, the Acholi are in essence a broken people with a broken traditional system. This broken traditional system cannot offer them the much needed support in order to attain and enjoy their RTD.

Before the conflict, the Acholi had a way of life that was firmly rooted in their culture. The Uganda Constitution recognises this right of each person to belong to and practice their culture.[29] The Acholi practiced this right and their traditional system consisted of a hierarchy whereby men were the providers while women had assigned roles.[30] Some of the roles that were assigned to women include cooking and harvesting crops.[31] Through the assignment of roles, each family made a contribution towards the general development of the clan.

The clan was headed by a clan leader who watched over the various families under his jurisdiction.[32] All members of the clan would be unified to ensure that they collectively progressed. This system can be referred to as a clan-based development model under which families have social and economic obligations to the clan; and ultimately to the tribe. This traditional system had the cumulative effect of contributing to the overall development of the tribe. The cultural system and its role in facilitating enjoyment of the RTD will be discussed in chapter five.

The Acholi way of life and cultural system fostered unity among the community and ensured that they developed together. With unity, development was promoted for all members of the community. This development was halted and eroded by 20 years of conflict in

[28]D Beyleveld & R Brownsword, 'Human dignity', 11 in Steinmann (n 24 above), 7.

[29]Constitution of the Republic of Uganda 1995 (as amended), art 37.

[30]NJ Bilotta, 'Encompassing Acholi values: culturally ethical reintegration ideology for formerly abducted youth of the Lord's Resistance Army in northern Uganda' (2011) Paper 535, 22.

[31]As above.

[32]Informal discussion with Mr. Ongaya Acellam, Clan Leader of Koro Ibakara clan on 9th June 2017 at Pece Division, Gulu Municipality, Gulu district.

the northern region. With the signing of the cessation of hostilities agreement (CHA), relative peace returned to northern Uganda. The CHA was signed during the Juba peace talks between the Lord's Resistance Army (LRA) and the Government of Uganda (GoU).[33]

Despite the cessation of hostilities, untold damage and suffering had already been done to the Acholi through massive human rights violations. These include: massive killings, mutilations, abductions, torture and other mistreatment of the Acholi,[34] which occurred between 1986 and 2006 when the conflict ended. The 20-year conflict also brought about an institutional deficit among the Acholi through the disintegration of the Acholi traditional systems.

The disruption of the Acholi institutional structure commenced by the Uganda People's Democratic Army (UPDA) in 1986.[35] The UPDA consisted of remnants of General Tito Okello Lutwa's army and their civilian supporters.[36] The UPDA later turned into the Holy Spirit Movement (HSM) and was led by Alice Lakwena until November 1987 when it was defeated by government soldiers.[37] After its defeat by government soldiers, the HSM transitioned into the Lord's Resistance Army (LRA) commanded by Joseph Kony, which sustained the war till 2006.[38]

The Acholi had existed and lived based on an organised clan system in the pre-conflict era.[39] One of the major effects of the war was that these traditional systems were destroyed, especially with the forced displacement of the Acholi from their villages to IDP

[33]The signing of the CHA was mediated by the Government of South Sudan. The CHA signalled the return of peace in northern Uganda and led to a reduction in the violation of human rights for the people of northern Uganda.

[34]Human Rights Watch, (n 9 above), 15-20.

[35] Z Lomo & L Hovil, 'Behind the violence: Causes, consequences and the search for solutions to the war in northern Uganda, 2004, Refugee Law Project Working Paper No. 11, 10.

[36] As above.

[37]As above.

[38]BG Wairama, 'Uganda: The marginalisation of minorities', (2001) 11; Lomo & Hovil, (n 35 above), 10-13.

[39]Informal discussion held with Mr. Ambrose Olaa the Prime Minister of Acholi Kingdom on 9th June 2017 at Ker Kwaro (Acholi Cultural Institution); 'Lango and Acholi', https://www.globalsecurity.org>uganda , (accessed 27 June 2018).

camps. This forced displacement deprived the Acholi of their right to property and the right to livelihood.[40]

In the case of *Olga Tellis & Ors v Bombay Municipal Council*, the interrelation between the right to life and livelihood was explored and explained.[41] Here, the right to life, a civil and political right, was used to advance the right to livelihood, an economic, cultural and social right. In this case, a writ petition was filed by pavement and slum dwellers in Bombay who were due to be evicted by the Bombay Municipal Corporation, seeking to be permitted to stay in the dwellings during the monsoon months.

The Supreme Court of India held that the right to life, which is conferred by article 21 of the India Constitution, includes the right to livelihood; and, therefore, an eviction of the petitioners from their dwellings would deprive them of their livelihood. Court, however, observed that the right to life was not an absolute right and could, therefore, be deprived if due process is followed.[42] Similarly, denial of human rights of the Acholi through destruction of property and their forced displacement amounts to deprivation of the right to life, a right guaranteed by the Uganda Constitution.[43]

The forced encampment of the Acholi affected their enjoyment of social and economic rights and deprived them of development opportunities. As stated in the *Olga Tellis* case, no one can live without the means of living.[44] The conflict created a state of insecurity in the northern region and reduced opportunities for development. With an insecure region, no investor whether local or foreign would risk investing in Acholiland due to high probability of abductions and routine ambushes carried out by the LRA rebels.[45] Consequently, development efforts in the region came to a halt.

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[40]Universal Declaration of Human Rights, art 17; Constitution of the Republic of Uganda 1995, art 26.

[41] Olga Tellis & Ors v Bombay Municipal Council [1985] 2 SCC (3) 545.

[42]As above.

[43] Constitution of the Republic of Uganda 1995 (as amended), art 22.

[44]Olga Tellis & Ors v Bombay Municipal Council [1985] 2 SCC (3) 545.

[45]'Economic cost of the conflict in northern Uganda', https://reliefweb.int/report/Uganda/economic-cost-conflict-northern-uganda, posted on 13 November 2002, (accessed 19 September 2019).

The conflict left the Acholi people quite vulnerable and poor. With a situation where over 90% of the population were displaced, economic activities stalled, thereby affecting livelihood and development.[46] In this instance, development is looked at the ability to have an improvement in human lives.[47] A 2012 Poverty Status Report classified 40% of the Acholi people as absolutely poor, as compared to 4% of the population in Kampala, the capital city.[48]

One who is 'absolutely poor' or lives in 'absolute poverty' has been defined as a person/household that lives in a 'condition characterised by severe deprivation of basic human needs such as food, health, shelter and education, among others.[49] The conflict led to the marginalisation of a vulnerable population with the increased inequality and limited access to development opportunities.[50] This is a reflection of the dire poverty situation for the Acholi people and justifies the urgent need for attainment of the RTD.

The Human Development Indices (HDIs) and Human Poverty Indices (HPIs) demonstrate that northern Uganda was lagging behind the rest of the country towards the end of the conflict.[51] Regional imbalances remained in the northern region, keeping it disfavoured.[52] The challenge for the Acholi is that their development remained unrealised despite the existence of a legal framework guaranteeing the RTD,[53] particularly at the regional level. This is attributed to the fact that other regions, especially the central and western region have enjoyed relative peace, a vital factor for development.[54]

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[46] Peace Recovery and Development Plan (2007-2010), 73.

[47] UO Spring, RV Summy et al (*eds*), 'Peace studies', Volume vii, *Public Policy and Global Security*, 126.

[48]Ministry of Finance Planning and Economic Development, Poverty status report, 2012; Relief Web, 'Analysis: From emergency aid to early recovery in northern Uganda', 2 January 2013, https://reliefweb.int/report/uganda/analysis-emergency-aid-early-recovery-northern-uganda, (accessed 31 July 2019).

[49]United Nations definition of absolute poverty in D Gordon, 'Indicators of poverty & hunger', Expert Group Meeting on Youth Development Indicators United Nations Headquarters, New York 12 – 14 December 2005, https://www.un.org/esa/socdev/unyin/documents/ydiDavidGordon_poverty.pdf, (accessed 12 July 2021).

[50]RS Esuruku, Horizons of peace and development in northern Uganda, https://www.accord.org.za/ajcr-issues/horizons-of-peace-and-development-in-northern-uganda/ (accessed 17 November 2020).

[51]United Nations Development Programme, *Uganda Human Development Report* (2007), 61.

[52]As above.

[53]African Charter on Human and Peoples' Rights, art 22.

[54]Esuruku, (n 50 above).

Further, the Acholi have remained poor and undeveloped despite attempts at implementation of various development interventions by GoU. Some of these interventions include the Peace Recovery and Development Programme (PRDP)[55] and Northern Uganda Reconstruction Programme (NURP).[56] These interventions were specifically planned and designed to facilitate post-conflict reconstruction and recovery in northern Uganda.

With NURP, GoU's objective was to restore economic and social structures in northern Uganda.[57] PPRDP, on the other hand, aimed at rehabilitating northern Uganda by addressing the negative impact of the LRA conflict.[58] The interventions were implemented during and after the northern conflict and have had no impact on the full restoration of the human dignity and livelihood of the Acholi. These programmes and their intended objectives are discussed in detail in chapter three.

The need for development of the Acholi people became more crucial having had a 20-year lull in their socio-economic development. The people of Acholiland require a concerted effort by the State to facilitate their socio-economic development. This study, therefore, seeks to analyse the legal framework as well as the development systems and processes with a view to establishing how best the GoU could fulfil its obligation of guaranteeing attainment of the RTD for the Acholi in the post-conflict era.

Nkondo project, a community-led development initiative will also be analysed with the objective of ascertaining how the same can be replicated in line with the principles on the RTD and the Acholi clan system to facilitate the Acholi to develop. The study also seeks to draw lessons from a case study of Rwanda, a post conflict society, on how best the RTD can still be attained for the Acholi; especially in light of the possible use of a clan based development model.

[55]Adong, (n 6 above), 36.

[56] Ministry of Finance Planning and Economic Development, 'Post conflict reconstruction: The case of northern Uganda', Discussion paper 7, 2003, 32.

[57]As above, 32.

[58]Adong, '(n 6 above), 36.

1.1.1 State duty to protect and promote the RTD

The RTD is a controversial right. The debate on its justiciability has remained contentious in international human rights discourse. In the Ugandan context, the RTD, especially in a post-conflict northern Uganda setting, is both a substantive human right and a socio-economic right. The GoU is bound by its obligations under the ACHPR to guarantee the RTD.[59] Uganda ratified the ACHPR on 10th May 1986.[60] The ratification of the ACHPR obliges the GoU to respect the RTD and protect its observance.

States have a duty to protect human rights as enshrined in human rights instruments that they ratified. This duty was highlighted in the *SERAC* case.[61] In the *SERAC* case, the African Commission expounded on this obligation as requiring the State to avail human rights protection to beneficiaries against political, economic, and social interference.[62] This obligation necessitates State parties to protect the holders of human rights through both enactment of legislation, as well as provision of effective remedies.[63]

The nature of this State obligation to protect was defined to include the creation and maintenance of an atmosphere that allows an effective interaction of laws and regulations.[64] This interaction enable members of the public to freely realise their rights and freedoms by promoting tolerance, raising awareness, and building infrastructure.[65] In the Ugandan context, the GoU failed to fulfil its obligation to protect the Acholi from having their rights interfered with.

GoU failed in its obligation to protect Acholi people since it did not prevent the northern conflict. In addition, the GoU did not protect its people from the consequential human rights violations. This created an unfavourable environment for development that frus-

[59]African Charter on Human and Peoples' Rights (n 1 above), art 22.

[60]The ratification table on the African Charter indicates that Uganda ratified the African Charter on Human and Peoples' Rights on 10th May 1986, https://www.achpr.org/ratificationtable?id=49, (accessed 30 June 2021).

[61]Social and Economic Rights Action Centre (SERAC) & Another v Nigeria (2001) AHRLR 60 (ACHPR 2001) para 48.

[62]As above.

[63]As above, para 46.

[64] Social and Economic Rights Action Centre (SERAC) & Another v Nigeria (n 61 above), para 46.

[65]As above.

trated people in northern Uganda from enjoying the RTD as enshrined in article 22 of the ACHPR. The Acholi, a people afforded protection under the ACHPR, have been deprived of this opportunity to enjoy their right to economic, social, and cultural development in equal measure.[66] The State would, therefore, be liable to remedy any violation suffered by local communities.

Where a remedy is to be availed by the state, it is expected that the affected community would be consulted. This was discussed in the *Ogiek case*, a public interest application that was referred by the African Commission on Human and Peoples' Rights (African Commission) to the African Court on Human and Peoples' Rights (African Court) on behalf of the Ogiek indigenous community of the Mau Forest in Kenya. This referral emanated from a communication that had initially been brought before the African Commission by Ogiek Peoples' Development Program (OPDP), Centre for Minority Rights Development (CEMIRIDE) and Minority Rights Group International (MRGI) on behalf of the Ogiek indigenous community.

In the communication to the African Commission, the three organisations had argued that a 30-day eviction notice issued by the government of Kenya requiring the Ogiek indigenous community, a marginalised and forest-dwelling community, to leave the Mau Forest grossly violated various human rights guaranteed by the ACHPR, including article 22 which guaranteed the right to development.

In its decision, the African Court held that failure by the state to give effect to facets of the RTD is a violation of article 22 of the ACHPR.[67] These facets of the RTD include the need for the Ogiek community to be actively involved in the development and determination of the health, housing and other economic and social programmes that affected them.[68] This decision affirmed the need for States to consult and involve indigenous communities in decision making processes on development programmes that affect their livelihood. In light of the decision in the *Ogiek case*, failure by the GoU, a party to the ACHPR, to enable the Acholi to

[66]African Charter on Human and Peoples' Rights, art 22 (1).

[67]African Commission on Human and Peoples' Rights v Republic of Kenya, Application No. 006/2012, para 208.

[68]African Commission on Human and Peoples' Rights v Republic of Kenya (n 67 above).

participate in and enjoy the RTD is a violation of their human right. GoU could, therefore, be held liable for failure to implements its state duty.

State liability emanating from failure to guarantee human rights was also considered in *Velàsquez Rodríguez v Honduras.* The Inter-American Court of Human Rights (IAMCHR) held that a State would be in clear violation of its obligations under the convention to protect human rights of its citizens if it allowed private persons or groups to act freely and with impunity to the detriment of recognised rights.[69] GoU was from the onset obliged under the ACHPR to protect the Acholi from conflict.[70] The GoU was also duty-bound to protect the Acholi from any subsequent human rights violations, including developmental rights. The existence of conflict in an area does not suspend the observance of human rights.

It may be argued that the limited available resources undermine GoU's efforts towards fulfilment of its human rights obligations. However, this does not take away GoU's duty to ensure that the limited resources are effectively utilised so that some strides are made in that regard. GoU is still obliged to assist the Acholi to attain the RTD. This is on the basis that GoU was complicit in the violation of the Acholi's human rights.

In addition, the GoU is obliged to assist the Acholi in light of its international and regional human rights commitments as evidenced by the international and regional treaties that it has signed and ratified. Some of these treaties include: the International Covenant on Economic, Social and Cultural Rights (CESCR) and the ACHPR. Further, the GoU has a duty to fulfil its development obligations because the Acholi are a people that are entitled to state protection. GoU is, therefore, still duty-bound to aid the Acholi to develop as it has an obligation to ensure the exercise of the RTD.[71]

The study emphasises the need for GoU to fulfil its human rights obligations to the Acholi to enable them develop. This is a right that they have been unable to enjoy during and after the LRA conflict. The study, therefore, advances the need for people-led development

[69]Velàsquez Rodríguez v Honduras, Judgment of July 29, 1988, Inter-Am Court of Human Rights (Ser. C) No. 4 (1988) para 182 – 183.

[70]African Charter on Human and Peoples' Rights, art 4.

[71]African Charter on Human and Peoples' Rights, art 22 (2).

interventions if the RTD is to be attained within the Acholi context. Furthermore, given the uncertain nature of the RTD, one of the arguments that is advanced for its justiciability is the indivisibility of civil and political rights from socio-economic rights.

The uncertainty on the RTD stems from challenges concerning the limited feasibility in the right being attained.[72] This is based on the limitation that the RTD within the Ugandan national legal framework is only recognised under the National Objectives and Directive Principles of State Policy (NODPoSP) in the Uganda Constitution. The NODPoSP has been argued to be non-justiciable. The ACHPR and the indivisibility argument are, therefore, relied on to make a case for the enforcement of the RTD for the Acholi. This indivisibility of the two categories of human rights entitles the Acholi to a right to remedy and reparations. These civil and political rights are complementary to, and embedded within, the RTD.

This chapter also lays out the thesis statement, the research objectives, the research questions and hypothesis to the considered. Also contained in the chapter is the significance of the study, justification of the study and the chapterisation.

1.2. Thesis Statement

The Acholi people do not have a claimable right to development (RTD) under the Ugandan national legal framework. The RTD is justiciable under the African regional legal framework. This thesis, therefore, demonstrates that the legal regulatory framework on the enjoyment of the RTD does not adequately address the developmental and human rights impact of the 20-year LRA conflict on the people of Acholi. The thesis argues that alternative approaches should be explored to protect and attain the RTD for the Acholi; and close the poverty gap in northern Uganda. This thesis promotes the use of a clan-based development model as an effective response mechanism for addressing the development gap in post-conflict Acholi. The clan-based development model would be cognisant of the principles of the RTD; which include equality, participation, transparency, accountability;[73] as it would promote the use of

[72]AK Sengupta, Conceptualizing the right to development for the twenty-first century, 67-68, https://www.ohchr.org/Documents/Issues/Development/RTDBook/PartIChapter4.pdf, (accessed 14 July 2021).

[73]Minority Rights Group, 'The right to development', https://minorityrights.org/law/right-to-development/#:~:text=The%20right%20to%20development%20encompasses,cooperation%20in%20an%20integrated%20manner, (accessed 4 December 2020).

clan structures within the Acholi traditional setting.[74]

1.3. Statement of the problem

The Acholi have remained poor over 10 years after the cessation of the northern conflict. This is so despite the existence of a legal framework guaranteeing the RTD and the implementation of various development interventions by the GoU. The legal framework and the enforcement of development interventions for the Acholi have been weak in their protection of the RTD for Acholi people. The RTD has, therefore, not been effectively realised in post conflict Acholiland in a way that is reflective of and responsive to local human rights needs and concerns. GoU has a duty to facilitate enjoyment of the RTD in Acholi but its effort has been inadequate. There has been rampant poverty stemming from the lacklustre implementation of development programmes coupled with the general destitution of the Acholi as a result of displacement and encampment during the 20-year conflict. Consequently, there is a great divide between the *de jure* and *de facto* fulfilment of the GoU's obligations on ensuring the realisation of the RTD in Acholi sub-region as the socioeconomic needs have not been addressed.

This research problem, therefore, requires an examination of the legal, policy and institutional framework for the protection of developmental rights in the post-conflict setting with a view to identifying the social and legal gaps that have inhibited the enjoyment of the RTD in post-conflict Acholiland. The study, therefore, seeks to explore the use of alternative approaches, including a clan-based development model, for the protection and attainment of developmental rights in Acholiland.

1.4. Research questions

The main research question in this study is: how best could the developmental rights of the Acholi be attained in post-conflict northern Uganda in a way that would reflect and be responsive to local human rights concerns and needs.

In a bid to facilitate the investigation into the research question, the following sub-

[74]African Charter on Human and Peoples' Rights, art 22 (1); United Nations Declaration on the Right to Development, arts 1, 2(1) & 2(2).

research questions will be answered:

1. What is the theoretical and conceptual framework governing the enjoyment of human rights; and how is it connected to the enjoyment of the right to development in a post conflict setting?
2. What specialised government programmes have been put in place to facilitate peace and development in Acholi sub-region?
3. What lessons can be drawn from similar peace processes in Africa to facilitate attainment of development?
4. To what extent does Uganda's legal and institutional framework protect the RTD in Acholiland?
5. What mechanisms have been utilised by the GoU to facilitate attainment of the RTD in post-conflict northern Uganda, and how effective have they been?
6. What lessons can be drawn from people-led development interventions in Uganda and the transitional justice process in Rwanda to facilitate attainment of the RTD for the people of northern Uganda?
7. How can the RTD best be protected and effectively implemented to address the gaps in its enjoyment in post-conflict northern Uganda?

1.5. Objectives of the study

The main objective of the study is to assess the extent to which the GoU has fulfilled its development obligations in respect to the Acholi people; and whether in so doing, it has ensured that development can be effectively realised in a manner that ensures meaningful enjoyment of the RTD within a localised context of northern Uganda.

This study, therefore, seeks at fulfilling the following sub-objectives:

1. To appreciate the conceptual and theoretical framework governing human rights and explore its connection and application in the enjoyment of developmental rights in post-conflict Acholiland.
2. To analyse specialised government programmes that were established to facilitate peace and development in Acholi sub-region.
3. To draw lessons from similar peace processes in Africa to establish how developmental rights can be better protected and promoted within a localised context for the Acholi.

4. To assess the effectiveness of legal and institutional frameworks that GoU established to guarantee attainment of the RTD in Acholiland.
5. To assess the efficacy of post-conflict development mechanisms in promoting the realisation of developmental rights in Acholi sub-region.
6. To determine how public-private-partnerships through people-led interventions (clan-based development model); and lessons from post-conflict communities like Rwanda, can be used to facilitate attainment of the RTD in northern Uganda.
7. To establish alternative means through which the RTD can be made a reality for the Acholi.

1.6. Research methodology

This study is socio-legal in nature as it affords opportunities for scrutiny of the existing legal and policy framework guaranteeing the realisation and enjoyment of the RTD in light of the social and cultural context within which it was to be applied. Attainment of the right to development is critical as it is an all-encompassing right. A purely doctrinal research would not suit this study as some informal discussions were conducted to contextualise the study.

Informal discussions were also relied on to obtain local interpretations of what would amount to attainment of the RTD for an ordinary Acholi. Further, informal discussions helped the researcher establish Acholi perceptions on what was expected of the post-conflict development interventions that were implemented. Through informal discussions, an insight was also obtained on how Acholi clan structures would fit into a clan-based development model to promote attainment of developmental rights.

The use of informal discussions was to obtain an unbiased view of the conflict and to deepen the understanding and appreciation of the researcher. This required holding of discussions with the local traditional leaders as opposed to political leaders; and some local community members to obtain a few community perspectives and authenticate the study. This approach was used as the respondents would be more forthcoming as compared to a formal setting. This was critical because the respondents had suffered and were vulnerable during the over 20-year conflict. There was, therefore, need for sensitivity.

In the conduct of the informal discussions, a combination of snowball and convenience sampling was used to identify respondents due to the interview fatigue that the Acholi have endured over the years. This eased access to the respondents who are part of the Acholi community, the population of interest. One clan leader out of a possible five was assigned by the Prime Minister of the Ker Kwaro to avail the required information on the Acholi cultural practices.

The research involved intensive desk research especially on unpacking the concept of development, and the GoU's obligation to guarantee its enjoyment in post conflict northern Uganda. Desk review was required on the legal and institutional framework in a bid to assess the efficacy of these frameworks in guaranteeing development for the Acholi. A desk review was also required on a successful public-private partnership through community-led initiatives in eastern Uganda. This helped determine the aspects of such initiatives that could be replicated for northern Uganda as well as other future development programmes in the country.

Desk review was also necessary since government-led interventions on attainment of the RTD were largely ineffective. Furthermore, a desk review of existing literature was conducted on government policy and developmental interventions that have been undertaken in the past. The review of government policy was done with a view to establishing how best they could be used to promote the realisation of the RTD in a way that would address the needs and aspirations of the people of northern Uganda.

The literature enabled the researcher to make a comparison between what government set out to accomplish in terms of attainment of RTD and what is on the ground. This way, the gaps identified were used to contribute to scholarship on the un-exhausted area of implementing the RTD in a way that factors in local human rights needs, perceptions, and promotes inclusivity. A better understanding of why the Acholi have remained poor and unable to enjoy the RTD was also elicited. This was based on a comparison of Acholiland with other regions in Uganda, especially central and western region.

Lessons were also elicited from countries like Rwanda that have similarly emerged from conflict. A comparative methodology was employed to enable the researcher obtain re-

liable data. The use of a comparative methodology broadened the researcher's perception on how the RTD can be best attained for the Acholi. It is from this methodology that some lessons were drawn on strategies that could be considered northern Uganda. Peace processes in other countries that have experienced conflict were studied. To avoid being too descriptive, as is common with desk reviews, an analytical approach was also relied on.

Information was gathered from various institutions including government departments. The Office of the Prime Minister (OPM) is the key institution considered as it is the main government institution responsible for overseeing recovery and development efforts in northern Uganda. Other institutions from which information was obtained include: the Ministry of Finance and Economic Development; National Planning Authority, and Uganda Human Rights Commission.

The study also required an analysis of the extent to which a human rights-based approach to development has been applied in post-conflict reconstruction processes in Uganda. This analysis required a review of instruments including treaties, statutes, case law, and government policy documents alongside the core principles of the RTD. In addition, given the sensitivity of information concerning the RTD and implementation of post-conflict recovery programmes in northern Uganda, particularly the PRDP, caution was taken on the collection of information.

Caution was specifically taken during the collection of information from local leaders in northern Uganda and government officers. The need for caution during data collection was because of the non-responsive nature of some public officers when requested for information. Further, caution was also needed due to fatigue by local leaders from being continuously interviewed by various researchers conducting studies on northern Uganda. Informal discussions were, therefore, used as the preferred mode of obtaining data to encourage respondents to avail much needed information.

There were some library inadequacies regarding information on the RTD in the Ugandan context, particularly access to accurate reports on specialised development programmes for northern Uganda. Few policies and reports could be accessed from Office of the Prime Minister and the Ministry of Finance, Planning and Economic Development, including

the Peace Recovery and Development Plan (PRDP) for northern Uganda.

Some publications on the state of human rights in Uganda, and human rights and international law in general were accessed from the Uganda Human Rights Commission. There were, however, few reports or publications specifically written on northern Uganda. The region specific publication that could be found was the joint collaboration between Uganda Human Rights Commission and UN Office of the High Commissioner for Human Rights. The publication was titled 'The dust has not yet settled: Victims' views on the right to remedy and reparation, A report from the greater North of Uganda'.

It was at times difficult to obtain information from some respondents in public office due to their unwillingness to avail it. This situation arose irrespective of the fact that the Access to Information Act states that information not available to the public be declared so.[75] Some government ministries, departments, and agencies (MDAs) have not declared information that is not accessible to the public. Consequently, reliance was placed on informal discussions. The writer's experience from having lived in northern Uganda was also relied on for primary data.[76]

1.7. Limitations of the study

There were some limitations that constrained this study. These challenges were both in terms of the nature and understanding of the RTD as well as the ability to access crucial information to enable the researcher to decipher the meaning and understanding of the RTD in the context of an ordinary Acholi.

First, the nature and existence of the RTD still remains an issue within the international legal regime. However, reliance was placed on the ACHPR which guarantees the RTD under article 22. Additionally, the Uganda Constitution provides for the RTD albeit under the NODPoSP.[77]

[75]Access to Information Act 2005, Act 6 of 2005, sec 4.

[76]The researcher lived in northern Uganda for a period of three years from 2007 to 2009.

[77]Constitution of the Republic of Uganda 1995 (as amended), principle ix of the National Objectives and Directive Principles of State Policy.

The subject of the study, the Acholi people, have 'interview fatigue'. These are a people who were subjected to various interviews by researchers, both local and international. These researchers conducted various studies pertaining to the conflict-affected region. As a result of the interview fatigue, some potential respondents were not interested in conducting the interview while others expected to be paid. It was, therefore, necessary that informal discussions be held with a few respondents inorder to obtain local perspectives. A combination of the snowball and convenience sampling techniques were employed.

The other limitation that was faced in the course of conducting this study was government bureaucracy in availing the researcher relevant documents pertaining to the study. Particularly, documents on the PRDP and other development plans/programmes were hard to access given the public outcry on mismanagement of the programme. Consequently, it was difficult to access some assessment reports on PRDP, which ordinarily ought to be available to the public.

Additionally, some government respondents were naturally defensive and suspicious of the researcher. Consequently, there was some bias in the reports availed, if availed at all. Nevertheless, this was countered by having informal discussions as opposed to formal interviews in a bid to obtain much needed information.

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1.8. Relevance of the study

This study sought to contribute to the debate on the justiciability of the RTD but within the local context of the Acholi as a post-conflict society. There is no study that examines developmental rights for the Acholi people; especially as a crucial right for a community in the post-conflict setting.

The study creates a balance between the social aspects of the conflict and the legal right of the Acholi to enjoy their development. The study focused on the RTD as an umbrella right through which the Acholi can be lifted from poverty and facilitated to attain and enjoy their RTD. The study explored existing theories and cultural practices through which the RTD could be effectively realised by the Acholi.

The study provided an opportunity for the advancement of the use of people-led de-

velopment model as a mechanism through which the Acholi could attain their RTD. Here, clan-based structures would be utilised in line with one of the tenets of the RTD. This tenet provides for the involvement and active participation of the concerned community in the decision making and implementation processes. The Acholi's active involvement in development could be explored through their existing clan-based systems.

This study presents an opportunity for the recognition of the importance of culture in facilitating the attainment of socio-economic development among indigenous communities like the Acholi. Culture is the central point around which livelihood of the Acholi rotates. The study, therefore, advances the need for utilisation of a clan-based development model as a better and more effective way of guaranteeing the attainment and enjoyment of the RTD among the Acholi.

The study is crucial in that it determines how best the RTD can be attained in line with the GoU's obligation to fulfil its international, regional, and national human rights obligation to respect, protect, and promote the RTD in Acholiland. In light of this, victim-centredness and participation in all development processes was emphasised. The question that was determined here is, what alternative strategies can the GoU use to fulfil its mandate of ensuring development for the Acholi?

The study enlightens policy-makers on the sustainability of government programmes that have been undertaken in Acholi sub-region. This study also acts as a benchmark upon which better and more relevant policies and interventions should be formulated on the development of regions emerging from conflict.

In light of the foregoing, one of the proposals this study was to advocate for the use of PPPs as a mode of ensuring attainment of socio-economic rights, and consequently the RTD. This would ensure that approved development policies guarantee the realisation and enjoyment of the RTD. Furthermore, this study benefits local communities and civil society organisations (CSOs) as they would be better empowered to advocate for policies that favour the local populace. This would contribute to a change in the mode of implementation of developmental policies. Focus would be on respect for and protection of the rights of local communities.

The findings from the study could also be utilised by academicians and students in academia to appreciate the challenges of formulating and implementing holistic developmental programmes that address local human rights needs in a post conflict setting. This would encourage further studies on development and how it can be better realised by ordinary Acholi.

This study, therefore, presents an opportunity for reconsideration of how the RTD can be viewed and achieved through the lens of post-conflict societies like the Acholi. This is in consideration of the fact that local needs and aspirations ought to be respected, taken into account, and incorporated in any policy formulation and implementation process. This would contribute to sustainable development.

1.9 Literature review

1.9.1 Introduction

The study is based on two theories as a means of facilitating the attainment of the RTD in post conflict northern Uganda. That is, the theory of peace as advanced by Johan Galtung, who defines peace as the absence of violence; and Amartya Sen's theory of development, which he defines as 'freedom'. The theory advanced in this study is to the effect that the two theories are mutually dependent and that the Acholi in the post-conflict era have the freedom to enjoy the RTD, participate in, and contribute to their development in the absence of violence.

This section reviews existing literature related to the study. It should be observed that there are barely any studies on realisation of RTD in post-conflict societies in Uganda, let alone the Acholi. The available literature at best, tend to refer to development or even the RTD at the global level and a few of them at the African regional level. This alone justifies the need for this study in a bid to provide guidance on how the RTD can be realised and enjoyed within the local context and developmental needs of the Acholi.

1.9.2 The normative content of the RTD

Human rights and development are two concepts that are interdependent and mutually-reinforcing,[78] with social and economic rights being at the core of development.[79] These social and economic rights include rights to education, health care, food, water, social security, and housing.[80] As observed by Mubangizi, the extent to which these socio-economic rights should and can be enforced and protected is controversial, especially since they are treated as secondary rights.[81]

Mubangizi's view is applicable in the Ugandan setting where more emphasis is placed on safeguarding the respect and protection of civil and political rights over socio-economic rights. In a scenario like the post conflict northern Ugandan setting, the need for realisation of socio-economic rights, especially the RTD, is not only real, but urgent given the dire conditions of poverty that the Acholi live in.

This study argues that despite the *de facto* relegation of socio-economic rights, and their being viewed as secondary rights, the impact of the northern conflict renders the RTD urgent and a primary right. The basis for this is that local communities were deprived of any meaningful development for twenty years due to government's failure in its duty to protect them from the various human rights violations that occurred both at the hands of the LRA and the UPDF.

Northern Uganda has had relative peace since 2006, a crucial element for development and the consequent enjoyment of the RTD. What is in contention, is the adequacy of the legal and policy regulatory framework in creating a conducive environment that allows for erasing of traces of northern Uganda's violent past and paves the way for the enjoyment of human rights and economic growth. This is against the backdrop that development and human rights are interrelated and co-dependent for the meaningful attainment of either concept.

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[78]JC Mubangizi, A human rights-based approach to development in Africa: Opportunities and challenges, (2014) 39 (1) *Journal of Social Science*, 67-76, 69.

[79]As above, 70.

[80]As above.

[81]Mubangizi (n 78 above), 70.

What is also in contention in this study is the nature of development that should be sought. What form should it take; and should it be at the household level/ clan level, which would have a spill-over effect to a district and eventually regional attainment of economic growth and, therefore, overall enjoyment of the right to development? And, what should be the focus of government and investors?

Collier, on the other hand, observed that aid and policy could be used to achieve economic growth in a post-conflict era.[82] He further observed that the outcomes of such policy would have to be localised according to the post-conflict situation, as the effect can be distinctive.[83] The need to customise developmental efforts is indeed crucial as it promotes the use of a bottom-up approach during policy formulation. This avails an opportunity for the local content to be captured in order to address local needs.

Gawanas defines culture as being the foundation of society and development, and an avenue for integrating the values, customs, and characteristics of a people, as well as promoting interaction and dialogue amongst people.[84] Gawanas also noted that the RTD was not merely about economic or social development. He noted that the RTD was both an independent right and one that was intrinsically linked to the full enjoyment of a range of human rights with social, cultural, political, and economic dimensions.[85] This notion is in tandem with the situation in northern Uganda that this study explores. The view here is that the RTD is both an independent right and at the same time interdependent with other human rights.

Per Gawanas' assertions, it should be noted that culture was not necessarily at the core of the formulation of development policies and programmes. Rather, emphasis was placed on areas of interest as determined by development partners as well as consultations

[82]P Collier, 'Development and conflict', Centre for the Study of African Economies, http://www.un.org/esa/documents/Development.and.Conflict2.pdf, (accessed 16 August 2016).

[83]As above.

[84]B Gawanas, 'The African Union: Concepts and implementation mechanisms relating to human rights', 142, http://www.kas.de/upload/auslandshomepages/namibia/Human_Rights_in_Africa/6_Gawanas.pdf, (accessed 10 May 2016).

[85]As above, 144.

held with government leaders. This study, therefore, showcases the need for reflection of social, cultural, and economic needs of local communities in development plans and processes.

With the inclusion of social, cultural and economic needs of local communities, development would be guaranteed in a way that is meaningful at both the local, national, and international levels. This would be by seeking ways of interpreting international human rights standards on the RTD alongside social and cultural norms of the Acholi. This is juxtaposed against utilisation of a standard international definition of development and what would amount to the RTD.

This study highlights how social, cultural, and economic aspects of life were affected by conflict thereby affecting any form of development in the northern region. Subsequently, the study justifies the need for inclusiveness and incorporation of, as far as they are constitutional, aspects of social and cultural norms in formulation and implementation of development policy in a way that advances realisation of the RTD.

It is also observed that groups that were made vulnerable as a result of social exclusion and inequality arising out of conflict were best protected through the effective implementation of social, economic, and cultural rights. The same applies to the protection of the RTD, as well as civil and political rights.[86] Gawanas explained that poverty and exclusion from mainstream development policies and programmes result in vulnerability; and vulnerable groups, in this instance, would include children, the elderly, persons with disabilities, the youth, orphans and other vulnerable children, persons living with HIV and AIDS, poor families, and displaced persons.[87]

This study shows that northern Uganda became poor and more marginalised as a result of the conflict. With the conflict spanning over 20 years, there was a breakdown of culture thereby affecting any organised communal involvement in the development processes. This was in light of the fact that the Acholi are a traditional society that was ordinarily governed by cultural norms and practices that instilled order in communal development efforts. These practices, therefore, took a back seat.

[86]Gawanas (n 84 above), 149.

[87]As above.

Sengupta defines development as a comprehensive process, going beyond economics to cover social, cultural, and political fields and aiming at 'constant improvement', meaning progressive and regular improvement of well-being.[88] He observes that there was a shift in the definition of development from the past where it was looked at in terms of industrialisation or capital inflows. He argued that the process must be participatory and ensure fair and equitable distribution of the benefits in line with human rights standards for the well-being of all people.[89]

Decker *et al* argue that failure to determine economic development without the ability to determine allocations and power would only further exacerbate the existing inequalities and deprivation.[90] This would be contrary to their argument that development could enhance well-being and capacity,[91] build a better quality of life for poor and marginalised groups, and realisation of human rights.[92]

The definition of development as including 'improvement of well-being' was further expounded on by Sengupta to include the realisation of human rights and fundamental freedom within a rights framework.[93] Consequently, the RTD would include both the right to the process and the outcomes of the development process. According to Sengupta, realisation of the outcomes of development would bring about the enjoyment of various rights, and that the changes realised ought to be more visible than the actual rights to be enjoyed. That is, growth or resources and institutions.[94]

Sengupta put forward a view that the enjoyment of any one right depends on the fulfilment of any other right.[95] He also opined that the level of enjoyment of a right at a given

[88]A Sengupta, The human right to development, (2004) Volume 32 Issue 2 *Oxford Development Studies,*179-203, 180.

[89]As above.

[90]K Decker et al, 'Human rights and equitable development: "ideals", issues and implications', (2005) 1.

[91]As above.

[92]As above.

[93]Sengupta (n 88 above) 181.

[94]As above.

[95]As above.

time would impact on the realisation of other rights in future.[96] It could be argued that this notion shows how indivisible and complementary human rights are, since human rights are mutually reinforcing. No given set of rights can be enjoyed independently of others.

Sengupta further argues that development processes ought to be implemented from a rights-based approach, in that all the outcomes are obtained with equity, accountability, and through policies and action by State agents.[97] Here, these State agents perform their role in line with human rights standards; while at the same time ensuring a participatory and non-discriminatory process.[98] In his analysis, Sengupta introduced the concept of reading in rights.[99] This puts forward the argument that development processes ought to be tangible. This means that there should be some visible infrastructural changes in northern Uganda as well as an improvement in the socioeconomic wellbeing of the Acholi.

This study establishes whether, through all development efforts in northern Uganda, there has been meaningful progress and improvement of social and economic well-being. There is also need to establish how inclusive and participatory the policy development process and implementation has been in a bid to determine the extent to which local interests were catered for.

In linking human rights to development, Henkin opines that human rights are based on a theory that takes for its starting point the notion that human dignity of individuals and their entitlement to have basic autonomy and freedoms respected, and basic needs satisfied.[100] Human rights are, therefore, viewed as basic minimum standards that guarantee the basic requirements that are necessary for one to lead a 'good life'.[101]

It is from this perspective that the RTD is being viewed as a human right and, therefore, an entitlement for persons who have survived the conflict in northern Uganda and are

[96]Sengupta (n 88 above).

[97] As above, 184.

[98]As above, 184.

[99] Sengupta (n 88 above), 184.

[100]L Henkin, 'Introduction' in *The International Bill of Rights*, (1981) 12.

[101]Decker et al (n 90 above) 5.

attempting to recover after the 20-year conflict. To this end, international human rights standards indicate that development processes incorporate civil and political rights, as well as economic, social, and cultural rights.[102] This entitlement could, therefore, be enforced by reading-in the RTD into civil and political rights, such as the right to life,[103] to render it attainable.

The recognition of the RTD as an inalienable human right confers a claim on national and international resources and obliges the States and other agencies of the society, including individuals, to implement that right.[104] In this instance, resources may be financial, physical or institutional, among others.[105] As pointed out by Marks, it is imperative that economic, social, and cultural rights are enforced inorder for the RTD to be realised.[106] In the case of northern Uganda, there is need to establish whether these development programmes were victim-centred.

Marks observes that in the 1970s and 1980s, the RTD was introduced as one of several rights belonging to a third generation of human rights which consists of solidarity rights belonging to peoples and covering global concerns like development, environment, humanitarian assistance, peace, communication, and common heritage.[107]

This study, therefore, considers the level of participation in developmental efforts in northern Uganda and the extent to which it has been successful. This study also considers whether the Acholi have enjoyed any economic, social, and cultural development as a result of the government interventions that were undertaken to ensure realisation of the RTD. An

[102]MA Tadeg, 'Reflections on the right to development: Challenges and prospects', (2010) 10 *African Human Rights Law Journal, 330*.

[103]The right to life is guaranteed under art 6 of the International Covenant on Civil and Political Rights. The preamble to the International Covenant on Civil and Political Rights recognises that civil and political freedom can be enjoyed in an environment where both civil and political rights, as well as economic, social and cultural rights are enjoyed.

[104]A Sengupta, 'Realizing the right to development', (2000) Volume 31, *Development and Change,* 553 – 578, 557.

[105] As above, 559.

[106]S Marks, 'The human right to development: Between rhetoric and reality', (*Spring* 2004) Volume 17 *Harvard Human Rights Journal,* 147.

[107]As above 138.

area for consideration in this quest is how best Uganda could implement the RTD with regard to the local context of a post-conflict northern Uganda. Here, the views and aspirations of the Acholi people would be the central focus of development planning.

Sengupta breaks down the meaning of the RTD into three main aspects. The first aspect views the RTD as the right to the means of creating an environment that facilitates the realisation of the RTD. This includes the formulation, adoption and implementation of policy.[108] The second aspect portrays the RTD as the right to a process of creating that environment; which requires concerned parties to bear responsibilities inorder to promote the process of development.[109] Lastly, the third dimension views the RTD as having a right to the benefits that flow from the realisation of development.[110]

Sengupta recommends that national obligations in ensuring realisation of the RTD commences right from the formulation of policies that address each individual right within the RTD, as well as considerations of rights in *tandem* as a part of a development programme.[111] One such right that would be indivisible from the RTD is the right to an adequate standard of living.[112] This notion emphasises the need for policy makers to reflect on the interdependence of rights, as a violation of one right would culminate into violation of the RTD.[113]

In light of the foregoing, the study establishes whether GoU enhanced the well-being, capacity to claim rights, and the quality of life of the Acholi people. In essence, it determines the extent to which the GoU has gone in ensuring victim-centredness and participation in efforts geared towards realisation of the RTD. Further, the study also establishes the extent to which policy was formulated out of local aspirations and perceptions on development.

This is in light of the fact that the people from northern Uganda were marginalised

[108]Sengupta (n 104 above), 559.

[109]As above, 562.

[110]As above 563; Sengupta, (n 88 above), 183 - 192.

[111]Sengupta, (n 88 above), 183 - 192.

[112]Covenant on Economic Social and Cultural Rights, art 11; Universal Declaration of Human Rights, art 25.

[113]Sengupta (n 88 above), 193.

during the 20-year war as a result of which they could not develop culturally, economically or socially due to the disintegration of their traditional clan structures. These structures would have been responsible for any development in the pre-conflict era. The study assesses the effectiveness of post conflict interventions aimed at ensuring attainment of the RTD.

The need for the GoU to undertake measures to guarantee the attainment of the RTD in northern Uganda has never been more necessary given the region's historical background of sustained conflict till 2006 when relative peace returned in the region. This need to guarantee the RTD is in line with Uganda's international human rights obligations which binds States parties by virtue of their being parties to international human right treaties, to adhere to the human rights principles set out therein.[114]

Much as it may be argued that the UN DRD is soft law and, therefore, not necessarily binding on State-parties, at the African regional level, the ACHPR, to which Uganda is a State party, recognises the RTD.[115] The ACHPR is the only treaty that creates a binding obligation on States parties to respect, protect, and fulfil human rights.[116] Uganda, therefore, has a duty to facilitate the Acholi people in the attainment of their RTD. Sengupta pointed out that when States opt to adopt international treaties on civil and political rights, as well as economic, social, and cultural rights, they are taken to have bound themselves to guarantee enjoyment of these rights.[117] These States also avail themselves to be scrutinised to ensure compliance with their international obligations.[118]

In addition, Decker et al, reiterated the fact that it would be meaningless for human rights to be codified at the international, regional, or national level if people are not aware of these rights.[119] The authors argue that lack of awareness would incapacitate the people from

[114]'What are human rights', https://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-1/whatare.htm, (accessed 16 May 2016).

[115]Ratification table for signatories to the African Charter on Human an Peoples' Rights indicates that Uganda ratified the African Charter on 10 May 1986, http://www.achpr.org/instruments/achpr/ratification (accessed 14 August 2018); Art 22 of the African Charter on human and Peoples' Rights recognises the right to development.

[116]'What are human rights', (n 114 above).

[117] Sengupta, (n 88 above), 186.

[118]As above.

[119]Decker *et al* (n 90 above) 1.

claiming their rights.[120] Decker et al further argue that economic development may be needed to improve their individual circumstances.[121] This would be a precursor to making human rights meaningful in practice.[122]

It is in line with this international obligation of Uganda as a State party to the UN DRD that this study assesses the extent to which the GoU has strived to achieve its obligations in guaranteeing enjoyment of the RTD. The regional obligations are assessed alongside the obligation placed on Uganda under the ACHPR, as well as the Uganda Constitution which tries to acknowledge a RTD.

Ngang et al, however, point out the controversy surrounding the legal nature and conceptual clarity of development as a human right. The authors observe that this controversy inhibited the implementation of the RTD. This, however, does not take away state obligation to the respect, protect and fulfil the attainment of the RTD. It is in light of this existing state obligation that the RTD for the Acholi can be claimed.[123]

Kamga expounds on the existence of a state duty on the RTD by citing the ACHPR as the only human rights treaty in which the RTD is legally binding under article 22.[124] The author concludes that as a result of this provision, states are bound to fulfil the RTD and must abide by the set obligatory standards under the ACHPR.[125] The justiciability of the RTD under the African legal regime is not contentious since it is explicitly provided for in the ACHPR.[126] However, dualist countries like Uganda have to domesticate the provisions or invoke article 45 of the Uganda Constitution to render the right justiciable.[127] The challenge

[120] Decker *et al* (n 90 above) 1.

[121] As above.

[122] Decker *et al* (n 90 above) 1.

[123]CC Ngang *et al*, 'Introduction: the right to development in broad perspective', chapter 1 in *eds* CC Ngang *et al*, 'Perspectives on the right to development', (2018) Pretoria University Law Press, 1.

[124]SAD Kamga, 'The right to development in the African human rights system: The Endorois case', *De Jure* (Pretoria), (2011) Volume 44, no, 381-391, 386.

[125]As above.

[126]African Charter on Human and Peoples' Rights, art 22.

[127]Article 45 of the Constitution of the Republic of Uganda enables a rights-holder to claim a right guaranteed in international human rights treaties ratified by Uganda. This is discussed in detail in chapter five.

that remains is how to make this right a reality, particularly for an Acholi recovering from conflict.

Tadeg notes that individual States are traditionally charged with the role of duty bearers to ensure that the RTD is respected.[128] According to Tadeg, State obligations on the RTD include the creation of favourable conditions, either nationally or internationally (collectively with other states), for the realisation of the realisation of the RTD.[129] This State obligation also includes the progressive enhancement of the right.[130] In light of this obligation, this study determines the extent to which the GoU discharged its duty in facilitating the realisation of the RTD in northern Uganda.

The study explores the extent to which GoU facilitated people's participation in development planning to reflect local needs. This determines whether GoU fulfilled its obligation to ensure a rights-based approach in planning. What remains questionable is the extent to which GoU has fulfilled its obligation; beyond ratifying the ACHPR and providing for the RTD in the national objectives and directive principles of state policy. In essence, the question is, how far does this duty go?

Ginsberg notes that there is need for aid projects to take into account local context. According to Ginsberg, local content ought to be made part and parcel of the project planning process. She also points out that aid projects need to take the local context into account.[131] Ginsberg observes that there could be various levels of cultural representations including global, national, group, and individual, during the process of selecting, implementing, and management of details of a project.[132] In light of this, Ginsberg advised that the local context be taken into consideration if the project is to be relevant and effective within a given cultural setting.[133]

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[128]Tadeg (n 104 above), 334.

[129] As above.

[130]As above.

[131]N Ginsberg, 'Determining the context of an international development project' (2016) Volume 50 No 5 *The Journal of Developing Areas,* 432.

[132] As above.

[133]Ginsberg (n 131 above).

Ginsberg's view resonates with this study since consideration of the local Acholi context would determine the level of sustainability of any given development project or programme. It was, therefore, important that this study to consider whether there were indeed efforts towards incorporating local context in the policy development process of government interventions like PRDP and the projects hereunder.

The local context would determine the developmental interventions to be undertaken and consequently, the various aspects of the developmental rights that would be addressed in the course of policy implementation. This way, human rights concerns that are complementary to the RTD would be catered for, especially bearing in mind that human rights are indivisible.

According to Brems, the ACHPR attaches particular importance to economic, social, and cultural rights.[134] He points out that the realisation of these rights coincides with some of the central goals of the development policy.[135] Brems also observes that other basic social rights like the right to a decent standard of living were remarkable in this respect.[136] Okafor, however, in his quest to decipher the RTD, considers views by sceptical scholars including Yash Ghai, and argues that the RTD was negative in nature as it was, among others, capable of providing more resources for State manipulation and repression of civil society.[137]

This study agrees with Brems view that realisation of human rights coincides with some of the central goals of development policy. This study goes a step further to make a case for a holistic approach in the GoU's attempt to ensure that the RTD is realised in northern Uganda. As mentioned earlier, infrastructural development like road construction may be key for the attainment of development and, therefore, RTD; but it will be useless if interrelated rights like the right to work, food and shelter are not guaranteed.

[134] E Brems, 'Human rights: Universality and diversity', (2002) 119.

[135]As above.

[136]As above.

[137]OC Okafor, 'A regional perspective: Article 22 of the African Charter on Human and Peoples' Rights', 375; in 'Realizing the right to development : Essays in commemoration of 25 years of the United Nations Declaration on the Right to Development / United Nations Human Rights', Office of the High Commissioner, 373-384.

This is especially true in northern Uganda where there are challenges in guaranteeing access to land and the accompanying land rights. Furthermore, as argued by Okafor, there are indeed dangers, some of which had already been experienced in northern Uganda, where resources meant for recovery efforts were been embezzled. The issue, in this instance, is whether the GoU could minimise such occurrences given the warning sounded by Okafor.[138]

This study, therefore, builds on existing literature on the RTD, but with specific reference to post conflict societies like the Acholi. This thesis demonstrates that the human rights regulatory framework, as it is, is ineffective in lifting the Acholi people from the poverty that the northern conflict left them in. The study argues how a clan-based development model alongside other approaches can be engaged as a response to address the human rights protection gap.

1.10 Overview of chapters

Chapter one lays the background to the study. The chapter highlights the meaning of the RTD and justifies its need in post-conflict northern Uganda given the impact of the 20-year war. The chapter focuses on Acholi sub-region in particular. The chapter raises the conceptual issues surrounding the RTD in light of the post conflict situation in northern Uganda. The chapter also introduces the research questions upon which the study is based.

The methodology used in carrying out the study is explained; and an overview given of the literature reviewed with a view to showcasing how they contribute to the study and in the alternative, the gaps that the study intends to fill. Potential limitations that could be faced in the course of carrying out the study are raised, as well as proposals on how these limitations could be addressed are made.

Chapter two discusses the theoretical and conceptual framework on the right to development. The chapter considers and discusses the principles of human rights and their applicability to the attainment of the RTD in post-conflict northern Uganda. Further, the human rights duties and responsibilities that emanate therefrom are also considered. Here, the role of duty bearers and rights-holders are discussed.

[138]Okafor (n 137 above).

The attainment of the RTD as a government obligation in post-conflict northern Uganda is also discussed, thereby laying a foundation for an analysis of the legal framework in chapter five. The chapter explores the theory of peace and highlights the influence of culture on peace processes as a prelude to development in societies experiencing conflict. The chapter draws a connection between development as a concept and the right to development.

Chapter two also presents the discourse on the RTD. The chapter questions the 'africanness' of the right to development and explores the justiciability of the RTD as a right in the Acholi context. The chapter goes further to discuss the applicability of culture in development programming. The chapter also makes a case for a human rights based approach to development.

Chapter three sets the pace for the discussion on specialised government programmes for the development of Acholi. Here, the chapter commences with GoU's obligation to facilitate development. The Chapter also assesses the efficacy of various government plan/programmes that were undertaken to facilitate the development of Acholiland.

In chapter three, emphasis was placed on development programmes that were implemented in Acholi sub-region during the northern conflict. The chapter concludes with some general observations on the implementation of these development plans/programmes for the development of Acholi sub-region.

Chapter four analyses the Juba Peace Agreement on Accountability and Reconciliation (Juba Peace Agreement) and how it laid a foundation for the people of the northern Uganda, as rights-holders, to claim the RTD. The chapter also considers the role of women in bridging the gap between conflict and transitional justice in northern Uganda. Experiences are also drawn from other countries in the region on the involvement of women in peace processes. There is need for peace if development is to be attained.

Chapter four also links the Juba Peace Agreement to the RTD. The chapter analyses the merits of the Juba Peace Agreement alongside the Abuja peace agreement and Doha peace agreement on Darfur. Further, the chapter four draws some lessons from the Juba peace process in facilitating attainment of the RTD in post-conflict northern Uganda.

Chapter five assesses the effectiveness of various legal and policy interventions that guarantee the RTD in northern Uganda. The existing institutional framework that is mandated to guarantee the fulfilment of the GoU's obligations on the RTD and their efficacy in guaranteeing enjoyment of the right is also assessed. With regard to analysis of the legal framework, emphasis was placed on the constitutional protection of the RTD under the ACHPR and other regional and international legal framework on the RTD.

In addition, chapter five sought to establish where the gaps are in the policy implementation process. Here, the international, regional, and national legal frameworks that guarantee the RTD in northern Uganda are discussed, and an analysis conducted on the extent to which these legal policies have been effective in guiding efforts towards the realisation and enjoyment of the RTD in post conflict northern Uganda.

Chapter six discusses the right to remedy for the Acholi people given their vulnerable status after the war. The chapter justifies the need for the right to remedy to be implemented. The chapter highlights the prospects for attainment of this right in northern Uganda; and assesses the efficacy of the various mechanisms that the GoU has attempted to undertake to guarantee enjoyment of the RTD in post conflict northern Uganda.

Chapter seven considers alternative mechanisms for attainment of the RTD. This is in line with the advancement of a clan-based development model to facilitate development in Acholiland. Here, lessons are drawn from a community-led intervention in eastern Uganda. This case study demonstrates how sustainable development can be achieved through enjoyment of the right to participate in the decision making processes. Focus was placed on public-private partnerships as a means to attain socio-economic rights for the Acholi people.

Furthermore, lessons are drawn from Rwanda, a country that is similarly recovering from conflict. Rwanda is a country that emerged from conflict but has also been touted as a success story in terms of realisation of developmental rights. Of interest here is to establish how Rwanda was able to beat the odds and ensure post-conflict reconstruction and enjoyment of the RTD, and pick some lessons that could be customised for northern Uganda.

Chapter eight offers proposals on how the RTD could be implemented in a way that

promotes effective realisation of the RTD in line with the local human rights needs and concerns. In this instance, the primary consideration was how the RTD could be attained in a way that would reflect the local human rights needs and aspirations of the Acholi people, as well as the actual recovery and rehabilitation from conflict.

CHAPTER TWO
THEORETICAL AND CONCEPTUAL FRAMEWORK

2. Introduction

The main objective of this thesis is to interrogate whether, in light of the impact of the northern Uganda conflict, the human rights regulatory framework in Uganda provides adequate safeguards for the Acholi's right to development (RTD) in the post conflict era. The study also seeks to explore how the RTD, as a concept, can be employed as a response to Acholi's developmental rights. This chapter argues that the RTD is a right that ought to be urgently and immediately claimed by rights-holders in a post-conflict setting like northern Uganda. Ordinarily, socio-economic rights are to be realised progressively.[1]

This study contends that due to the developmental stagnation of the Acholi during and after the conflict, the RTD becomes more of an immediate right to be enjoyed as opposed to one that should be progressively attained. The immediate need for this right to be realised in Acholiland will be appreciated after the discussion of the concept of human rights, principles of human rights, and their applicability in the enjoyment of the RTD.

The chapter also discusses the duties and responsibilities of rights-holders and duty bearers; as well as State obligations on human rights. The chapter places emphasis on state obligation to guarantee attainment of the RTD in post-conflict Acholiland. This contextualises the situation in northern Uganda, thereby giving a background to the status quo since this study is a socio-legal one. Some of the human rights implications of the northern Uganda conflict on the Acholi are also highlighted.

This chapter questions the notion of a RTD in Africa and weighs whether it is justiciable within Uganda's local setting. The chapter interrogates the nexus between development and the RTD, which is critical for the Acholi in light of the clan-based development model and the need for holistic approaches in development planning; and their inherent right to self-determination.

[1]International Covenant on Economic Social Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, art 2 (1).

The chapter also highlights the relevance of culture in the attainment of the RTD for the Acholi, for whom the cultural setting is a pillar for community development. The chapter ends with a case being made for a rights-based approach to development; which in essence provides for a holistic approach in the attainment of developmental rights.

2.1. The concept of human rights in a post conflict setting

2.1.1. Defining the concept of human rights

The RTD is governed by general concepts and principles of human rights. Human rights are not perceived in the same way. Views on human rights differ from one school of thought or person or society to another. Consequently, there is no single definition of what human rights are. To demonstrate the absence of a uniform human rights definition, Clapham defines human rights in terms of each person living in dignity.[2] Clapham also views human rights as an opportunity to fight inequality, combat poverty, and design international development assistance, among other aspects.[3]

Eze defined human rights as 'demands or claims made by individuals or groups on society, some of which have become part of *ex lata;* while others remain aspirations to be attained in future.'[4] In Eze's understanding, only a right that is recognised and protected by the legal system can be considered as a right.[5] The challenge posed by this definition is that it leaves room for the state to determine what may or may not amount to a human right. This distorts the notion of human rights being inherent and not granted by the state.

Gewirth defines a right as an individual's interest that ought to be respected and protected.[6] This definition, however, ignores the notion that human rights may be claimed individually or collectively, particularly for group rights. Michael Ignatieff, a deliberative scholar thinks of human rights as being necessary to protect individuals from violence and

[2]A Clapham, 'Human rights: A very short introduction', (2007), 2.

[3] As above.

[4]MK Mbondenyi, 'A review of the concept and philosophy of human rights in MK Mbodenyi, 'International human rights law and their enforcement in Africa (2011), 17.

[5]As above.

[6]A Gewirth, 'The community of rights' in MB Dembour, 'What are human rights?', (2010) Volume 32 (1) *Human Rights Quarterly*, 1-20, 12.

abuse.[7] Donnelly, on the other hand, refers to human rights as universal rights.[8] Donnelly also asserts that human rights claims rest on a prior moral entitlement.[9] Therefore, the source of human rights is man's moral nature.

It is evident that the definition of human rights is dependent on the context within which it is applied. As observed by Mbondenyi, human rights may be codified as a response to a particular threat or act of repression that may have arisen at a given time.[10] The commonly used definition, however, refers to human rights as being God-given by virtue of their inherent nature.[11]

This 'inherent' nature of human rights is recognised in various human rights treaties including the International Covenant on Economic Social and Cultural Rights (ICESCR) which recognises that human rights are derived from the inherent dignity of the person.[12] A similar provision is contained in the Convention Against Torture.[13] It is on the basis of the inherent nature of rights that there are basic minimum standards that are necessary and must be adhered to for one to lead a 'good life'.[14] Donnelly categorised human rights in two spheres, that is:

- Human rights as a minimum set of goods, services, opportunities and protections that are recognised as essential prerequisites for a life of dignity;

[7]M Ignatieff, 'Commentator, in human rights as politics and idolatry' in MB Dembour, 'What are human rights?', (2010) Volume 32 (1), *Human Rights Quarterly*, 1-20, 14.

[8]J Donnelly, 'Universal human rights in theory and practice', (2nd edition), 12.

[9] As above.

[10]Mbodenyi (n 4 above), 20.

[11]A Edel, 'Some reflections on the concept of human rights'; chapter in H Ervin (ed), 'Human rights', Initial publication of the American section of the international association for the philosophy of law and social philosophy', (1971), 13; Constitution of the Republic of Uganda, 1995 (as amended), art 20 (1) recognises that fundamental human rights of an individual are inherent and not granted by the state.

[12]Covenant on Economic Social Cultural Rights, the preamble.

[13]Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, the preamble.

[14]K Decker *et al*, 'Human rights and equitable development: 'Ideals', issues and implications', (2005) 5.

- Human rights as a set of practices that are needed to realise the goods, services, opportunities, and protections.[15]

Human rights can be traced from the natural rights concept of 17th and 18th-century natural law philosophy which viewed rights as being laid down by God, rather than man-made.[16] Human rights have, therefore, been defined as entitlements accruing to an individual because of their being human.[17] These entitlements are enjoyed irrespective of an individual's age, sex, or race, among other grounds.[18] According to Donnelly, the qualifying factor for one to enjoy their rights is that the claimant is a human being; which entitles one to the same rights as everyone else.[19] The Uganda Constitution recognises this by recognising the equality of all persons before the law.[20]

Eze, in his view, observes that only some rights are recognised and protected by law; while others are not.[21] This bestows upon the State the status of grantor of rights as opposed to protector of human rights, which rights are supposed to be inherent. The justiciability of such rights comes into question as a rights-holder can only claim a right that has been guaranteed in the bill of rights. However, the legal system ought to guarantee protection for and enforcement of all rights by virtue of their inherency in man.[22]

Dembour identifies four schools of thought on human rights, that is, the natural school of thought which views human rights as given; the deliberative scholars who view human

[15]Donnelly (n 8 above), 17.

[16]AB Rukooko, 'Human values as the unifying reference for human rights and the African perspective', chapter VII in *eds* Dalfoyo, J Kisekka, G Tusabe *et al*, 'Ethics, human rights and development in Africa', *Cultural Heritage and Contemporary Change Series II*, *Africa*, Volume 8 (2002), 137.

[17]AA An-Na'im, 'Possibilities and constraints of the legal protection of human rights under the constitutions of African countries, (1999),7.

[18]As above; Universal Declaration of Human Rights, art 1 & 2; International Covenant on Civil and Political Rights, arts 2 & 3; Covenant on Economic Social and Cultural Rights, art 3; & Constitution of the Republic of Uganda 1995 (as amended), art 21.

[19]J Donnelly, Universal human rights in theory and practice (2013), 3rd edition, 10.

[20]Constitution of the Republic of Uganda 1995 (as amended), art 21.

[21]O Eze, 'Human rights in Africa', (1984) 5 in MK Mbodenyi, 'International human rights law and their enforcement in Africa, 17.

[22]Mbodenyi (as above).

rights as agreed upon; protest scholars who look at human rights as fought for; and discourse scholars who view human rights as 'talked about'.[23]

The natural school of thought views human rights as entitlements that require human rights obligations to be fulfilled. Here, the human rights obligations are negative and absolute, thereby requiring the government to refrain from carrying out acts that infringe on human rights enjoyment.[24] Under the natural school of thought, it is also argued that human rights are universal and exist even where there is no social recognition.[25]

The deliberative school, on the other hand, departs from the notion of human rights being natural. Instead, the deliberative school views human rights as political values that a liberal society chooses to adopt. In other words, it does not view human rights as being universally applicable, but rather, as something that can be attained over time.[26] To the deliberative scholars such as Jürgen Habermas and John Rawls, human rights do not dictate how things should be. Human rights can, however, be realised through a specific `mode of action.[27]

According to the protest school, human rights are about redressing injustices. Here, human rights are viewed as claims and aspirations that permit the status quo to be questioned in favour of the oppressed. Protest scholars, such as Costas Douzinas and Upendra Baxi, are open to the notion that human beings have rights, but argue that one has an obligation to ensure that the rights of others are respected and failure to do so would amount to a betrayal of the human rights concept.[28] To them, advocacy for human rights is a relentless fight since a single victory does not signify an end to all injustice.[29]

[23]MB Dembour, 'What are human rights?', (2010) Volume 32 (1) *Human Rights Quarterly*, 1-20, 2.

[24]As above.

[25] As above, 3.

[26] Dembour (n 23 above), 3.

[27] As above, 8.

[28] As above, 7.

[29] Dembour (n 23 above), 3.

The discourse school argues that human rights exist because they are talked about.[30] It is also argued that human rights are not given, and neither do they constitute the right response to the ills of the world. It is, however, recognised that human rights are a powerful language through which political claims are expressed.[31]

Despite the divergent views on human rights, the critical point is that there are human rights and they must be respected, protected, and promoted by the state. This includes rights like the RTD that were recently included in the human rights discourse. The protection of such rights secures and facilitates the progressive development of communities.[32] Through the attainment of the RTD, all human rights, including economic, social, and cultural rights; and civil and political rights can be realised.[33] This is on the basis that the RTD is an umbrella right and would, therefore, facilitate the enjoyment of other rights.[34]

Much as development ought to be driven by local communities in accordance with their human rights and aspirations, the government's priorities may differ; and at the same time, development partners' areas of focus and interests may be different or even change from time to time.

2.1.2. State obligations in the fulfilment of human rights

Human rights are classified as requiring either positive or negative obligations.[35] Under the positive obligations, a state is obliged to undertake measures aimed at facilitating human rights enjoyment.[36] Negative obligations, on the other hand, require the state to refrain from instances where its action/inaction would jeopardise the enjoyment of human rights.[37] Both the Uganda Constitution and the African Charter on Human and Peoples' Rights (ACHPR)

[30]Dembour, (n 23 above), 4.

[31]As above.

[32]KF Rahman, Linkage between right to development and rights-based approach: An overview, (2010) Volume 1, *The Northern University Journal of Law*, 96-111, 96.

[33]As above, 97.

[34]As above, 98.

[35]International human rights law', https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx, (accessed 16 November 2020).

[36]As above.

[37]As above.

impose positive obligations on the GoU in the protection of human rights.[38]

In guaranteeing human rights, the GoU is required to respect, protect, promote, and fulfil human rights. Under the duty to respect, the GoU is obliged to refrain from violating the rights of her people. The duty to protect obliges the GoU to stop third parties from meddling with the rights of others. In the northern Ugandan context, the GoU had an obligation to stop the LRA rebels from interfering with the enjoyment of the right to peace in the region.[39] Interference with the enjoyment of the right to peace and security affected opportunities for development and the general enjoyment of human rights. With the failure to maintain peace in northern Uganda, the GoU is obliged to avail effective remedies to the Acholi.[40]

Although the RTD is viewed as an economic, social, and cultural (ECOSOC) right, it falls under the group rights category.[41] The RTD is, however, not explicitly protected in the CESCR; hence its non-justiciability within the international legal regime. Authors like Dharmadhikari have opined that unlike civil and political rights, socio-economic rights are non-justiciable.[42] This view is premised on the fact that socio-economic rights are often excluded from the bill of rights.[43] Dharmadhikari, therefore, considers socio-economic rights to be mere objectives that can be progressively attained.[44]

Dharmadhikari's view is in *tandem* with the Ugandan context where socio-economic rights, including the RTD, are embedded within the national objectives and directive

[38]Constitution of the Republic of Uganda 1995 (as amended), principle ix of the National Objectives and Directive Principles of State Policy; African Charter on Human and Peoples' Rights, art 22 (2).

[39]United Nations Declaration on the Right of Peoples to Peace, art 2.

[40]Universal Declaration of Human Rights, art 8.

[41]S Marks, The human right to development: Between rhetoric and reality, (Spring 2004) Volume 17 *Harvard Human Rights Journal,* 138.

[42]DM Dharmadhikari, '*Human values and human rights, Universal Law,* (2010) in *Protection of human rights: Constitutional thrust and expanding horizons of jurisprudence of human rights by way of judicial pronouncements,* 3-4.

[43]As above.

[44]As above.

principles; and not the bill of rights.[45] It was pointed out by Gutto that the inclusion of a justiciable right in the bill of rights of a constitutional democracy that respects the rule of law renders such rights and processes of their justiciability accessible to all persons, be they rich or poor.[46] Here, irrespective of their social status, whether advantaged or disadvantaged, each person has an opportunity to either defend their position or pursue their interests to obtain some improvement in their living conditions.[47]

In light of the non-justiciability of the RTD in the Uganda Constitution, a more solid foundation for claiming the RTD can be found in the ACHPR.The ACHPR has been ratified by most African states including Uganda. However, ratification does not determine the extent to which the RTD is respected within a state. Despite the existence of enforcement mechanisms at the regional level, the implementation of RTD remains another daunting task. The approach towards attainment of the RTD is at best lukewarm. The justiciability of the RTD is discussed in detail in the ensuing sections in chapter two and chapter five.

2.1.3. Principles of human rights

Human rights exist to protect the dignity of human life. There are principles that govern the enjoyment of human rights. These human rights principles must be defined and discussed to provide the context for the applicability of the RTD for the Acholi. These are:

(i) Universality of human rights

Universality of human rights refers to the common standard of achievement for all persons.[48] The universal application of human rights has its foundation in the UDHR.[49] The principle of universality is a core element of human rights as it is a basis upon which rights can be claimed if a national regulatory framework is inadequate in guaranteeing human rights. The entitlement to enjoy human rights stands irrespective of whether there is conflict. Human

[45]Constitution of the Republic of Uganda 1995 (as amended), objective ix of the National Objectives and Directive Principles of State Policy.

[46]S Ghutto in J Oloka-Onyango, 'Human rights and sustainable development in contemporary Africa: A new dawn, or retreating horizons?', Human Development Report 2000 Background Paper,10.

[47]As above.

[48]H Bielefeut, 'Philosophical and historical foundation of human rights'; chapter in C Krause & M Scheinin (eds), '*International protection of human rights: A text book'*, 3.

[49]Universal Declaration of Human Rights, art 1.

rights standards apply at all times and the Acholi are entitled to minimum universal human rights under this theory.

The notion of the universality of human rights is drawn from the Universal Declaration of Human Rights (UDHR). The UDHR recognises the inalienable rights of all human beings and declares the UDHR as the minimum yardstick that states ought to rely on in guaranteeing human rights within their territories.[50] Human rights are, therefore, innate and cannot be separated from the rights-holder.

The Vienna Declaration and Programme of Action (Vienna Declaration) expounded on this concept of human rights being universal.[51] The Vienna Declaration recognises that human rights apply to all persons regardless of one's sex, age, and social status, among others. In the case of northern Uganda, irrespective of whether there was conflict or not, local communities were entitled to attain and enjoy their RTD.

The notion that human rights are universal is one that ought to be applied with some modifications depending on the culture and practices within the state or community in issue. This view is supported by authors like An-Na'im who argued that development strategies aimed at protecting human rights in a given jurisdiction should be implemented in light of its normative and institutional framework.[52] The idea of human rights being universally applicable is acceptable. However, there are instances where human rights are not universally applicable. This is attributed to cultural relativism.

With cultural relativism, certain aspects may be interpreted and applied differently from one social setting to another. For instance, the very nature of the RTD itself is in issue as it is both an individual right and a group right under the ACHPR; but only an individual right under the UN DRD. For communities like the Acholi, human rights are applicable even in times of war. Their application, however, does not allow some aspects to be flexibly interpreted to facilitate the recognition of Acholi culture and how these rights can be applied

[50]Universal Declaration of Human Rights, the preamble.

[51]Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, Vienna Austria, 25 June 1993.

[52]An-Na'im, (n 17 above), 7.

locally. This is bearing in mind that the Acholi are a culturally sensitive society.

The non-recognition of cultural relativism is a form of radical universalism as it renders culture to be irrelevant.[53] Human rights may be universally applicable but the local context ought to be taken into consideration. This argument is in line with the right to self-determination; which challenges the notion of universalism since it applies to a people. If there is a uniform yardstick to be adhered to by all, would there be a need for a right to self-determination?

The right to self-determination has been described as the right of a people to determine their destiny.[54] The right to self-determination is viewed as a right of process, not of outcome, belonging to peoples and not to a state or government.[55] The UN Charter,[56] the ICCPR,[57] and the CESCR[58] recognise the right of peoples to self-determination. The right to self-determination was initially viewed in terms of the right of peoples to freely determine their political status.[59] This was against the backdrop of the de-colonisation agenda in which formerly colonised states were able to secede and form independent states.[60]

The definition of the right to self-determination has broadened to include allowing a people to select their political status and to determine the form of economic, cultural, and social development that best suits them.[61] Stemming from the unresolved content of this right, it also includes the right of a people to cultural integrity and development; as well as

[53]An-Na'im, (n 17 above), 7.

[54]'Self-determination', 21 September 2017: https://unpo.org/article/4957#:~:text=Essentially%2C%20the%20right%20to%20self,economic%2C%20cultural%20and%20social%20development (accessed 24 November 2020).

[55]As above.

[56]United Nations Charter, art 1 (2).

[57]International Covenant on Civil and Political Rights, art 1 (1).

[58]Covenant on Economic Social and Cultural Rights, art 1 (1).

[59]J Eze *et al*, The right of people to self-determination and the principle of non-interference in the domestic affairs of states, (2013) Volume 7 (1) *NALSAR Law Review*, 147-164, 145.

[60]As above.

[61]As above, 147.

the right to economic and social development.[62] The ACHPR, on the other hand, expounds on the definition of the right to self-determination as consisting of the freedom, equality, justice, and dignity that are necessary for the achievement of the legitimate aspirations of the African peoples.[63]

The ACHPR also expressly recognises the right to self-determination and describes it in terms of a right to existence and to have an unquestionable and inalienable right to self-determination.[64] The provision recognises that under this right, all peoples shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.[65]

In Uganda, this right is provided for in terms of the right to participate in governance, whereby the Acholi are free to either directly participate, or participate through chosen representatives.[66] Under this right, the Acholi, as a people within the state of Uganda, are entitled to be afforded an opportunity to determine their self-development in line with their social, economic, and cultural aspirations. This right can be realised through district local government councils which are mandated to protect the Constitution and other laws of Uganda;[67] and promote democratic governance; and ensure the implementation of and compliance with Government policy.[68]

According to Franscioni, human rights are pegged to the idea of shared humanity and dignity among all members of the human family.[69] Cultural rights, on the other hand, are based on a group or community having a unique legacy.[70] The Uganda Constitution recognis-

[62]M Saul, The normative status of self-determination in international law: A formula for uncertainty in the scope and content of the right, (2011) 11, *Human Rights Law Review*, 609-644, 613.

[63]African Charter on Human and Peoples' Rights, the preamble.

[64]African Charter on Human and Peoples' Rights, art 20 (1).

[65]As above.

[66]The Constitution of the Republic of Uganda 1995 (as amended), art 38.

[67]Local Government Act cap 243, sec 30 (1) (c).

[68]Local Government Act cap 243, sec 30 (1) (d).

[69]F Franscioni, 'Culture, heritage and human rights: An introduction' in F Francioni & M Scheinin (Eds.), 'Cultural human rights: International studies in human rights', (2008), 3.

[70]As above.

es this right in terms of each person being in a position to belong to, enjoy, practice, profess, maintain and promote any culture, cultural institution, language, tradition, creed, or religion in community with others.[71]

Franscioni, argues that as a result of this legacy, the community is bound together and a sense of belonging and identity is built.[72] Franscioni's assertion questions the notion of universalism. Here, universalism would only apply to that unique community. This raises a conflict between the interests of the world and the community as an individual unit with its own unique needs. Much as human rights are universally applicable, how they are applied or perceived differs from one society to another.

The concept of universality of human rights does not take into account that human rights in Africa are hinged on social values within a given society. The concept of universality is instead envisaged as a grund norm that applies to all individuals irrespective of the society within which they live.[73] However, it is evident that the interpretation of rights may vary depending on the social setting in which it is applied.

For an ordinary Acholi recovering from the northern conflict, development would include having a source of livelihood and being able to afford basic necessities of life, for instance, health, education, water and sanitation.[74] For the GoU, it would largely entail infrastructural development. This divergence is where the conflict on what would amount to the fulfilment of the RTD for the Acholi emanates from. Consequently, there is need for human rights norms to be applied to different cultures but with the necessary modifications.

(ii) Equality

The principle of all persons being equal before the law has been cited as a basic and general

[71]The Constitution of the Republic of Uganda 1995 (as amended), art 37.

[72]As above.

[73]W Eno, 'The African Commission on Human and People's Rights as an instrument for the protection of human rights in Africa (1998) LLM thesis of South Africa, 18 in MK Mbondenyi, 'A review of the concept and philosophy of human rights in 'International human rights and their enforcement in Africa', (2011), 67-68.

[74]K Gelsdorf *et al*, 'Livelihoods, basic services and social protection in Northern Uganda and Karamoja', Working Paper 4, August 2012, 21-25, https://fic.tufts.edu/assets/UgandaEvidencePaperFINAL_Aug2012.pdf, (accessed 8 July 2021).

principle for the protection of human rights.[75] International law exists to offer a platform upon which equality can be claimed as a right by all categories of persons, especially by the marginalised. The UDHR recognises the principle of equality of all persons as one of the pillars for ensuring freedom, justice and peace for all persons.[76] The UDHR also recognises the principle of equality as an avenue through which all persons can progress socially and have a better standard of living.[77] This is through the affirmation of the equal status between men and women; and the equality of all persons irrespective of their sex, race, or other status.[78]

Can human rights truly be said to be 'equal'? Would that not mean that they accrue and are applicable at all times, both during times of peace or conflict? Therefore, in conflict situations like in Acholi-land, there should not have been a lull in development. The Acholi were, as a consequence of this 'equality', entitled to the same human rights guarantees as other Ugandans. GoU was obliged to safeguard their rights irrespective of the political situation.

In line with this principle of equality, the Uganda Constitution similarly guarantees the equality of all persons before the law irrespective of their sex, tribe, and social status among other things.[79] The Uganda Constitution also pays specific attention to women. The Uganda Constitution emphasises the right of women to be treated equally with men, in terms of being availed economic and social opportunities,[80] as well as the right to affirmative action.[81]

In this instance, the principle of equality would require that the Acholi, as a tribe, be afforded developmental opportunities that would place them on an equal footing as other tribes. The inadequate recognition of the Acholi as a marginalised group and government

[75]United Nations General Comment No. 18: Non-discrimination, adopted at the Thirty-seventh Session of the Human Rights Committee, on 10 November 1989, para 1.

[76]Universal Declaration of Human Rights, the preamble.

[77]Universal Declaration of Human Rights, art 1 & 2.

[78]As above.

[79]Constitution of the Republic of Uganda 1995 (as amended), arts 21 (1) & (2).

[80]Constitution of the Republic of Uganda 1995 (as amended), art 33 (4).

[81]Constitution of the Republic of Uganda 1995 (as amended), art 33 (5).

commitment towards their development, even in the post-conflict setting cripples the effectiveness of any lukewarm undertakings by the status. The Acholi ought to be availed the same state guarantees on development as the central and western regions of the country are availed.

The principle of equality would also involve the Acholi having access to information on developmental opportunities. The right to access information is protected under the International Covenant on Civil and Political Rights (ICCPR) which includes the freedom to seek, receive and impart information and ideas of all kinds.[82] Access to information is a right that is also guaranteed by the Uganda Constitution.[83] However, the only exception to the release of such information is if it is likely to prejudice the security or sovereignty of the state or interfere with the right to the privacy of any other person.[84]

The right to access information is critical to sustainable development as it promotes peoples' participation. Access to information requires the government to be accountable and transparent.[85] The state, therefore, has an obligation to avail and sensitise its citizens on relevant information. Here, exclusion of certain categories of persons from accessing information on development opportunities would have the resultant effect of an increase in the number of vulnerable persons, including women, children, and the elderly.[86]

This right to access information is an enabler right that would facilitate the participation of the Acholi in decision making. The principle of equality requires the state to

[82]International Covenant on Civil and Political Rights, art 19; African Charter on Human and Peoples' Rights, art 9.

[83]Constitution of the Republic of Uganda 1995 (as amended), art 41.

[84]As above.

[85]'Importance of the right to access information', https://www.article19.org/data/files/medialibrary/38832/Open-Development--Access-to-Information-and-the-SDGs-2017.pdf, (25 November 2020).

[86]B Gawanas, 'The African Union: Concepts and implementation mechanisms relating to human rights', 149, http://www.kas.de/upload/auslandshomepages/namibia/Human_Rights_in_Africa/6_Gawanas.pdf, (accessed on 10 May 2016).

take affirmative action to eliminate conditions that cause discrimination.[87] The issue in the northern Uganda context is the extent to which the affirmative interventions were effective in eliminating the state of poverty in the region.

(iii) Indivisibility, interdependence, and interrelatedness of human rights

Human rights have been deemed to be indivisible, interdependent, and interrelated. These are related and intertwined concepts. In other words, one cannot enjoy one set of rights in total disregard of another set. This principle is recognised in the Vienna Declaration and Programme of Action.[88]

The notion of human rights being indivisible, interdependent and interrelated is critical in assessing the efficacy of the regulatory framework on the RTD. The right to enjoy developmental rights can be discerned from the attainment of civil and political rights. This view was reflected in the ACHPR which stated thus:

> …….Convinced that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.[89]

The principle of human rights being interdependent and indivisible emanates from the universal declaration model of human rights.[90] Under this, rights are viewed as being holistic, with each right augmented by others.[91] An illustration of this model is the relationship between civil and political rights as guaranteed by the ICCPR and economic, social, and cultural rights as protected under the CESCR.

Human rights are categorised into three: civil and political rights; economic, social,

[87]General Comment No. 18: Non-discrimination, adopted at the Thirty-seventh Session of the Human Rights Committee, on 10 November 1989, para 10.

[88]Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993.

[89]African Charter on Human and Peoples' Rights, the preamble.

[90] Vienna Declaration and Programme of Action 1993, para 5.

[91]Donnelly (n 8 above), 31.

and cultural rights; and group rights. These categories mutually reinforce each other in a bid to ensure effective implementation of rights being claimed.[92] Hence, there being indivisible, interdependent and interrelated. The indivisibility, interdependence, and interrelatedness of human rights were reflected in the *SERAC* case.

In the *SERAC case*, a matter that was originally viewed as a case concerning violation of environmental rights also consisted of violations of other rights. These rights included the rights to property, housing, food, and freedom from torture.[93] As explained by Oloka, one can only be whole when they are in a position to enjoy civil and political rights, as well as economic, social and cultural rights.[94] Here, human rights become the foundation for the attainment of a holistic and integrated approach to sustainable human development.[95]

Flowing from the indivisibility, interdependence, and interrelatedness of human rights is the concept of reading in rights. For instance, whereas the RTD is not expressly justiciable under the Ugandan legal regime, it could be read into socioeconomic rights, including the right to health, as guaranteed under the CESCR. The definition accorded to the right to health is wide and encompasses access to safe and potable water; adequate sanitation; and adequate supply of safe food, nutrition, and housing;[96] which are also aspects of the RTD.

Where development rights cannot be specifically claimed from the state, such rights can be read into other recognised rights. As noted by Gawanas, the RTD is interrelated with human rights that bear elements of a social, cultural, economic, and political nature.[97] This way, even when a right is not specifically guaranteed, it can be read in and claimed under an existing right. This clearly demonstrates that one set of rights cannot be enjoyed to the exclusion of other rights.

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[92]H Quane, A further dimension to the interdependence and indivisibility of human rights?: Recent developments concerning the rights of indigenous peoples, Volume 25, *Harvard Human Rights Journal*, 49.

[93]Social and Economic Rights Action Centre & another v Nigeria (2001) AHRLR 60.

[94] Oloka-Onyango (n 46 above), 3.

[95] As above.

[96]General Comment No. 14 on the right to the highest attainable standard of health (Art. 12), para 11, adopted by the Committee on Economic, Social and Cultural Rights at the 22nd Session, 11th August 2000.

[97]Gawanas (n 86 above), 144.

(iv) Accountability

There can be no meaningful enjoyment of human rights if there is no provision for accountability, especially by the state. Accountability is necessary, especially where there is state failure to adequately protect human rights within its jurisdiction. The UDHR, therefore, guarantees the right of all persons to an effective remedy.[98] This remedy is claimed before a competent national tribunal mandated to handle matters concerning human rights violations by the state.[99]

The Uganda Constitution created the Uganda Human Rights Commission (UHRC) to ensure state accountability.[100] This UHRC is constitutionally mandated to oversee the protection and promotion of human rights observance in Uganda. This mandate is implemented through various means including handling of complaints on alleged human rights violations before its tribunal.

The UHRC investigates complaints on alleged human rights violations by the state.[101] Where there is merit in the allegations made, the complaint is heard by the UHRC's tribunal. Upon disposal of the complaint, various orders may be made for implementation by the concerned state agency.[102] Some of these orders include compensation and a requirement that administrative action is undertaken by a government ministry, department, or agency.[103]

The Constitution obliges the state to respect entities like the UHRC that are tasked with the duty to guarantee the enjoyment of human rights.[104] An examination of the extent to which the state respects the mandate of such institutions will be discussed in chapters three and five of this study.

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[98]Universal Declaration of Human Rights, art 8.

[99]As above.

[100]Constitution of the Republic of Uganda 1995 (as amended), art 51.

[101]Constitution of the Republic of Uganda 1995 (as amended), art 52 (1) (a).

[102] Constitution of the Republic of Uganda 1995 (as amended), art 53 (1).

[103]Constitution of the Republic of Uganda 1995 (as amended), art 53 (2).

[104]Constitution of the Republic of Uganda 1995 (as amended), principle v (i) of the National Objectives and Directive Principles of State Policy.

2.2. Human Rights Duties and Responsibilities

It was earlier stated that human rights are generally viewed as entitlements. It, therefore, follows that where there are human rights to be attained and enjoyed, there must be rights-holders/claimants/beneficiaries. There are also those whose duty it is to make human rights a reality. These duties/responsibilities are explained below:

2.2.1. Rights-holders/beneficiaries of the RTD

In the enjoyment of human rights, all persons are viewed as rights-holders or beneficiaries.[105] Human beings are considered to be rights-holders since they are entitled to have their rights respected by the State.[106] Where the State fails to guarantee the enjoyment of a human right, the rights-holder is entitled to seek enforcement of the violated human right.

In seeking enforcement against the state, a rights-holder is empowered to hold the State accountable. The ability to enforce observance of a human right, however, requires the rights-holder to be aware of their rights. Without awareness of the existence of one's human rights, a rights-holder would not be able to claim and have their rights enforced. With regard to the RTD, all persons are expected to enjoy their rights as beneficiaries through their active participation in all development processes, right from the policy formulation process till implementation.

The RTD, therefore, entitles a right-holder to take part in, and make a contribution to the development process.[107] The participation of rights-holders enables them to identify strategies that could lead to attainment of the RTD in a post-conflict society like the Acholi. Such strategies would be adapted to and address their socio-economic needs. This way, the right goals and criteria would be identified for implementation in the attainment of the developmental rights.[108]

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[105]J Donnelly, Human rights as natural rights, (1982) 4, *Human Rights Quarterly* 391, 399.

[106]As above.

[107]A Sengupta, Realising the right to development, (2000) Volume 31 issue 3 *Development and change*,553-578, 567.

[108]RL Barsh, The right to development as a human right: Results of the global consultation, (1991) 13 No 3 *Human Rights Quarterly,* 332-328, 328 in WF Felice, 'Right to development', http/:www.williamfelice.com/_literature_78071/WFF_-_Development_encylopedia_article, (accessed 11 August 2016).

2.2.2. Duty bearers

The existence of a right creates a parallel duty which must be borne by a duty bearer.[109] In overseeing the enjoyment of human rights, duty bearers are required to foster its respect, protection, and promotion.[110] Authors like Sengupta opine that a State must fulfil its obligation in ensuring that all human rights are enjoyed, irrespective of whether they are civil and political rights or socioeconomic rights.[111] Consequently, a violation of one set of human rights would lead to a violation of another.[112]

The legal duty to guarantee the enjoyment of the RTD obliges GoU to ensure that nationals enjoy legal rights as guaranteed by national, regional, and international human rights law. These legal rights include the right of nationals to participate in and benefit from development.[113] With regard to the RTD, more emphasis is placed on its attainment under the ACHPR since it expressly provides for the existence of a RTD.[114] Uganda as a State has a duty to guarantee respect for the RTD.[115] This duty obliges the GoU to create the necessary conditions that facilitate attainment of the RTD.[116] States have a duty to enforce the observance of human rights.

In light of the definition of the RTD under the UN DRD, this duty includes: the right to the means for creating a conducive environment that facilitates attainment of the RTD; guaranteeing the right of nationals to be part of the process of creating a conducive environment for the realisation of the RTD; and enabling nationals enjoy their right to the benefits of attaining the RTD.[117]

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[109]E Zerbinos, The right to know: Whose right and whose duty, (1982) 4 *Communications & Law* 33, 35.

[110] As above.

[111] Sengupta, (n 107 above), 556.

[112]As above.

[113]Universal Declaration on the Right to Development, the preamble.

[114]African Charter on Human and Peoples' Rights, art 22.

[115]MA Tadeg, Reflections on the right to development: Challenges and prospects, (2010) 10, *African Human Rights Law Journal 330*, 334; African Charter, arts 1, 2 & 22.

[116]As above.

[117]A Sengupta, The human right to development, (2004) Volume 32 No.2, *Oxford Development Studies* 179 – 203, 183 – 192.

With regard to northern Uganda, the use of a rights-based approach in development planning would be appropriate for the region. This would facilitate the effective attainment of development goals through a mutual cooperation between government and the citizenry.

2.3. The Impact of the LRA conflict on human rights enjoyment in Acholiland

Participation in developmental activities was part of the traditional way of life of the Acholi in the pre-conflict era. The clan structures within the Acholi cultural system, just like in other African societies, ensured that all members of the community were assigned roles to play in the development of the community.[118] Here, there was collective cooperation in the fulfilment of assigned roles by all members of the community. These roles included: men having the duty to erect a hut; and women being responsible for plastering mud on walls.[119]

Through communal participation, food security and communal development was guaranteed. It is as a result of this participatory grassroots process that families would contribute part of their harvests for storage in granaries; a practice that would guarantee access to food during famine. The LRA conflict, however, diminished most opportunities for development of the Acholi. The LRA conflict exacerbated the marginalisation of women and children in Acholi sub-region.

In light of international human rights norms, women were marginalised in terms of the exercise of their rights within African society; which would include the Acholi. Children, on the other hand, were viewed as having no rights in the African traditional setting since they were only 'to be seen and not heard'. Contrary to popular belief, Acholi traditional culture is viewed by ordinary Acholi as being progressive in nature. It does not view women as being inferior but that both men and women have traditional roles to play, which either gender cannot purport to take up.[120]

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[118]Informal discussion with Mr. Ongaya Acellam, Clan Leader of Koro Ibakara clan on 9th June 2017 at Pece Division, Gulu Municipality, Gulu district.

[119]EE Etta *et al*, African communalism and globalization, (June 2016) Volume 10 (3), Serial No 42, *African Research Review*, 302-316 303, 307.

[120]Informal discussion with Mr. Ongaya Acellam, Clan Leader of Koro Ibakara clan on 9th June 2017 at Pece Division, Gulu Municipality, Gulu district.

In essence, men were the providers while women looked after the home. In the words of a clan leader 'a man cannot be seen in the granary trying to determine what should be cooked'.[121] Upon death of a head of a household, the Acholi custom guaranteed protection of the widow by requiring that she selects an inheritor from within or outside the husband's family.[122] It is this inheritor, usually a brother or uncle of the deceased husband, who would then be obligated to provide for the widow and her children.[123]

Failure to select an inheritor from the husband's clan would affect a widow's access to land rights and consequently her children too.[124]Before the LRA conflict, women and their children could only access clan land through marriage. Upon death of a male head, access to land rights by women was dependent upon her being inherited by a clan member. This is contrary to the Uganda Constitution which recognises women as having equal rights with men upon marriage, during the marriage and at its dissolution.[125]

In light of this practice, a widow should be able to access her deceased husband's property and deal with it as she deems fit. At the grassroots, customary practices are more commonly applied in the resolution of issues. A widow's defiance at being inherited would amount to her giving up her rights to access her deceased husband's property. The property would, therefore, revert to the clan.

The northern conflict impaired enjoyment of the right to culture,[126] and culminated in the disintegration of the existing traditional structures. The creation of IDP camps fragmented clans as clan members were spread across the various IDP camps. This affected the ability of clan leaders to mobilise their members. In addition, clan leaders were rendered irrelevant since IDP camps had their own leadership structures that were aligned to the political, as opposed to traditional system of governance.

[121]Informal discussion held with Clan leader Koro Ibakara Clan, Mr. Ongaya Acellam at Gulu Municipality, Gulu district on 9th June 2017.

[122]L Hannay, 'Women's land rights in Uganda', July 23, 2014, https://www.landesa.org/wp-content/uploads/LandWise-Guide-Womens-land-rights-in-Uganda.pdf, (accessed 25 May2017).

[123]As above.

[124]As above.

[125]Constitution of the Republic of Uganda 1995 (as amended), art 31(1).

[126]Constitution of the Republic of Uganda 1995 (as amended), art 37.

With the breakdown of traditional structures, there was widespread individualism. These individuals struggled during and at the end of the conflict with the abolition of IDP camps and state ordered return and resettlement of IDPs. Individualism also limited opportunities for development of communities since clan structures had disintegrated with the forced encampment.

Despite the existence of constitutional guarantees on equality of human rights in general and also, in terms of development, the rights of the Acholi have remained limited. Much as the northern conflict curtailed opportunities for protection of developmental rights of the Acholi, GoU's obligation to protect their rights did not cease on the advent of the conflict. Rather, the conflict intensified the need for the state to guarantee developmental rights; which need still exists in the post conflict era.

2.4. Linking the concept of development to the right to development

Human development has been defined as a process that facilitates the enlargement of people's choices.[127] There are different levels of development but the critical ones include: the ability to lead a long and healthy life, the acquisition of knowledge and having access to a decent standard of living.[128] These levels can only be attained in instances where opportunities can be accessed for the development and improvement of lives.

Various definitions have been given to the concept of development. The definition adopted for purposes of this study is to view development as the process through which all human lives are improved.[129] This is similar to the view in the 1980 Brandt Commission report which gave development a more holistic definition by looking at it in terms of transforming an entire economic and social structure, among other things.[130]

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[127]Human development report 1992 in E Wamala, 'Freedom and human rights: The development dilemma in Sub-Saharan Africa' in at Dalfoyo *et al* (eds), 'Ethics, human rights and development in Africa', (2002) Volume 8, *Cultural Heritage and Contemporary Change Series II*, Africa, 101.

[128]As above.

[129]UO Spring, RV Summy et al (*eds*), 'Peace studies', Volume VII *public policy and global security*, 126.

[130]RI Meltzer, 'International human rights and development: Evolving conceptions and their application to relations between the European community and the African-Caribbean- Pacific States' in CE Welch Jr. & RI Meltzer (eds), 'Human rights and development in Africa (1984), 213.

Authors like Sen note that the success of development can only be judged by the enhancement of living conditions as an essential, if not the most essential object, of economic exercise.[131] This view is reflective of the situation in northern Uganda where the local populace live a life of abject poverty despite the cessation of conflict. In line with the human rights-based approach to development, focus should be placed on assisting poor communities like those in northern Uganda to overcome developmental challenges.[132] This is crucial considering that their sources of livelihood were completely destroyed while they were confined in IDP camps.

Attainment of the RTD in a post conflict setting would, therefore, require the existence of a robust legal and institutional framework to guarantee the same. In addition, there must be a balance between infrastructural development and improvement in the social and economic wellbeing of the people. In the absence of a balancing act between the two, human rights will not be enjoyed.

In accordance with Sen's views, there can be no successful development venture if there is no improvement in the living conditions of the local populace. It follows, therefore, that for economic growth to be realised, there is need for a change in the economic, social, and cultural wellbeing of the people of Acholiland.

2.5. The theory of peace as a basis for development in Acholiland

The northern Uganda conflict was characterised by brutality by the LRA as well as the Uganda army.[133] As highlighted in chapter one, some of the outcomes of the conflict was the massive violation of human rights, disintegration and destruction of livelihood of local communities; hence, the need for peace.

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[131]A Sen, 'The concept of development', (1988), in H Chenery & TN Srinivasan (*eds*), 'Handbook of development economics', Volume 1, 10-26, 10.

[132]RC Offenheiser & SH Holcombe, Challenges and opportunities in implementing a rights-based approach to development: An Oxfam America perspective, 32 (2), *Nonprofit & Voluntary Sector Quarterly* 268-301.

[133]P Tom, 'The Acholi traditional approach to justice and the war in northern Uganda', posted on August 2006, https://www.beyondintractability.org/casestudy/tom-acholi, (accessed 3 October 2020).

Johan Galtung explored the theory of peace in three different dimensions: peace as stability, in reference to an internal state of a human being; peace as the absence of violence; and thirdly, peace as a synonym for all good things in the world, including cooperation among humans.[134] For purposes of this study, the focus is on the concept of peace meaning the absence of violence. The theory of peace as propounded by Galtung defines peace as the absence of violence. This violence is categorised as violence that may occur between nations, ethnic groups, among other groups.[135]

In the Acholi context, the violence referred to is the violence that occurred between the UPDF, LRA and the Acholi as the victims of the conflict. This theory of peace ties into Sen's theory of development in which he views development as freedom and expounds on this by looking at it in terms of what people can do for themselves.[136] This points to the symbiotic relationship between peace and development. There can, therefore, be no peace without development, or development without peace.

Sen also identifies what he deems to be necessary freedoms for one to be able to develop. These freedoms include: sufficient economic opportunities, civil liberties, good health and basic education, among others.[137] In light of the Acholiland development dilemma, having peace would afford them an opportunity to develop. The Acholi way of life has its basis in their traditions. These traditions are passed on from generation to generation. Traditions clothed the Acholi in a life of dignity and abundance through collective development processes overseen by clan-heads.

The over 20-year conflict undermined the potential of the Acholi to exercise their developmental rights. The Juba peace process was, therefore, an opportunity for the Acholi to regain their dignity as a people and develop. In light of the north-south divide in Uganda, the Acholi required the absence of conflict as well as structural violence in order to explore op-

[134]J Galtung, 'Theories of peace: A synthetic approach to peace thinking', International Peace Research Institute (1967) 12.

[135]As above.

[136]A Sen, 'Poverty and famines: An essay on entitlement and deprivation' (1981) in J Barnett, 'Peace and development towards a new synthesis', (January 2008) *Journal of Peace Research, 79.*

[137]As above, 79-80.

portunities for self-development.[138] It was, therefore, necessary that peace be attained in northern Uganda in order for the Acholi to have a conducive environment to facilitate development.

There are various stakeholders in the quest for peace in northern Uganda. These stakeholders include: the Acholi, the LRA rebels, government of Uganda and the international community. Each stakeholder had its own interpretation of peace in light of which the peace negotiations at Juba between the LRA and the government of Uganda were hinged. For the LRA rebels, right from the pre-conflict era, attaining peace meant overthrowing what they deemed to be a corrupt regime headed by President Yoweri Museveni and putting in place a new governance system based on the Ten Commandments.[139] In the LRA's view, this would enable them defend the interests of the people of northern Uganda.[140] These are issues that would be challenging to address in a peace negotiation.

To the Acholi, peace meant having the conflict come to an end. This would be accompanied by forgiveness and reconciliation of the LRA combatants through their traditional justice systems; and their eventual peaceful co-existence. This is in line with Acholi traditional culture which is restorative in nature.[141] The GoU, on its part, is constitutionally mandated to ensure that the RTD is exercised. This constitutional mandate requires GoU to take necessary steps to create the required environment for the enjoyment of the RTD.[142] Such

[138]The north-south divide commenced with the 'divide and rule' policy that was implemented in the pre-independence period by colonial administrators to govern Uganda. This marked the beginning of the marginalisation of northern Uganda as the other regions, central, eastern and western Uganda, enjoyed economic favours from colonialists. This north-south divide was exacerbated by the over 20-year conflict in northern Uganda. S Adejumobi, 'Citizenship, rights and the problem of conflicts and civil wars in Africa', (2001) Volume 23, No 1, *Human Rights Quarterly*, 154; C Amone & O Muura 'British colonialism and the creation of Acholi ethnic identity in Uganda', 1894 to 1962, (2014) Volume 42 No 2, *The Journal of Imperial and Commonwealth History*, 239-257, 249.

[139]D Hendrickson & K Tumutegyereize, 'Dealing with complexity in peace negotiations: Reflections on the Lord's Resistance Army and the Juba talks', (January 2012), 6.

[140]As above.

[141]Tom, (n 133 above).

[142]African Charter on Human and Peoples' Rights, art 22 (2).

steps, in a conflict setting would require GoU to find ways of bringing the northern conflict to an end, including entering into peace negotiations with the LRA.

The GoU, despite its human rights obligations to guarantee peace and development for all Ugandans, entered into the negotiations due to donor pressure.[143] GoU's idea of peace was, therefore, to have the LRA sign a commitment to end the northern conflict. This is discussed in detail in chapter four. The international community, on the other hand, wanted to bring to an end the northern conflict.[144]

The preamble to the International Covenant on Civil and Political Rights (ICCPR) recognises that the inherent dignity and the equal and inalienable rights of all persons are the foundation of freedom, justice and peace in the world.[145] Therefore, without peace, the Acholi would not be able to enjoy their rights as members of the human family. By virtue of the ICCPR, the international community was obliged to fulfil their commitment towards ensuring peace in northern Uganda.[146] This was done by getting the GoU to participate in the peace talks and funding the negotiations.[147]

The alternative to the peace talks would have been the GoU following through with the indictment against the top commanders of the LRA and having them prosecuted by the ICC. The LRA commanders that were indicted were: Raska Lukwiya, Vincent Otti, Okot Odhiambo and Dominic Ongwen. The GoU had in 2003 referred the situation in northern Uganda to the ICC.[148] This referral was in line with the Rome Statute, which permits a state party to refer to the Prosecutor situations pertaining to commission of crimes within the jurisdiction of the court with a view to establishing whether certain persons should be charged.[149]

[143]Hendrickson &Tumutegyereize, (n 139 above), 6.

[144]As above.

[145]International Covenant on Civil and Political Rights, the preamble.

[146]As above.

[147]Hendrickson & Tumutegyereize, (n 139 above), 6.

[148]As above, 14.

[149] Rome Statute, art 14(1).

The referral of the situation in northern Uganda was on the basis that the northern conflict involved violation of international humanitarian law. The crimes committed were against the international community, to which the Acholi belong. The indictment of the top LRA commanders was supported by international human rights organisations that thought that it would end impunity in northern Uganda.[150] Acholi traditional leaders, on the other hand, were opposed to the indictment.[151] The Acholi traditional leaders were of the view that the indictment would prolong the northern conflict.[152]

All these stakeholders arrived at the peace negotiations in Juba with different expectations. The peace negotiations were heavily tilted to the LRA's disfavour and sought to have them abandon the rebellion. A failure of the peace negotiations was, therefore, a foregone conclusion. This was contrary to the idea behind the UN Declaration on the right to peace which foresaw states striving to ensure that their policies sought to eliminate the threat of war in a bid to guarantee peace for its peoples.[153]

The preconditions for the peace negotiations as stated by the Mediator, Dr. Riek Machar, applied to the LRA and not to the GoU. Some of the preconditions required the LRA high command to be accessible to the mediation team; the LRA and Sudanese People's Liberation Army were to cease hostilities; and that the LRA delegation should have access to the LRA high command and have powers to negotiate on their behalf.[154]

An effective peace process would, therefore, accord a 360-degree analysis of the needs of all the conflicting parties as well as the survivors of the conflict. This would facilitate the finding of sustainable solutions to the conflict and development needs of the populace. Worth noting, however, is that the Juba peace process was based on five agenda items,

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[150]'Locals want rebel leader forgiven', *The New Humanitarian* of 1 August 2006, https://www.thenewhumanitarian.org/fr/node/226951, (accessed 16 November 2020).

[151]Human Rights Watch, 'Uprooted and forgotten: Impunity and human rights abuses in northern Uganda', Human Rights Watch, Volume 17, No 12(A), 55.

[152]As above.

[153]United Nations Declaration on the Right to Peace, art 3, United Nations General Assembly resolution 39/11 of 12 November 1984.

[154]D Mwaniki, M Wepundi & H Morolong, 'The (Northern) Uganda peace process: An update on recent developments', Situation report, 2 February 2009, 3.

including: cessation of hostilities; justice and accountability; and disarmament, demobilization and reintegration. Most, if not all the agenda items demanded action from the LRA as opposed to the GoU.[155]

Peace can only be attained where there is 'give and take' from both parties to the conflict. Another critical aspect for a sustainable and effective peace process is the involvement of survivors of the conflict as parties and not observers. Their participation would require the incorporation of aspects of Acholi dispute resolution mechanisms, customary practices that are known to the parties involved. Rather, the conflict was regionalised and mediated by the government of South Sudan.[156]

The failure to attain peace affected the ability of the Acholi to attain freedom to pursue their development. This aspect will be explored in detail in chapter four which analyses the Juba peace process and its impact on the attainment of developmental rights in Acholiland.

2.6. Is the right to development a human right?

A question for consideration is whether the RTD originates from Africa and is indeed an African right, one claimable by the Acholi as a people. The debate concerning whether the RTD is a human right stemmed from a north-south argument on whether it is indeed a right. In the debate, the north (largely consisting of developed countries) argued that there is no RTD. For these countries, acknowledging the existence of RTD would oblige them to facilitate the creation of a favourable environment that would enable developing countries to realise the RTD.

The UN DRD defines RTD as a broad economic, social, cultural, and political process that seeks to ensure continuous improvement of all persons. In defining the RTD, it is expected that beneficiaries would freely and actively participate in development processes and ensure fair distribution of the benefits emanating therefrom.

Proponents of development as a right, particularly developing countries, hinged their

[155]Hendrickson & Tumutegyereize, (n 139 above), 15.

[156]Mwaniki, Wepundi & Morolong, (n 154 above), 2.

support for a RTD on the inadequacies of decolonisation and subsequent efforts towards development cooperation aimed at eradicating poverty and attaining the objectives of various development strategies. The opponents to the recognition of the RTD, including States such as the United States of America, based their objection on grounds that development is attained through economic liberties and private enterprise, as opposed to a right that can be claimed.

The eventual recognition of the RTD in the UN DRD as an inalienable human right conferred a claim on national and international resources and obliged States to implement that right. However, as pointed out by authors like Marks and Sengupta, the RTD as guaranteed by the UN DRD is not enforceable as it does not have the status of a treaty. On the other hand, the RTD can be realised through the enforcement of economic, social, and cultural rights which are justiciable in national courts.[157]

Such views are merely a smokescreen to hoodwink those that believe in the existence of an enforceable RTD on the international legal plane. This is in light of the perceived universal application of human rights. Internationally, RTD remains comatose as it is quite evident that states in the West are not keen on having it as a recognised and enforceable right. Considering that it is largely the states in the 'South', the African countries, that eagerly embraced the RTD as a human right, it is evident that it is indeed an African right.

Various arguments allude to the 'Africanness' of the RTD, the first of which is the fact that the RTD is an African idea and has its origins in Africa. The idea of having the RTD recognised as a basic human right was popularised in 1972 by an African, Keba M'Baye. M'Baye came up with the idea of a RTD and opined about the need for all persons to equitably enjoy goods and services that are produced through unified efforts of members of the community.[158]

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[157]Marks, (n 41 above), 147; Sengupta, (n 107 above), 558.

[158]M'Baye looked at development as something that concerned 'all men,' 'every man,' and 'all of man. See K M'Baye 'Le droit au développement comme un droit de l'homme' (1972) *Revue des Droits de l'Homme* 503 in R Ozoemena, 'Development as a right in Africa: Changing attitude for the realisation of women's substantive citizenship', (2014) Volume 18, *Law, Democracy & Development*, 224-239; J Donnelly, The 'right to development': How not to link human rights and development', 261, 264.

M'Baye further argued that without the RTD, it would be a challenge to ensure the enjoyment of other human rights.[159] Consequently, the idea for a UN Declaration on the RTD was conceived in Africa, though the right is yet to be rendered enforceable on the international plane. The idea advanced by M'Baye sought to have the RTD as a reality for all persons and to have the entire human race free from want.[160]

The practice of catering for the interests of 'all persons' is African. This is because, in African society, focus is placed on collective communal rights as opposed to individual rights.[161] This practice stems from the African *ubuntu* philosophy which states that 'a person is a person because of or through others'. The *ubuntu* philosophy is the spirit of being united and collective participation by all members within a given society to foster the attainment and enjoyment of human rights.

Under the *ubuntu* philosophy, human rights are enjoyed irrespective of whether they are civil and political rights or social, economic or cultural rights. Ubuntu is a notion that societies like the Acholi embrace and would, if given an opportunity, develop the community in line with their 'grassroots' ideas. For instance, under the supervision of a clan leader, communal land would be apportioned for agricultural use and accordingly assigned to clan members.[162] Such development ideas would be implemented under the watch and guidance of their clan-based system. Without the RTD, such communities like the Acholi would be unable to enjoy other human rights.

Furthermore, the ACHPR is the sole legally binding human rights instrument that recognises the existence of the RTD as a distinct right. This renders the RTD as an African concept. African States like Uganda and Malawi have gone ahead to affirm the existence of the RTD by including it in the normative framework of their national constitutions.

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[159]M'Baye (n 158 above).

[160]K M'Baye in Kamga SD & Fombad CM, 'Actualising the right to development in Africa: Options and prospect's (2017) Volume 47 (3), *Africa Insight,* 7.

[161]As above, 7.

[162]Informal discussion held with Clan Leader Koro Ibakara Clan Mr. Ongaya Acellam at Gulu Municipality, Gulu district on 9th June 2017.

The Uganda Constitution provides for the RTD and requires the state to facilitate rapid and equitable development. This provision is vague in that it does not indicate the nature of the right or how it can be claimed. The Uganda Constitution, however, does not provide for the RTD within the bill of rights. This has led to debate on the justiciability of the RTD under the Ugandan national legal regime. The discussion on the justiciability of the RTD shall be contained in chapters two and four.

Malawi recognises and guarantees the RTD in its Constitution.[163] The provisions in the Malawi Constitution are, however, more elaborate and binding in their provision for the RTD. Firstly, the Malawi Constitution provides for the RTD within the bill of rights. The Malawi Constitution also recognises that individuals and groups, irrespective of gender and age, among other things, have a right to development including economic, social, cultural, and political development.[164]

The Uganda and Malawi Constitutions, however, do not provide for the means of attainment of the RTD. Despite the gaps in the two Constitutions, what is of significance is that the RTD is at least recognised and reflected therein. The Maputo Protocol, an African regional instrument, also recognises the important role that women play in the attainment of development.[165] This reflects the commitment of the African continent in having the RTD recognised and attained.

The debate on whether the RTD is indeed a human right remains unresolved. Further, considering that the West has largely denied the existence of development as a right and has only gone as far as including it in the UN DRD as opposed to a legally binding treaty, the RTD is in fact African. The provision for the RTD in the UN DRD was inconsequential as it has no binding force. Having the RTD in the UN DRD only goes to confirm the resentment that the West has had towards its being embraced as a distinct and claimable human right.

The Flemish Minister-President advanced an argument that the viewing of the RTD

[163]Constitution of the Republic of Malawi, art 30.

[164]Constitution of the Republic of Malawi, art 30 (1).

[165]As above.

on the same plane as other economic, social and cultural rights and, therefore, bearing the same weight was an attempt by non-western countries to have global wealth redistributed.[166] This argument is a reflection of the kind of disregard that Western countries have towards the African notion of 'groupness' and '*ubuntu*' that the RTD caters for.

The RTD is also an African right given that it focuses on community as opposed to the Western way of viewing human rights as applying to an individual.[167] This would explain why Western countries easily accepted the ICCPR as opposed to the CESCR. The opposition to the CESCR was due to its having been classified as containing a group of rights that are to be progressively realised within the available resources of a given State. It is, however, acknowledged that despite the need for 'collectiveness' in African society, individual rights are still enjoyed within this group setting.

For the Acholi, rights such as the RTD are enjoyed as a community. Further, human rights-related conflicts such as killings of an individual by another would be handled as a community. Ordinarily, it would be argued that the violation of an individual's right would not require community involvement. In Acholi culture, however, such human rights violations would be handled through a traditional justice mechanism called *mato oput*.

Authors like Cohen acknowledge the importance of 'groupness' in African culture, that is, the notion of not living alone or suffering alone unless one is a social pariah. This is the basic need for the enjoyment of human rights under the African approach. This does tie into the concept of *ubuntu*. Ubuntu advances the notion that human beings cannot live in isolation of each other. The concept of Ubuntu puts forward the idea that a group's survival depends on its unity and ability to collectively work together. This is contrary to the individualistic approach that is favoured by developed countries.

The collectiveness in the RTD is best described by former President of Tanzania, Jul-

[166] Lecture by Hon. Geert Bourgeois, Minister-President of the Government of Flanders on 'The link between official development assistance and the right to development', on the occasion of the Right to Development in Africa Course 2017 Centre for Human Rights, Pretoria, 22 August 2017, available at http://www.up.ac.za (accessed on 26 June 2018).

[167] African Charter on Human and Peoples' Rights, art 22.

ius Nyerere, who, in describing a traditional African society, observed that all individuals were secure irrespective of whether they were 'rich' or 'poor'. President Nyerere also observed that no individual ever starved of food or was deprived of human dignity, as they were able to rely on the wealth that was held by their community.

Eze advances a similar idea. Eze argues that human rights were recognised and protected from the pre-colonial era in Africa. Eze states that this recognition and protection was reflected in the way the African societies were communal in nature and brought people together by their beliefs in mythology. This unity among members of the community obliged them to cater for each person's rights. This aspect of making development participatory renders the RTD even more African in nature.

In the northern Uganda context, having the RTD as an enforceable African right would mean that all persons affected by the conflict would be availed an opportunity to equitably benefit from social and economic services just like their countrymen had had access to. Consequently, the idea for the RTD and the subsequent declaration on the RTD was conceived in Africa and is indeed an African right. This is despite the fact that the UN DRD highlighted the commitment of state parties at an international level to make the RTD a reality.

The UN DRD attempted to give recognition of civil and political rights an equal footing with economic, social and cultural rights. This was through the recognition that both categories of rights cannot be enjoyed independently of each other. This recognition falls flat given the non-justiciability of the RTD on the international plane. The UN DRD is not a *jus cogens*; and even if it was, the idea of development as a human right remains African given that the ACHPR is the only human rights instrument that recognises development as a right. The ACHPR is, therefore, the only binding human rights treaty.

2.7. Justiciability of the RTD in the Acholi-land Context

A question that has been debated over time is whether the RTD is an enforceable right on the international, regional, or national plane? Given the fluid nature of the RTD, there has been contention, especially at the international level, as to whether the RTD is a guaranteed human right. This contention is fuelled by the division between the north and the south on whether

the RTD exists in the normative sense.[168]

The RTD has its origins in the UN Charter which recognised the need to reaffirm faith in fundamental human rights; in the dignity and worth of the human person; in the equal rights of men and women and of nations and the need to promote social progress and better standards of life.[169] The origins of the RTD are further rooted in the Universal Declaration of Human Rights (UDHR) which recognised that all human beings are born free and equal in dignity and rights;[170] the equality of all persons before the law and their entitlement without any discrimination to equal protection of the law.[171] The UDHR further advanced the right of all persons to a standard of living adequate for their well-being;[172] and the right to self-determination.[173]

The UN Charter and the UDHR, however, did not confer the RTD a status as a distinct human right. It was as a result of the adoption of the Declaration on the Right to Development (UN DRD) by the UN General Assembly that the RTD was formally recognised at the international level as a human right. This recognition of the RTD sought to affirm the above-cited principles that had been articulated in the UN Charter and the UDHR.

The UN DRD, therefore, proclaimed this RTD as a right for every person and all peoples to take part in, contribute to, and enjoy economic, social, cultural and political development, as a result of which all human rights and fundamental freedoms can be fully attained.[174] The UN DRD, in essence, recognised the RTD as both an individual and collective right and gave states the main mandate of creating conditions that favour realisation of the RTD at both the national and international levels.[175]

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[168]B Ibhawoh, The right to development: The politics and polemics of power and resistance, (2011) Volume 33, *Human Rights Quarterly*, 76–104, 77.

[169]Unite Nations Charter, arts 1 & 55.

[170]Universal Declaration of Human Rights, art 1.

[171]Universal Declaration of Human Rights, art 7.

[172]Universal Declaration of Human Rights, art 25.

[173]Universal Declaration of Human Rights, art 27.

[174]United Nations Declaration on the Right to Development, art 1 (1).

[175]United Nations Declaration on the Right to Development, art 3 (1).

Given the substance of the RTD, the UN DRD does not guarantee its enforcement. The nature of the state obligations or how the right is to be attained have remained unresolved.[176] The recognition of the RTD as a distinct right elevated its status to a right of universal application and one that should be respected by all. The UN DRD is, however, recognised as soft law globally, which inhibits its justiciability. The RTD has, therefore, remained non-justiciable on the international plane.

Kirchmeier points out that commitments like the RTD made by states at the international level do not necessarily translate into legally binding rights.[177] Beneficiaries of the RTD, like the Acholi, would not, therefore, rely on the UN DRD to claim developmental rights despite an international commitment affirming that the RTD belongs to all persons and peoples.[178] Opponents to the RTD, mainly from the positivist school of thought state that the RTD cannot be attained.

In this positivist approach, it is argued that human rights that are not legally enforceable cannot be regarded as human rights; but rather, as social aspirations.[179] Kratochwil described instruments like the UN DRD as non-binding soft laws that are 'a weak institutionalisation of the norm-creation process by prodding the parties to seek more specific law solutions within the space laid out in the declaration of intent'.[180]

Authors like, Vandenbogaerde argue that the RTD ought to be disregarded since it does not create substantive obligations on the state and non-state actors.[181] Vandenbogaerde further opines that there should instead be a concerted effort towards extraterritorial obligations in a bid to establish an enabling environment at the international level.[182] Clapham, on

[176]K Arts & A Tamo, The right to development in international law: New momentum thirty years down the line?, *Netherlands International Law Review*, 1.

[177]F Kirchmeier, The right to development – where do we stand?', Dialogue on globalisation, Occasional papers no. 23 of July 2006, 11.

[178]United Nations Declaration on the Right to Development, art 1 (1).

[179]Sengupta (n 107 above), 558.

[180]F Kratochwil in Kamga & Fombad, (n 160 above), 9.

[181]A Vandenbogaerde, The right to development in International human rights law: A call for its dissolution, (2013) Volume 31/2, *Netherlands Quarterly of Human Rights*, 187–209, 188.

[182]As above.

his part, stated that *'these days it is usually not long before a problem is expressed as a human rights issue'*.[183] This is a reflection of the discontent with the recognition of the RTD.

These sceptics further argue that a right can only be recognised as an entitlement if it is sanctioned by a legal authority and has the backing of substantive law. This analogy causes conflict as it merges two opposing but complementary notions of human rights and legal rights. Human rights are inherent and, therefore, precede law; and also emanate from human dignity.

Proponents of the RTD include Keba M'Baye who viewed the RTD as a right belonging to all human beings and argued that each person has the right to live and the right to live longer.[184] M'Baye couched the RTD in terms of people within a community being able to equitably enjoy the goods and services produced.[185] The ability to equitably enjoy these goods and services was deemed to be as a result of the solidarity among community members.[186] The consideration of the RTD as a human right would mean that it is innate, as a result of which all persons are entitled to claim and enjoy it.

The RTD has been embraced at the African regional level through its inclusion in the ACHPR thereby rendering it justiciable.[187] The ACHPR provides for the RTD in broad terms by recognising the right of all peoples to have the right to their economic, social, and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.[188] The ACHPR also creates a vague state duty to individually or collectively, ensure the exercise of the RTD.[189] The ACHPR does not give clarity or any direction on how states should effect these provisions in a bid to realise the RTD.

The African Commission on Human and Peoples' Rights and the African Court on

[183]A Clapham in 'The danger of over-inclusive human rights', 16 September, 2015, https://leidenlawblog.nl/articles/the-danger-of-over-inclusive-human-rights, (accessed 15 November 2020).

[184] K M'Baye in Kamga & Fombad (n 160 above), 7.

[185] As above, 224-239.

[186]As above.

[187] African Charter on Human and Peoples' Rights, art 22.

[188] African Charter on Human and Peoples' Rights, art 22 (1).

[189] African Charter on Human and Peoples' Rights, art 22 (2).

Human and Peoples' Rights have attempted to enforce the RTD in two communications before them: that is, in *Centre for Minority Rights Development (Kenya) & Minority Rights Group International on behalf of Endorois Welfare Council v Kenya (the Endorois case)*;[190] and *African Commission on Human and Peoples' Rights (Ogiek Community) v Republic of Kenya, (the Ogiek case)*.[191]

In the *Endorois case*, the Endorois community had been aggrieved by a decision of the government of Kenya that led to their forced removal from their ancestral lands. This forced removal was done without proper prior consultations or adequate and effective compensation. In finding the Kenyan government liable for having violated article 22 of the ACHPR, the African Commission affirmed that Endorois are a distinct people whose culture, religion, and traditional way of life are intimately intertwined with their ancestral lands; which entitled them to the protection of their collective rights as provided for in the ACHPR.[192]

With specific reference to the RTD, the African Commission referred to the UN DRD and emphasised the import of article 2 (3) of the UN DRD by observing that the RTD includes 'active, free and meaningful participation in development'. The African Commission deduced this to mean that the result of development should be the empowerment of the Endorois community; and that the capabilities and choices of the Endorois had to improve if the RTD was to be realised.[193]

The African Commission also explained state obligations in the implementation of development projects. The African Commission emphasised that the state has a duty consult with a community and also obtain their free, prior, and informed consent, according to their customs and traditions in instances where any development or investment projects to be un-

[190]Centre for Minority Rights Development (Kenya) & Minority Rights Group International on behalf of the Endorois Welfare Council v The Republic of Kenya, African Commission on Human and Peoples' Rights, communication No. 276/2003, paras 269-298.

[191]African Commission on Human and Peoples' Rights (Ogiek Community) v Republic of Kenya (2017) Application 006/2012, paras 201-217.

[192]Endorois Case, para 162.

[193] Endorois case, para 283.

dertaken would have a major impact within the Endorois territory.[194] The African Commission pointed out that it was the State that bore the burden of creating favourable conditions aimed at guaranteeing people's development.[195]

In addition, the African Commission held that Kenya had an obligation to ensure that the Endorois were not left out of the development process or its benefits.[196] This was to be achieved by either providing adequate compensation and benefits or providing suitable land; which the Kenya government had not done. In this case, the African Commission clearly spelt out a state's obligations in fulfilment of its duty to facilitate development; something which the ACHPR does not do.

The *Ogiek Case* was public interest litigation in which the applicant contended that the respondent had violated the Ogieks' RTD by evicting them from their ancestral land in the Mau Forest.[197] The respondent had also failed to consult with and/or seek the consent of the Ogiek Community on matters pertaining to the development of their shared cultural, economic and social life within the Mau Forest.[198] In finding for the Applicant, the court observed that the Ogieks were a people within the meaning of the ACHPR and were, therefore, entitled to social, economic and cultural development since they were part of the peoples of a state. Consequently, article 22 afforded the Ogieks a right to enjoy their development.[199]

The court observed that article 22 of the ACHPR should be read alongside article 23 of the UN Declaration on Rights of Indigenous Peoples which recognises the right of indigenous peoples to determine and develop priorities and strategies for the exercise of the RTD. This provision also emphasises the right of indigenous peoples to actively get involved in developing and determining economic and other programmes; and to implement such programmes through their institutions.[200]

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[194] Endorois case, para 291.

[195] Endorois case, para 298.

[196] As above.

[197] Ogiek Case, para 202.

[198] As above.

[199] Ogiek Case, para 208.

[200] Ogiek Case, para 209.

The Court found that the Ogieks had been continuously evicted from Mau Forest without effective consultations being held; which adversely impacted their economic, social, and cultural development. It was also noted that the Ogieks had not been actively involved in any of the programmes affecting them. This amounted to a violation of article 22 of the charter.[201] These legal principles as explained by the African Commission and the African Court, if embedded in the ACHPR and similarly reflected in national legal frameworks would offer better guidance and protection on the RTD.

A few African states have gone ahead to provide for the RTD within their national legal framework thereby confirming its status as a human right and, therefore, creates a binding obligation on the state to guarantee its enjoyment. This recognition of the RTD consequentially entitles citizens to a claim. Some of these countries include: the Democratic Republic of Congo (DRC); the Federal Republic of Ethiopia; the Republic of Benin; and the Republic of Malawi.

The Constitution of the Democratic Republic of the Congo guarantees the right of all Congolese to enjoy wealth and creates a state duty to redistribute it equitably and guarantee the RTD.[202] The Ethiopian Constitution, on the other hand, is more elaborate. The Ethiopian Constitution recognises and provides for the right to improved living standards and sustainable development.[203] The Ethiopian Constitution also creates a specific right for nationals to participate in national development.[204] This right includes a particular right for nationals to be consulted on matters regarding policies and projects that would affect their community.[205] This right guarantees their right to self-determination on development aspects that would concern their community.

The Ethiopian Constitution obliges the state to ensure that all international agreements entered into protect and guarantee Ethiopia's right to sustainable development.[206] The Ethio-

[201]Ogiek Case, para 210-211.

[202]Constitution of the Democratic Republic of the Congo (2005) (revised 2011), art 58.

[203]Constitution of the Federal Republic of Ethiopia 1994, art 43 (1).

[204]Constitution of the Federal Republic of Ethiopia 1994, art 43 (2).

[205]As above.

[206]Constitution of the Federal Republic of Ethiopia 1994, art 43 (3).

pian Constitution also emphasises that development activities should strive at enhancing the capacity of citizens to develop and meet their basics.[207] The Ethiopian Constitution, the most elaborate of all the Constitutions, attempts to demarcate the role of the state and its citizens in its quest to ensure development for all her peoples within its jurisdiction.

The Benin Constitution does not specifically provide for the RTD. However, article 7 of the Constitution provides that the rights and duties guaranteed by the ACHPR are an integral part of the Constitution and Beninese law.[208] This, therefore, means that the RTD as guaranteed under article 22 of the ACHPR is justiciable in Benin.

The Malawi Constitution was already considered in the discussion on the 'Africanness' of the RTD. This Constitution, similarly, recognises the RTD in the bill of rights.[209] Uganda, unlike its counterparts, has only provided for the RTD in its national objectives and directive principles of state policy and not the bill of rights. The Ugandan content is discussed in the ensuing paragraphs.

In the Ugandan context, the debate on the RTD has elicited discussions as to whether the RTD is indeed a right guaranteed by the Uganda Constitution, and whether it is justiciable. The Government of Uganda (GoU) adopted constitutional provisions that recognise the RTD in an attempt to cater for developmental rights for all Ugandans albeit in the national objectives and directive principles of state policy.[210] The ability to claim this right is crucial for the Acholi for whom development came to a halt from the onset of the conflict.

There are two schools of thought on this justiciability debate. According to the first school of thought, the RTD is not a guaranteed human right given that it is a socio-economic right. This argument is hinged on the fact that the RTD, as well as other socio-economic rights, are not provided for within the text of the bill of rights. The only socio-economic right

[207]Constitution of the Federal Republic of Ethiopia 1994, art 43 (4).

[208]Constitution of the Republic of Benin 1990, art 7.

[209]Constitution of the Republic of Malawi, art 30.

[210]Constitution of the Republic of Uganda 1995 (as amended), principle ix of the National Objectives and Directive Principles of State Policy.

that is guaranteed in the bill of rights is the right to a clean and healthy environment.[211]

Under the first school of thought, it is argued that had the framers of the Constitution meant for the RTD to be justiciable, then it would have been included in the bill of rights. This view is held by authors like Viljoen who also argued that by providing for the RTD in the directive principles of state policy, the Judiciary is availed guidance when interpreting the Constitution or other laws.[212]

Further, the Uganda Constitution requires the state to facilitate equitable development by encouraging its people to undertake private initiatives and be self-reliant.[213] This provision, in essence, does not categorically define the content of the RTD. The provision only requires the GoU to put in place conditions that would enable individuals (through their own initiatives) to develop. Furthermore, there is no binding international human rights instrument in place to confirm the RTD's status as a substantive right.

The UN DRD, the only universally applicable human rights treaty on the RTD, is not justiciable under international law. This is because the UN DRD is not a *jus cogens* norm. Declarations are 'soft law'. 'Soft law' are in essence political commitments that are not law but could potentially become law,[214] and thus give rise only to political consequences.[215] The UN DRD would, therefore, become binding if states, through practice, exhibited a willingness to be bound by obligations as enshrined therein.

The second school of thought is to the effect that the RTD is a human right since it is recognised in the NODPoSP. The Uganda Constitution specifically obliges the GoU to govern in consideration of principles of national interest and the common good.[216] These princi-

[211]Constitution of the Republic of Uganda 1995 (as amended), art 39.

[212]F Viljoen, 'Justiciability of socioeconomic rights at the domestic level'; in 'International human rights law in Africa', (2007), 576-577.

[213]Constitution of the Republic of Uganda 1995 (as amended), principle ix of the National Objectives and Directive Principles of State Policy.

[214]K Raustiala, Form and substance in international agreements, (2005) 99, *American Journal of International Law* 581-614, 587; DL Shelton, 'Soft law', Handbook of international law, (2008), 1.

[215]As above.

[216]Constitution of the Republic of Uganda 1995 (as amended), art 8A.

ples referred to in this instance are enshrined in the NODPoSP. There is no RTD *per se* in the bill of rights. The RTD has yet to be found to be a legally claimable right by Ugandan courts. The Human Rights (Enforcement) Act, however, empowers the High Court to hear matters concerning violation of fundamental and other human rights and freedoms envisioned in article 45 of the Constitution.[217]

Article 45 of the Uganda Constitution avails an avenue through which developmental and other rights guaranteed in international and regional legal frameworks ratified by Uganda can be claimed. Therefore, human rights that are not specifically mentioned in the bill of rights, but are contained in human rights declarations and conventions can now be claimed under the Human Rights (Enforcement) Act.[218] The RTD is, however, specifically guaranteed at the African regional level under article 22 of the ACHPR. Such a right is enforceable under the Human Rights (Enforcement) Act.

The RTD is also enforceable in light of treaty obligations based on the customary international law principle of *pacta sunt servanda*.[219] The principle of *pacta sunt servanda* means that agreements are binding.[220] This is based on the notion that treaties seek to impose binding obligations on states that accept to be bound by them.[221] These treaties would become binding upon their signing and ratification.[222] Consequently, such a right would be claimable under the ACHPR by virtue of Uganda having ratified it.

Much as directive state principles are generally non-justiciable, case law has shown that they are complementary to fundamental human rights. This was the position in the *State of Kerala v N.M Thomas*. In this case, one of the findings of the majority judges was that the fundamental rights and directive state principles are complementary.[223]

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[217]Human Rights (Enforcement) Act 2019, sec 4 (1) (b).

[218]As above.

[219]MN Shaw, International law, (2014) 7th Edition, 67.

[220]As above.

[221]JG Starke 'Introduction to international law', (1989) 10th edition, 438.

[222] Shaw (n 219 above), 68.

[223]V.R. Krishna Iyer, J, State of Kerala v N. M. Thomas (1976) 2 SCC, 310 at para 134, 367, http://www1.umn.edu/humanrts/edumat/IHRIP/circle/justiciability.htm.

The RTD, though provided for in the NODPoSP, is generally non-justiciable in Uganda. For the RTD to be justiciable, the concepts of reading in rights and complementarity of human rights, as well as state obligations emanating from regional human rights instruments that Uganda has ratified have to be relied upon. The GoU, therefore, having ratified human rights instruments like the ACHPR, is construed as having an intention to be bound by the human rights obligations enshrined therein.

The act of ratifying human rights instruments signifies a state's undertaking of a commitment in good faith to protect and promote the rights guaranteed in such instruments. It is imperative that the GoU is held accountable for the fulfilment of its human rights obligations. This way, Uganda would be obliged to fulfil its undertaking to safeguard the human rights of her people, as opposed to the status quo where the GoU's action/inaction in protecting the rights of the Acholi has gone unchecked.

The UDHR provides for the creation of an enabling environment for the enjoyment of human rights in general, which includes the RTD;[224] while the CESCR provides for the progressive realisation of these socio-economic rights.[225] However, in light of a post-conflict setting like Acholiland, the need to attain developmental rights is dire and immediate due to the human rights needs that either emanated from or were perpetuated by the conflict.

In light of GoU's obligation to fulfil developmental rights, this duty would include: refraining from violating the RTD; protecting the Acholi from having their rights violated; and creating an environment conducive to the enjoyment of such rights. Human rights are inherent and based on the concept of human dignity.[226] Consequently, as highlighted in the *CEHURD* case,[227] it precedes law and can be recognised and claimed as a human right even if it is not internationally recognised as a human right.

Principle XII of the Uganda Constitution requires the state to undertake measures

[224]Universal Declaration of Human Rights, the preamble.

[225]Covenant on Economic Social and Cultural Rights, art 2 (1).

[226]Sengupta (n 107 above), 558.

[227]The Centre for Health, Human Rights and Development & 2 Others v The Executive Director, Mulago National Referral Hospital & Attorney General, High Court Civil Suit No. 212 of 2013.

aimed at guaranteeing the realisation of balanced development in both urban and rural areas of Uganda. Consequently, GoU has a duty to ensure that the Acholi have their socio-economic and development needs addressed. As stated earlier, the attainment of socio-economic and developmental rights in northern Uganda is an immediate need and not one for progressive realisation given the impact of the conflict on the Acholi.

The NODPoSP, however, imply that there is no special consideration for post-conflict societies like those in northern Uganda.[228] Rather, the GoU only has a political duty to ensure that its resources are shared equitably among the different parts of the country. This failure to prioritise the victims of the conflict would amount to discrimination against sub-regions like Acholi-land that was gravely affected by the 20-year conflict. This is because the Uganda Constitution does not entitle such disadvantaged societies to special considerations for their rehabilitation and recovery from effects of the conflict.

The massive violation of civil and political rights of the Acholi by state agents entitles them to a claim for fulfilment of their developmental rights.[229] In light of the gross violation of civil and political rights of the Acholi during the 20-year conflict, there is need for development to be attained. This is based on GoU's failure in its duty to protect its citizens from both the conflict and its impact on the enjoyment of human rights and socio-economic development.

Government soldiers and the LRA rebels were perpetrators of human rights violations in the northern region. Various civil and political rights were violated during the conflict and these included: the right to life with the loss of lives;[230] and the right to property.[231] Property was lost through destruction and looting by the UPDF soldiers and the LRA rebels. The destruction of property of the ordinary folk was done to deprive the rebels of sources of food. The destruction occurred during the general herding of the people to live in internally displaced persons' camps.

[228]Constitution of the Republic of Uganda 1995 (as amended), principle xiii.

[229]Art 50 of the Constitution of the Republic of Uganda 1995 (as amended) provides for the general right to remedy.

[230]Constitution of the Republic of Uganda 1995 (as amended), art 22.

[231]Constitution of the Republic of Uganda 1995 (as amended), art 26.

As a result, the Acholi lost their dignity, culture, livelihood, and conditions that would otherwise enable them to develop socially, economically and culturally. The Acholi were reduced to a state of abject poverty with a third of the poor in Uganda coming from the region.[232] Failure by the GoU to guarantee these civil and political rights, among others, had a snowball effect of leading to a violation of socio-economic rights. Some of these rights include the right to education, food, shelter, and livelihood.[233] This points towards the absence of a holistic approach in the protection of human rights of the Acholi.

All these rights, alongside some of the civil and political rights highlighted above, impact on the enjoyment of the RTD because there is an interrelation and interdependence between all these rights. Consequently, the RTD should be viewed as an enforceable right against the GoU. The debate on the justiciability of the RTD within the international legal realm remains unresolved. This study, therefore, relies on Uganda's obligations on development as guaranteed in the ACHPR.

2.8. Culture and its applicability in the pursuit of the RTD in Acholiland

The right to practice and enjoy one's culture is a recognised right in Uganda.[234] The use of culture in governance has been recognised by the GoU in various instances including traditional justice mechanisms. The operation of culture in Uganda is, however, not codified thereby leaving it to the individual community to freely determine their mode of operation. Wai opines that Africans have personal rights against their government.[235] However, these rights are only enforced on the basis of certain criteria and not their humanity.[236] These criteria include age, sex, lineage, and community membership.[237]

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[232]RS Esuruku, 'Horizons of peace and development in northern Uganda', https://www.accord.org.za/ajcr-issues/horizons-of-peace-and-development-in-northern-uganda/, (accessed 17 November 2020).

[233]Universal Declaration of Human Rights, art 25 on the right to an adequate standard of living, including the right to food and shelter, and art 26 on the right to education; Covenant on Economic Social and Cultural Rights, art 13 on the right to education; General Comment No. 12 on the right to adequate food; African Charter on Human and Peoples' Rights, art 17 on the right to education.

[234]Constitution of the Republic of Uganda 1995 (as amended), art 37.

[235]DM Wai, 'Human rights in Sub-African', (1980) 116 in J Donnelly, 'Universal human rights in theory and practice', (2013), 3rd edition, 78-79.

[236]As above.

[237]Wai (n 235 above).

Welch acknowledges that the recognition and protection of human rights existed in the precolonial period.[238] African definitions of human rights differed in key respects, however, from those prevalent in the West.[239] The context of family, clan, and ethnic solidarity in short, the web of kinship, provided the frameworks within which individuals exercised their economic, political, and social liberties and duties.[240] It is in light of this right to practice one's culture that the Acholi were able to practice their culture, especially in the pre-conflict era, in a manner that promoted their development. This was through the use of their traditional structures.

The Uganda Constitution protects this right by making it an obligation for the State to promote cultural practices that are deemed to foster the dignity and wellbeing of nationals.[241] Aspects of Acholi traditional culture that promote development and general well-being of the Acholi people ought to be preserved. Acholi traditional culture embodies the notion of '*ubuntu*', which in essence, is literally described 'as a person can only be a person through others'.[242] *'Ubuntu'* brings out the aspect of people being able to tap into their humanity and human values to help each other to develop.

Ubuntu exudes African culture in various ways including in the expression of dignity, humanity, and mutuality in the interest of building and maintaining communities through justice and mutual caring.[243] Such culture is still deeply embedded in Ugandan society, especially in the pre-conflict northern Uganda. Under this ideology, cultural norms and aspirations are entangled with development of the people as a whole as opposed to development being undertaken on an individual basis. Here, development goals are pursued as a collective. Customary practices that aim at development and taking care of mutual interests include commu-

[238]CE Welch, Jr, 'Human rights as a problem in contemporary Africa; chapter 1 in CE Welch Jr. & RI Meltzer (eds), 'Human rights and development in Africa, (1984) 11.

[239]As above.

[240]As above.

[241]Constitution of the Republic of Uganda 1995 (as amended), principle xxiv (a) of the National Objectives and Directive Principles of State Policy.

[242]Bishop Desmond Tutu in JK Khomba, 'The African ubuntu philosophy', 126, http://repository.up.ac.za/bitstream/handle/2263/28706/04chapter4.pdf?sequence=5 (accessed 10 June 2017).

[243]Khomba, as above, 127-128.

nal ownership of land and division of labour.[244]

Consequently, the community developed as a whole and not on an individual basis under the watchful eye of the clan leaders. This is why a clan-based development model as employed by the government of Uganda could be more effective in guaranteeing a change in the economic and social development of the Acholi. As observed by Donnelly, it is through membership of a given African traditional society, family or accomplishment that rights would be enjoyed.[245] By virtue of such entitlement, the Acholi in the pre-conflict era would mutually benefit from the assigned rights in the community.

With emphasis on groupness/oneness, interdependence and collective responsibility of the people within a clan setting,[246] individual rights would be balanced alongside the interests of the entire clan.[247] This is reflective of the ACHPR which recognises the exercise of the rights and freedoms of each individual with due regard to the rights of others, collective security, morality and common interest.[248] Consequently, the practice is that a male clan head holds the land in trust for the enjoyment of the entire clan. For the Acholi, this aspect of their culture is not viewed as male domination, but rather as a way of ensuring protection of women and children within the clan.[249]

Following the death and enforced disappearance of men and boys during the conflict as well as the forced encampment of the Acholi, traditional practices/systems became difficult to be enforced as clan members were scattered in different IDP camps all over the region. In the pre-conflict era, the Rwot Kweri (land manager within a clan) was in charge of mobi-

[244]Informal discussion held with Clan Leader Koro Ibakara Clan Mr. Ongaya Acellam at Gulu Municipality, Gulu district on 9th June 2017.

[245]J Donnelly, 'The "right to development": How not to link human rights and development'; in CE Welch Jr. & RI Meltzer (*eds*), 'Human rights and development in Africa (1984), 269.

[246]B Ibhawoh, Cultural relativism and human rights: Reconsidering the Africanist discourse, (2001) 1, *Netherlands Quarterly of Human Rights,* 53.

[247]J Cobbah, African values and the human rights debate: An African perspective, (1987) 9 *Human Rights Quarterly,* 321.

[248]African Charter on Human and Peoples' Rights, art 27 (2).

[249]Informal discussion held with Clan Leader Koro Ibakara Clan Mr. Ongaya Acellam at Gulu Municipality, Gulu district on 9th June 2017.

lising and organising the clan members into small farming groups to grow sufficient food crops and cash crops.[250] The Rwot Kweri would also determine which crops were to be grown and when.[251] Hence, collective development at both the family and clan level.

The breakdown of traditional structures impacted on the operation and coordination of development interventions by clan heads. This is in light of the fact that before the war, some developmental initiatives were implemented with the involvement of the traditional leadership and in line with cultural norms and structures. With a bottom-up approach to development, there would be communal ownership of development outcomes. This would lead to sustainable development.

Without the development of the clan, a family would not develop. Where a family is not developed, an individual within that family would also remain undeveloped. Consequently, the development and livelihood of all persons in the community would be affected. It is clear that the northern conflict contributed to the erosion of the traditional hierarchy of authority. This traditional hierarchy of authority had been used to ensure order in society and attainment of common goals. With the breakdown of traditional and moral foundations of Acholi culture, societal structures were shaken and disintegrated.[252]

Individualism overtook the sense of oneness that once existed, thereby increasing vulnerability of women, children, and the elderly. These are groups whose protection within the community was once guaranteed. However, in light of universal application of human rights, albeit with some modifications in light of cultural relativism, the Acholi are still owed a duty by the State to guarantee their RTD.

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[250]RR Atkinson, Protecting rights to clan-based land in Acholi, Northern Uganda: Follow-up report on a research project of the Joint Acholi Subregion Leaders' Forum (JASLF) and Trócaire, Paper prepared for presentation at the '2019 World Bank Conference on Land and Poverty', The World Bank - Washington DC, March 25-29, 2019, 9, https://www.conftool.com/landandpoverty2019/index.php/06-14-Atkinson-785_paper.pdf?page=downloadPaper&filename=06-14-Atkinson-785_paper.pdf&form_id=785&form_version=final, (accessed 15 July 2021).

[251]As above.

[252]FO Adong, 'Recovery and development politics: Options for sustainable peacebuilding in northern Uganda', Discussion Paper 61, 60.

Culture is critical in the holistic pursuit of the RTD in Acholi-land. Cultural institutions are respected institutions that should be rebuilt as they would facilitate development of the community and consequently the individual. Development of the individual would translate into change in the living conditions and therefore 'successful development' as described by Sen.[253]

2.9. The need for a rights-based approach for attainment of the RTD

Human Rights-Based Approach to Development (HRBA) refers to a conceptual framework for the process of human development that is based on international human rights standards and is directed towards the protection and promotion of human rights.[254] As various mechanisms for attaining the RTD are sought, observance of HRBA ought to have sustainability as the central focus. Sustainability of development projects hinges on government ensuring that all sections of the population are considered for developmental projects. Further, such undertakings should meet current needs of the population without harming the prospects for future generations.

A human rights-based approach to development would seek to address the imbalance brought about by the northern Uganda conflict. Here, through HRBA, attempts would be made to improve on the social, cultural, and economic wellbeing of the people of northern while at the same time ensuring that infrastructural development is undertaken. This would bring the northern Uganda region at par with other regions. A rights-based approach would result in a raise in the standard of living of local communities.

A rights-based approach would also ensure the existence of a variety of goods and services at the disposal of the Acholi to increase their opportunities for development. In light of this approach, pressing needs of the Acholi, such as the need to be rehabilitated and assisted to recover from the devastating effects of the northern conflict, would be addressed. Recovery would include the use of traditional justice mechanisms like *mato oput* to facilitate healing and reconciliation as well as reparations for harms done.

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[253]A Sen, 'The concept of development' (1988), in H Chenery and TN Srinivasan (*eds*), 'Handbook of development economics', Volume 1, 10-26, 10.

[254]UN definition in JC Mubangizi, A human rights-based approach to development in Africa: Opportunities and challenges, (2014) Volume 39(1) *Journal of Social Science*, 67-76, 68.

HRBA provides a stronger basis for citizens to make claims on their States. HRBA also affords an opportunity for states to be held accountable for their duties to enhance the access of their citizens to the realisation of their rights.[255] As observed by the former UN Secretary General, Kofi Annan, HRBA empowers people to demand justice because it is their right and not as a charity.[256] HRBA, therefore, provides opportunities for existing resources to be shared more equitably. This is with a view to assisting those that have been marginalised, like the Acholi, to assert their rights to those resources;[257]which they have not been able to adequately do.

In the northern Uganda situation, the Acholi were not empowered to make demands for the fulfilment of their human rights. Further, some development strategies are hinged on a centrally planned economy which has the effect of limiting individual participation in matters that would otherwise affect their economic lives; hence failure to attain the RTD.[258] Under HRBA, development strategies must be determined by the people themselves and adapted to their particular conditions and needs, since there is no universally applicable development model that cuts across all cultures and peoples.[259]

This calls for the application of a victim-centred approach. This approach requires that the Acholi be given primary consideration in the development and implementation of policies that seek to improve on their level of enjoyment of human rights, in this instance, the RTD. Here, the application of a victim-centred approach would seek to 'serve the interests of the victim'.[260]

In adopting a HRBA in a post-conflict setting like northern Uganda, the interests of the victims of the LRA conflict would be the primary consideration and not national priorities like infrastructural development. As observed by Rhoda Howard, it is the interests of the rul-

[255]A Cornwall & C Nyamu-Musebi, Putting the 'rights-based approach' to development into perspective, (2004) Volume 25 No 8, *Third World Quarterly*, 14-1437, 1416.

[256]Quote by Kofi Annan in the UN Annual Report 1998 in Mubangizi (n 156 above), 67.

[257]Cornwall & Nyamu-Musembi, (n 255 above), 1417.

[258]As above.

[259]United Nations Office of the High Commissioner for Human Rights, Realizing the right to development: Situating the right to development (2013) 60.

[260]As above.

ing class that supersede the rights of other citizens.[261] Implementation of transitional justice mechanisms would be prioritised as it would be in the main interest of the people of northern Uganda, especially the Acholi people.

The need for implementation of transitional justice mechanisms was cited in studies undertaken by the Uganda Human Rights Commission and UN Office of the High Commissioner for Human Rights in northern Uganda.[262]The participation of the Acholi in the formulation and implementation of development programmes affecting the attainment of their RTD was, and still is, crucial. This is bearing in mind that the end result of such policies is not only the attainment of the RTD but also the ability of the local populace to enjoy their rights.

HRBA is linked to development since the definition of development includes the 'improvement of well-being',[263] as well as the general realisation of human rights and fundamental freedom in a rights framework.[264] Development would, therefore, be attained through involvement of the community in policy formulation processes and realisation of the outcomes. This renders it a mandatory requirement that the victims of the northern conflict actively participate in any development interventions affecting them.

The UN DRD provides for empowerment of victims of the northern Uganda conflict to participate in economic, social, political, and cultural development.[265] This emphasises the indivisibility of human rights and the fact that local communities are key to any development process and successful outcomes. This is because they are better placed to identify their human rights needs and concerns.

Adherence to a rights-based approach to development would foster realisation of the

[261]R Howard in TM Shaw, 'The political economy of self-determination: A world systems approach to human rights in Africa'; chapter 10 in *Eds* Welch Jr. & Meltzer, (n 236 above), 226.

[262]Uganda Human Rights Commission & United Nations Office of the High Commissioner for Human Rights, 'The dust has not yet settled: Victims' views on the right to remedy and reparation, A report from the greater north of Uganda'.

[263]'Measuring well-being for development', OECD global forum on development, 4-5 April 2013, Discussion Paper, https://www.oecd.org/site/oecdgfd/Session%203.1%20-%20GFD%20Background%20Paper.pdf.

[264]Sengupta (n 107 above), 181.

[265]United Nations Declaration on the Right to Development, art 1.

RTD. This is bearing in mind that the concept is still relevant in the absence of the recovery of social, cultural, and economic wellbeing of the Acholi people. The need to attain and guarantee enjoyment of the RTD is still crucial.

2.10. Conclusion

This chapter discussed the theoretical and conceptual framework governing the right to development. It is evident is that there is a general universal acceptance by States to guarantee the observance of human rights in their respective jurisdictions. What is limited is the application of these rights and their actual implementation; hence the universalism versus cultural relativism debate.

Chapter two also made a case for justiciability of the RTD in the post-conflict northern Uganda setting. Much as the justiciability debate on enforcement of the RTD is unresolved within the international legal regime, the debate is resolved at the African regional level particularly with Uganda's ratification of the ACHPR. The challenge remains in testing the extent of the enforceability of the RTD.

Chapter two laid a theoretical and conceptual foundation on which this RTD is claimable for the Acholi. There is, however, need for further analysis of developmental interventions in Acholi-land. Chapter three, therefore, seeks to examine the efficacy of various development plans/programmes that GoU undertook during and after the northern conflict to promote development in Acholi-land.

CHAPTER THREE
SPECIALISED GOVERNMENT PLANS AND PROGRAMMES FOR THE RESTORATION OF PEACE AND DEVELOPMENT IN OF ACHOLILAND

3. Introduction

The Lord's Resistance Army (LRA) waged a 20-year rebellion against the government of Uganda (GoU). This war had far reaching human rights implications on the social and economic development of the Acholi. GoU formulated and implemented various development interventions during and after the conflict to curb development challenges in the northern region. The northern region traditionally includes the sub regions of West Nile, Acholi, Lango, Teso and Karamoja.[1] This discussion is, however, limited to government programmes conducted in Acholi sub-region.

This chapter, therefore, assesses the efficacy of various GoU programmes that were undertaken during and after the northern conflict in facilitating development in the region.

3.1. Government constitutional obligation to facilitate development

The GoU's obligation to facilitate development programmes in Acholi sub region emanates from the Uganda Constitution.[2] This obligations requires GoU to fulfil the fundamental rights of all Ugandans to enjoy social justice and economic development.[3] Further, the Uganda Constitution renders it a duty for GoU to ensure the maximum attainment of social and cultural well-being of all people through implementation of development efforts.[4]

Principle xv (b) of the Uganda Constitution also requires GoU's to facilitate the en-

[1]Northern Uganda sub regions, posted by UN Office for the Coordination of Humanitarian Affairs on 19 Feb 2008, available at https://reliefweb.int/map/uganda/northern-uganda-sub-regions, (accessed on 1 July 2021).

[2]Constitution of the Republic of Uganda 1995 (as amended), principle xiv of the National Objectives and Directive Principles of State Policy.

[3]As above.

[4]Constitution of the Republic of Uganda 1995 (as amended), principle xv (a) of the National Objectives and Directive Principles of State Policy.

joyment of rights and opportunities by all Ugandans. This enables them to have access to education, health services, and food security, among others. All these rights are part of the RTD. The Acholi are, therefore, owed this duty by the state.

A 2012 poverty status report conducted 5 years after cessation of the LRA rebellion classified 40% of the Acholi as 'absolute poor'.[5] In light of this definition, the Acholi people that had limited access to income or social services was a very high percentage as compared to 4 percent in the capital, Kampala.[6] These comparisons between regions justify the need for specialised government programmes to be undertaken in Acholi sub region. The test, however, is on the extent to which these programmes reduced the state of poverty among the Acholi and the level of participation of the Acholi in attaining their RTD.

The next section discusses the various government programmes that were implemented by the GoU.

3.2. Government programmes for reconstruction of Acholi sub region

The African Charter on Human and Peoples' Rights (ACHPR) recognises that all peoples are equal and that they shall have and enjoy the same respect and rights.[7] In a bid to guarantee equality of all peoples and regions in Uganda, the GoU has over the years implemented various development programmes in a bid to develop the country as whole. It was in 1992 that region specific development programmes aimed at alleviating poverty and promoting development in northern Uganda commenced.

The national objectives and directive principles of state policy in the Uganda Constitution obliges GoU to take necessary measures to bring about balanced development of the

[5]Ministry of Finance Planning and Economic Development, Poverty status report, 2012.

[6]Relief Web, 'Analysis: From emergency aid to early recovery in northern Uganda', 2 January 2013, https://reliefweb.int/report/uganda/analysis-emergency-aid-early-recovery-northern-uganda (accessed 31 July 2019).

[7]African Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), art 19.

different areas of Uganda;[8] and to take special measures in favour of the development of the least developed areas.[9] At the national level, the poverty eradication plan and national development plan were formulated over the years to facilitate development nation-wide. Other region-specific development programmes were later formulated when GoU observed that the northern region had lagged behind the rest of the country due to the northern conflict.

This section analyses the different development plans and programmes that were initiated and implemented by GoU. At the national level, the poverty eradication action plan and the national development plan are included in the discussion. This is because government programmes are drawn from national plans.

3.2.1. Poverty Eradication Action Plan

The Poverty Eradication Action plan (PEAP) was first introduced in 1997. PEAP was introduced as a national plan albeit with some implications at a regional level.[10] The objective of the PEAP was initially to address service delivery gaps in the public sector.[11] The objective of PEAP was later expanded to include socioeconomic transformation and structural change at the national level.[12] Here, GoU placed emphasis on improving Uganda's physical infrastructure.[13]

PEAP was drafted in 1997 and had four core priorities. The four core priorities were: restoration of security; restoration of sustainable growth; human development and; transparent and efficient use of public resources to eradicate poverty.[14] PEAP had a national outlook that did not benefit the people of northern Uganda, especially those in Acholiland. By 1997,

[8]Constitution of the Republic of Uganda 1995 (as amended), principle xii (ii) of the National Objectives and Directive Principles of State Policy.

[9]Constitution of the Republic of Uganda 1995 (as amended), principle xii (iii) of the National Objectives and Directive Principles of State Policy.

[10]Poverty Eradication Action Plan (2004/5-2007/8), 1.

[11]Ministry of Finance Planning and Economic Development, Poverty reduction strategy paper: Progress report, November 2014, 2

[12]As above.

[13]As above.

[14]A Tostensen, 'The Bretton Woods institutions: Human rights and the PRSPs'; chapter 9 in ME. Salomon *et al* (eds), 'Casting the net wider: Human rights, development and new duty-bearers', 206.

Acholi sub-region was already experiencing the conflict between the LRA and the GoU.

It should be observed that by the time PEAP was being implemented, the Northern Uganda Reconstruction Programme, a northern Uganda specific programme, had already been in operation for five years. This is explained further in the next section. PEAP was eventually replaced in financial year 2010/2011 with the National Development Plan; which is discussed in the ensuing sections.

3.2.2. Northern Uganda Reconstruction Programme

The Northern Uganda Reconstruction Programme (NURP) is a government programme that commenced in 1992, in the early stages of the northern Uganda conflict.[15] With NURP, GoU sought to restore economic and social structures in northern Uganda. The estimated cost of the programme was US dollars 600 million, however, only US dollars 93 million was availed.[16] This variance in the projected cost and the actual funds undermined the success of the project as only some of the needs of the local populace were met.[17]

The main criticism for NURP is that its planning and implementation was centralised.[18] The centralisation of the planning process limited the participation of local communities and undermined the potential for sustainability due to lack of ownership.[19] The programme success was also affected by the insecurity in the region as it slowed down programme implementation. This explains why less funds were availed. Further, there was lack of harmonisation of interventions by development partners and NGOs.[20] This led to duplication of programmes and ineffective use of resources.

With the winding up of NURP, the GoU introduced a new programme, the Northern Uganda Social Action Fund. The implementation of this programme was meant to be different from NURP in that it was viewed as a demand driven intervention.

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[15]Ministry of Finance Planning and Economic Development, 'Post conflict reconstruction: The case of northern Uganda', Discussion paper 7, 2003, 31.

[16]As above, 32.

[17]As above.

[18]Ministry of Finance Planning and Economic Development (n 15 above), 32.

[19]As above.

[20]As above.

3.2.3. Northern Uganda Social Action Fund

The Northern Uganda Social Action Fund (NUSAF) is a three-phase programme that sought to develop northern Uganda. The programme was initially to be implemented under a single phase lasting for five years, but has since been extended for two more phases. Each of these three phases is discussed below:

i. NUSAF I

NUSAF begun as a community development project funded by the World Bank. NUSAF was introduced by the GoU in 2002 as the main poverty reduction initiative for northern Uganda.[21] According to a Ministry of Finance Planning and Economic Development report, the livelihood of the people of northern Uganda had been negatively impacted on by the high level of displacement and restrictions on their mobility.[22] Hence, the need for a poverty reduction strategy.

NUSAF had a budget of US dollars 100 million and sought to empower 18 districts in northern Uganda.[23] These districts included: Gulu, Kitgum, Pader, Lira, Apac, Moyo, Yumbe, Adjumani, Arua and Nebbi.[24] The sub-regions of West Nile, Teso and Karamoja were included under the northern region. The districts of Gulu, Kitgum and Pader are the districts that fall under Acholi sub-region. The foundation for the formulation and implementation of NUSAF was based on the notion that the northern region had lagged behind in terms of development due to the northern conflict.

Through NUSAF GoU sought to embolden local communities in the 18 targeted districts in northern Uganda to enhance their capacity to identify their needs and also prioritise and make the necessary plans. This way, local communities would be able to implement sustainable development initiatives that would translate into better socio-economic services and

[21]F Golooba-Mutebi & S Hickey, 'Governing chronic poverty under inclusive liberalism: The case of the Northern Uganda Social Action Fund', Working Paper July 2009 No. 150, 11, (accessed 3 August 2019).

[22]Ministry of Finance Planning and Economic Development, 'Uganda poverty reduction strategy paper: Progress report (2002)' in Golooba-Mutebi & Hickey, (n 21 above), 11.

[23]NUSAF rebuilds northern Uganda', *New Vision*, 8 March 2006, https://www.newvision.co.ug/new_vision/news/1152930/nusaf-rebuilds-northern-uganda, (accessed 3 August 2019).

[24]As above.

opportunities. Consequently, there would be improved livelihoods for local communities.[25]

The GoU's objective in the implementation of NUSAF was to narrow the development gap between northern Uganda and other regions in the country. This objective sought to address one of the reasons for the northern conflict, that is, the north-south divide. This gap was to be to be bridged by allowing local community groups to have control over development processes and resources.[26]

One of the challenges with the implementation of NUSAF was that by September 2002, GoU had ordered the Acholi to move into 'protected' camps within 48 hours.[27] An estimated 600, 000 people had been living in IDP camps by the end of 2002.[28] Therefore, one could not really talk about development in a place where one did not belong. There were and still are land access issues for the rural poor. Additionally, the herding of the Acholi into IDP Camps led to the disintegration of their clan structures.

As highlighted in chapter one and discussed further in chapter five, these clan structures were responsible for organising their members into development units and giving direction on how development is to be achieved for the betterment of the entire community. Dada asserts that development is a cultural process that ought to factor in the involvement of people that are the object of development.[29] The ACHPR recognises the right to self-determination and the need for economic, social and cultural development to be attained with due consideration of the freedom and identity of the peoples.[30]

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[25]Golooba-Mutebi & Hickey, (n 21 above), 14.

[26] As above, 7.

[27]Profile of internal displacement: Uganda, compilation of information available in the Global IDP Database of the Norwegian Refugee Council, 10 August 2005, https://reliefweb.int/sites/reliefweb.int/files/resources/93AA7EAD7E739FF4C125705A00412A1E-globalidp-uga-10Aug.pdf; also available at http://www.idpproject.org, (accessed 5 August 2019).

[28]Ministry of Finance Planning and Economic Development, 'Uganda poverty reduction strategy Paper: Progress report (2002)', 49.

[29]SO Dada, Post-development and the role of tradition in the process of development, (2016) Volume 20 (70/65) 1, *Trames Journal of the Humanities and Social Sciences*, 75–93, 76.

[30]African Charter on Human and Peoples' Rights, arts 20 & 22(1), respectively.

The development process requires that tradition and the experiences of the beneficiaries be taken into consideration in the development process.[31] This was so for the Acholi before the conflict. The creation of IDP camps during the conflict affected the use of traditions and experiences as utilised by the Acholi under their clan system. Clan members that originally had a common interest were scattered in the various IDP camps. To the contrary, individuals that emerged from diverse backgrounds and divergent interests came together to form development groups. This exacerbated the fracturing of the Acholi cultural system as it limited opportunities for clans to reconverge and further their development interests.

'Development' groups specially created to benefit from government funding lacked the unifying factor that clans under the Acholi traditional structures had. Consequently, upon receipt of funds from programmes like NUSAF, such groups would conflict over the use of the funds and disintegrate.[32] At a time when the LRA insurgency was nearing its peak, opportunities for development were almost non-existent due to insecurity.

Another criticism of NUSAF I was that the targeted beneficiaries did not access the resources as intended by the project objectives.[33] Rather, it was the elites and more influential individuals, including traders and progressive farmers, that accessed the funds, bearing in mind that NUSAF I was a demand driven project. As a result, much as funds were released by GoU, fewer beneficiaries whose projects had been approved accessed the funds.

The number of community projects that were undertaken were below the required target as only 18-20% of the projects were approved.[34] Further, some of the development groups did not receive funds directly as originally depicted by the programme objective. Rather, project funds were received through the NUSAF Monitoring Unit (NUMU). This also had its own challenges as it availed an opportunity for corruption.[35]

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[31]African Charter on Human and Peoples' Rights, (as above).

[32] Golooba-Mutebi & Hickey (n 21 above), 18.

[33]'NUSAF rebuilds northern Uganda', *The New Vision* 8 March 2006, https://www.newvision.co.ug/news/1152930/nusaf-rebuilds-northern-uganda, (accessed 3 August 2019).

[34]As above.

[35] As above.

There were various allegations of corruption, including project beneficiaries being required to give NUSAF facilitators 'kick-backs' upon being awarded a project.[36] Other allegations included embezzlement of funds by government officials; as well as the implementation of sub-standard or no work.[37] According to a report made to the Parliamentary Presidential Affairs Committee, there was a failure by the OPM to account for NUSAF funds worth Uganda shillings 3.3 billion.[38] Uganda shillings 2.5 billion out of Uganda shillings 3.3 billion had been paid out towards community development initiatives.[39]

The targeted beneficiaries did not access funds as required. Where funds were accessed, less amounts were actually received due to the demand for kick-backs from the programme officers. This, therefore, affected project performance and culminated into the limited development of the Acholi people.

In light of the foregoing, it is evident that the project outcomes of NUSAF I were lower than envisaged. However, the World Bank deemed it necessary to fund a second phase of the NUSAF project.

ii. NUSAF II

NUSAF II was a follow up project to NUSAF I. NUSAF II commenced in 2009. By this time, there had been no attacks by the LRA in northern Uganda for two years. This provided an opportune environment for development since there was peace and stability. NUSAF II sought to improve access to income earning opportunities and better socio-economic services by beneficiary households.[40] NUSAF II was also one of the development interventions coordinated by the OPM.

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[36]T Okwir, 'Reasons behind the failure of NUSAF project phase one in Uganda', posted on January 15 2012, https://okwirtonny2011.wordpress.com/2012/01/15/reasons-behind-the-failure-of-nusaf-project-phase-one-in-uganda/, (accessed 3 August 2019).

[37]RM Kavuma, 'NUSAF: Developing northern Uganda', https://www.theguardian.com/katine/2010/jan/11/nusaf-developing-north-uganda, (accessed 5 August 2019).

[38]Report made by Honourable David Wakikona, State Minister for northern Uganda to the Parliamentary Presidential Affairs Committee in '100 to face court over NUSAF scam', *New vision* posted on 24 September 2009, https://www.newvision.co.ug/new_vision/news/1235851/100-court-nusaf-scam, (accessed 3 August 2019).

[39] As above.

[40]As above.

Unlike NUSAF 1, NUSAF II was funded as one of the projects under the Peace Recovery and Development (PRDP) for northern Uganda.[41] PRDP was introduced in 2007 and became the umbrella development programme for post-conflict northern Uganda.[42] PRDP shall be discussed in the next section. NUSAF II was operated on a US dollars 100 million loan from the World Bank and a 24 million pound grant from the Department of International Development.[43] PRDP II also sought to narrow the poverty gap between northern Uganda and other regions in Uganda.[44]

NUSAF II was similar to NUSAF I as it also adopted a community demand driven (CDD) approach. NUSAF II was viewed by the GoU as having been successful. As at May 2014, 79.5 per cent of funds disbursed for the greater north had been accounted for by sub-project committees.[45] However, the percentage of the community or intended beneficiaries that were able to access the funds was low. Further, questions also arise on how the lives of beneficiaries were impacted on by the projects, either socially or economically. This is in the absence of reports on project impact assessment.

Despite the rolling out of NUSAF II, there was lack of a tangible correlation between disbursed funds and an improvement in the poverty status of the beneficiaries. NUSAF II was equally plagued by allegations of corruption. For instance, the NUSAF focal person for the districts of Nwoya and Amuru, both of which fall under Acholi sub region, was fired on allegations of incompetence and corruption.[46]

Further, the Auditor General's 2010 value for money audit report on NUSAF showed

[41]New Vision, (n 38 above).

[42]Kavuma (n 37 above).

[43]Report by Honourable Rose Namayanja, Minister for Information and National Guidance, published in 'Social action fund will transform communities in northern Uganda', *Daily Monitor*, 7 August 2014, https://www.monitor.co.ug/OpEd/Commentary/Social-action-fund-will-transform-communities-in-northern-Uganda/689364-2411074-m44d8fz/index.html, (accessed 3 August 2019*).*

[44] As above.

[45] As above.

[46]D Olaka, 'Amuru NUSAF II boss fired over corruption, incompetence', 1 April 2011, https://ugandaradionetwork.com/story/amuru-nusaf-ii-boss-fired-over-corruption-incompetence, (accessed 3 August 2019).

that there were incomplete projects worth Uganda shillings 16.6 billion that local communities never benefited from.[47] Furthermore, the Auditor General's report also indicated that out of Uganda shillings 227, 844, 706, 768 billion that was disbursed to fund sub-projects, Uganda shillings 58,826,655,271 billion was unaccounted at 30th June 2014.[48]

NUSAF II also failed to recognise that the Acholi were unable to manage funds on their own.[49] The Acholi did not have any experience in financial management, not to mention project management. By 2010, the Acholi were still in the process of resettling in their villages. Others had not been fully integrated back into the social system. With the influx of project money, those that benefited from project funds did not have the capacity to effectively utilise it.[50] This aspect was ignored in the designing of NUSAF II.

Failure to adhere to programme objectives frustrated the attainment of development efforts. Hence, the continued poverty in the sub-region. Where funds are readily accessed by the intended beneficiaries and effectively utilised, socioeconomic transformation would have been experienced. In the absence of funds and the required monitoring by OPM, NUSAF 2 failed.

iii. NUSAF III

NUSAF III is a US dollars 130 million World Bank project[51] that followed on the heels of NUSAF II. The objective of NUSAF III was to provide effective income support to the poor

[47]'Govt seeks to borrow more for NUSAF III – hoping for more impact', http://parliamentwatch.ug/govt-seeks-to-borrow-more-for-nusaf-iii-hoping-for-more-impact/#.XUV4cntRXIU, (accessed 3 August 2019).

[48]Office of the Auditor General, 'Second Northern Uganda Social Action Fund project 2 (NUSAF 2): Financial statements for the year ended 30th June 2014 together with the report and opinion thereon by the Auditor General', http://www.oag.go.ug/wp-content/uploads/2015/12/second-northern-uganda-social-action-fund-world-bank-funding-nusaf-ii-to-opm-report-of-the-auditor-general-2014.pdf, (accessed 3 August 2019).

[49]'Northern Uganda's displaced people are left to fend for themselves', https://www.theguardian.com/global-development/poverty-matters/2012/jan/24/northern-uganda-displaced-people-out-in-cold, (accessed 9 August 2019).

[50]As above.

[51]'NUSAF III project: 40,000 to benefit through groups', *The Observer* 16 April 2018, https://observer.ug/businessnews/57472-nusaf-iii-project-40-000-to-benefit-through-groups, (accessed 3 August 2019).

and vulnerable households in northern Uganda.[52] The project has four components, which include livelihood investment support; strengthening transparency, accountability and anti-corruption.[53] NUSAF III sought to change the financial livelihood of project beneficiaries in line with GoU's goal of having Uganda transformed into a middle-class economy by 2020.[54]

One of the objectives of NUSAF III was to train an estimated 40,000 beneficiaries in enterprise management within a five-year period.[55] These beneficiaries were to be placed in groups and availed capital to enable them expand their business.[56] The beneficiaries were expected to save 30% of their income to facilitate the creation of a revolving fund.[57] NUSAF III does not have a stand-alone budget as it is being operated as one of the projects under PRDP.[58]

From the onset, NUSAF III had contradictions. On one hand, NUSAF III was described as a community-led initiative, however, communities were availed an array of income generating opportunities to select from with guidance from government technical teams.[59] The essence of a community-led intervention consist of members of the community identifying and being funded on projects that they wish to undertake. The project would be dependent on communal interests and needs as opposed to government/donor interest.

Despite the implementation of NUSAF III, the Acholi have remained poor and incapacitated to further their socio-economic needs. Therefore, the programme objective of training beneficiaries on enterprise management did not benefit the poor. To the contrary, the elites and the few who already own businesses benefit from the project. NUSAF III was, therefore, never intended to benefit poor Acholi.

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[52]The Observer, (n 51 above).

[53]'Northern Uganda Social Action Fund (NUSAF)', https://opm.go.ug/northern-uganda-social-action-fund-nusaf-3/, (accessed 3 August 2019).

[54]The Observer, (n 51 above).

[55]As above.

[56]As above

[57]The Observer, (n 51 above).

[58]Report by Honourable Rose Namayanja, (n 43 above).

[59]Statement by Office of the Prime Minister on NUSAF 3, https://projects.worldbank.org (accessed 3 August 2019).

3.2.4. The Peace Recovery and Development Plan

The Peace Recovery and Development Plan (PRDP) is a government initiative that sought to rehabilitate northern Uganda in an attempt to address the impact that the LRA conflict had had on the region.[60] This initiative aimed at closing the development gap between the northern and southern region. This was to be achieved by empowering communities and supporting peace and reconciliation efforts in northern Uganda.[61] PRDP was also an attempt by the GoU to deal with the under-development in northern Uganda as it had been one of the drivers of past conflicts in the region.[62]

PRDP is an additional budget support to districts in northern Uganda since it required specific development in light of the northern conflict.[63]The PRDP has fourteen programmes that are being implemented under it. The programmes under PRDP include: facilitation of peace agreement initiatives; enhancement of police; enhancement of prisons; judicial services enhancement; enhancement of local government; emergency assistance; return and resettlement of IDPs; community empowerment and recovery; infrastructure rehabilitation; and, counselling, amnesty, demobilisation and reintegration.[64]

PRDP has been implemented under three different phases, that is, PRDP I, II and III. Each of these phases bears a lifespan of three years and has its set objectives.

i. PRDP I

PRDP I was developed by an Inter-Ministerial Technical Committee (ITMC) in 2005 after conducting an analysis of the situation in northern Uganda.[65] At this point, the Juba peace talks had not yet been entered into by the GoU and the LRA. Hence, the post-conflict human rights concern or the need for implementation of transitional justice mechanisms that arose

[60]FO Adong, 'Recovery and development politics: Options for sustainable peacebuilding in northern Uganda', Discussion Paper 61, 36.

[61]A Otto, 'Acholi leaders want OPM ejected from PRDP implementation', http://ugandaradionetwork.com/a/story.php?s=67309, (accessed 26 January 2017).

[62]As above.

[63]Report of the Public Accounts Committee of Parliament on special audit investigations into financial impropriety in the Office of the Prime Minister, May 2013, 5.

[64]Peace Recovery and Development Plan (2007 – 2010), viii.

[65]Adong (n 60 above), 37.

upon the return of peace in 2007 were not taken into consideration. Financial year 2009/2010 was the first year of full-scale implementation of the PRDP.[66]

The PRDP is at times mistaken to be one of GoU's plans to administer reparations in post-conflict northern Uganda. Reparations are yet to be provided for as the national transitional justice policy was passed in 2019. An act of parliament aimed at facilitating implementation of the national transitional justice policy is yet to be drafted.

PRDP had four strategic objectives: consolidation of state authority; rebuilding and empowering communities; revitalising communities; and, peacebuilding and reconciliation. These objectives, however, did not address reparations. PRDP, by design, was considered to be a bottom-up framework that made provision for overriding sector priorities.[67] PRDP funds did not substitute normal sector grants to the district but rather, were an additional affirmative resource over and above normal sector grants.[68]

District local governments were consulted to ensure ownership of the programme and that their areas of priority were provided for.[69] However, there were concerns regarding the extent to which these consultations were inclusive and victim-centred. The local context was, therefore, lacking. Had there been victim participation, the prioritised key objectives would have reflected the needs of Acholi. For instance, consolidation of state authority would not have been the first strategic objective.[70]

This objective is not related to traditional justice and reparations, the commonly cited needs advanced by victims of the northern Uganda conflict. Under consolidation of State authority as a key objective, it was envisaged that there would be cessation of armed hostilities, provision of security, and ensuring the rule of law, among others.[71]

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[66]Office of the Prime Minister, 'Report on the challenges of the Peace Recovery and Development Plan', 6.

[67]As above, 22.

[68]As above.

[69]Peace Recovery and Development Plan (2007 – 2010), vii.

[70]As above.

[71]As above.

Other short comings of PRDP I are highlighted in the discussion on PRDP II since PRDP II was by and large an extension of PRDP I. PRDP II, therefore, sought to address the gaps that were observed in PRDP I.

ii. PRDP II

PRDP II was the second of phase of the Peace Recovery and Development Plan. The second phase was also a three-year programme and ran from July 2012 to June 2015. PRDP II had four strategic objectives which were carried forward from PRDP I. These were: consolidation of State authority; rebuilding and empowering communities; revitalisation of the economy; and peace building and reconciliation.[72]

PRDP II had an estimated cost of US dollars 455 million over the three year period.[73] US dollars 214 million, which forms 47% of the budget was to be availed through the PRDP budget grant.[74] 30% (US dollars 136 million) was to fund special projects; while 23% (US dollars 104 million) would be through off-budget funding, which enabled development partners to fund projects without the involvement of government.[75]

During the implementation of PRDP I in 2009, it was observed that the income poverty in the northern region had reduced to 46%.[76] However, this percentage was still twice the national average.[77] There was, therefore, need to cater for conflict drivers including economic development. There was also need for key conflict drivers to be addressed, such as land issues, youth unemployment and reintegration.[78] Hence the formulation of PRDP II.

PRDP II had shortcomings similar to PRDP I. For instance, there was an absence of victim-centredness. As earlier noted, PRDP objectives dwelt more on infrastructural invest-

[72]Peace Recovery and Development Plan (2012 – 2015), 7.

[73]Peace Recovery and Development Plan (2012 – 2015), iv.

[74]As above.

[75]As above.

[76]Peace Recovery and Development Plan (2012 – 2015), 4.

[77]As above.

[78]As above.

ment.[79] This was contrary to the Uganda Constitution which obliges the GoU to take affirmative action in favour of marginalised groups for purposes of redressing imbalances which exist against them.[80]

Further, PRDP II covered 55 districts including districts like Masindi and Mbale that are not part of the northern region.[81] Despite these districts having not experienced the northern conflict, they were included as beneficiaries of PRDP.[82] The traditional northern region includes the sub-regions of West Nile, Acholi, Lango and Karamoja The inclusion of non-northern districts inflated the number of districts to be catered for and constrained the availed resources.

Other weaknesses with the two phases of PRDP include their being conflict insensitive. As noted by Clausen et al, PRDP focused on infrastructural development and neglected implementation of the strategic objective on peace building and reconciliation.[83] Peacebuilding and reconciliation are central to Acholi culture and important to them, especially in light of their traditional beliefs and practices.

Furthermore, the non-involvement of the *Ker Kwaro*, the Acholi traditional leadership, from active participation in PRDP limited the opportunity for local contribution and ownership of development interventions.[84] This undermined the success of such development interventions.

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[79]Advisory Consortium on Conflict Sensitivity, 'Are we there yet?: Brainstorming the successor programme to Peace Recovery Development Plan (PRDP2) for post conflict northern Uganda', Policy Brief No 1, February 2015.

[80]Constitution of the Republic of Uganda 1995 (as amended), art 32 (1).

[81]'MPs, premier in PRDP row', *Daily Monitor,* available at: http://www.monitor.co.ug/artman/publish/regional-special/MPs_premier_in_PRDP_row_81663.shtml in FO Adong, 'Recovery and development politics: Options for sustainable peacebuilding in northern Uganda', Discussion Paper 61, 38.

[82]'MPs, premier in PRDP row' (as above).

[83]RS Esuruku, Horizons of peace and development in northern Uganda*'* (2011) *African Journal of Conflict Resolution*, 125.

[84]Informal discussion held with Mr. Ongaya Acellam, Clan Leader, Koro Ibakara Clan, on 9th June 2017 at Gulu municipality, Gulu district.

iii. PRDP III

PRDP III sought to address the needs of the victims of the northern conflict as well as consolidate the gains made from investment in infrastructure in PRDP II.[85] Unfortunately, PRDP III does not have a stand-alone budget in the same way that PRDP I and II were implemented. Rather, PRDP was to be incorporated and implemented within the district's main budget. The incorporation of PRDP III within district local government programmes explains the absence of a policy document for the implementation of PRDP III. This situation presents a lost development opportunity for the local populace since their needs were previously not catered for and would now compete with central government objectives.

Implementation of development interventions is still ongoing. This leaves open an opportunity policy documents to be revisited to ensure for attainment of development in northern Uganda. Adjustments could be made to these policies to mirrors and reflect the human rights concerns and aspirations of the local communities.

3.2.5. Uganda National Development Plan

i. National Development Plan I

The first National Development Plan (NDP) came into effect in April 2010.[86] The NDP is an overarching guide for national development.[87] The NDP replaced the Poverty Eradication Action Plan (PEAP). The first NDP covered the period running from 2010/11 to 2014/15.[88] The theme under which the NDP was implemented was 'growth, employment and socio-economic transformation for prosperity'.[89] The NDP came into effect three years after cessation of the northern conflict and at a time when the implementation of PRDP was underway. NDP I, therefore, had no bearing on PRDP I.

The NDP I refers to PRDP as a government intervention for northern Uganda and an affirmative programme through which long-term recovery could be facilitated in northern

[85]Advisory Consortium on Conflict Sensitivity, (n 79 above).

[86]National Development Plan (2010/11 – 2014/15), 1.

[87]As above, 4.

[88]As above, 1.

[89]National Development Plan (n 86 above).

Uganda.[90] The NDP identifies some constraints to sub-national development. These constraints include: weak and conflicting policy, legal and regulatory framework; and, limited vertical and horizontal coordination within and across sectors.[91] However, no strategies have been actively pursued to counter these constraints to development.

The National Planning Authority (NPA) coordinates the national planning process while the implementation of the NDP is overseen by government Ministries, Departments and Agencies (MDAs). MDAs formulate their programmes in line with sectoral objectives.[92] These sectoral objectives are at times not drawn from the NDP; hence the disconnect between the NDP and government development programmes.

The NDP operates in isolation of other development programmes. This is contrary to the expectation that sectoral or regional development programmes would draw their objectives from the NDP. This disconnect undermines the effectiveness of development processes as national goals are barely achieved.

ii. National Development Plan II

The second National Development Plan was a five-year development plan that ran from financial year 2015/2016 to 2019/2020.[93] The goal of NDP II was to propel the country towards middle income status by 2020.[94] Uganda's middle income status was to be achieved through strengthening the country's competitiveness for sustainable wealth creation, employment and inclusive growth.[95] NDP II just like the NDP I was an umbrella plan that all government programmes were obliged to fulfil.

The NDP II sought to promote human rights, gender equality and women's empowerment in the development process; which would include promotion of socio-economic rights of the Acholi. The NDP II, however, did not explain how this objective was to be achieved.[96]

[90]National Development Plan (2010/11 – 2014/15), para 844, 362.

[91]As above, 363.

[92]As above, 65.

[93]Second National Development Plan (2015/16 – 2019/20), 2.

[94]As above, foreword, xvii.

[95]As above.

[96]Second National Development Plan (NDPII) 2015/16 – 2019/20, 3.

NDP II recognised the need for a social development sector that would facilitate the mobilisation of communities to maximise their potential. NDP II also recognised that social development sector promotes cultural growth, labour productivity as well as gender responsive development, among others.[97]

A social development sector would minimise instances of imbalances and inequalities and provide an opportunity for affirmative action for the marginalised to be taken.[98] The NDP II objectives were, however, not region specific.[99] Acholi sub-region would require specialised development planning since the socio-economic needs of an Acholi are different from those of a Ugandan living in central Uganda. Acholi sub-region would require special affirmative action to propel it to the same level of development as other regions in the country.

Further, NDP II was not cognisant of government priorities.[100] Each MDA set its own priorities, which in itself ignores the local context at the grassroots. This is contrary to the spirit of participation as envisaged in the RTD. In the RTD, a bottom-up approach is encouraged through the use of participatory approaches like community *baraza*, as it promotes inclusiveness and ownership of development programmes.

3.2.6. Development Initiative of Northern Uganda

The Development Initiative of Northern Uganda (DINU) is a successor project to PRDP that was launched in 2018 and supported by the European Union.[101] The objective of DINU is to: strengthen stability in the northern region; eradicate poverty and under-nutrition; and, strengthen the foundations for sustainable and inclusive socio-economic development.[102] DINU has an estimated budget of € 26 million that will benefit a projected population of over

[97]Second National Development Plan (n 96 above), 230.

[98]As above, 230.

[99] As above, 232 – 233.

[100]Comments made by the NPA Chief at the launch of 'The formulation of the second national planning development plan 2015/16 to 2019/20' in 'National development plans not in line with govt priorities – NPDA Chief', *Daily Monitor* 14 February 2014, https://www.monitor.co.ug, (accessed 31 July 2019).

[101]The Development Initiative of Northern Uganda, 'Programme action document', https://ec.europa.eu/europeaid/sites/devco/files/annex-1-aap-uganda-2016_en.pdf, (accessed 30 August 2019).

[102]As above.

7 million people.[103] DINU was hinged on the need for peace, stability and development in northern Uganda. It sought to contribute to the development of the northern region by specifically promoting agriculture.[104]

Similar to other northern Uganda rehabilitation programmes, DINU is under the stewardship of the OPM. DINU is being implemented in the 5 sub-regions of Acholi, Karamoja, Lango, Teso and West Nile for 6 years.[105] The programme covers 33 districts in these sub-regions.[106] DINU, like other development interventions for northern Uganda, seeks to lessen the development gap between northern region and other regions in Uganda. Under its programme objective, the areas of nutrition and food security; road infrastructure; and good governance are emphasised.

DINU offers technical and financial assistance to key stakeholders in three core areas. These areas include: a finance facility that provides affordable finance to small and medium enterprises value adding projects in agriculture; a district road rehabilitation facilitation that offers conditional grants for rehabilitation of district and community access roads to connect local and regional markets and improve the access of local communities to jobs and social services.[107]

Thirdly, DINU also offers support on national public financial management (PFM). Here, DINU seeks to improve efficiency in the allocation, use and availability of public resources, among others.[108] The infrastructural arm of the programme targets transport infra-

[103]The Development Initiative of Northern Uganda, 'Programme action document', (n 101) above).

[104]'Rugunda launches 665 billion development initiative for northern Uganda', https://opm.go.ug/2018/05/11/rugunda-launches-665-billion-development-initiative-for-northern-uganda/, (accessed 29 July 2019).

[105]As above.

[106]As above.

[107]Information available at: https://www.uncdf.org/development-initiative-for-northern-uganda-dinu (accessed 29 July 2019).

[108] As above.

structure, under which the Atiak-South Sudan border road was to be rehabilitated.[109] Interventions on food security involve availing programme beneficiaries access to improved crop and animal breed.[110] The support to public finance management, on the other hand, focuses on strengthening of local governments in financial management.[111]

Considering that DINU is a fairly recent programme, its impact on socio-economic development is yet to be felt. As indicated, DINU has only been in place for only a year and a call for proposals was recently sent out. DINU assumes that the local populace already has access to land and yet some Acholi are still embroiled in land disputes; some of which arose because of the massive displacement of the Acholi from their villages.[112]

It should be observed that 80% of cases in the courts of law are land-related matters.[113] In light of these statistics, the Acholi may not benefit from these food security interventions in the absence of access to land. For such communities, access to land is at the core of their development and general enjoyment of livelihood. Therefore, having no access to their source of livelihood would affect every aspect of their development.

In the *Mabo case*, where the Australian High Court introduced the legal doctrine of native title, it was observed that the dispossession of an indigenous people that has lived in an area for thousands of years of their land would affect Australia as a nation.[114] Similarly, the displacement and subsequent dispossession of the Acholi of their land would have a snowball effect of affecting attainment of the RTD for them and in Uganda as a whole. With land grabbing that is still rife in northern region, there is limited opportunity for the Acholi to ben-

[109]'Northern Uganda gets Shs 600b new project', *Daily Monitor* of 6 May 2018, https://www.monitor.co.ug/News/National/Northern-Uganda-Shs600b-project-European-Union-corruption/688334-4547026-h3ogp0/index.html, (accessed 3 August 2019).

[110] As above.

[111] As above.

[112] Peace Recovery and Development Plan (2007-2010), 25-26.

[113] 'Land wrangles account for 80% of cases in northern Uganda', *The New Vision*, 12 November 2014, http://www.newvision.co.ug/new_vision/news/1314754/land-wrangles-account-80-northern-uganda, (accessed 14 January 2017).

[114]Mabo and others v Queensland (No. 2) HCA 23, (1992) 175 CLR 1.

efit. It has been reported that most land grabbers are government officials.[115] In light of this, the real beneficiaries of these interventions are the elites and not the Acholi.

3.3. Some observations on the implementation of specialised government programmes for northern Uganda

Some observations were made regarding the limited effectiveness of development programmes that have been implemented in northern Uganda over the last 20 years. These include:

3.3.1. Limited sensitivity to regional dynamics

It has been observed that some of these government programmes are insensitive to regional dynamics or local human rights needs. Each region in Uganda has its unique challenges, culture, socio-economic needs and aspirations. For instance, by the end of the conflict, northern Uganda was the poorest region in the country and lagged behind other regions on all socio-economic indicators.[116] Further, there was an increase of in child-headed households by 12%.[117] All these ought to be borne in mind when formulating development programmes. Adoption of a human rights based approach to development would have addressed some of these concerns.

The Acholi's need for implementation of transitional justice mechanisms has not been incorporated nor fulfilled. This aspect is discussed in detail in chapter 6. This is an element that is crucial for the Acholi and has not been catered for in all the development and recovery programmes.

3.3.2. Inadequate inclusiveness of local content

There is limited inclusiveness of local content in the creation of government development programmes. Programmes that were tagged as 'community driven', had been pre-determined

[115]'Judge: Most land grabs are by govt officials, soldiers', *The Observer*, 11 October 2017, https://observer.ug/news/headlines/55372-judge-most-land-grabs-are-by-govt-officials-soldiers.html, (accessed 10 August 2019).

[116]Peace Recovery and Development Plan (2007 – 2010), 25.

[117]As above.

by government and development partners. This is contrary to self-determination;[118] and the right to participate as guaranteed in the ACHPR and the Uganda Constitution.[119] Local communities were only afforded an opportunity to select an area of interest from a 'short list'. This undermines the notion of community driven project since government and its partners largely dictate the areas that are to be funded.

3.3.3. Impact of rampant corruption on development interventions

Corruption remains a chronic problem hampering development of local communities.[120] NUSAF I, which had a component for direct facilitation of local groups, was grossly undermined by corruption. PRDP was marred by the same corruption allegations. Officials in charge of evaluating project proposals were, in both programmes, cited in corruption allegations.

Rampant corruption chips away at the limited available resources. As a result, development interventions remain ineffective with no tangible improvement in the social and economic aspects in the lives of intended beneficiaries.[121] In light of this, the RTD would remain an enigma for local Acholi.

3.3.4. Inadequate demand for accountability

Despite the below par performance of the various government programmes, development partners have continued to commit funding without any effective demand for accountability. Ordinarily, government officials found to have embezzled development funds ought to have been held accountable if found guilty by the courts of law. The Uganda Constitution requires that all lawful measures be undertaken to eradicate corruption and abuse or misuse of power

[118]African Charter on Human and Peoples' Rights, art 20 (1).

[119]African Charter on Human and Peoples' Rights, art 13 (1); Constitution of the Republic of Uganda 1995 (as amended), art 37.

[120]'Northern Uganda's displaced people are left to fend for themselves', https://www.theguardian.com/global-development/poverty-matters/2012/jan/24/northern-uganda-displaced-people-out-in-cold (accessed 9 August 2019).

[121]Refugee Law Project, 'Are we there yet: Brainstorming the successor programme to Peace Recovery Development Plan (PRDP 2) for post conflict northern Uganda' Policy Brief No 1, February 2015,3, https://refugeelawproject.org/files/ACCS_activity_briefs/Are_We_There_Yet_%20ACCS_PRDP_III_Briefing.pdf, (accessed 11 July 2021).

by those holding political and other public offices.[122] However, such cases are never conclusively handled by the courts of law. Where some officers that were tried in courts were found guilty, there was no requirement for such government officials to refund embezzled funds.

3.3.5. Limited decentralisation of project implementation

Institutions like the Office of the Prime Minister are over-stretched in their bid to coordinate and implement various development programmes and projects. This is irrespective of the fact that there are fully fledged line MDAs that could carry out the same role. For instance, under NUSAF II, OPM implemented programmes in education, health, water, and agriculture, among others.[123] Line MDAs would be better placed to monitor and supervise project implementation.

3.4. Conclusion

The Acholi are a broken people who have been rendered destitute due to gross violation of their human rights and loss of most of their livelihood. There have been limited interventions to address imbalances caused by the northern conflict since there is still a gap between rural Acholi and the rest of the country. The development plans and programmes undertaken by GoU lacked inclusiveness and had limited participation of the Acholi. These programmes also lack social protection structures that are crucial for recovery and actual development of the Acholi. Development programmes, particularly PRDP 3 and DINU that targeted beneficiaries already in possession of some resources remained ineffective.

The need for the Acholi's development is still glaring. There is need, therefore, to explore how other countries that emerged from conflict handled their peace processes and post-conflict interventions.

[122]Constitution of the Republic of Uganda 1995 (as amended), Principle XXVI (iii) of the National Objectives and Directive Principles of State Policy.

[123]M Mugoya, 'Govt seeks to borrow more for NUSAF III – hoping for more impact', http://parliamentwatch.ug/govt-seeks-to-borrow-more-for-nusaf-iii-hoping-for-more-impact/#.XUV4cntRXIU (accessed 3 August 2019).

CHAPTER FOUR

DRAWING PARALLELS AND CONTRASTS FROM SOME REGIONAL PEACE PROCESSES

4. Introduction

The continued suffering of the Acholi during the LRA conflict precipitated the Juba peace talks. The Juba peace talks sought to broker peace between two conflicting parties, the government of Uganda (GoU) and the Lord's Resistance Army (LRA).[1] The peace talks paved way for the observance of human rights, reinstatement of the rule of law and consequently, opportunities for enjoyment of the RTD. It is through attainment of peace that the Acholi could have an environment that would favour development in the northern region. The right to an environment that favours development is guaranteed in the African Charter on Human and Peoples' Rights (ACHPR).[2]

The ACHPR reinforces the need for peace in order for sustainable development to be realised.[3] Where there is peace, individuals have greater freedom, creativity and the ability to be responsible for their material well-being. The Juba Peace Agreement, therefore, became a precondition for development in northern Uganda. The Juba peace talks availed an opportunity for the restoration of livelihood and human dignity of the local communities in Acholiland. The Juba Peace Agreement legitimised the need for victims of the conflict to be facilitated to enjoy developmental rights.[4]

This chapter explores the background to the Juba Peace Agreement. It is crucial that the role of peace, in light of the Juba Peace Agreement, in creating a favourable environment for attainment of the RTD in Acholiland, be considered. This is in light of the fact that peace is a central feature of development. Peace and development are interconnected concepts in

[1]Agreement on Accountability and Reconciliation signed between the government of Uganda and the Lord's Resistance Army, preamble.

[2]African Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), arts 22 & 23.

[3]African Charter on Human and Peoples' Rights, art 24.

[4]Agreement on Accountability and Reconciliation between Government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba, Sudan (2007), clause 8.1.

that, without peace, there can be no meaningful or sustainable development, and vice versa.

The chapter also discusses the role women played in making peace a reality for the people of northern Uganda. A discussion on the role of women is necessary since it was a woman's (Ms. Betty Bigombe) personal initiative that led to what later became the Juba peace talks, even though she did not participate in the peace talks. Had it not been for Ms. Bigombe's peace efforts, peace would probably have taken longer to return to northern Uganda, and possibly, no opportunity for any form of development in the region.

The Chapter contains a comparative analysis between the Juba Peace Agreement as opposed to the Abuja Peace Agreement and Doha Peace Agreement on Darfur. These agreements highlight the need for a rights-based approach in the drafting of peace agreements to cater for the interests of all stakeholders. Other aspects that are discussed include: The International Criminal Court and its contribution to the northern Uganda peace efforts; reparations as a tool for attainment of the RTD in Acholiland; as well as some lessons that can be drawn from how the Juba peace process was conducted.

4.1. Background to the Juba Peace Agreement

The holding of the Juba peace talks was necessary as there can be no development without peace and no peace without development. In addition, other human rights cannot be considered without the right to peace. This is in line with the UN Declaration on the Right of Peoples to Peace which recognises that life without war is a primary international prerequisite for the material well-being, development and progress of countries, and for the full implementation of the rights and fundamental human freedoms.[5]

Peace is at the core of the concept of development. Consequently, when troops like the LRA and the Uganda Peoples Defence Forces (UPDF) fight, then there is no room for the Acholi to embark on development. In essence, peace is a core minimum for attainment of the RTD. Therefore, in the absence of peace, 'development' as a word becomes an empty shell. The need for peace as a prelude to development has its bearings in the ACHPR which pro-

[5]United Nations Declaration on the Right of Peoples to Peace, the preamble.

vides for the right to peace and security.[6] It is for this reason that the Juba Peace Agreement was negotiated.

The LRA had initiated a military campaign with a view to toppling the National Resistance Movement (NRM) government. By 2006, the LRA had tried to justify its military struggle on the basis of perceived marginalisation of northern and eastern Uganda.[7] The conflict raged on for two decades until the push for peace negotiations. The peace talks between the GoU and the LRA rebels commenced in 2006.[8] The Juba peace talks provided a forum that sought to find peaceful and lasting solutions to the 20-year northern Uganda conflict.[9] The forum also sought to facilitate the reconciliation and restoration of harmony among local communities that had been affected by the conflict.[10]

Before these peace negotiations, Uganda had previously experienced transitional justice processes, that is, two truth commissions. One of the truth commissions was conducted by Justice Arthur Oder in 1974 and another by Justice Benjamin Odoki in 1986.[11] This truth Commission sought to investigate disappearances during the early years of President Idi Amin Dada's regime. The recommendations of the Commission of Inquiry were, however, not implemented as a result of State interference.[12]

None of the Truth Commissions was deemed as having been successful since they

[6]African Charter on Human and Peoples' Rights, art 23 (1).

[7]C Rose & FM Ssekandi, The pursuit of transitional justice and African traditional values: A clash of civilisations: The case of Uganda, (2007) no7 year 4, *International Journal of Human Rights*, 104.

[8]D Hendrickson & K Tumutegyereize, 'Dealing with complexity in peace negotiations: Reflections on the Lord's Resistance Army and the Juba talks', (January 2012), 5.

[9]Agreement on accountability and reconciliation signed between the government of Uganda and the Lord's Resistance Army, preamble.

[10]Agreement on Accountability and Reconciliation signed between the government of Uganda and the Lord's Resistance Army, preamble.

[11]JR Quinn, Dealing with a legacy of mass atrocity: Truth commissions in Uganda and Chile, (2001) 23, *Netherlands Quarterly on Human Rights*, 383 in J Sarkin, Providing reparations in Uganda: Substantive recommendations for implementing reparations in the aftermath of the conflicts that occurred over the last few decades, (2014) 14 *African Human Rights Law Journal* 526-552, 530.

[12]PB Hayner, Fifteen truth commissions 1974 to 1994: A comparative study, (November 1994) Volume 16 No. 4, *Human Rights Quarterly*, 597 – 655.

were perceived as having not been transparent or credible, among other factors.[13] The Juba peace talks, therefore, offered a third opportunity for transitional justice processes to be undertaken in Uganda. This was in a bid to restore peace and dignity for the Acholi.

The peace negotiations sought to bring an end to the hostilities between the GoU and the LRA. The negotiations also sought to find durable solutions to the conflict in northern Uganda.[14] The Juba Peace Agreement was not the first attempt at brokering peace between the LRA and the NRM Government. The first attempt towards brokering peace in northern Uganda was made by Honourable Betty Bigombe. In the second peace negotiations, the South Sudan stood to gain from any peace agreement between the two warring parties. The LRA had extended their area of operation to include South Sudan and Central African Republic.

A successful negotiation of the peace agreement would have required the LRA to leave South Sudan. The Juba Peace Agreement focused the negotiations on matters concerning disarmament of the LRA and reconciliation in northern Uganda, among others.[15]The Juba peace talks were guided by five agenda items. These were: cessation of hostilities; comprehensive political solutions; justice and accountability; implementation of disarmament, demobilisation, and reintegration (DDR); and institution of a permanent ceasefire.[16]

The five agenda items were to be discussed by the parties before the final agreement would be drafted and signed. The LRA had a lower negotiating capacity since they were not directly represented by the leadership. Rather, they were initially represented by Acholi from the Diaspora that had their own interests to push forward.[17] This tilted the talks to the disfavour of the LRA and later hampered the signing of the final peace agreement.[18]

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[13]Quinn, (n 11 above).

[14]Opening remarks by the Minister of Internal Affairs at the validation of a report and policy proposals on the use of traditional justice and truth telling mechanisms in the promotion of justice, accountability, peace and reconciliation, 18 July 2012, Imperial Royale Hotel, Kampala.

[15]Rose & Ssekandi, (n 7 above) 104.

[16]D Mwaniki *et al*, The (Northern) Uganda peace process: An update on recent developments, 2 February 2009, https://media.africaportal.org/documents/SITREPUGANDA02-02-09.pdf, (accessed 18 May 2020).

[17]Hendrickson & Tumutegyereize, (n 8 above), 15.

[18]As above.

One of the preliminary outcomes of the peace negotiations was that the Cessation of Hostilities Agreement (CHA) was signed.[19] The CHA was signed in September 2006. This ushered in some peace in northern Uganda and paved way for the eventual signing of the Juba Peace Agreement on accountability and reconciliation. Following the relative peace that dawned on the northern region, the Acholi were able leave internally displaced persons' (IDP) camps and return to their villages. Furthermore, they were now in a position to reclaim their human rights and dignity.

The Juba Peace Agreement on accountability and reconciliation was the second agreement to be signed between GoU and the LRA. This agreement was a precursor to the signing of the final peace agreement between the two warring parties. The agreement took into account the impact that the conflict had had on enjoyment of human rights and the socio-economic effects it had had on the local communities.[20] The agreement, therefore, sought to promote redress in line with international human rights obligations that Uganda had undertaken to abide by.

There is an array of international human rights treaties that provide for the right of victims to remedy and reparations for serious human rights violations.[21] According to Sarkin, programmes like reparations once undertaken, enable victims of conflict to resume their lives as it were before the conflict.[22] In the northern Uganda context where the Acholi lost their sources of livelihood including housing, livestock, and farmlands, to mention but a few, reparations would be necessary.

The conflict affected the ability of the Acholi to enjoy the RTD; which right requires citizens to actively participate in and contribute to their development. However, one cannot meaningfully participate in or contribute to development where one has nothing to offer. The

[19]RS Esuruku, Horizons of peace and development in northern Uganda*'* (2011) *African Journal of Conflict Resolution*, 117.

[20]Agreement on Accountability and Reconciliation signed between the government of Uganda and the Lord's Resistance Army, preamble.

[21]J Sarkin, Providing reparations in Uganda: Substantive recommendations for implementing reparations in the aftermath of the conflicts that occurred over the last few decades, (2014) 14, *African Human Rights Law Journal* 526-552, 536.

[22]As above, 534.

GoU and the LRA expressed a willingness to be bound by the conditions set out in the Agreement on accountability and reconciliation when they signed it. Some of the terms will be highlighted in the ensuing section.

For the GoU, the signing of the Juba agreement signalled a step towards fulfilling its international, regional, and constitutional human rights obligations to guarantee the rights of its people. It was at this point that the GoU undertook to set up a US dollars 340 million fund to assist northern Uganda.[23] The final peace agreement between the LRA leader, Joseph Kony and President Yoweri Museveni ought to have been signed in April 2008.[24] The final signing did not take place due to mistrust by the LRA.[25] However, GoU had already made an undertaking to ensure the observance of peace and human rights in northern Uganda.

4.2. Bridging the gap between pre and post conflict: The role of women in peace processes

The role of women in peace building and transitional justice processes has largely been minimal.[26] Often, women have been relegated to only playing the role of participants in consultative meetings on matters pertaining to peace negotiations. This largely happens when no deliberate effort is made to ensure the participation of women. This section discusses the contribution that women have made to peace processes and how it impacted the attainment of peace.

4.2.1. Women: The bridge between conflict and transitional justice in northern Uganda

Women in Africa are at the heart of all forms of development, be it in the home or in the in-

[23]T. McConnell, 'Uganda sees local justice as key to peace: Talks raise hopes that a Central African conflict involving the Lord's Resistance Army is winding down', *The Christian Science Monitor*, Boston, 8 September 2006 in Rose & Ssekandi, (n 4 above).

[24]'Ugandan rebel leader fails to sign peace deal', *The Guardian* 11 April 2008, https://www.theguardian.com/world/2008/apr/11/uganda, (accessed 18 November 2020).

[25]Accord, 'Initiatives to end the violence in northern Uganda: 2002-09 and the Juba peace process', Supplement to Accord Issue 11, 12.

[26]M O'reilly et al, 'Reimagining peacemaking: Women's roles in peace processes', (June 2015) 7, https://www.ipinst.org/wp-content/uploads/2015/06/IPI-E-pub-Reimagining-Peacemaking.pdf., (accessed 5 July 2018).

ternational arena.[27] This right for women's participation stems from the Maputo Protocol which provides for women's right to peaceful existence.[28] It is from this right that women have a central role to play in peace processes. Women's participation promotes attainment of peace as a means of facilitating development. Women have, however, often been left out of peace processes. This has impacted on their ability to contribute to the creation of a favourable environment for realisation of the RTD.

Despite the exclusion of women from peace-building processes, they have managed to find a way into the peace negotiation arena especially at the grassroots level. As has been observed, women have been able to create a link between peace-making processes at the grassroots level to the national level.[29] This partly explains how Ms. Betty Bigombe, a Minister of State in the Ugandan cabinet at the time, was able to find her way into the northern Uganda peace process. This was as early as 1994 when the northern conflict had intensified.

The Uganda Constitution recognises the important role that women play in society.[30] The provision may not spell out how they are important or the level of women's involvement, but it, at the very least, recognises their significance.[31] The Uganda Constitution further recognises that women and men are equal and are to be accorded full and equal dignity like men.[32] The Uganda Constitution guarantees the right of all citizens to take part in the affairs of government either individually or through a chosen representative. It can be argued that on a broad level, Ms. Bigombe could have participated in the northern Uganda peace negotiations in this capacity.

The Protocol to the African Charter on the Rights of Women (Maputo Protocol) is more specific on the role of women in peace-building. The protocol provides for the right of women to a peaceful existence and to participate in the promotion of peace and its mainte-

[27]F Anunobi, Women and development in Africa: From marginalization to gender inequality, (2002) Volume 2 Issue 2 Article 3 *African Social Science Review*, 4.

[28]Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art 10 (1).

[29]M O'reilly et al (n 26 above) 7.

[30]Constitution of the Republic of Uganda 1995 (as amended), principle xv of the National Objectives and Directive Principles of State Policy.

[31]As above.

[32]Constitution of the Republic of Uganda 1995 (as amended), art 33 (1).

nance.[33] It is on the basis of these rights and also by virtue of her human values that Ms. Bigombe got herself involved in the northern Uganda peace negotiations. Not only did she involve herself but she actually initiated the northern Uganda peace process in 1994.

Prior to Ms. Bigombe's involvement, as already highlighted in chapters one and two, women, men, and children in Acholiland had experienced the brunt of the LRA rebellion. Interventions by personalities like Ms. Bigombe were, therefore, welcomed to end the massive human rights violations.[34] Ms. Bigombe was responsible for the first initiative to broker peace in northern Uganda. This attempt to initiate peace talks between the LRA and the GoU was not without challenges as it was a personal initiative on the part of Ms. Bigombe's. Furthermore, there was reluctance from the side of Ugandan security forces.

Ms. Bigombe had been required by the GoU to reside in Acholiland and encourage the LRA to abandon their rebellion and return to their community. On her own volition, Ms. Bigombe took her assignment a step further and initiated contact with Joseph Kony, the LRA rebel leader, without the President's knowledge.[35] This was a time when cultural prejudices against women still existed; especially in the circumstances of the time where she was seeking to bring peace between two conflicting 'men'.[36] It was as a result of Ms. Bigombe's persistence and efforts that the LRA and GoU later agreed to hold peace talks.

Ms. Bigombe's efforts were not without challenges. First, the GoU was cautious about holding talks with the LRA.[37] In addition, the local populace were equally sceptical about the overall intention of government, although they trusted Ms. Bigombe to be able to pursue the peace negotiation.[38] The talks failed in 1994 largely due to mistrust between the LRA and the GoU which made it difficult for Ms. Bigombe to facilitate the peace process.[39] The LRA declined to send their officers to Gulu for further meetings. This was because of a

[33]Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art 10 (1).

[34]B O'Kadameri, 'LRA/Government negotiations 1993 – 94', in L Okello (ed) 'Protracted conflict, elusive peace: Initiatives to the end of conflict in northern Uganda', (2002) 36.

[35]As above.

[36]As above, 35.

[37]O'Kadameri (n 34 above), 38.

[38]As above, 35.

[39]As above, 40-41.

belief that there was a plot to arrest them. Though no such plot existed, the conduct of the Uganda government reinforced this perception; hence the withdrawal by the LRA.[40]

Ms. Bigombe's involvement in initiating talks between the LRA and GoU contributed to the eventual end of the conflict. It is, therefore, evident that women could be instrumental in pushing for commencement of or finalisation of peace negotiation.[41] This explains why in 2004, Ms. Bigombe was able to revive the peace talks, though the meeting scheduled for 20th April 2005, that was to be attended by Kony, did not take place due to a refusal by the GoU to avail clearance.[42] Despite Ms. Bigombe's participation in jumpstarting the peace process in northern Uganda, the involvement of ordinary Acholi women remained minimal.

The involvement of women was important given the contribution that women make to development in a peaceful environment. Considering that the core of article 10 of the Maputo Protocol and article 22 of the ACHPR is 'participation', the involvement of women in peace processes should have been visible. Ms. Bigombe remains instrumental in having brought about the eventual attainment of peace in northern Uganda.

The limited involvement of women in peace processes was not only experienced in the Juba peace process, the same has occurred in other conflict-ridden African countries. Some of these experiences are highlighted below.

4.2.2. Other experiences of women's participation in post conflict peacebuilding in Africa

As already noted, women in Africa are often left out of peace processes. This can be attributed to the largely patriarchal societies, hence male dominance in peace processes.[43] In addition, the absence of women from peace processes has also been attributed to too much em-

[40]'The roots of war: How Bigombe's efforts to end LRA war failed', *The Observer* 14 September 2011, http://www.observer.ug/news-headlines/15057-the-roots-of-war-how-bigombes-efforts-to-end-lra-war-failed, (accessed 5 July 2018).

[41]O'reilly *et al* (n 26 above), 11.

[42]N Boustany, 'The woman behind Uganda's peace hopes', 11 July 200, http://www.washingtonpost.com/wp-dyn/content/article/2007/07/10/AR2007071001933.html?noredirect=on, (accessed 5 July 2018).

[43]S Shekhawat, 'Conflict, peace and patriarchy: Female combatants in Africa and elsewhere', https://www.accord.org.za/conflict-trends/conflict-peace-and-patriarchy/, (accessed 2 July 2021).

phasis on the combatants as the main parties at the negotiating table.[44] This leaves out the victims of the conflict, including women, who would respond to the need for diversity in participation.[45]

The limited involvement of women in peace processes in Africa has been experienced in different States experiencing conflicts. With the exception of Rwanda where there was a deliberate effort by the Rwanda government to involve women in the peace process, in other States, women had to devise various means to secure their place at the negotiating table. Some selected countries are discussed below:

i. Somalia

One of the effects of the war in Somalia was the absence of men. This necessitated the engagement of Somali women in peace processes. The role played by women was largely through informal and unrecognised arrangements.[46] Women's participation was, therefore, limited to some extent. The minimal role played by women was due to the clan-based politics that is practiced in Somalia.[47] The seclusion of women from actively participating in peace processes was due to the existing restrictive patriarchal norms that only recognise traditional gender roles.[48]

As a result, women were excluded from participating in any fora that required formal decisions to be made.[49]These Somali women were more or less 'self-appointed' mediators and would resolve matters relating to inter-clan conflict.[50] Female mediators focused on matters concerning sustainable livelihood as well as truth and reconciliation, among others.[51]

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[44]O'reilly et al, (n 26 above), 4.

[45]As above, 5.

[46]J Gichuru, 'Participation of women in peace building in Somalia: A case study of Mogadishu', Occasional paper series 5, No 6 (2014) 2.

[47]O'reilly et al, (n 26 above), 4.

[48]As above.

[49]L Kumalo, 'Why women should have a greater role in peacebuilding', 26 May 2015, https://www.weforum.org/agenda/2015/05/why-women-should-have-a-greater-role-in-peacebuilding/, (accessed 19 July 2018).

[50]Gichuru, (n 46 above), 3.

[51]Kumalo, (n 49 above).

Somali women used their influence over male members of their families, including fathers, husbands, and sons.[52] This form of mediation worked for the Somali women due to what was viewed as their affiliation with other clans either through their fathers, husbands, or siblings. Somali women were restricted to playing the role of the 'lobbyist' while the men conclude the formal negotiations.

ii. Rwanda

The participation of women in the Rwandan post-genocide peace process was evident in the *Gacaca* courts, among other areas.[53] In more recent times, Rwanda has been tagged as a progressive country whose government is dominated by women. According to recent reports, female representation in Rwanda's parliament stands at 64%, which exceeds the 2003 constitutional decree that required 30% of parliamentary seats be reserved for women.[54]

In the Rwandan scenario, a deliberate effort was made by the State to ensure the involvement and participation of women in the post-genocide era. The Rwandan traditional justice system was used as one of the means for fostering reconciliation in post-genocide Rwanda. The *Gacaca* courts were a hybrid of the Rwanda traditional justice system and modern systems. In the pre-genocide era, it was unheard of for women to serve as judges as it was a role that was reserved for men that were deemed to be wise and respected within the community.[55]

In the post-genocide *Gacaca* courts, women were estimated to form 29% of the *Gacaca* membership, which was a deliberate State effort to promote gender equality and empower women as a way of facilitating sustainable peace and development in Rwanda.[56] The majority of those that had survived the genocide were women. It was, therefore, inevitable that women would be more involved in decision making processes.

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[52]Gichuru, (n 46 above), 3.

[53]J Mutamba & J Izabiliza, 'The role of women in reconciliation and peace building in Rwanda: Ten years after genocide 1994-2004: Contributions, challenges and way forward', (May 2005),14.

[54]'Rwanda, 'A success story of women empowerment', https://www.huffingtonpost.com/entry/rwanda-a-success-story-of-women-empowerment_us_5a4f1d87e4b0ee59d41c09ad, (accessed 25 July 2018).

[55]J Mutamba & J Izabiliza (n 53 above), 32.

[56]J Izabiliza, 'The role of women in reconstruction: Experience of Rwanda', 2, http//:www.unesco.org>fileadmin>SHS>pdf (accessed 24 July 2018).

iii. Burundi

Women in Burundi had equally been left out of the peace process that took place between 1998 and 2000. Just like their Somali counterparts, women had been side-lined from participating in high-level decision making processes.[57] The Burundi peace talks sought to bring an end to the conflict between the Tutsi and Hutu ethnic groups.[58] The participation of Burundi women in the Arusha peace process was as a result of pressure from women's organisations.[59]

Women's participation in the peace process was made possible by the 'All party Burundi women's Peace Conference' that was held on 17th July 2000 in Arusha, Tanzania. The conference was sponsored by UNIFEM and the late Mwalimu Nyerere's foundation.[60] The push for women's participation in the Burundi peace process was against the backdrop of the fact that women constituted an estimated 65-70% of the refugees.[61] The women had been severely affected by the rape, killings, and forced displacement that occurred during the conflict.[62]

This peace process was facilitated by former South African President, Nelson Mandela. Mandela insisted that despite the advanced stages in which the peace negotiations were, there was still room for incorporation of recommendations made by women in the final peace accord.[63] Women were able to push for the recognition and inclusion of issues affecting them in the final agreement. Some of the issues that women advocated for include: gender equality,[64] and the need for acknowledgment of and support for women's contribution to the economy.[65]

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[57]'Mandela ushers women into Burundi peace process', https://reliefweb.int, (accessed 22 July 2018).

[58]UN Women, 'Remembering Nelson Mandela's work to bring women to the table during peace talks in Burundi', https://www.unwomen.org, (accessed 22 July 2018).

[59]M Barengayabo, 'Burundian women in peacebuilding and social development', July 2016, http://www.salo.org.za>uploads>2016/07, (accessed 22 July 2018).

[60]As above.

[61]As above.

[62]Barengayabo, (n 59 above).

[63]As above.

[64]As above.

[65]Barengayabo, (n 59 above).

Had the Burundi women not muscled their way into the peace process, and had it not been for the intervention of Mandela, the voices of women would have remained unheard. Women's participation in peace processes is still a challenge. Women who participated in these peace processes had to force their way into the processes to participate. Had they not done so, they would have either still been forgotten or relegated to the periphery of the peace process.

This maltreatment of women is still ongoing. This is despite the existence of UN General Assembly resolution 65/83 which calls for the active and visible role of women in peace processes and their appointment as chief mediators in UN sponsored peace processes.[66] Women in Africa generally take a back seat or low key roles during peace negotiations and largely remain 'unsung heroes'.

It is, therefore, a welcome development that the UN General Assembly has passed a resolution that encourages the participation of women in peaceful settlement of disputes. This resolution decisively recognises that women can indeed play a critical role in peace processes[67] and, therefore, needs to be implemented. Considering that women are often agents of change in any meaningful peace process, a lot has to be done to make this a reality for Africa.

4.3. The Juba Agreement on Accountability and Reconciliation as a precondition to the enjoyment of the RTD

The Juba agreement on accountability and reconciliation was signed on 29th June 2007.[68] The agreement on accountability and reconciliation stemmed from the third agenda item of the peace talks, that is, the agenda item on justice and accountability. The agreement on accountability and reconciliation became the foundation upon which a case for implementation of transitional justice mechanisms in northern Uganda was made. It is on this basis that the RTD could be claimed as a right for the victims of the northern Uganda conflict.

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[66]Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution, UN General Assembly Resolution 65/283, adopted on 22 June 2011, clause 9.

[67]UN Women, 'Women's participation in peace negotiations: Connections between presence and influence', https://reliefweb.int/sites/reliefweb.int/files/resources/03AWomenPeaceNeg.pdf, (accessed 5 July 2018).

[68]Juba Peace Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement Juba, Sudan.

As highlighted throughout the study, the GoU owes a duty to the people of Acholi to facilitate their attainment of the RTD as it had failed to respect and protect their civil and political rights during the conflict.[69] The Juba Peace Agreement on accountability and reconciliation that was signed by the GoU and the LRA, in addition to the pre-existing human rights obligations, presented a contractual obligation binding on the GoU to fulfil the attainment of the RTD. The RTD includes the ability of all persons to participate in, contribute to, and enjoy economic, social, cultural, and political development.[70]

By virtue of the agreement on accountability and reconciliation, the local populace should be in a position to claim for redress for harms they suffered at the hands of the LRA and the government soldiers. The harms include violation of the right to freedom from torture, cruel, inhuman and degrading treatment or punishment;[71] the right to life[72] without which other rights cannot be enjoyed; and the right to property including farmlands and livestock, [73]which are the main source of livelihood for the Acholi who are primarily agriculturalists.

Contrary to the recognition under the CESCR that socioeconomic rights can be progressively attained,[74] the RTD ought to be immediate for the Acholi. Given the dire socioeconomic conditions of the Acholi, the RTD would not be a right that requires progressive realisation. As already noted, livelihoods were destroyed on a massive scale during the 20-year conflict thereby requiring immediate recovery. This can be addressed through reparations.

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[69]Social and Economic Rights Action Centre (SERAC) & Another v Nigeria (2001) AHRLR 60 (ACHPR 2001) para 48; Velàsquez Rodríguez v Honduras, Judgment of July 29, 1988, Inter-Am Court of Human Rights (Ser. C) No. 4 (1988) para 182 – 183, where it was held that a State would be in clear violation of its obligations under the convention to protect human rights of its citizens if it allowed private persons or groups to act freely and with impunity to the detriment of recognised rights.

[70]United Nations Declaration on the Right to Development, art 1.

[71]Constitution of the Republic of Uganda 1995 (as amended), art 24; Prevention and Prohibition of Torture Act, sec (3).

[72]Constitution of the Republic of Uganda 1995 (as amended), art 22.

[73]Constitution of the Republic of Uganda 1995 (as amended), art 26.

[74]Covenant on Economic Social and Cultural Rights, art 2 (1) & (3).

The Permanent Court of International Justice (PCIJ) in the *case concerning the factory at Chorzow* observed that:

> 'Reparation must, as far as possible, wipe out all consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed'.[75]

Consequently, in light of the GoU's undertaking in the Juba Peace Agreement on accountability and reconciliation, any reparations offered to the Acholi ought to restore them to the lives they had before the conflict. Furthermore, this massive destruction occurred as a result of State failure to fulfil its duty to respect and protect civil and political rights of the Acholi. Stemming from this failure to implement the State duty to protect, the local populace in Acholiland is owed a duty by the GoU to be reinstated to the life they had before.[76] This was discussed in detail in both chapters one up to three.

The Juba Peace Agreement required parties to make use of national legal structures to facilitate access to justice as well as realisation of reconciliation.[77] These national legal structures include the use of both formal and informal justice mechanisms and measures.[78] The formal measures include the creation of an International Crimes Division (ICD) of the High Court of Uganda to handle cases concerning LRA. However, only the case concerning Kwoyelo has so far been handled.[79]

On the other hand, the use of informal measures would consider the employment of traditional justice mechanisms of the affected community. For the Acholi, this would include '*mato oput*'. *'Mato oput'* largely entails affected communities being brought together to establish the truth of what occurred during a conflict; upon which compensation would be paid

[75]PICJ case concerning the factory at Chorzow, 1927 PCIJ (Ser A) No 9 in Sarkin J, Providing reparations in Uganda: Substantive recommendations for implementing reparations in the aftermath of the conflicts that occurred over the last few decades, (2014) 14, *African Human Rights Law Journal*, 526-552, 535-536.

[76]Sarkin, (n 21 above), 533.

[77]Agreement on accountability and reconciliation between Government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba, Sudan (2007), clause 2.1.

[78]As above.

[79]Uganda v Thomas Kwoyelo HCT-00-ICD-Case No. 02 of 2010.

in accordance with the set by-laws.[80] It should be noted that the Acholi way of life is strongly influenced by their culture. There is a belief in the gods or divine spirits providing guidance on the Acholi moral order.[81]

Where there was a wrong committed, the entire community would be involved in resolution since peace had to be made both in the spiritual realm as well as on earth.[82] As a result of this way of life, traditional justice mechanisms were favoured by local communities as a means to return peace in northern Uganda. Traditional justice mechanisms were also favoured by traditional, religious, and cultural leaders in northern Uganda. This is because of its basis on restorative, as opposed to retributive principles of the court.[83]

The Juba Peace Agreement recognised the importance of having the suffering of victims of conflict acknowledged and addressed.[84] In line with this, the agreement requires that attention be paid to the needs of the most vulnerable groups.[85] The agreement also requires that the right of all victims who contribute to society be promoted and facilitated.[86] This resonates well with the tenets of the RTD.

The Juba Peace Agreement and the transitional justice process that accompanied it were a form of claim to the RTD for the Acholi. This is because a transitional justice process would include the undertaking of a reparations process. A reparations process would enable victims of the northern Uganda conflict to be redressed for any harm they might have suffered. There were, however, challenges with the proper identification of actual victims of the conflict. Already, there were challenges with the distribution of 10, 000 iron sheets among

[80]C Baguma, **'**When the traditional justice system is the best suited approach to conflict management: The Acholi mato oput, Joseph Kony, and the Lord's', (2012) Volume 7 No 1 *Journal of Global Initiatives*, 31-43, 37.

[81]P Tom, 'The Acholi traditional justice approach and the war in northern Uganda', http://www.beyondintractability.org/casestudy/tom-acholi (accessed 10 June 2017).

[82]Informal discussion held with Mr. Ambrose Olaa the Prime Minister of Acholi Kingdom on 9th June 2017 at Ker Kwaro (Acholi Cultural Institution).

[83]Baguma, **(**n 80 above), 33.

[84]Agreement on accountability and reconciliation between Government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba, Sudan (2007), clause 8.1.

[85] As above.

[86]As above.

IDPs,[87] and the management of the Peace Recovery and Development Programme. The implementation of PRDP was discussed in chapter three.

One of the challenges with implementation of the activity was that some iron sheets were not received by the right beneficiaries. The iron sheets were stolen; at times with the alleged assistance of law enforcement personnel.[88] If such a programme was part of the GoU's reparations programme, then its objective would not have been fully realised due to sabotage by some State agents. It is these reparation processes that could enable the Acholi to regain their lost 'dignity' and source of livelihood.[89]

This claim for redress could be hinged on the agreement signed between the LRA and GoU to the effect that reparations/compensation would be made to victims of the conflict.[90] This claim is also premised on GoU's failure to fulfil its duty to respect and protect human rights of the Acholi. This entitles the Acholi to seek redress under article 50 (1) of the Uganda Constitution.

4.4. Juba Peace Agreement versus Abuja Peace Agreement and Doha Peace Agreement on Darfur

4.4.1. Background to the Darfur peace process

The Darfur peace process sought to end the conflict between the rebel movements that were fighting the Government of Sudan. Like the LRA, the rebels, the Sudan Liberation Movement (SLM) in Darfur were fighting against perceived political and economic marginalisation of their respective communities.[91] Inter-Sudanese peace talks on the Darfur conflict were held in

[87]The distribution of 10, 000 iron sheets was one of the government interventions aimed under development and pacification of northern Uganda. Information on post-war recovery and Presidential pledges are https://opm.go.ug (accessed 5 July 2018).

[88]'Amuru police boss under probe over iron sheets', *Daily Monitor*, https://www-monitor-co-ug.cdn.ampproject.org/v/www.monitor.co.ug/News/National/Amuru-police-boss-under-probe-over-iron-sheets, (accessed 5 July 2018).

[89]Office of the High Commissioner of Human Rights, *Analytical Study on Human Rights and Transitional Justice*, 2009 in CS Villalba, 'Transitional justice: Key concepts, processes and challenges', Briefing paper, (July 2011), *3.*

[90]Principal Agreement; clauses 6.4 and 9 .

[91]L Nathan, 'No ownership, no peace: The Darfur peace agreement', Crisis States working paper series No. 2, 1.

Abuja in late 2005 in a bid to negotiate peace between the warring factions. The peace talks were mediated by Salim Ahmed Salim, a former Secretary General of the Organisation of African Unity (OAU).

The peace talks culminated into the signing of the Darfur peace agreement (Abuja Peace Agreement) on 5th May 2006 between the Government of Sudan and Minni Minawi, one of the leaders of the SLM faction; though it was not signed by Abdel Wahir al Nur, the leader of the second faction of the SLM.[92] The Abuja Agreement did not succeed in securing peace in Darfur as it was viewed as having been forced on the people of Darfur and did not cater for the interests of all the factions in the conflict.[93]

The Abuja Agreement was deemed to have focused on the interests of the Government of Sudan, as well as the minority tribe, Zaghawa, to which rebel leader Minawi belonged.[94] Consequently, a second peace agreement was negotiated in Doha to include the interests of the second faction of the SLM. This led to the signing of the Doha Agreement in 2011 between the Government of South Sudan and the Liberation and Justice Movement, hence the Doha Document for Peace (DDP).[95] The DDP went an extra step to address the root causes of the Darfur conflict and its consequences.

4.4.2. Comparative analysis between the Juba Peace Agreement and the Darfur Peace Agreement

As compared to the Juba Peace Agreement, the Abuja Peace Agreement and Doha Peace Agreement combined sought to attain durable peace in Darfur, a region in Sudan.[96] One of the distinctions between the two sets of agreements is that the comprehensive Juba Peace Agreement was never signed, while those concerning Darfur were conclusively handled on

[92]L Nathan, 'No ownership, no peace: The Darfur peace agreement', Crisis States working paper series No. 2, 1.

[93]As above, 2.

[94]As above.

[95]'International donor conference for reconstruction and development in Darfur', information available at: http://www.darfurconference.com, (accessed 5 July 2018).

[96]International Crisis Group, 'Sudan's spreading conflict (III): The limits of Darfur's peace process', Africa Report No 211, 27 January 2014, 7, https://www.refworld.org/pdfid/52e7c8954.pdf, (accessed 2 July 2021).

14th July 2012.[97]

Further, the Doha Peace Agreement considered factors that led to the conflict in Sudan and sought to alleviate them; these factors included religious intolerance and the need for power sharing. The Juba Peace Agreement, on the other hand, only focused on ushering in peace without necessarily focusing on the factors that led to the conflict between the LRA and the NRM government.

The Doha Agreement for Peace in Darfur was comprehensive as it catered for various aspects that were critical in peace building. These areas included: sections on the observance of human rights and fundamental freedoms; power sharing and the administrative status of the Darfur compensation; and, return of IDP and refugees, among others.[98] This section on human rights was to become the bill of rights had the Darfur agreement been successful.

The Juba Peace Agreement, on the other hand, did not offer any power sharing deals to the LRA. Rather, the LRA were to be possibly investigated and prosecuted for their role in either planning or carrying out widespread attacks on civilians.[99] Additionally, the Juba Peace Agreement did not have express provisions guaranteeing human rights. At best, it observed the need for reparations for the victims of the LRA conflict, but pegged its implementation to a national transitional justice policy, which, was passed in 2019.[100]

The provision on power sharing in the Doha agreement was vital to promote the unity, security, and stability in Darfur, as well as the entire Sudan.[101] Under the terms of the Doha peace agreement, power was to be shared at all levels of government, as well as in the three

[97]International donor conference for reconstruction and development in Darfur', 15 April 2013, https://reliefweb.int/report/sudan/final-communiqu%C3%A9-international-donor-conference-reconstruction-and-development-darfur, (accessed 18 July 2021).

[98]Index to the Doha Document for Peace in Darfur.

[99]Annexure to the Agreement on accountability and reconciliation, clause 12.

[100]'Uganda's transitional justice policy 2010: Better late than never!', *New Vision* 5 July 2019, https://www.newvision.co.ug/new_vision/news/1502988/uganda-transitional-justice-policy-2019-late, (accessed 8 July 2019)

[101]Doha Document for Peace in Darfur, art 2, para 21 of the agreement.

arms of government, that is, legislature, executive and judiciary.[102] Power sharing was not an option in the Juba Peace Agreement.

The Juba Peace Agreement focused on discussing the transitional justice mechanisms that were to be used on the LRA. The agreement considered whether formal justice mechanisms be applied by having the LRA charged in the International Crimes Division or traditional justice mechanisms. The LRA on their part preferred traditional justice mechanisms. Consequently, upon failure of the GoU to have the indictments against the top leaders dropped, the peace talks collapsed.[103]

Furthermore, the DDPA provided clear administrative strategies for the development of Darfur including the creation of a Darfur Regional Authority (DRA). Among other things, DRA was tasked to ensure the promotion of peace and security; socio-economic development, stability and growth; as well as justice, reconciliation, and healing.[104] The Juba Peace Agreement, on the other hand, left the issue of development unresolved.

The Transitional Justice Working Group of the Justice Law and Order Sector was tasked with the drafting of the national transitional justice policy. It was this policy that was expected to guide the implementation of transitional justice mechanisms in northern Uganda. In light of the passing of the policy, it is yet to be seen how the issue of development will be handled.

The Doha agreement recognised the importance and role of having a National Human Rights Commission and a Human Rights sub-Committee to monitor the human rights situations.[105] It was also envisioned that these two institutions would protect and promote human rights observance in Darfur.[106] In the Ugandan context, the Uganda Human Rights Commission (UHRC) was an observer during the Juba peace negotiations and has continued to moni-

[102]Doha Document for Peace in Darfur, arts 3 - 7.

[103]S Ross, 'The history of peace and conflict with the LRA', https://scottandrewross.com/2012/03/28/the-history-of-peace-and-conflict-with-the-lra/, (accessed 5 July 2018).

[104]Doha Document for Peace in Darfur, art 9, para 59.

[105] Doha Document for Peace in Darfur, art 1, para 14.

[106]As above.

tor the state of human rights in the country. The UHRC is also spearheading the documentation of human rights violations during the northern Uganda conflict.

By providing for principles to govern the sharing of wealth in Sudan, the Doha Document for Peace in Darfur (DDPD) sought to put in place an economy that could, among other things, mitigate poverty. It was also hoped that the economy would ensure equitable distribution of wealth and resources. This was in a bid to balance the standard of living for all citizens in Sudan.[107] As already observed, the Juba Peace Agreement did not contain such provisions as it was envisioned that the national transitional justice policy would guide the northern Uganda reconstruction process. However, much as the DDPD provides for principles on wealth sharing, the implementation of these provisions was ineffective.

The DDPD provided for a right to a just and balanced development in light of the need for reconstruction of certain parts of Darfur that had been affected by armed conflict.[108] This resonates with this study as it asserts that the Acholi have a similar right to balanced development based on the human rights violations and the loss suffered as a result of the northern conflict. The DDPD, therefore, made a justification for an immediate right to development for post conflict societies.

In acknowledging the equal rights that the citizens of Sudan are entitled to, the agreement largely took note of the socio-economic rights. The socio-economic rights that were considered include: the right to sustainable living, the right to quality education; access to health and other social services; as well as the right to restitution and compensation for loss incurred during the conflict. In comparison to the Juba Peace Agreement, the DDPD was more comprehensive on the coverage of socio-economic rights that were to be protected and promoted.[109]

The only criticism might be the extent to which the Government of Sudan actually implemented this agreement on Darfur. The DDPD was quite specific on the nature of programmes to be undertaken to develop the areas affected by conflict. The development pro-

[107]Doha Document for Peace in Darfur, art 16, para 95.

[108]Doha Document for Peace in Darfur, art 16, para 97.

[109]Doha Document for Peace in Darfur, art 16, para 102.

grammes that were to be undertaken were provided for under articles 18, 19, 20, and 21 of the DDPD, among others. Article 21 of the DDPD, for instance, categorically provided for the reform, restructuring and rectification of imbalances caused by the conflict in Darfur, through the use of the reconstruction and development fund.[110]

Additionally, the DDPD spelt out how Government of Sudan would allocate the spending of US dollars 200, 000, 000, 000,[111] and identified the responsibility centres that would oversee the utilisation of the said funds over a six year period.[112] This type of clarity on utilisation promotes transparency on what should be done and the available resources. This is, however, lacking in the Juba Peace Agreement.

The DDPD also clearly provided for compensation of victims of the Darfur conflict, as well as the return of IDPs and refugees on the basis of durable solutions.[113] The DDPD called for reliance on international human rights law and international humanitarian law, among others. The DDPD echoed the need for the rights of victims of the conflict to be respected, protected and fulfilled, though recognition was given to the fact that all citizens of Sudan were entitled to equal rights.[114]

Durable solutions were considered in the Juba peace talks. The same principles alluded to in the DDPD were highlighted in the Juba Peace Agreement on Accountability and Reconciliation, although they were to be embedded within the national transitional policy in greater detail. The DDPD further emphasised the need for active participation by IDPs, victims of the conflict and civil society in the planning and implementation process of policies and programmes.[115] These policies and programmes aimed at addressing the humanitarian and human rights effects of the conflict, as well as the management of the return process.[116]

[110]Doha Document for Peace in Darfur, art 21, para 139.

[111]Doha Document for Peace in Darfur, art 21, para 141.

[112]Doha Document for Peace in Darfur, art 21, para 142.

[113]Doha Document for Peace in Darfur, art 42.

[114]Doha Document for Peace in Darfur, art 42, para 218.

[115] Doha Document for Peace in Darfur, art 42, para 221.

[116]As above.

A similar provision was included in the Juba Peace Agreement. The agreement emphasised the need for wide consultations to be made in the course of developing and implementing principles of the agreement.[117] To some extent, the Justice Law and Order Sector conducted wide consultations especially on the use of traditional justice mechanisms and the draft national transitional justice policy. There was, however, a lull in the move towards having the policy passed.

The DDPD declares that victims of the Darfur conflict be availed financial compensation for harm and losses suffered during the conflict.[118] These losses are categorised as including loss of life as well as economic losses.[119] This is different from the Juba Peace Agreement which recognised the need for compensation for human rights violation. The Juba Peace Agreement, however, directs that such compensation and the mechanisms for their attainment be provided for in the national transitional justice policy.

The DDPD provided for the creation of various Commissions to manage the peace process. These include: including the Voluntary Return and Resettlement Commission to manage the return process,[120] Cease Fire Commission,[121] as well as the Truth, Justice, and Reconciliation Commission.[122] The creation of any Commission emanating from the Juba Peace Agreement should be dependent on the text of the national transitional justice policy. Much as the policy has been passed, a corresponding law is yet to be enacted to guide on the enforcement of the principles set in the transitional justice policy.

The DDPD provided for the establishment of a Commission to oversee the process of IDPs returning to their villages. It was envisaged that the Commission would ensure that some form of order was followed. The DDPD also specifically provided for amnesty for the perpetrators of the Darfur conflict. However, those that were implicated in the commission of war crimes, crimes against humanity and crimes of genocide, among others, were exclud-

[117]Juba Peace Agreement on Accountability and Reconciliation, clause 2.4.

[118]Doha Document for Peace in Darfur, art 43, para 225.

[119]As above.

[120]Doha Document for Peace in Darfur, art 51.

[121]Doha Document for Peace in Darfur, art 64.

[122]Doha Document for Peace in Darfur, art 58, para 311.

ed.[123]

Uganda, on the other hand, had already granted amnesty to LRA rebels that had surrendered to the authorities. The only exceptions were the four rebel leaders, Raska Lukwiya, Okot Odhiambo, and Dominic Ongwen, that had been indicted before the ICC. The granting of Amnesty in Uganda is guided by the Amnesty Act, which came into force before the Juba peace talks.[124] The Juba Peace Agreement, however, alludes to it by requiring the GoU to amend the Amnesty Act to bring it in conformity with the peace agreement.[125]

A positive aspect of the Juba Peace Agreement takes into account the need for both formal and informal justice mechanisms. The DDPD, on the other hand, focused more on the use of formal justice mechanisms. The use of formal justice systems does not encourage the participation of all stakeholders in comparison to traditional justice mechanisms which are open to all members of society.

The DDPD also provided for the need for a permanent ceasefire, without which durable solutions to the conflict could not be obtained.[126] On the contrary, the signing of the Juba Peace Agreement was preceded by the signing of the Cessation of Hostilities Agreement (CHA) between the GoU and the LRA. It could, however, be argued that a more elaborate and comprehensive final peace agreement should have been signed, although it never materialised.

The DDPD provided for social and economic reintegration of former combatants of the Darfur conflict.[127] This issue was a source of contention in northern Uganda as there was a perception that former combatants were treated better than the victims of the northern Uganda conflict. This was because the former combatants were given resettlement packages and assisted with reintegration. The same courtesy was not extended to the Acholi, especially those that had been internally displaced from their villages.

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[123]Doha Document for Peace in Darfur, art 60, paras 329 & 330.

[124] Amnesty Act Cap 294. The Amnesty Act came into force on 31st December 2000.

[125]Juba Peace Agreement on Accountability and Reconciliation, clause 14.4.

[126]Doha Document for Peace in Darfur, art 62.

[127]Doha Document for Peace in Darfur, art 73.

Importantly, the DDPD was to have a constitutional status upon its adoption by the parties.[128] This would have been tantamount to an express recognition of the RTD and render all the socio-economic and development rights enshrined therein as being justiciable. The agreement went as far as to set timelines, within which the components included therein, would be implemented.[129]

The Juba Peace Agreement on the other hand, does not specifically address issues of development. However, the agreement recognises the need for reparations for victims of the northern conflict.[130] It is through reparation mechanisms like rehabilitation, restitution, and compensation that the RTD can be attained.[131]

4.5. The International Criminal Court and the Northern Uganda peace efforts

Uganda ratified the Rome Statute of the International Criminal Court (Rome Statute) in January 2004,[132] and domesticated it in 2010. The Rome Statute creates the International Criminal Court (ICC), an international court that has power to investigate and prosecute persons for commission of the most serious crimes of international concern.[133] These crimes include genocide, war crimes, crimes against humanity, and crimes of aggression.[134] The Rome Statute requires State parties like Uganda to cooperate fully with the ICC in the investigation and prosecution of crimes that fall within the jurisdiction of the court.[135] There is an additional duty for State parties to establish procedures that facilitate their cooperation with the International Criminal Court at the national level.[136]

Local leaders in northern Uganda did not embrace the idea of having the LRA investigated and prosecuted before the ICC.[137] In their view, there was need for traditional justice

[128]Doha Document for Peace in Darfur, art 78.

[129]Implementation timetable provided for under art 78 para 486 of the Doha Document for Peace in Darfur.

[130]Juba Peace Agreement on Accountability and Reconciliation, clause 9.1.

[131]As above.

[132]Information available at https://www.icc-cpi.int>uganda (accessed on 4 July 2018).

[133]Rome Statute, art 1.

[134]Rome Statute, art 5.

[135]Rome Statute, art 86.

[136]Rome Statute, art 88.

[137]Baguma, **(**n 80 above), 33.

mechanisms to be given an opportunity, since these mechanisms are based on restorative principles as opposed to the punitive approach to justice that is followed by the ICC.[138] This request was not heeded to and the four top LRA leaders were referred to the ICC.

Uganda took advantage of the provisions of the Rome Statute to refer Joseph Kony,[139] the LRA rebel leader and some of his top commanders to the ICC on 16th December 2003.[140] These top commanders that were jointly referred with Kony are: Vincent Otti, who had 11 counts of crimes against humanity and 21 counts of war crimes including rape; Raska Lukwiya; Okot Odhiambo; and Dominic Ongwen. Okot Odhiambo and Raska Lukwiya who had also been referred to the ICC had proceedings against them terminated as they had died.[141]

Dominic Ongwen, the fourth accused is the only LRA leader that has been tried by the ICC and his matter was heard separately so as not to delay the hearing.[142] Dominic Ongwen was found guilty on 6th May 2021 and sentenced to 25 years of imprisonment for 61 counts of crimes against humanity and war crimes committed in northern Uganda between 1st July 2002 and 31st December 2005.[143]

The cultural and religious leaders from the sub-regions of West Nile, Madi, Acholi, and Lango believed in the use of traditional justice mechanisms to foster reconciliation between the local communities and the LRA. What came to be known as the Lira Declaration was signed to advocate for traditional justice mechanisms to be used as tool for justice and reconciliation.[144] The Lira declaration was made on the first anniversary of the Juba peace talks.[145]

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[138]Baguma, **(**n 80 above), 33.

[139]Art 14(1) of the Rome Statute allows states parties to refer a matter for investigation by the ICC.

[140]ICC case information on The Prosecutor v Joseph Kony and Vincent Otti No ICC-02/04-01/05, https://www.icc-cpi.int>KonyEtAlEng (accessed 4 July 2018).

[141]As above.

[142] As above.

[143]Dominic Ongwen case update in The Prosecutor v. Dominic Ongwen ICC-02/04-01/15, https://www.icc-cpi.int/uganda/ongwen, (accessed 11 July 2021).

[144]Baguma (n 80 above), 34.

[145]As above.

The LRA on their part were curious about the modalities of the Acholi traditional justice system of *mato oput*.[146] The implementation of this justice process would have had challenges with its implementation. The GoU would have been required to allow its soldiers to participate in traditional justice process, which it had been hesitant to do.

Uganda, on its part, set up the International Crimes Division (ICD) of the High Court in light of the requirement under the International Criminal Court Act.[147] With retributive justice being the other transitional justice approach, the processes that would be implemented would include prosecution of perpetrators of the northern conflict.[148] The ICD has not been actively used as it is only the case of Thomas Kwoyelo, a former LRA rebel leader, that has been brought before the court for prosecution.

The hearing of the case against Kwoyelo stalled following the challenging of his prosecution on the basis that he was entitled to amnesty under the Amnesty Act 2000. Here, Kwoyelo's defence counsel argued that charging him would amount to discrimination.[149] The Supreme Court, however, ruled that Kwoyelo had been properly indicted by the Director of Public Prosecutions (DPP) and that the indictment was neither discriminatory nor unconstitutional as the DPP was acting within its powers as granted by the Constitution.

4.6 Transitional justice and post conflict reconstruction in northern Uganda

The post-conflict setting consists of the undertaking of various processes including transition from war to peace,[150] hence transitional justice (TJ). TJ has been defined as an approach to systematic or massive violations of human rights that seeks to avail redress to victims and create opportunities for the transformation of the political systems, conflicts, and other conditions that may have been at the root of the abuses.[151] For the Acholi, the Juba Peace Agree-

[146] Baguma (n 80 above), 34.

[147]International Criminal Court Act, Act 11 of 2010.

[148]Justice Law and Order Sector, Transitional justice in northern Uganda, eastern Uganda and some parts of west Nile region (2008) 2.

[149]Uganda v Thomas Kwoyelo Constitutional Appeal No. 01 of 2012 (SC).

[150]L Reychler & A Langer, Researching peace building architecture, (2006) Volume 75 *Cahiers internationale betrekkingen en vredesonderzoek*, 24 in G. Brown *et al*, 'A typology of post-conflict environments', CRPD Working Paper No. 1, September 2011, 2.

[151]What is transitional justice?: A background, http://www.un.org/en/peacebuilding/pdf/doc (accessed 12 March

ment set the pace for the implementation of TJ mechanisms in northern Uganda.

The Juba Peace Agreement sought to adopt various mechanisms including customary processes of accountability. This approach aimed at resolving the northern conflict and promoting reconciliation.[152] Given that the northern conflict affected various locals differently, multifaceted TJ mechanisms were required to cater for the wider range of harms suffered. For instance, some suffered sexual and gender based violence as a result of which they were discriminated against, while others were economically disempowered.[153]

The Juba Peace Agreement paved way for the consideration of reparations as a form of TJ to be undertaken in northern Uganda. In the implementation of TJ mechanisms, victims of the conflict are at the core of all developmental policies affecting them. This requires that a victim-centred approach be adopted, which in essence, means that in any post-conflict setting, the central objective of TJ would be to 'serve the interests of the victim'.[154] Reparations as a tool for attainment of the RTD for the Acholi is discussed in greater detail in the next paragraph.

Reparations were one of the central features of the Juba Peace Agreement. It would have been expected, therefore, that development efforts in northern Uganda would focus on availing some form of reparations for the Acholi. This has, however, not been so despite the culture of the Acholi, and the political realities in Uganda. Focus was placed on rebuilding of institutions.[155] The relevance of culture in the implementation of development interventions is discussed in chapter five.

2017).

[152]Preamble to the Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba, Sudan.

[153]International Centre for Transitional Justice Uganda, 'Reparations for northern Uganda: Addressing the needs of victims and affected communities', ICTJ Briefing paper, September 2012, 4.

[154]Foundation for Human Rights Initiative, 'Back home but not really home: Towards a victim-centered approach to justice-An analysis of Uganda's 5th Draft Transitional Justice Policy', November 2015, 1-2.

[155]G Kasapas, 'An introduction to the concept of transitional Justice: Western Balkans and EU conditionality', UNISCI Discussion Papers, No. 18 October 2008, 61.

This is the scene that was set for the Acholi people with regard to how government efforts including PRDP were implemented. Under PRDP it was expected that the Acholi people should take centre stage in all policies aimed at ensuring development and realisation of their RTD; but this has not been so. The PRDP is discussed in more detail in chapter five.

Admittedly, TJ mechanisms like reparations would not adequately compensate the victims of the northern Uganda conflict for the loss they suffered.[156] However, there was and there is still a need for a multifaceted approach to be undertaken in post-conflict reconstruction in northern Uganda. This requires an investigation to establish how best, TJ mechanisms alongside other government interventions can be effectively utilised to enhance realisation of the RTD.

4.7 Reparations as a tool for attainment of the RTD in Acholiland

The implementation of transitional justice mechanisms like reparations was previously not possible due to the absence of a national transitional justice policy. Reparations would have provided an opportunity for structured development of affected local communities as the activities would be victim-centred. This stems from the fact that the LRA looted and destroyed villages in northern Uganda, while the UPDF also violated human rights of the local populace including arbitrary detention, torture, and forcible relocation.[157]

Reparations can be defined as a way of making amends to those that may have suffered some form of harm or loss through provision of compensation.[158] Reparations are guided by the principle that a victim of a human rights violation ought to be fully restored to what they had before.[159] Reparations may take various forms including distribution of money to victims or the carrying out of reconstruction programmes to benefit the affected communi-

[156]A Soble & A Weiner, The cost of closure, (2009) 13 October *Yale Globalist*, 40-43 in Kasapas. G, An introduction to the concept of transitional Justice: Western Balkans and EU conditionality, UNISCI Discussion Papers, No. 18 October 2008, 67.

[157]Rose & Ssekandi, (n 7 above), 103.

[158]Sarkin, (n 21 above) 535.

[159]Justice Law and Order Sector, Transitional justice in northern Uganda, eastern Uganda and some parts of west Nile region (2008) 32; Principal 19 of the UN Basic Principles on the Right to Remedy and Reparations.

ty.[160]

Reparations are, therefore, a human right for victims of massive human rights violations such as the Acholi that suffered grave harm to their person and loss of their property in the course of the conflict. Reparations are recognised under the Uganda Constitution as it empowers a rights claimant, whose fundamental right or freedom has been violated to seek redress from a competent court.[161] A successful claim before court would entitle a victim to redress, which would include reparations.[162]

A similar call for reparations is echoed in international human rights instruments including the Convention against Torture which provides for the levying of appropriate penalties in instances where torture has been committed.[163] At the African regional level, a right to reparations is provided for in the protocol to the Maputo Protocol. The Protocol states that women should be provided with reparations.[164]

The right to reparations is also reflected in the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparations, which equally provides for the same right. The declaration recognises that it is through reparations that there can be post-conflict transformation of socio cultural injustices.[165] In light of these two African legal instruments, women were afforded protection to enable them claim for reparations in instances where they were victims of harm or loss.

The challenge with enforcement of women's right to reparations remains in the implementation process since African societies are patriarchal in nature and no special status may be accorded to female victims of harm when the need arises. In the northern Uganda setting where women were perpetual victims both at the hands of rebels and the government

[160]Justice Law and Order Sector, Transitional justice in northern Uganda, eastern Uganda and some parts of west Nile region (2008), 32.

[161]Constitution of the Republic of Uganda 1995 (as amended), art 50.

[162]As above.

[163]Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment, art 4.

[164]Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art 4.

[165]Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparations, clause 3.

soldiers, the right to reparations is a right that ought to be enforced to give them some form of restoration; at the very least, restoration of their human dignity through empowerment.

This right to reparations was equally provided for in the Juba Peace Agreement which recognised various measures that could be utilised to restore the Acholis, including rehabilitation, restitution, and compensation.[166] The Juba Peace Agreement cites the GoU as being responsible for reparations for victims of the LRA conflict.[167] The agreement also goes further to recognise the need for vulnerable members of the society to be prioritised when implementing reparations measures.[168] The implementation of these measures is, however, yet to be undertaken as the national transitional justice policy that shall be used to guide the process is yet to considered and passed.

The legal frameworks, therefore, provide a basis upon which the Acholi can make a claim for reparations from the GoU. With these reparations, the Acholi that had since been reduced to a life of abject poverty would be in a position to participate in development processes. This ability to meaningfully participate in development processes would help restore their dignity as a people and enable them to enjoy their right to livelihood. There is a pressing requirement for transitional justice mechanisms to be implemented in Acholiland, in light of the fact that transitional justice focuses on restoring dignity of victims of conflict.[169]

With restorative justice, truth telling and reparations would be the primary consideration as the two transitional justice mechanisms would facilitate socio-economic recovery of the Acholi from the mass human rights violations they experienced.[170] As was observed during an informal discussion with the Prime Minister of the Acholi Cultural institution, in order to move forward, the past injustices committed against the Acholi should first be ad-

[166]Juba Peace Agreement on Accountability and Reconciliation, clause 9.1.

[167]Sarkin, (n 21 above), 539.

[168]Juba Peace Agreement on Accountability and Reconciliation, clause 9.1.

[169]Justice Law and Order Sector, 'Transitional justice in northern Uganda, eastern Uganda and some parts of West Nile region' (2008) 2.

[170]As above.

dressed.[171] Once the past injustices are resolved through Acholi traditional justice mechanisms, reparations could be paid and subsequently, developmental rights enjoyed.

4. 8 African traditional peace negotiations versus modern peace agreements

4.8.1. Validity of modern Juba peace process in an Acholi traditional setting

The Juba peace process was hinged on the need to find peaceful and lasting solutions to the northern conflict.[172] The Juba peace process also sought to promote reconciliation and restore harmony among affected communities.[173] As reflected in the preceding sections, the Juba peace process was a largely formal process that was funded by the international community and conducted in line with western notions of peace negotiations.

The Juba peace process had its shortcomings. Right from the preamble to the Juba Peace Agreement on Accountability and Reconciliation, reference is made to the Rome Statute of the International Criminal Court that the LRA did not necessarily respect. This begs the question on the relevance and effectiveness of a peace process whose backers believed in the signing of the agreement as signalling an end to the conflict; as opposed to the LRA, whose 20-year war was influenced by their belief in the disenfranchisement of the Acholi and spiritualism to facilitate their objective of taking over power from the NRM government.

The Juba peace process was not successful in its quest to attain peace for the Acholi people and the rest of the people of northern Uganda. Yes, there was relative peace that was realised in northern Uganda through the absence of violence. However, there was limited freedom for the Acholi to develop since the status quo was inconclusive given the failure of the LRA and GoU to sign the final peace agreement.

It was envisaged that the signing of the final agreement would create a foundation upon which development rights would be pursued. There are still efforts being undertaken to develop a national law on transitional justice, which will have its own implementation chal-

[171]Informal discussion held with Mr. Ambrose Olaa the Prime Minister of Acholi Kingdom on 9th June 2017 at Ker Kwaro (Acholi Cultural Institution).

[172]Preamble to the Juba Peace Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement.

[173]As above.

lenges since the recently drafted National Transitional Justice policy has a national approach as opposed to focusing on the Acholi.[174]

The failure of the Juba Peace Agreement is attributable to the conflicting beliefs and needs of the parties involved. On the one hand, there was the LRA, a rag-tag rebel group whose fight was based on mysticism and African traditional beliefs. On the other, was the GOU that was pushing forward a donor-backed peace treaty whose signing was supposed to be binding on both parties and reflect their commitment to observe its terms. This was bound to fail.

The LRA, especially its top leadership, were largely Acholi, that emerged from political obscurity to wage war against GOU on behalf of the Acholi. This was originally done with the blessing of traditional leaders. Where Acholi culture and beliefs were invoked to start the war, the conflict could only be concluded in a similar. The signing of a 'piece of paper' would, therefore, hold no significance.

Further, the Acholi believe in their traditional conflict resolution mechanism, *mato oput*. *Mato oput* is respected and considered binding as it focuses on forgiveness and reconciliation,[175] factors that are at the centre of Acholi traditional culture. Traditional Acholi believe in the world of the 'living-dead' and divine spirits;[176] entities that need to be appeased in the event of conflict to avert reprisals in the form of misfortune or other punishment on the entire clan or tribe.[177] It is these beliefs that shape their views on justice and reconciliation.[178] The failure of the Juba peace process was, therefore, inevitable.

Further, a number of African cultures believe in the sanctity of an oath taken. For instance, among the Acholi, swearing over a mother or a dead parent held a lot of weight and

[174]National Transitional Justice Policy 2019.

[175]P Tom, 'The Acholi traditional approach to justice: The war in northern Uganda', posted in August 2006, http://www.beyondintractability.org (accessed 3 October 2020).

[176]As above.

[177]OL Ogora & Uganda Law Reform Commission, 'Traditional Justice: A significant part of the solution to the question on accountability and reconciliation in Northern Uganda' (A case study of the Acholi local justice mechanism of mato oput in Northern Uganda), (2008) Volume 6, *Uganda Living Law Journal*, 1.

[178]Tom (n 175 above).

one's commitment to the terms of an agreement was taken seriously. Such an oath symbolised honesty on the part of the maker. The maker of an oath was always believed and they, on their part, would abide by the oath. The essence of such practices in the Juba peace process explains the elusiveness of the LRA in seeing through the peace agreement. Had they taken an oath at the signing of the peace agreement, they would have felt obliged to abide by its terms.

There have been other failed attempts to attain peace in Africa due to a general neglect and failure of the state to recognise the significant role that traditional African beliefs play in conflict resolution. An example of this is the Marikana massacre. The Marikana massacre arose from a standoff between Marikana miners who were advocating for better pay and living conditions while working in the Lonmin Platinum mines at Marikana. Security forces were subsequently called in and the standoff ended with 34 miners shot dead and 78 injured.[179]

In the Marikana massacre, the striking Marikana miners believed in and sought the assistance of a traditional healer (*sangoma*) to wash and sprinkle their bodies with a substance that would make them invisible and consequently invincible to bullets.[180] A failure of the talks was, therefore, guaranteed. The Marikana miners prepared for the interface both physically and spiritually,[181] an aspect that the government of South Africa did not envisage. Modernity and the common notion of having table discussions to resolve the strike were considered; and the influence of occultism ignored. It is this spiritual aspect that rules over African lives.

In northern Uganda, between 1986 – 1987, there was the Holy spirit movement led by Auma Alice Lakwena that also had its fighters believe that they were immune to bullets fired by government troops once their bodies were smeared with a mixture of shear nut oil and red

[179]A du Preez, The Marikana massacre: Seeing it all, (2015) Volume 16 No 4, 419-442, 434.

[180]As above, 433.

[181]As above, 434.

soil.[182] It was believed that this mixture would provide immunity to the fighters and bounce off enemy bullets.[183] The LRA later conscripted the remnants of this movement.

In African society, there is a general belief in the invocation of the spiritual world when resolving conflict, especially those involving the spilling of blood. Even among the Igbo in Nigeria, where there was spilling of blood, like is the case in the northern Uganda conflict, ritual treaties and blood covenants would be entered into to resolve the conflict .[184] The commission of a social offence would be tantamount to an abomination *(aru*) since the laws of the earth god, the guardian of morality and controller of fortune and economic life, would have been infringed upon.[185] An oath would, therefore, be taken in the name of the earth god.

Considering that these practices are deeply entrenched in the traditional way of life, a much higher degree of respect would be accorded to traditional modes of resolving conflict as opposed to western peace treaties that required the signing of peace agreements. The disregard for western-style peace agreements would be high where the agreements are negotiated under the influence and supervision of the international community.

The Juba peace process, could have been more successful had the Acholi traditional justice system of *mato oput* been incorporated as part of the process. As alluded to, the Acholi believe in their traditional practice of *mato oput* as it upholds the sanctity of human life and promotes a culture of peace and reconciliation. *Mato oput* is holistic in its approach as all the parties involved are summoned. In the eyes of the LRA, the Acholi elders were equally culpable and should have also been party to the peace talks as they initially blessed the rebellion

[182]'Cults: How Lakwena amassed 10, 000 fighters', *New Vision*, posted on 7 October 2019, https://www.newvision.co.ug (accessed 15 October 2020).

[183]New Vision, as above.

[184]EO Anyacho, & DB Ugal, 'Modernization and traditional methods of social control in Obudu local government area of cross River State, Nigeria', a paper presented at the first biennial conference of the Centre for Peace and Strategic Studies, University of Ilorin, Nigeria, (October 2010), 28 in CA Lanshima, African traditional systems of conflict resolution, **(**2016**)** Volume 20, No 1 & 2, *The African Anthropologist*, 262 – 291, 280.

[185]CA Lanshima, African traditional systems of conflict resolution, **(**2016**)** Volume 20, No.1 & 2, *The African Anthropologist*, 262 – 291, 284.

but later withdrew their support.[186] To the LRA, this justified their introduction of violence against the Acholi people.

Mato oput, is a voluntary process that is performed when there has been any killing, whether intentional or unintentional.[187] This is contrary to the Juba peace process where the LRA and the GoU were in essence coerced into holding the peace talks. Mato oput involves the drinking of the bitter root as a symbolic act that reunites the conflicting parties. The bitter oput root is mixed with kwete (a local drink) and blood and drunk by both parties to symbolise the washing away of the bitterness between the parties.[188] Liver from a slaughtered animal is also eaten to restore good relations.[189] The parties are reconciled and social trust rebuilt to avert future reprisals.[190]

African peace processes like *mato oput* are revered and highly respected by local communities as opposed to foreign practices of signing peace agreements. The fear of reprisals from ancestors compels them to 'willingly' reconcile and abide by the agreement made. An oath taken in front of clan heads and invoking the names of ancestors attracts a higher commitment towards enforcement of the terms agreed upon. Not having *mato oput* as a mode of conflict resolution during the Juba peace process marred any opportunity for a durable end to the conflict.

It is evident that a 'paper-based' agreement would have no impact on generating a lasting solution to the northern conflict. The Juba peace process was, therefore, bound to fail from the onset. The signing of peace agreements cannot, therefore, replace such elaborate ceremonies that are deeply spiritual and entrenched in the Acholi's beliefs and way of life. As a result, critiques like Pham *et al* have argued that such communities should be allowed to

[186]'Uganda: Acholi elders may hold key to peace talks', posted on 18 July 2006, https://reliefweb.int (accessed 15 October 2020).

[187]Ogora & Uganda Law Reform Commission(n 177 above), 1.

[188]Tom (n 175 above).

[189]T Murithi, African approaches to building peace and social solidarity, 26.

[190] As above.

respond to their conflicts in their own way and use means that are in line with their local traditions.[191]

To date, foreign norms are used in the resolution of conflicts. Most of these peace processes have only been successful in as far as establishing a ceasefire. However, other terms of the agreements are seldom implemented. 'Signing ceremonies' are alien to the African parties involved and, therefore, would not attract the same level of commitment that an indigenous process would.

4.8.2. General observations on 'western' peace negotiations versus the impact of African traditional beliefs in conflict resolution

The disregard for Africanised dispute resolution practices contributes to the unsuccessful peace processes in Africa, including the Juba Peace Agreement. The whole process was funded and supervised by the international community; and the mediators, though African, were not Ugandan, nor Acholi. The failure of peace processes, therefore, affected the rate at which development was attained in the concerned communities.

The spiritual element that was seen in the studies cited is lacking. It is this spiritual element that would oblige the parties to adhere to the terms of the resolution due to a general fear of the repercussions of angering the spirits/ancestors. The signing of document symbolising a peace agreement would, therefore, hold no weight even for parties like the LRA, a number of whom were Acholi and had a cultural background hinged on spiritualism.[192]

The Acholi traditional conflict resolution system ought to have been treated as being complementary to the western model that was used in the Juba peace process. This contributed to the bias towards and the negative outcome of the Juba peace process. A peace treaty concerning African issues but devoid of any recognised African traditional approaches to conflict resolution could not be respected. The insistence on the signing of a peace treaty was a foreign concept imposed on a group of rebels that still had an attachment to their traditional beliefs.

[191]P Pham, 'The Acholi traditional approach to justice and the war in northern Uganda', August, 2006, http://www.beyondintractability.org/casestudy/tom-acholi, (accessed 10 June 2017).

[192]Cross-cultural Foundation Uganda, 'Women, culture and rights in Acholi', (2017), 6.

The participation by the victims of the conflict in the Juba peace was also very limited if not lacking. Instead it was GoU, generally considered as a perpetrator of the LRA conflict, that was the second party. Those that were wronged were never represented. It is no wonder that other than the general ceasefire, the LRA did not adhere to the main objectives of the Juba Peace Agreements which, among other things, required them to abandon the rebellion.

Peace in Africa will, therefore, generally remain elusive unless revered and respected traditional cultural practices that impact on conflict resolution are treated as being complementary to 'modern' peace processes.

4.9. Lessons from the Juba peace process and its impact on the RTD

Much as the final peace agreement was never signed, a foundation was laid for the possible return of peace and implementation of transitional justice mechanisms. In light of the success and failures of the peace talks, some lessons were drawn that could impact on the attainment of the RTD. The lessons include the following:

4.9.1 Partial involvement of the LRA leadership in the peace process

A successful peace process demands a committed and full participation of the relevant leadership. The limited participation of the relevant LRA commanders undermined the outcome of the peace process from the onset. The initial delegation representing the LRA largely comprised of Acholi from the diaspora as opposed to those that were within the rank and file of the LRA fighting force.

The LRA leadership did not fully embrace the process. There was eventual mistrust and suspicion by those within the fighting force against the Acholi from the Diaspora who were negotiating on their behalf. It was not a surprise, therefore, that the LRA did not show up to sign the final peace agreement.

4.9.2 The effect of Uganda's referral of the LRA leadership to the ICC

GoU referred members of the top leadership of the LRA to the ICC for prosecution for war crimes and crimes against humanity they had allegedly committed. Some of the crimes they were alleged to have committed included rape, murder, enslavement, sexual enslavement, and

forced enlistment of children.[193] This was discussed in the previous sections. This referral had a positive effect in that it nudged the LRA leadership into participating in the peace talks in the hope of avoiding prosecution.

The referral was also counter-productive as it cast a shadow over the peace process. The LRA expressed a willingness to participate in the peace talks but demanded that the arrest warrants issued against them by the ICC be withdrawn before the final agreement could be signed. To date, only Dominic Ongwen has so far been brought before the ICC and prosecuted. The warrant against Joseph Kony, the LRA leader, has not been withdrawn. This was alluded to in the previous sections.

4.9.3 One-sided demands by GoU

For any meaningful negotiations, attempts should be made to ensure that the outcome would have a win-win outcome for the parties involved. There is need for an element of inclusiveness to be reflected in a peace agreement to enable both parties to feel that their interests are well catered for. This gives room for mutual trust between the parties as both parties seek to 'give and take', as would be envisaged under any contractual agreement.

The Juba peace talks on the other hand, appeared to be heavily skewed in favour of the GoU over the LRA. Some of the terms of the agreement were in favour of the GoU but more commitment was expected from the LRA. This rendered the LRA vulnerable. The LRA were required to assemble at two assembly points in either Ri-kwangba in West Equatoria or Winy Ki-Bul in East Equatorial. Talks on the comprehensive peace agreement were to commence upon the LRA having assembled. The LRA leaders, including Joseph Kony, declined to enter the camps as there were still outstanding ICC warrants against them.

In addition, the peace talks were marred by selfish interests as portrayed by the team representing the LRA. At the initial stages of the peace talks, some members of the LRA delegation were perceived as 'not having a claim to represent the actual LRA fighters'.[194] These

[193]Statement by Chief Prosecutor Luis Moreno-Ocampo, 14 October 2005 in C Rose and F M Ssekandi, 'The pursuit of transitional justice and African traditional values: A clash of civilisations – The case of Uganda', (2007) number 7 year 4, *International Journal of Human Rights*, 104.

[194]Hendrickson & Tumutegyereize, (n 8 above),19.

delegates were viewed as having their own concerns resolved as opposed to the concerns of the LRA fighters that had led them to fight the GoU.[195] Consequently, the LRA kept changing its negotiating team, which contributed to the shift in their demands. The peace process eventually slowed down and there was a subsequent failure to have the final peace agreement signed.

4.9.4 The absence of balance of power

The Juba peace talks and the negotiations that followed were heavily tilted in favour of GoU. One of the observations is that the LRA was largely treated as the main perpetrators of the human rights violations that occurred. This was different from the Doha peace agreement which provided for a power sharing arrangement. Consequently, even where there were talks of prosecution, it was in terms of having the LRA fighters prosecuted and not the government soldiers who were equally complicit in the violation of human rights.

To this end, Joseph Kony, the LRA leader, was uncompromising on the need for both the LRA and UPDF soldiers to be treated equally, and that if a special court was to be created, the UPDF soldiers would have to be tried as well.[196] Consequently, the failure of parties to agree on some key issues became one of the overarching reasons why the final peace agreement was never signed.

Furthermore, the LRA fighters on their part had lower negotiating skills as compared to their counterparts representing the GoU. One of the factors that inhibited the capacity of the LRA to negotiate fair terms for themselves was the fact that they were not directly represented by those that had fought the war in the initial stages of the talks. Rather, the LRA were represented by Acholi from the diaspora that had their own interests. This tilted the talks against the LRA and later affected the signing of the final peace agreement.

[195]Hendrickson & Tumutegyereize, (n 8 above),19.

[196]Interview of Bishop Mark Baker Ochola, Gulu, 2 May 2010; in D Hendrickson & K Tumutegyereize, 'Dealing with complexity in peace negotiations: Reflections on the Lord's Resistance Army and the Juba talks' (January 2012), 2.

4.10 Conclusion

The Juba peace talks set out to find an end to the northern Uganda conflict and ensure lasting solutions to guarantee the enjoyment of human rights by the Acholi and non-repetition of the conflict. However, only some of the objectives were achieved. The stage was, however, set for the implementation of transitional justice mechanisms in Uganda; which policy was passed. In the absence of a transitional justice law in Uganda to guide the enforcement of the RTD in Acholiliand as envisaged under the Juba Peace Agreement, there was no legal or institutional vacuum to guarantee enjoyment of the right. Chapter five, therefore, seeks to assess the effectiveness of the existing legal and institutional framework in guaranteeing the attainment and enjoyment of the RTD northern Uganda.

CHAPTER FIVE
EFFICACY OF LEGAL AND INSTITUTIONAL FRAMEWORK FOR GUARANTEEING THE RIGHT TO DEVELOPMENT IN NORTHERN UGANDA

5. Introduction

One of the core objectives of development is to further the fulfilment of human rights.[1] The RTD can best be protected and promoted if there is a versatile legal regime in place and strongly rooted institutional mechanisms that can support the attainment of the right for the Acholi. These legal and institutional frameworks provide a stepping stone upon which development can be pursued. What remains to be determined is the extent to which these frameworks have been effective in guaranteeing realisation and enjoyment of the RTD.

This chapter, therefore, reviews the legal and institutional framework for the RTD. This review is done with a specific intent of establishing the extent to which the RTD is guaranteed for the Acholi. The discussion delves into an analysis of the efficacy of Uganda's legal and institutional framework. These are discussed below.

5.1. Legal guarantees on the right to development

The RTD cannot be enforced without the existence of a legal and institutional framework to breathe life into and give meaning and effect to the right. GoU has put in place a legal regime and set up the necessary institutional framework to protect and ensure the enforcement of the RTD. There is need, therefore, for these legal and institutional framework to be scrutinised to ascertain their level of effectiveness.

5.1.1. National legal framework on the RTD

i. 1995 Uganda Constitution

In the 1995 Uganda Constitution (Uganda Constitution), the RTD is provided for in the national objectives and directive principles of state policy (NODPoSP) and not in the bill of

[1]SN MCinerney-Lankford, ' Human rights and development: A comment on challenges and opportunities from a legal perspective', (March 2009) Volume 1 No 1, *Journal of Human Rights Practice*, 51–82, 53.

rights.[2] Authors like Viljoen have opined that human rights that are provided for under the directive principles of state policy are not necessarily justiciable, but rather, give guidance to the executive or legislature in the fulfilment of their functions.[3]

The Uganda Constitution enjoins the State to guarantee fundamental rights and freedoms for its populace.[4] The State is also required to respect institutions that are mandated to protect these rights.[5] This obligation requires the state to, among other things, provide adequate resources to facilitate relevant institutions to perform their functions.[6] The obligation also requires that such institutions be permitted to operate freely within their mandate and without State intimidation.[7] In a quest to fulfil its mandate, the GoU created institutions such as the Uganda Human Rights Commission (UHRC) and the Equal Opportunities Commission (EOC) to ensure that human rights are protected and promoted.[8]

The Transitional Justice Working Group (TJWG) was also established under the Justice Law and Order Sector (JLOS) to draft policies aimed at guiding the implementation of transitional justice mechanisms in Uganda. The Justice Law and Order Sector (JLOS) is a forum through which government institutions with mandates closely linked to administration of justice and promotion of observance of human rights, among others, meet to discuss their objectives and plans.[9] Whether these institutions have been effective in guaranteeing human rights and contributing to the attainment of the RTD, will be discussed in the section on the institutional framework.

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[2]Constitution of the Republic of Uganda 1995 (as amended), principle ix of the National Objectives and Directive Principles of State Policy.

[3]F Viljoen, 'Justiciability of socioeconomic rights at the domestic level'; in 'International human rights law in Africa', (2007), 576-577.

[4]Constitution of the Republic of Uganda 1995 (as amended), principle v of the National Objectives and Directive Principles of State Policy.

[5]Constitution of the Republic of Uganda 1995, as above.

[6]Constitution of the Republic of Uganda 1995 (as amended), principle v (i) of the National Objectives and Directive Principles of State Policy.

[7]As above.

[8]Constitution of the Republic of Uganda 1995 (as amended), arts 32 (2) & 51, respectively.

[9]Brief on the Justice Law and Order Sector,
http://judiciary.go.ug>data>smenu>Justice%20Law%20and%20Order%20Sector.html, (accessed 9 July 2018).

The Uganda Constitution recognises the RTD and obliges the State to facilitate equitable development by encouraging private initiatives to be undertaken.[10] This provision confirms that the attainment of the RTD in northern Uganda is a State obligation and that its attainment requires the active participation and contribution of the local populace. The Uganda Constitution further enjoins the State to ensure the involvement of Ugandans in the planning and implementation of development programmes that concern them.[11] This provision calls for a reflection on whether development interventions like PRDP were formulated and implemented in the spirit of these constitutional obligations.[12]

The Uganda Constitution requires the GoU to use integrated and coordinated planning approaches when planning for development.[13] In addition, the measures undertaken ought to facilitate the balanced development of every region of Uganda.[14] Much as the need to ensure balanced development is noble, it is not clear as to what would amount to balanced development. Though government links improvement in infrastructure to development, it is not clear whether within this definition of development, social and economic well-being are embraced as part of a wider definition of the RTD.

The Uganda Constitution further enjoins the State to facilitate Ugandans to enjoy their right to social justice and economic development. This is through the undertaking of developmental efforts that aid the social and cultural well-being of the people.[15] The Uganda Constitution also makes provision for all Ugandans to enjoy the available rights and opportuni-

[10]Constitution of the Republic of Uganda 1995 (as amended), principle ix of the National Objectives and Directive Principles of State Policy.

[11]Constitution of the Republic of Uganda 1995 (as amended), principle x of the National Objectives and Directive Principles of State Policy.

[12]Constitution of the Republic of Uganda 1995 (as amended), Principle x of the National Objectives and Directive Principles of State Policy.

[13]Constitution of the Republic of Uganda 1995 (as amended), Principle xii(i) of the National Objectives and Directive Principles of State Policy.

[14]Constitution of the Republic of Uganda 1995 (as amended), Principle xii (ii) of the National Objectives and Directive Principles of State Policy.

[15]Constitution of the Republic of Uganda 1995 (as amended), Principle xiv (a) of the National Objectives and Directive Principles of State Policy.

ties, including, access to education, health services, work and food security, among others.[16]

This provision of the Uganda Constitution encompasses the essence of the RTD. Here, once an impoverished and dejected society had access to quality education, it would avail more avenues for development and empowerment of the community. This way, an ordinary Acholi once stripped of all their basic possessions and livelihood would be able to have a life of dignity.

The Uganda Constitution recognises the rights of women and the need to accord them full and equal dignity with men.[17] The Uganda Constitution also recognises that women's rights require special protection because of their unique status in society.[18] Furthermore, the Uganda Constitution provides for the right of women to be treated equally with men. This right includes equal opportunities in economic and social activities, among others.[19] The Uganda Constitution also provides for affirmative action with a view to redressing imbalances.[20]

The importance of women in Acholiland during and after the LRA conflict is evident. As was already seen in chapter four, Honourable Betty Bigombe was instrumental in making peace a possibility for the people of northern Uganda, without which the RTD would be difficult to enjoy. In the aftermath of the northern Uganda conflict, women were equally crucial given that a number of men lost their lives while others were abducted. It is estimated that between 28000 and 37000 adults were abducted by 2007,[21] which is a considerably high number.

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[16]Constitution of the Republic of Uganda 1995 (as amended), principle xiv (b) of the National Objectives and Directive Principles of State Policy.

[17]Constitution of the Republic of Uganda 1995 (as amended), art 33(1).

[18]Constitution of the Republic of Uganda 1995 (as amended), art 33(3).

[19]Constitution of the Republic of Uganda 1995 (as amended), art 33(4).

[20]Constitution of the Republic of Uganda 1995 (as amended), art 33(5).

[21]P Pham *et al* 'Abducted: The Lord's Resistance Army and forced conscription in northern Uganda', (2007); in J Sarkin, 'Providing reparations in Uganda: Substantive recommendations for implementing reparations in the aftermath of the conflicts that occurred over the last few decades', (2014) 14 *African Human Rights Law Journal*, 532.

Women assumed roles that were traditionally reserved for men. This was in sharp contrast from Acholi traditional culture where men were the primary bread winners; while women were assigned the role of overseeing the functioning of the home, among other things.[22] The shift in gender roles facilitated women in Acholiland to demonstrate their ability to fully provide for the needs of their families.

The Uganda Constitution also provides for enhancement of the welfare of women. This provision seeks to facilitate the advancement of women and enable them to realise their full potential.[23] In light of cultural values in local communities, women's rights are not necessarily viewed the same way. Despite the existence of constitutional guarantees, cultural norms stifle the active participation of women in development planning.[24]

Considering that the LRA conflict further exacerbated the already existing imbalances in a largely patriarchal society, there is need for development policies to be formulated in consideration of this so that women's rights and interests are adequately catered for. Consideration of the role of women in the attainment of the RTD has never been more necessary given the shift in gender roles and their taking on the mantle of heads of households in the absence of men.

5.1.2. Regional legal framework

i. African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights (ACHPR) recognises that all persons have a right to enjoy the rights and freedoms enshrined therein notwithstanding their sex, social origin or other status, among others.[25] The ACHPR also recognises that all peoples have a right to exist and freely pursue their economic and social development in accordance with policies they have chosen.[26]

Much as the ACHPR guarantees peoples' right to pursue their development, govern-

[22]Informal discussion held with Mr. Ongaya Acellam, Clan, Leader, Koro Ibakara Clan, on 9th June 2017 at Gulu municipality, Gulu district.

[23]Constitution of the Republic of Uganda 1995 (as amended), art 33 (2).

[24]Constitution of the Republic of Uganda 1995 (as amended), art 38.

[25]African Charter on Human and Peoples' Rights, art 2.

[26]African Charter on Human and Peoples' Rights, art 20 (1).

ment policies like the Peace Recovery and Development Plan (PRDP) were not necessarily chosen by the Acholi. Further, peoples like the Acholi do not often get opportunities to freely choose policies they would like to be governed by. Consequently, in a post conflict setting like Acholiland, these development policies are predetermined without the meaningful participation of the people.

Furthermore, the ACHPR assumes that African peoples are able to explore other options in the event of failure of government policies. This would have been dependent on beneficiaries, like the Acholi, being aware of the existence of government policies. It would also be dependent on the Acholi's being empowered and having the ability to determine whether such development programmes are a success or failure. More often than not, project beneficiaries are not aware of these programmes or how such programmes seek to develop them.

The local populace lack empowerment and awareness of the nature and content of government programmes that are being implemented in their communities.[27] Lack of empowerment affects their ability to demand for accountability from the State. This explains the inaction by the Acholi to demand for an improvement of their livelihood and socio-economic wellbeing.

The ACHPR protects development for all peoples.[28] The ACHPR obliges the GoU to, either on its own or collectively with development partners, ensure that the RTD is exercised.[29] The ACHPR, however, leaves the interpretation and determination of how the RTD is to be exercised to State parties within their domestic domain. This position is similar to that in the Uganda Constitution. The Uganda Constitution does not define what the RTD is and how it can be locally realised.

The ACHPR also guarantees the right of all peoples to a satisfactory environment that favours their development.[30] The ACHPR, however, does not define what amounts to a 'satis-

[27]'CDOs faulted for failing gov't programmes in Acholi', *The Independent* 22 March 2020, https://www.independent.co.ug/cdos-faulted-for-failing-govt-programmes-in-acholi/, (accessed 2 July 2021).

[28]African Charter on Human and Peoples' Rights, art 22 (1).

[29]African Charter on Human and Peoples' Rights, art 22 (2).

[30]African Charter on Human and Peoples' Rights, art 24.

factory environment' for an ordinary Acholi in Pabbo Sub County, Amuru district in northern Uganda. In the absence of a clear definition of what would amount to a 'satisfactory environment', the views of an Acholi would differ from those of a technocrat drafting development policies in the central government. The needs/views of the two entities are diametrically different, with the Acholi prioritising traditional justice and reparations over consolidation of State authority, which was the first strategic objective of PRDP.[31]

The ACHPR recognises the family as the basic unit of society and the custodian of morals and traditional values.[32] The ACHPR, therefore, obliges all individuals to ensure that the family is developed in harmony; and that they work for the cohesion and respect of the family.[33] The ACHPR further requires States Parties to ensure that discrimination against women is eliminated; and that the rights of women and children are protected.[34]

The role of women in a family is appreciated, however, culture still plays a central role in determining the nature of protection accorded to women and children; and the level of their participation in discussions on developmental issues. In the northern Uganda setting, a patriarchal society, development is a shared responsibility borne by both men and women. However, the men determine the nature of development to be undertaken. Women, on the other hand, are consulted only when it is deemed necessary.[35] But in the post-conflict situation where there are more female-headed households, the views of the female-head ought to be considered.

ii. Protocol to the African Charter on the Rights and Welfare of Women

Uganda ratified the Protocol to the African Charter on the Rights and Welfare of Women (Maputo Protocol) on 22nd July 2010.[36] The Maputo Protocol was signed when the conflict in northern Uganda had ended and would ordinarily not have retrospective application. The im-

[31]Peace Recovery and Development Plan (2007), 38.

[32] African Charter on Human and Peoples' Rights, art 18 (1).

[33] African Charter on Human and Peoples' Rights, art 29 (1).

[34]African Charter on Human and Peoples' Rights, arts 18(2) & (3).

[35]Informal discussion held with Mr. Ongaya Acellam, Clan, Leader, Koro Ibakara Clan, on 9th June 2017 at Gulu municipality, Gulu district.

[36]Information available at: http://www.achpr.org>instruments>ratification, (accessed 10 July 2018).

pact of the conflict on enjoyment of human rights, including the RTD, has however, continued to date. Hence its applicability.

The Maputo Protocol guarantees the right of women to dignity.[37] The protocol also recognises and protects their human and legal rights.[38] In the Maputo Protocol, States like Uganda are enjoined to implement measures that could help prohibit any form of exploitation or degradation of women.[39] The protection afforded by the Maputo Protocol is necessary for the women of northern Uganda who were degraded during and after the war. Some of the Acholi women have been forced by their socio-economic circumstances to resort to prostitution. There is nothing more degrading in Acholi culture, a people who took pride in catering for the needs of community members, than to be so desperate as to turn to prostitution to put food on the table.[40]

The Maputo Protocol also guarantees the rights to life and security of the person.[41] In defining the nature of the right to life,[42] General Comment No. 3 on the ACHPR, defines the right to life as a foundational right and, therefore, requires the attainment of all human rights enjoyment.[43] The development of Acholi women would depend on their ability to fully maximise their right to life. The enjoyment of this right would include the adeptness of women to adequately fend for their families.

The Maputo Protocol provides for the right of women to participate in decision making processes.[44] The Maputo Protocol recognises the equality of women and men as partners irrespective of the level of development and the extent to which State polices and develop-

[37]Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, art 3.

[38]Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, art 3.

[39]Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, art 3(3).

[40]Informal discussion held with Mr. Ongaya Acellam, Clan Leader, Koro Ibakara Clan, on 9th June 2017 at Gulu municipality, Gulu district.

[41]Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, art 4 (1).

[42]African Charter on Human and Peoples' Rights, art 4.

[43]General Comment No. 3 on the African Charter on Human and Peoples' Rights: The right to life (art 4), adopted at the 57th ordinary session of the African Commission on Human and Peoples' Rights, 4th – 18th November 2015, Banjul, paras 5 & 6.

[44]Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, art 9.

ment programmes have been implemented.[45] As observed earlier, culture is a hindrance on the right of women to fully participate in development planning. This is due to the patriarchal nature of Acholi society; though active participation is one of the key aspects for the attainment of the RTD.

Much as it is good to have a recognised RTD, it makes even more sense when sustainable development is guaranteed. This right of women to sustainable development is provided for under the Maputo Protocol.[46] This provision goes beyond requiring State parties to guarantee the RTD by providing that it should be sustainable. The challenge, however, is with regard to enforcement and ensuring that the RTD is indeed sustainable.

The Maputo Protocol provides for a gender perspective to national development planning.[47] The protocol also promotes the participation of women at all levels of development. This includes women's involvement in the conceptualisation, implementation, and evaluation of development interventions.[48] The need for the participation of women in attainment of the RTD has been alluded to in the preceding paragraph.

Additionally, sustainable development can only be attained where a contribution is made by the local community. This contribution leads to ownership of development processes. The challenge, however, is that more focus was placed on empowering women to the detriment of men. While the men battled with post-war trauma and were not ready for life after conflict, women became more economically empowered and aware of their human rights.[49] The more women became economically empowered, the higher the risks of domestic violence. This was because Acholi men felt that their position in society was threatened.

[45]Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, art 9 (c).

[46]Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, art 19.

[47]Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, art 19 (a).

[48]Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, art 19 (b).

[49]'Suicides high as northern women get empowered',
https://www.newvision.co.ug/new_vision/news/1425244/suicides-northern-women-empowered, (accessed 9 August 2019).

iii. Protection of the RTD under the African Charter on the Rights and Welfare of the Child

Uganda ratified the African Charter on the Rights and Welfare of the Child (ACRWC**)** on 17th August 1994.[50] The ACRWC obliges the GoU to improve the conditions in which an African child lives. These conditions include: ensuring that special safeguards and care are in place to protect children against socio-economic factors, culture and armed conflicts.[51] In light of this, the ACRWC recognises the family as the basic unit of society and requires the State to ensure its protection and support for its establishment and development.[52]

The ACRWC also obliges the GoU to take measures that render the necessary protection and care to children affected by armed conflict.[53] This protection is needed by children who have been in situations of conflict, tension and strife.[54] In the post conflict setting in northern Uganda, where families were disintegrated through displacement, death and abduction, it is challenging to identify the special safeguards put in place by the GoU has done to protect and develop children.

In light of the foregoing paragraph, can it then be said that there has been protection of the child? Even with the return process, can there be said to be special protection afforded to Acholi children to enable them enjoy their rights within the community? If there is, are they able to participate and forward their ideas on how they would like their RTD to be attained?

The ACRWC entitles children who have been permanently deprived of their family environment to special protection and assistance.[55] The ACRWC, however, does not define the nature of this special protection and assistance for children. Enforcement of such a provision would, therefore, be a challenge since the goodwill of state parties would be required to

[50]List of countries which have signed, ratified/acceded to the African Union Convention on the African Charter on the Rights and Welfare ofthe Child available at:
http://www.achpr.org/english/ratifications/ratification_child%20rights.pdf, (accessed on 27 September 2010).

[51]African Charter on the Rights and Welfare of the Child, para 4 of the preamble.

[52]African Charter on the Rights and Welfare of the Child, art (18) (1).

[53] African Charter on the Rights and Welfare of the Child, art (22) (1).

[54]African Charter on the Rights and Welfare of the Child, art 22 (3).

[55]African Charter on the Rights and Welfare of the Child, art 25 (1).

implement it. Furthermore, Uganda does not have adequate resources or specialised institutions to offer special protection or assistance to children in a post-conflict setting.

There is a Family and Child Protection Units (FCPAU) within the Uganda Police Force structure. However, this unit is not equipped to deal with issues emanating from conflict and the accompanying human rights violations and abuses. This inadequacy hampers any efforts that could be undertake to protect children.

iv. African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) was a strategy by the African Union to create a binding instrument at the African regional level. The Kampala Convention sought to offer better protection for IDPs in the African continent. The Convention was signed by Uganda on 23rd October 2009 and ratified on 29th January 2010.[56] The Kampala Convention, in essence, applies to the handling of matters affecting displaced Acholi in the post-conflict era.

The Kampala Convention defines IDPs to include, persons that have been forced out of their homes to avoid the effects of armed conflict.[57] The Kampala Convention obliges the GoU to protect and assist IDPs during displacement and obtain durable solutions for them.[58] The Acholi are entitled to durable solutions to facilitate their transition from conflict to peace. It is through the implementation of durable solutions that the RTD can actually be enjoyed by the local populace. The Acholi would also be empowered to contribute to the achievement of developmental goals in the region.

The issue that arises here is whether GoU formulated any durable solutions for the Acholi and what they are? And have they been attained? If yes, to what extent have they been

[56]Ratification status available at https://www.au.int/web/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa, (accessed 13 June 2017).

[57]African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, art 1(K).

[58]As above, art 2(a).

attained in the past 10 years since the cessation of hostilities in northern Uganda? These durable solutions ought to have been included in the PRDP.

In chapter three, it was observed that the third phase of PRDP did not have a standalone budget unlike the first and second phase of the programme. Rather, its budget was incorporated within the general budgeting system of the respective district local governments.[59] This stalled the capacity of the relevant district local governments to fulfil developmental rights of the Acholi. The third phase of PRDP had sought to be more victim-centred as compared to the first and second phase that focused on strengthening institutions.

The Kampala Convention also emphasises that the humanity and human dignity of IDPs should be respected.[60] This respect for humanity and human dignity is lacking in the post conflict era. The Acholi that were deliberately displaced from their villages have not been assisted to access healthcare, potable water, food or land and its associated rights.

The Kampala Convention obliges the GoU to domesticate its obligations under the Convention.[61] GoU is also obliged to designate an entity to coordinate activities that offer protection and assistance to IDPs.[62] The entity is also required to adopt measures, including policies on internal displacement.[63] This was not done by the Office of the Prime Minister (OPM) which was tasked to oversee the general implementation of the PRDP. The human rights concerns of the Acholi largely remain unattended to. This mandate of the OPM will be discussed in the ensuing sections.

The actual implementation of PRDP, however, is carried out by the district local governments in northern Uganda. These district local governments have had their own challenges

[59]Informal discussion with a Community Development Officer in Gulu district on 16th June 2017.

[60]African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, art 3(1)(c).

[61]African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, art 3(2)(a).

[62]African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, art 3(2)(b).

[63]African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, art 3(2)(c).

which were discussed in chapter three. The Kampala Convention, however, imposes a primary duty on the GoU to provide protection and humanitarian assistance to IDPs.[64] Furthermore, in availing protection and humanitarian assistance, the Gou is obliged to cooperate with other State parties.[65] The level of cooperation between states is, however, questionable.

There are questions regarding the ability of African governments to negotiate fair terms for development assistance especially where there is a mismatch in priorities. For instance, a Ministry of Health budget made provision for Uganda shillings 3 billion for sex lubricants for homosexuals.[66] This budget ignored other dire health concerns including nodding disease, which has particularly plagued northern Uganda. No real or lasting assistance has been offered.

The Kampala Convention further imposes obligations on States to ensure sustainable return and local integration of IDPs. The Kampala Convention also requires that satisfactory conditions be created for voluntary return on a sustainable basis and that there should be safety and dignity.[67] Firstly, the IDPs were never availed an option of returning voluntarily to their villages. The GoU declared camps closed and World Food Programme (WFP) cut off food relief to force people to return to their villages.[68]

Secondly, some of the land on which the IDP camps had been created belonged to private individuals who wanted their land back. Staying was, therefore, not an option for IDPs unless they entered into some form of agreement with the land owners.[69] Further, NGOs that availed most of the humanitarian assistance in northern Uganda pulled out at the end of

[64]African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, art 5(1).

[65]African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, art 5(2).

[66]'Row erupts over purchase of Shs 3b sex lubricants for homosexuals', *Daily Monitor,* Saturday 22 April 2017, http://www.monitor.co.ug/News/National/Row-erupts-prchase-sex-lubricants-homosexuals/688334-38994992-10q71pp/index.html, (accessed 19 June 2017).

[67]African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, art 11.

[68]Refugee Law Project, 'From arid zones into the desert: The Uganda national IDP policy implementation 2004-2012', October 2012, Refugee Law Project Working Paper No. 23, 21.

[69]As above.

the humanitarian phase.[70] This pull-out left the locals with no option but to return to their villages despite there being no basic necessities of life at return sites. The local populace has not been able to fully enjoy their socioeconomic rights even in light of the GoU programmes like PRDP. This will be discussed in detail in the next chapter.

The Kampala Convention obliges the GoU to provide effective remedies to persons that were displaced.[71] The Kampala Convention provides for the institution of an effective legal framework to afford just and fair compensation to IDPs, as well as other forms of reparations for the damage they experienced in the course of displacement.[72] Reparations have not been effected since the National Transitional Justice Policy is yet to be implemented.

In addition, institutions that have quasi-judicial powers, such as the UHRC, have attempted to order remedies for Acholi whose human rights have been violated. Orders for compensation have been made, especially for the violation of civil and political rights. Most of the payments of the awards have, however, not been honoured. The effectiveness of the UHRC's tribunal mechanism in the protection of human rights is discussed in the next section.

The Kampala Convention does not hold States parties liable for refraining from assisting IDPs.[73] The only exception is in the event that the displacement was caused by natural disasters. In a situation like northern Uganda the displacement of the Acholi people was imposed by the GoU. It should have followed that in the absence of resettlement assistance for IDPS, GoU ought to have been held liable for its failing to do so.

As previously highlighted, GoU also failed in its duty to protect IDPs from human rights violations during encampment; hence their entitlement to assistance. Some of the hu-

[70]Refugee Law Project (n 68 above).

[71]African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, art 12(1).

[72]African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, art 12(2).

[73]African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, art 12(3).

man rights that were infringed upon include: the right to life;[74] freedom from torture, cruel, inhuman or degrading treatment or punishment,[75] and the right to property.[76] This failure of the GoU's duty to protect its people in northern Uganda was substantively discussed in chapters one and two.

5.1.3. International legal framework

i. Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) is a *jus cogens* norm in that, as a result of state practice, it was adopted by States as a binding international human rights instrument. Consequently, all member States of the United Nations (UN) are obliged to abide by the UDHR. The UDHR recognises the equality of all persons in dignity and rights.[77] By virtue of this recognition. the people of Acholiland are entitled to the same protection and opportunities as any other Ugandan, that would facilitate the enjoyment of their RTD.

The UDHR further emphasises the right of all persons not to be discriminated against. All persons are entitled to the same rights and freedoms laid out in the UDHR.[78] Consequently, Ugandans in the northern part of the country were entitled to peace and the accompanying benefits of development like, their fellow citizens in the south. The guarantees on the right to non-discrimination are crucial considering that the Acholi have been marginalised on matters concerning enjoyment of their developmental rights. This calls to question the universality of the UDHR and its purported universal application.

The UDHR provides that victims whose fundamental rights granted by the Constitution or law are infringed upon have a right to an effective remedy.[79] Therefore, aggrieved local communities in Acholiland could hold GoU accountable for various human rights violations and stunted development in Acholiland. The contention, however, remains whether the local man in Acholiland is aware of this right to an effective remedy, how it can be claimed; and where it can be claimed? A response on the level of awareness in the negative would,

[74]Constitution of the Republic of Uganda 1995 (as amended), art 22.

[75]Constitution of the Republic of Uganda 1995 (as amended), art 24.

[76]Constitution of the Republic of Uganda 1995 (as amended), art 26.

[77]Universal Declaration of Human Rights, art 1.

[78]Universal Declaration of Human Rights, art 2.

[79]Universal Declaration of Human Rights, art 8.

therefore, erase the existence of the right to an effective remedy. Of what use is a right that cannot be claimed?

The UDHR guarantees the right to an adequate standard of living in a bid to ensure health and wellbeing of an individual and their family.[80] This right to an adequate standard of living includes access to food, housing, medical care, and necessary social services.[81] The Acholi are, therefore, entitled to facilities that would enable them enjoy this right. Such facilities would include equipping health centres with resources that address local health concerns such as the nodding disease; which has been largely unattended to and whose origin and treatment remains unknown.[82] It would also include creating opportunities for men and women to develop their families/clans and consequentially, their communities, the district, and region as a whole.

This right to an adequate standard of living is interrelated with the RTD. There can be no RTD if the wellbeing of local communities is not catered for. In Acholiland, however, emphasis was placed on infrastructural development. It may be argued that some GoU development programmes such as the Youth Livelihood Programme (YLP) were put in place to assist youth attain the RTD. However, as was discussed in chapter three, these programmes only benefit a few. Further, such youth are insufficiently skilled to efficiently utilise the meagre availed resources.

ii. International Covenant on Economic Social and Cultural Rights

Uganda ratified the International Covenant on Economic Social and Cultural Rights (CESCR) on 21st January 1987.[83] The ratification of the CESCR obliges the GoU to recognise the right of all peoples to self-determination.[84] This affords Ugandans an opportunity to

[80]Universal Declaration of Human Rights, art 25 (1).

[81]Universal Declaration of Human Rights, art 25 (1).

[82]Statement made to Parliament on nodding disease in northern Uganda by the Minister of State for Health (General duties), 8th February 2012, htttp://www.health.go.ug/docs/STATEMENT.pdf, (accessed 22 May 2018).

[83]Ratification status by country available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=182&Lng=EN, (accessed 12 June 2017).

[84]Covenant on Economic Social and Cultural Rights, art 1(1).

pursue their economic, social, and cultural development on their own free will.[85]

This right to self-determination presents the Acholi, as a people, an opening to determine the policy that should govern their recovery process and oversee the implementation of development programmes. In reality, there is no real or active participation of the Acholi in either policy formulation or actual implementation of development programmes; and yet participation is one of the core elements.

Article 2 (1) of the CESCR requires the GoU to ensure that social, economic, and cultural rights are progressively realised either on its own or with the assistance of development partners.[86] This progressive realisation must be attained to the highest level within available resources.[87] In other words, some effort must be put to ensure enjoyment of the RTD. The question is, where there is limited or no evidence of State efforts to guarantee realisation of the RTD, who bells the cat?

Treaty bodies are created to monitor state compliance with treaty obligations.[88] The efficacy of these treaty bodies in ensuring that State parties adhere to their treaty obligations is at times questionable. For instance, the GoU undertook to commit 15% of its national budget towards improvement of health under the Abuja Declaration.[89] GoU has consistently failed to do so and neither has it been held accountable.

The northern Uganda conflict has quite often been blamed on the Acholi as a consequence of their alleged support for the LRA.[90] Notwithstanding this fact, the GoU should assist the Acholi to develop in light of its state obligation. Uganda, being a signatory to the CESCR, has a duty to ensure equal rights to all economic, social, and cultural rights for both

[85]Covenant on Economic Social and Cultural Rights, art 1(1).

[86]Covenant on Economic Social and Cultural Rights, art 2(1).

[87]As above.

[88]C Valentina, 'The United Nations treaty bodies and universal periodic review: Advancing human rights by preventing politicization?', (2017) 39 (4) *Human Rights Quarterly*, 943–970.

[89]Abuja Declaration on HIV/AIDS, Tuberculosis and other related infectious diseases, para 26.

[90]H Tornberg, 'Ethnic fragmentation and political instability in post-colonial Uganda: Understanding the contribution of colonial rule to the plights of the Acholi people in northern Uganda', 2012, 28.

men and women.[91] Although a group right, the RTD is indivisible from, and interrelated to, socio-economic rights like the right to health and the right to livelihood.

Article 11 of the CESCR recognises the right of all persons to an adequate standard of living for themselves and their family. This provision is similar to article 25 of the UDHR, although the CESCR makes additional guarantees. The additional guarantees require state parties to continuously improve living conditions, and take relevant measures to guarantee the realisation of the right.[92] This provision also recognises that international cooperation should be based on free consent.[93]

The requirement that international cooperation be based on free consent is crucial, bearing in mind that in some instances, development partners may have their preferred areas of focus which may not necessarily be in line with the human rights and development wishes of local communities or government. Consequently, if a State like Uganda goes ahead to access donor aid in line with conditions set externally by development partners, chances of local human rights concerns and priorities being adequately addressed would be minimal.

The free consent envisaged in international cooperation between States is non-existent. This is in light of the fact that some development partners have predetermined areas of focus within a given funding cycle. Consequently, in instances where the GoU is unable to conform to donor demands, funding would not be availed. The availing of funding is dependent on the willingness of GoU to align its programmes to donor areas of interest as opposed to focusing on victim needs. Where there is inadequate focus on victim needs, their developmental rights remain unattended to.

GoU has a duty to continuously improve living conditions in northern Uganda and to take appropriate steps for the fulfilment of this right. However, 'free consent' in international cooperation alluded to in the CESCR is not really free due to the strings that are ordinarily tied to development partner funding. Furthermore, the CESCR does not define the 'appropriate' steps that the GoU ought to undertake to fulfil socio-economic rights. It is, therefore, left

[91]Covenant on Economic Social and Cultural Rights, art 3.

[92]Covenant on Economic Social and Cultural Rights, art 11.

[93]As above.

to each State to determine the measures it wishes to enforce; which may not be beneficial to the victims of the conflict. The PRDP, as was discussed in chapter three, lacked local content in the policy formulation and implementation and resulted in limited victim-centredness.

Emanating from the concept of the indivisibility of human rights, the CESCR guarantees the right of all persons to the highest attainable standard of physical and mental health.[94] This right was explained in General Comment No. 14 and includes the GoU's consideration of an individual's biological and socio-economic preconditions, as well as the available resources.[95] The Committee emphasised that a wider definition of the right to health would include socially-related concerns such as violence and armed conflict.[96]

The Committee also viewed the right to health as an inclusive right that covers components such as access to safe and potable water, and adequate sanitation.[97] This right also includes access to an adequate supply of safe food, nutrition, and housing.[98] In light of this widened definition of the right to health and its impact on enjoyment of developmental rights, GoU's obligation to the people in northern Uganda is broadened. This is in light of the fact that there are conditions/issues that were prevalent in northern Uganda that ought to have been addressed.

What remained in issue was the effectiveness of GoU's interventions in addressing Acholi's development needs. This was discussed in chapter three.

iii. Protection of the RTD under the Convention on Elimination of all forms of Discrimination against Women (CEDAW)

Uganda became a State party to the CEDAW on 22nd July 1985.[99] CEDAW requires State parties to facilitate the full development and advancement of women in all areas including

[94]Covenant on Economic Social and Cultural Rights, art 12 (1).

[95]General Comment No. 14 on the right to the highest attainable standard of health (art 12), para 9.

[96]General Comment No. 14 on the right to the highest attainable standard of health (art 12), para 10.

[97]General Comment No. 14 on the right to the highest attainable standard of health (art 12), para 11.

[98]As above.

[99]Ratification status available at http://treaties.un.org, (accessed 10 July 2018).

political, social, and economic areas.[100] It was envisaged that by doing so, women would be able to exercise and enjoy their rights.[101] The language here is vague as the provision does not expressly state the nature of the State obligation. What are these 'appropriate measures' that States are to undertake?

If human rights are indeed universal, the relevant human rights principles that would facilitate the 'taking of appropriate measures' would be clearly laid out within the provision to facilitate a unified application by State parties. Where human rights treaties are riddled with vagueness, States like Uganda will, unless convenient to them, interpret the vagueness in their favour, thereby slowing down the possibility of the RTD being attained. For the Acholi, there is limited demonstrable effort by GoU to ensure a change in their poverty level.

CEDAW requires State parties to take appropriate measures aimed at changing social and cultural patterns that facilitate the 'negative' notion of superiority or inferiority of the male or female sex.[102] This provision is equally vague as it does not give an indication of what these appropriate measures would be. Additionally, who determines what would amount to a 'negative' prejudices and cultural practices?

The Acholi do believe that the cultural structures and practices that they lived by before the conflict were actually streamlined and development-oriented.[103] The conflict disintegrated this culture and led to their current life of destitution. Furthermore, the provision assumes that law can be used to transform culture, especially in Acholiland where culture is at the heart of everyday life. As shall be seen in chapter six, it is through culture that discipline was instilled among local communities in Acholiland and the need for collective development promoted.

The spirit of *ubuntu* as alluded to in chapter two was practiced by the Acholi in the pre-conflict era as each member of the society understood that their existence and survival

[100]Covenant on Elimination of Discrimination Against Women, art 3.

[101]As above.

[102]Covenant on Elimination of Discrimination Against Women, art 5 (a).

[103]Informal discussion held with Mr. Ongaya Acellam, Clan Leader, Koro Ibakara Clan, on 9th June 2017 at Gulu municipality, Gulu district.

was dependent on each member of the society/clan fulfilling their role. The issue of superiority or inferiority would, therefore, be a foreign concept to the local populace.[104] Rather, emphasis should be placed on facilitating development within their cultural context, which the Acholi understand best. This approach would lead to sustainable development.

CEDAW does not offer real protection for an Acholi woman attempting to recover from the impact of the LRA conflict. The women of Acholi are dependent on the GoU to determine what policies should be undertaken to assist them to attain their RTD. The Uganda Constitution offers more protection to women as it requires GoU to develop programmes that specifically target women in Uganda.

iv. Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment

Uganda ratified the Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment (CAT) on 3rd November 1986.[105] The CAT is discussed among the legal framework on the RTD because of the GoU's being complicit in committing acts of torture on the people of Acholi during the conflict. This contributed to the inhibition of the victims from developing.

CAT defines torture as:

> ... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity[106]

The provision, therefore, envisages that acts of torture would only be committed by State agents like the UPDF soldiers that were deployed in northern Uganda during the conflict.

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[104]Informal discussion held with Mr. Ongaya Acellam, Clan Leader, Koro Ibakara Clan, on 9th June 2017 at Gulu municipality, Gulu district.

[105]Ratification status of the Convention Against Torture available at http://treaties.un.org, (accessed 10 July 2018).

[106]Convention Against Torture and Other Cruel or Inhuman Degrading Treatment or Punishment, art 1 (1).

In the Ugandan context, this definition of torture was widened by a former Commissioner of the Uganda Human Rights Commission, Mr. Aliro Omara. Mr. Omara while handling a human rights complaint lodged by one Fred Tumuramye against another individual, Gerald Bwete and others, observed that private individuals could also commit torture and should, therefore, be equally held liable for their acts.[107] This view was adopted in the course of drafting the Uganda Prevention and Prohibition of Torture Act which, in its definition of torture, includes the possibility of private individuals committing acts of torture.[108]

During the LRA conflict, various Acholi were tortured for allegedly collaborating with the rebels. This was irrespective of the fact that torture is a non-derogable right under the Uganda Constitution.[109] State Agents were at times assisted by private individuals to identify the alleged 'rebel collaborators', though few of these perpetrators were held accountable for their actions despite the existence of protection under CAT, the ACHPR and the Uganda Constitution.

CAT requires State parties like Uganda to have in place effective measures, whether legislative or judicial, among others, to prevent acts of torture within its territory.[110] Here, the GoU has tried to fulfil its obligation by guaranteeing the right to freedom from torture as a non-derogable right.[111] The Prevention and Prohibition of Torture Act (PPTA) was enacted in 2012 as part of GoU's international human rights obligation to domesticate CAT. However, the PPTA does not have retrospective application but could still be applicable in the event of a continuing human rights violation.

Furthermore, courts and the UHRC have been mandated to handle complaints lodged before them on alleged violation of the right to freedom from torture, cruel and inhuman or degrading treatment or punishment.[112] The mandate of the Commission and the Courts of Judicature in handling cases of violation of human rights will be discussed in detail in the ensu-

[107]Fred Tumuramye v Gerald Bwete and others, complaint 264/1999 (1 October 2001).

[108]Prevention and Prohibition of Torture Act, sec 2 (1).

[109]Constitution of the Republic of Uganda 1995 (as amended), art 44 (a).

[110]Convention Against Torture and Other Cruel or Inhuman Degrading Treatment or Punishment, art 2 (1).

[111]Constitution of the Republic of Uganda 1995 (as amended), arts 24 & 44 (a).

[112]Constitution of the Republic of Uganda 1995 (as amended), arts 50 (1) & 52 (1) (a), respectively.

ing sections of this chapter.

Despite the existence of legal protection, no measures were taken to prevent acts of torture being meted out by the government soldiers on the Acholi. In fact, the granting of the Courts of Judicature and the UHRC powers to handle complaints concerning alleged human rights violations is more of a reactive approach as opposed to prevention of the occurrence of torture.

CAT provides for the right to complain against torture,[113] and requires State parties to ensure that their legal system enables a victim of torture to obtain redress, including adequate compensation and full rehabilitation.[114] Access to a court or human rights tribunal award would go a long way in facilitating a victim of torture in northern Uganda to rebuild their lives and regain their human dignity.

As shall be seen in the course of this chapter, it is one thing to obtain a court order affirming that a human right has been violated thereby entitling the victim to compensation; and another to access the compensation. It is the very same 'State' that would say that there are no funds to pay out the court award. Much as there are other administrative remedies such as the writ of *mandamus* that could be used to compel the Secretary to the Treasury to pay out an award,[115] in reality, it would be difficult for an ordinary Acholi to be able to explore such options. This aspect will be discussed in detail.

At best, the provisions in the CAT are mere promises of various protections to victims of torture. In northern Uganda, the situation is dire as some victims lost limbs as a result of torture and required constant assistance for the rest of their lives.[116] The receipt of compensation would in essence be an opportunity for development and for one to afford a decent living.

GoU domesticated CAT with the enactment of the Prevention and Prohibition of Tor-

[113]Convention Against Torture and Other Cruel or Inhuman Degrading Treatment or Punishment, art 13.

[114]Convention Against Torture and Other Cruel or Inhuman Degrading Treatment or Punishment, art 14 (1).

[115]A writ of mandamus is provided for under section 37 of the Judicature Act, cap 13.

[116]Okech Rickson (Opio Charles) v Attorney General, UHRC Complaint no. GLU/122/2003.

ture Act and expounded on the aspect of liability for acts of torture by providing for strict liability.[117] The problem, however, remains with enforcement of court orders; that is, the ensuring of prompt payment of awards to survivors of torture. Some of these victims hoped to receive compensation with the anticipation that they would be able to rebuild their lives; but this did not happen.

Wouldn't a failure by the GoU to ensure payment of compensation amount to a further perpetuation of human rights violation and, therefore, an additional hindrance to a tortured Acholi's RTD? But who would ensure the GoU's compliance?

v. UN Declaration on the RTD

The UN Declaration on the Right to Development (UN DRD) was adopted on 4th December 1986.[118] As previously highlighted, the UN DRD was the first attempt to formally recognise and codify the RTD. The UN DRD entitles all persons to contribute towards attaining economic, social, cultural, and political development.[119] The UN DRD also recognises that all rights and freedoms can be realised during the enjoyment of the RTD.[120] Additionally, the UN DRD obliges the GoU to formulate development policies that seek to constantly improve the wellbeing of the entire population, although this must be done with their active, free and meaningful participation.[121]

The UN DRD clearly identifies human beings as beneficiaries of the RTD and makes it mandatory for all to take part in development processes. The argument here is that the Acholi ought to be part and parcel of any interventions aimed at promoting their enjoyment of the RTD. Admittedly, the GoU formulated the PRDP in 2007 and completed two phases over ten years; but can it be said that the wellbeing of the Acholi really has been constantly improved by PRDP? Were they really active participants if a local clan leader can only admit to having 'heard' about PRDP?[122]

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[117] Prevention and Prohibition of Torture Act, sec 4 (1).

[118] Available at http://www.un.org/documents/ga/res/41/a41r128.htm, (accessed 17 June 2017).

[119] United Nations Declaration on the Right to Development, art 1.

[120] As above .

[121] United Nations Declaration on the Right to Development, art 2 (3).

[122] Informal discussion held with Mr. Ongaya Acellam, Clan Leader, Koro Ibakara Clan, on 9th June 2017 at Gulu municipality, Gulu district.

The UN DRD recognises the human person as the focus of development and, therefore, emphasises the need for active participation of the beneficiaries.[123] Much as government interventions in northern Uganda have sought, in its view, to improve the wellbeing of the local populace, the sentiments on the ground are different. According to a clan leader in Gulu district, nothing tangible came out of PRDP as a programme, despite all the hype that surrounded the initial stages of its implementation.[124] Other than the locals observing the ongoing road construction, there was no awareness of what PRDP stood for, or what it sought to achieve due to the limited participation of the people.[125]

The UN DRD requires State parties to cooperate in ensuring development and eliminating obstacles to its attainment.[126] In so doing, States are required to promote a new international economic order based on sovereign equality, interdependence, mutual interest, and cooperation among all States.[127] States are expected to encourage the observance and realisation of human rights.[128] However, there is never any real mutual interest as discussions tend to be skewed in favour of the development partners, though on paper it appears to favour locals.

A question that remains is whether the local populace really benefit from such cooperation since foreign assistance normally comes with strings attached? Consequently, there are more questions as to whether voices of the people would really be reflected in development policies. As previously highlighted, developing countries like Uganda are funded basing on development partner priorities, which may not be priorities for those at the grassroots.

In light of the foregoing, infrastructural development may be a priority for the World

[123]United Nations Declaration on the Right to Development, art 2(1).

[124]As above.

[125]Informal discussion held with Mr. Ongaya Acellam, Clan Leader, Koro Ibakara Clan, on 9th June 2017 at Gulu municipality, Gulu district.

[126]United Nations Declaration on the Right to Development, art 3(3).

[127]As above.

[128]As above.

Bank;[129] but food security may be the issue in Acholiland or implementation of TJ mechanisms, including reparations and truth telling. There is a mismatch between what the Acholi need, in their view, to attain the RTD on the one hand and what the GoU thinks they need, on the other hand.

The UN DRD encourages all States to cooperate in a bid to ensure universal respect for and observance of all rights and fundamental freedoms.[130] This provision is important considering that human rights are indivisible and interdependent.[131] States may be encouraged to cooperate, but at times there is need to question what the power relations between States are, and whether it is truly a partnership or humanitarian assistance.

If indeed humanitarian assistance is made available by development partners, who else sets the agenda? Where it is the development partner setting the agenda, it would be a top-down approach with development partners outlining their areas of interest. This would be contrary to the principles of the RTD which emphasise a bottom-up approach through people-led interventions. In the absence of people-led policy formulation and implementation, there would be no ownership of that government programme. Nor would the human rights needs and aspirations of the victims of the northern conflict be addressed.

As earlier discussed, the UN DRD, despite being an international document, is merely soft law which renders the RTD as guaranteed under it unenforceable. In the circumstance, it is as good as a guide on the RTD. Where the RTD is to be enforced by the people of Acholiland, better protection would be obtained under the ACHPR as well as the Uganda Constitution as already discussed.

[129]World Bank, 'Improving conditions for people and businesses in Africa's cities is key to growth', press release on World Bank report, 9 February 2017, http://www.worldbank.org/en/news/press-release/2017/02/09/world-bank-report-improving-conditions-for-people-and-businesses-in-africas-cities-is-key-to-growth, (accessed 18 July 2017).

[130]United Nations Declaration on the Right to Development, art 6(1).

[131]United Nation Declaration on the Right to Development, art 6(2).

5.2. Institutional mechanisms protecting the right to development

There are regional and national institutional mechanisms that were created to facilitate the enforcement of the RTD. This section analyses the effectiveness of these institutions in facilitating the realisation of the RTD. These institutions are discussed below:

5.2.1. Regional

i. African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights (African Commission) was created to guarantee protection and promotion of human rights in Africa.[132] In light of this mandate, the African Commission has a duty to protect human rights in light of the provisions of the ACHPR, [133] which includes guaranteeing the RTD.[134]

The African Commission is instrumental in formulating principles that seek to guarantee human and peoples' rights.[135] However, for this to be possible, a communication relating to human rights violations may be sent to the Commission for determination. This mandate was exercised in the Kenyan case of *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of the Endorois Welfare Council versus The Republic of Kenya* (the Endorois case).[136]

In the *Endorois case*, having been forcibly removed from their ancestral lands without proper prior consultation or adequate and effective compensation, the African Commission found in favour of the Endorois community and held that Kenya had violated article 22 of the ACHPR.[137] The African Commission held that Kenya had an obligation to ensure that the Endorois were not left out of the development process or its benefits.[138]

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[132]African Charter on Human and Peoples' Rights, art 30.

[133]African Charter on Human and Peoples' Rights, art 45 (2).

[134]African Charter on Human and Peoples' Rights, art 22.

[135]African Charter on Human and Peoples' Rights, art 45 (1) (b).

[136]Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of the Endorois Welfare Council v The Republic of Kenya, African Commission on Human and Peoples' Rights, communication No. 276/2003.

[137]African Commission on Human and Peoples' Rights, communication No. 276/2003, para 298.

[138]As above.

The African Commission also found in favour of the Endorois to the effect that the State had not adequately provided for them in the development process since it had not provided for adequate compensation and benefits; nor had it provided for suitable land for grazing.[139] There is, however, a challenge in the enforcement of African Commission decisions. This is because the African Commission relies on the goodwill of State parties to implement its decisions. This was reflected in the *Hansungule case*.[140]

In the *Hansungule case*, the complainants filed a communication before the African Committee of Experts on the Rights and Welfare of the Child on behalf of children of northern Uganda against the Uganda government. The complaint alleged that the violation of various rights of the child as protected under the African Children's charter, including: protection of the child from being involved in armed conflict;[141] and the right of the child to life, survival, and development.[142]

The Committee found that there were some violations of the African Children's Charter including article 22. The violations arose from the fact that there had been no absolute ban on recruitment of children into the Uganda army.[143] Evidence had been found confirming the use of children by the UPDF in armed conflict.[144] The Committee recommended that the GoU put in place policies to protect against recruitment of children into the armed and security forces.[145]

The Committee also recommended that alternative mechanisms, other than detention and prosecution, should be used in holding children accountable for human rights violations during armed conflict.[146] The GoU was required to report on the status of implementation of

[139]African Commission on Human and Peoples' Rights, communication No. 276/2003, para 298.

[140]Decision on the communication submitted by Michelo Hansungule and others (on behalf of children in northern Uganda) Against the Government of Uganda, Communication no. 1/2005.

[141]African Charter on the Rights and Welfare of the Child, art 22.

[142]African Charter on the Rights and Welfare of the Child, art 5.

[143]Hansungule Case, paras 44 & 46.

[144]As above.

[145]As above, para 81 (4).

[146]Hansungule Case (n 140 above), para 81 (5).

these recommendations within six months after being notified. However, there is no evidence of any report having been made by the GoU nor is there any action by the Committee for the GoU's failure to abide by its decision.

Furthermore, before one approaches the African Commission, local remedies ought to have been exhausted.[147] In a country like Uganda where locals are not aware of the domestic court processes or that enforcement of human rights can be claimed through courts, the existence of the African Commission as a potential enforcer of human rights would be a wild idea at best, to an ordinary Acholi.

ii. The African Court of Justice and Human Rights

The African Court on Human and Peoples' Rights (African Court) was established under the Protocol to the ACHPR on the Establishment of an African Court on Human and Peoples' Rights (the Protocol). The objective for the creation of the African Court was to complement the human rights protective mandate of the African Commission.[148] Here, it was envisaged that decisions of the African Court would be final and binding on state parties to the Protocol; as opposed to the African Commission's decisions that are not necessarily binding on state parties.

The African Court has jurisdiction to handle cases pertaining to the interpretation and application of the African Charter.[149] In this instance, direct submission of such cases can only be done by states that have ratified the Protocol.[150] In addition to ratifying the protocol, it is also required that a state party makes a declaration accepting the competence of the court to receive cases.[151] Much as countries like Uganda have not made a declaration accepting the

[147]African Charter on Human and Peoples' Rights, art 56 (5).

[148] Protocol to the African Charter on Human and Peoples Rights on the Establishment of the African Court of Justice and Human Rights, art 2.

[149] Protocol to the African Charter on Human and Peoples Rights on the Establishment of the African Court of Justice and Human Rights, art 3(1).

[150] Protocol to the African Charter on Human and Peoples Rights on the Establishment of the African Court of Justice and Human Rights, as above.

[151] Protocol to the African Charter on Human and Peoples Rights on the Establishment of the African Court of Justice and Human Rights, art 34 (6).

competence of the court, in light of article 5 (1) (a) of the Protocol, the African Commission can still make a reference in a matter concerning violation of human rights by the GoU.

However, individuals or NGOs can only bring cases directly before the Court if Uganda made a declaration accepting the competence of the African Court. Unfortunately, Uganda is not among the African States that has submitted a declaration accepting the Court's competence. Uganda ratified the Protocol on 16th February 2001 but has not deposited a declaration accepting the competence of the court as required under article 34 of the Protocol. No individual or NGO in Uganda would, therefore, be in a position to bring a petition before the court unless permitted to do by the African Court.

It should be observed that the African Commission may make a referral to the African Court.[152] This referral mechanism was utilised by the African Commission in the *Ogiek case* following a finding by the Commission to the effect that there had been gross human rights violations that had been committed by the government of Kenya against the Ogiek community.[153] The human rights violations emanated from orders that were issued by the government of Kenya for the forcible removal of the Ogiek community from their ancestral lands within 30 days. Here, the reference was made despite Kenya having not submitted to the African Court's jurisdiction.

The referral was made on the basis that the African Court would be in a position to make binding decisions against the government of Kenya; and a finding was made to that effect. This case was already discussed in chapters one and two.

5.2.2. National

i. Justice Law and Order Sector

Justice Law and Order Sector (JLOS) is a sector-wide approach that was established by the GoU to unify various government institutions that bear a similar mandates of administering

[152]Protocol to the African Charter on Human and Peoples Rights on the Establishment of the African Court of Justice and Human Rights, art 5 (1).

[153]African Commission on Human and Peoples' Rights (Ogiek Community) v Republic of Kenya (2017) Application 006/2012.

justice and maintaining law and order and human rights.[154] The objective of the unification of these institutions was to, among others, enable them to adopt a holistic approach to improve access to and administration of justice.[155] JLOS consists of eighteen institutions including: Ministry of Justice and Constitutional Affairs (MOJCA); Judiciary; Uganda Police Force (UPF); Ministry of Local Government (Local Council Courts); Uganda Law Reform Commission (ULRC); and the Uganda Human Rights Commission (UHRC).[156]

Within JLOS, a Transitional Justice Working Group (TJ Working Group) was created in 2008 as one of the outcomes of the Juba peace talks.[157] During the drafting of the terms of the Juba Agreement, it was proposed that a national transitional justice policy and law be developed;[158] hence the formation of a working group to achieve this objective. It was envisaged that the national transitional justice policy and law would govern implementation of transitional justice mechanisms in a bid to address the impact of the LRA conflict on human rights enjoyment.[159]

The process of having the national transitional justice policy drafted, passed and implemented was extremely slow and lengthy. For over ten years after the signing of the Juba Peace Agreement, the policy was undergoing amendments to the final draft.[160] The policy

[154]'Justice Law and Order Sector', http://www.judiciary.go.ug/data/smenu/104/Justice%20Law%20and%20Order%20Sector.html, (accessed 18 May 2017).

[155]As above.

[156]Justice Law and Order Sector member institutions, available at https://www.jlos.go.ug/index.php/about-jlos/member-institutions, (accessed on 2 July 2021).

[157]Background to the creation of the Justice Law and Order Sector Transitional Justice Working Group available at https://www.jlos.go.ug/index.php/about-jlos/priority-focus-areas/transitional-justice, (accessed on 2 July 2021).

[158]S Okiror, 'Truth and reconciliation in limbo: Ugandan cabinet drags on enacting transitional justice policy', 26 September 2016, http://letstalk.ug/article/truth-and-reconciliation-limbo-ugandan-cabinet-drags-enacting-transitional-justice-policy>, (accessed 26 June 2017).

[159]As above.

[160]The 21st JLOS annual performance review (2015/16): Joint assessment of the Justice Law and Order Sector Development Partners Group (JLOS DPG), 27 October 2016, http://www.jlos.go.ug/index.php/document-centre/annual-review-conferences/21st-annual-jlos-review/393-development-partners-assessment-of-the-jlos-annual-performance-201516/file, (accessed 18 May 2017).

was subsequently passed in 2019 though no further action was taken. This delay raises questions on GoU's commitment towards ensuring enjoyment of human rights for the survivors of the LRA conflict.

Worth noting is that for the people of Acholiland, one cannot move forward without dealing with past injustices. This need for justice first is embedded within the Acholi traditional justice system. The delay in having a transitional justice policy has weakened the credibility of JLOS as a sector since it has not yet succeeded in having the transitional justice mechanisms implemented for the benefit of the Acholi. This affects opportunities for possible development of the Acholi.

ii. Uganda Human Rights Commission

> ...where Human Rights Commissions fulfil the prerequisites to effective functioning, there is no doubt that they play an important role in the promotion and protection of human rights. They are complementary to already established institutions and by the nature of their work are in [a] position to make unique contribution[s] to a country's efforts to protect its citizens and to develop a culture that is respectful of human rights and fundamental freedoms.[161]

The foregoing quote describes the unique and critical nature of national human rights institutions (NHRIs) and the important mandate they hold in promoting a culture of respect for human rights by the State, if allowed to effectively function. It is against this backdrop that the Uganda Human Rights Commission (UHRC) was created in Uganda. The UHRC is a constitutional body mandated to protect and promote human rights in the country.[162]

The establishment of the UHRC under the Uganda Constitution was as a result of a recommendation made in a report of the Justice Arthur Oder Commission of Inquiry into violations of human rights in Uganda. The institution of the inquiry was through the Commission of Inquiry Act Legal Notice 5. The inquiry sought to investigate human rights violations

[161]Quote by Margaret Sekaggya, former Chairperson of the Uganda Human Rights Commission in CM Peter, Human Rights Commissions in Africa – Lessons and challenges, 351, http://www.kas.de/upload/auslandhomepages/namibia/Human_Rights_in_Africa/11_Peter.pdf, (accessed 18 June 2017).

[162]Constitution of the Republic of Uganda 1995 (as amended), art 51.

that had occurred in Uganda under post-independence governments from 9th October 1962 until 25th January 1986.

One of the outcomes of the Commission of Inquiry was a recommendation for the establishment of a national human rights institution. This recommendation was considered by the Constitutional Review Commission (CRC) and the UHRC was subsequently provided for in the Uganda Constitution. The UHRC was operationalised by the enactment of the Uganda Human Rights Commission Act of 1997.

Some of the core mandates of the UHRC are: to investigate complaints against the violation of any human right;[163] to conduct civic education to inculcate in the citizens of Uganda awareness of their civic responsibilities, as well as their rights and obligations;[164] and to monitor GoU's compliance with its international human rights treaty and convention obligations;[165] among others.

Pursuant to its mandate, the UHRC monitored and handled complaints on alleged human rights violations and abuses in northern Uganda during and after the LRA conflict. With the establishment of its northern Uganda regional office, the Commission handled various complaints during the conflict though most of the complaints concerned violation of civil and political rights by State soldiers. In light of the concept of reading in rights, human rights violations that affect the enjoyment of socio-economic rights and the RTD have also been handled.

Some of the civil and political rights that were violated include violation of the right to life,[166] like in the complaint lodged by Adong Madelena. Ms. Adong lodged a complaint with the UHRC alleging violation of her son's, Ojera Alex, right to life by UPDF soldiers.[167] Ojera Alex was arrested while on his way to the village. His property, including his grass thatched

[163]Constitution of the Republic of Uganda 1995 (as amended), art 52(1) (a).

[164]Constitution of the Republic of Uganda 1995(as amended), art 52(1) (g).

[165]Constitution of the Republic of Uganda 1995 (as amended), art 52(1) (h).

[166]Constitution of the Republic of Uganda 1995 (as amended), art 22.

[167]Adong Madelena and Attorney General, Complaint No. UHRC/G/313/2003.

huts and granaries, were burnt. He was subsequently killed and his home turned into a military detach for UPDF soldiers.[168]

The UHRC tribunal found that Ojera's right to life had been violated and an award of Uganda shillings 21, 000, 000 as general damages was awarded.[169] The UHRC tribunal in making the award took into consideration Ojera's property that was destroyed as well as lost earnings that his family would have benefitted from. The award of Uganda Shillings 21, 000, 000 (an estimated US Dollars 5, 250) may not be much but is a starting point for his family's recovery. A complaint was also lodged by another complainant, Opio Charles. Opio's arms were amputated to save his life, following the torture that was meted on him by UPDF soldiers.[170] Opio was compensated with Uganda Shillings 215 million since he could no longer fend for himself.[171]

Adong Madelena and Opio Charles were some of the few Acholi who were able to access their tribunal awards from the Ministry of Justice, as the payment process is long. For Opio, the UHRC aggressively pursued the amicable settlement of his matter since Opio had lost both arms. His tribunal award, approximately US D 50, 0000, could help an ordinary Acholi in his position to engage in activities that facilitate them to afford a decent living. The UHRC has tried to fulfil its mandate through its quasi-judicial function.

The UHRC has a human rights monitoring mandate.[172] In light of its mandate of monitoring government compliance on its human rights obligations, the UHRC was tasked by JLOS to oversee the documentation of human rights violations that occurred during the LRA conflict.[173] This project is discussed in detail in the next chapter.

[168]Adong Madelena complaint, (n 167 above).

[169]As above.

[170]Okech Rickson (Opio Charles) and Attorney General, UHRC Complaint no. GLU/122/2003.

[171]As above.

[172] Constitution of the Republic of Uganda 1995 (as amended), art 52 (h).

[173]Clause 5.5 of the Juba Peace Agreement on Accountability and Reconciliation tasks the Uganda Human Rights Commission to implement relevant parts of the agreement. The human rights documentation process is one of the outcomes of the peace agreement aimed at attaining accountability.

The UHRC has heard various cases of human rights violations against State agents including violation of the rights to: life;[174] freedom from torture, cruel, inhuman and degrading treatment or punishment;[175] and property,[176] among others. The UHRC has, however, faced criticism on its effectiveness in holding the Uganda government accountable for human rights violations. As observed by the Human Rights Committee on State duty to make reparations to victims, 'without reparation to individuals whose Covenant rights have been violated, the obligation to provide effective remedy…is not discharged'.[177]

The UHRC has had challenges in discharging its duty of awarding effective remedies since GoU has not released the required funds for payment of some of the compensation awards. As at December 2020, there was an outstanding Uganda shillings 8, 042, 318, 759 billion that had been awarded by the UHRC tribunal as compensation to victims of human rights violations in Uganda.[178] The award had not been paid out to victims of human rights violations, some of whom were from northern Uganda.

In light of the above-cited quote by the Human Rights Committee, it would, therefore, be futile for UHRC to make orders that cannot be enforced. Where GoU does not comply with the tribunal's orders, UHRC is powerless as it relies on the goodwill of the State to adhere to its orders for them to be deemed effective.

It has been observed that enforcement of human rights remains a challenge despite the existence of the relevant international, regional, and national legal regime.[179] Consequently, enforcement of human rights legal regime can be affected by various reasons including lack

[174]Constitution of the Republic of Uganda 1995 (as amended), art 22.

[175]Constitution of the Republic of Uganda 1995 (as amended), art 24.

[176]Constitution of the Republic of Uganda 1995 (as amended), art 26.

[177]General comment no. 31 (2004) on the nature of the legal obligation imposed on States parties to the Covenant in Uganda Human Rights Commission & United Nations Office of the High Commissioner for Human Rights, 'The dust has not yet settled: Victims' views on the right to remedy and reparation, A report from the greater north of Uganda', 16.

[178]Information obtained from the Directorate of Complaints. Investigations & Legal Services of the Uganda Human Rights Commission on 2 August 2021. The annual reports for 2019 and 2020 could not be accessed as no report has been launched due to the delayed appointment of a substantive Chairperson to the Commission.

[179] Peter, (n 161 above), 351.

of effective institutions or the existence of weak institutions as well as the lack of political will to implement human rights.[180]

UHRC has also been ineffective in the enforcement of socio-economic rights. The UHRC has focused on civil and political rights at the expense of monitoring economic, social, and cultural rights. Monitoring of economic, social and cultural rights is necessary, especially in a post-conflict setting like Acholiland. Some efforts have, however, been made towards monitoring health facilities with a view to observing implementation of the right to health.

In 2016, the UHRC monitored 343 health facilities in light of complaints concerning, among others, alleged denial of access to medical treatment and medical negligence.[181] In 2018, the Commission monitored 42 health facilities in six selected districts of Sheema, Kaabong, Kisoro, Adjumani, Isingiro and Mbarara. This monitoring activity was done with a view to conducting a comparative analysis on the plight of health workers.[182]

The UHRC ought to have been at the forefront of efforts towards ensuring that the RTD is guaranteed in northern Uganda. This is because of its constitutional mandate to protect and promote human rights observance. In addition, the UHRC was responsible for spearheading the incorporation of human rights-based approaches to development during planning processes by district local governments, including those in northern Uganda.

Pursuant to various engagements between UHRC and the Ministry of Local Government (MoLG), coordination committees were set up in a number of districts and a human rights desk opened in each district. This was to ensure that a human rights-based approach to development was implemented in the formulation of district work plans and budgets. Had this been effectively followed up by the UHRC, PRDP may have been formulated and implemented better in line with principles of rights based planning.

[180]Peter, (as above).

[181]Uganda Human Rights Commission, Report on the State of Human Rights in Uganda, 2016, 115-116.

[182]Uganda Human Rights Commission, Report on the State of Human Rights in Uganda, 2018, 107.

iii. Mandate of the Office of the Prime Minister on post war recovery interventions

The Office of the Prime Minister (OPM) is the government institution that is tasked with overseeing the initiation, designing, coordination and implementation of post-war recovery efforts for troubled and disadvantaged regions of northern Uganda and Karamoja.[183] One of the outputs cited by OPM is the monitoring and supervision of government programmes and activities implemented under PRDP.[184] Some of the key activities that OPM undertook under its mandate of pacification and development included: distribution of 100, 000 hand hoes in northern Uganda; distribution of 50 ox-ploughs to youth, women groups and families of children with nodding disease; distribution of 10, 000 iron sheets in northern Uganda; and undertaking a benchmarking tours in developing countries.[185]

Furthermore, under the restocking programme, it was reported that 18,600 cattle were procured for the sub-regions of West Nile, Lango, Teso and Acholi.[186] In light of the ratio of the population to the number of cattle and non-food items distributed, the desired impact is questionable. Would the distribution of these items have any meaningful impact on the enjoyment of socio-economic rights and the RTD, even if it is to be realised progressively?

These interventions were not well-thought out and did not consider a human rights-based approach where people's participation in decision making processes is a key factor. A warehouse was also constructed in Butaleja district.[187] This district does not fall under northern Uganda region, neither was it affected by the conflict; nor would a warehouse ordinarily feature as a priority intervention for a local community recovering from conflict.

The available resources meant for rehabilitation of northern Uganda was stretched among undeserving districts and contributed to the limited impact of these development in-

[183]Mandate of OPM available at: http://opm.go.ug/post-war-recovery-and-presidential-pledges/, (accessed on 23 June 2016).

[184]Output of OPM available at: http://opm.go.ug/post-war-recovery-and-presidential-pledges/, (accessed on 23 June 2016).

[185]As above.

[186]'Govt allocates sh 20b for restocking', *The New Vision* 17 December 2014, https://www.newvision.co.ug/news/1317698/govt-allocates-sh20b-restocking, (accessed 18 November 2020).

[187]Information available at http://opm.go.ug/post-war-recovery-and-presidential-pledges/, (accessed 23 June 2016).

terventions. This shows a failure on the part of government to prioritise activities that would actually impact on attainment of socio-economic rights as well as the RTD. There is need for the role of the OPM in post-conflict reconstruction to be re-visited as it has been largely ineffective in ensuring attainment of the RTD and, unfortunately too, its mandate politicised.

iv. The Inspectorate of Government (IG)

The Inspectorate of Government (IG) was initially established in 1988 under the Inspector-General of Government (IGG) Statute.[188] With the promulgation of the Uganda Constitution, the Inspectorate of Government Act was enacted in a bid to operationalise chapter 13 of the Constitution.[189] Chapter 13 of the Constitution prescribes the Inspectorate of Government's mandate, functions, and powers, among other matters. The Inspectorate of Government is an independent government institution that bears the responsibility of eliminating corruption and abuse of authority in public office.[190]

The powers of the IG as enshrined in the Uganda Constitution and Inspectorate of Government Act include: investigating complaints; causing arrest of suspects; causing prosecution; and giving direction during investigations, among others.[191] The Act also tasks the IG to promote fair, efficient and good governance in public offices,[192] as one of its functions.[193] The Inspectorate of Government has, however, not been active in the detection of corruption in the management of PRDP funds. The Office of the Auditor General was responsible for unearthing the corruption scam concerning the mismanagement of PRDP funds by the Office of the Prime Minister.

v. Courts of Judicature

Courts of Judicature have been crucial in the post-conflict setting as determinants of cases concerning human rights violations, especially by State agents. The Uganda Constitution empowers any person whose human rights have been infringed upon or threatened to seek re-

[188]Inspector General of Government Act 1988, cap 167, sec 2.

[189]Inspectorate of Government Act 2002, sec 3(1).

[190] Inspectorate of Government Act 2002, sec 8(1) (b).

[191]Information available at: https://www.igg.go.ug/, (accessed 18 May 2017).

[192]Inspectorate of Government Act 2002, sec 8(1) (c).

[193] As above.

dress from a competent court; and this redress includes compensation.[194] Article 50 of the Uganda Constitution affords victims of the northern conflict two *fora* from which to seek redress for human rights violations, that is, courts of law or the UHRC in light of the quasi-judicial powers that the Commission holds.[195] However, where a complaint has already been lodged by the said complainant before a court, the UHRC is prohibited from handling it.[196] This prohibition seeks to avoid instances of forum shopping by complainants.

Courts have been instrumental in handling other human rights related disputes including land cases, especially since there was an influx of land wrangling in Acholiland exacerbated by the return of local communities from IDP camps to their villages. This influx was brought about by other settlers that took advantage of the absence of the original owners of the land. Some of these land wrangles are yet to be resolved by court.

Access to justice is a fundamental right that ought to be respected. However, this respect requires knowledge of the law, which in some instances, especially for poor litigants, is lacking. The lack of information on procedural steps to be taken in reclaiming land disfavours a poor litigant since legal representation is quite expensive.[197] The poor would not know how to proceed or even where to go for redress. This confusion stalls opportunities for them to reclaim and enjoy their land rights.

Courts of Judicature in northern Uganda have had challenges in ensuring quick dispensation of justice and access to remedies. In the aftermath of the conflict, there were no court in some districts like the district of Amuru. This could explain some of the violent land wrangles that were rampant in the area as locals took the law into their hands. Furthermore, the International Crimes Division of the High Court was also created to try war crimes cases arising from the LRA conflict. One of the issues affecting the performance of the International Crimes Division is the effect of the Amnesty Act. The Amnesty Act has been deemed a

[194]Constitution of the Republic of Uganda 1995 (as amended), art 50 (1).

[195]Constitution of the Republic of Uganda 1995 (as amended), art 53 (1).

[196]Constitution of the Republic of Uganda 1995 (as amended), art 53 (4).

[197]'Poor rarely get justice in Uganda Courts – Justice Kasule', *The Observer* 27 June 2018, http://www.observer.ug (accessed on (27 June 2018).

hindrance to prosecution of LRA rebels that have been granted amnesty irrespective of their role.[198]

Despite the existence of these courts, and the push for alternative dispute resolution (ADR) as a policy within the court system, a fact that was not considered or embraced is that for the Acholi, any conflict resolution process commences with the traditional justice system and not the courts of law.[199] This is because of the perception that formal justice mechanisms do not resolve the spiritual element of any dispute concerning the Acholi. As stated by the Prime Minister of the Acholi Cultural Institution, 'harming the human person is the highest crime in Acholi'.[200]

According to the Acholi, both parties to any conflict and the spiritual realm are equally affected.[201] Therefore, in any conflict resolution effort, both the spiritual and human aspects of the conflict must be addressed.[202] Consequently, the creation of the International Crimes Division of the High Court and the hearings at the International Criminal Court are almost foreign concepts to the Acholi and ignore the spiritual aspects of conflict. This is because these are formal justice systems that are operating outside their traditional realm.

Where a perpetrator expects to live within the Acholi community, they would be required to subject themselves to the traditional justice mechanisms. This renders the formal justice system as inferior to the Acholi traditional justice system.

vi. Equal opportunities Commission (EOC)

The Equal Opportunities Commission (EOC) was established under article 32(2) of the Uganda Constitution. The EOC is mandated to give full effect to article 32(1) of the Uganda Constitution which requires the State to redress imbalances against groups that have been

[198]International Center for Transitional Justice, 'Is Uganda's judicial system ready to prosecute serious crimes?', https:www.ictj.orglnews/Uganda-kwoyelo-case, (accessed 17 July 2017).

[199]Informal discussion with Mr. Olaa Ambrose, Prime Minister of the Acholi Cultural Institution, held on 9th June 2017 at the Ker Kwaro, Gulu district.

[200] Informal discussion with Mr. Olaa Ambrose, Prime Minister of the Acholi Cultural Institution, held on 9th June 2017 at the Ker Kwaro, Gulu district.

[201]As above.

[202] As above.

marginalised on the basis of gender or any other reason created by history, among others. The EOC handles complaints concerning marginalisation, discrimination, injustice, and inequality in access to resources,[203] among others.

The effectiveness of the EOC in advocating for the rights of the Acholi as a marginalised group is yet to be felt. The EOC has focused on other forms of discrimination and inequality with a nationwide appeal, for instance, ensuring gender and equity compliance by MDAs.[204]

5.3. Factors affecting effectiveness of the legal and institutional framework

The effectiveness of the legal and institutional framework in guaranteeing the RTD for the Acholi people was affected by various factors. These factors include the following:

5.3.1 Ineffective /weak laws

A contributing factor to the ineffectiveness of some of the legal framework is the inconclusive status of the RTD. In the previous chapters, it was explained that the RTD is not provided for in the bill of rights. This would have substantively confirmed it as a human right. Further, the Constitution does not clearly spell out State obligations in the fulfilment of the RTD in the NODPoSP, where the right is provided for. This makes it difficult for beneficiaries in Acholiland to claim their rights within the Ugandan legal regime.

Furthermore, article 45 ordinarily empowers a rights claimant to invoke any human right guaranteed in international human rights instruments that Uganda has ratified. However, the status of the RTD as a human right is still shaky at the international level in the absence of a binding treaty. At the international level, it is debatable as to whether the UN DRD is a binding human rights instrument given that the RTD has not attained the status of a *jus cogens* norm through State practice.

Much as the ACHPR can be relied on because of its recognition of the RTD, enforceability would still be a challenge since the African Commission depends on the goodwill of State parties to effect its decisions. However, Uganda has not actively enforced such deci-

[203]The National Equal Opportunities Policy, July 2006, 6.

[204] Information available at http//:www.eoc.go.ug, (accessed 17 May 2020).

sions. For instance, Uganda has not enforced the findings of the International Court of Justice (ICJ) in the case of *Democratic Republic of Congo v Uganda,*[205]

In the *Democratic Republic of Congo v Uganda* case, Uganda was ordered to pay reparations to DRC for various acts including: violation of principles of non-use of force in international relations and committing acts of violence against DRC nationals. This payment has not been made. Consequently, seeking enforcement of the RTD for the people of Acholiland could actually be futile due to lack of avenues through which decision of the African Commission can be enforced.

Additionally, enforcement of available legal policy becomes equally weak as the laws do not have the force of law, and there is limited judicial activism among judicial officers as well as knowledge of human rights law.

5.3.2 Poor accountability mechanisms

The Uganda Constitution promotes accountability and stipulates that all public offices are held in trust for the people.[206] The Constitution further emphasises that all persons in positions of leadership and responsibility are answerable to the people.[207] The Uganda Constitution also requires that all lawful measures be undertaken to expose and fight corruption.[208] Accountability mechanisms have, however, not been aggressively implemented despite the existence of relevant institutions to ensure that all public entities adequately utilise and account for public funds. That there is no value for money in the utilisation of these funds.

This accountability mandate lies with institutions such as the Office of the Auditor General (OAG).[209] Unfortunately, the OAG has not been very effective in fulfilling its mandate. It took about 5 years for complaints of suspected fraud in the management of PRDP

[205]Case concerning armed activities on the territory of the Congo (Democratic Republic of Congo v Uganda).

[206]Constitution of the Republic of Uganda 1995 (as amended), principle xxvi (i) of the National Objectives and Directive Principles of State Policy.

[207]Constitution of the Republic of Uganda 1995 (as amended), principle xxvi (ii) of the National Objectives and Directive Principles of State Policy.

[208]Constitution of the Republic of Uganda 1995 (as amended), principle xxvi (iii) of the National Objectives and Directive Principles of State Policy.

[209]Constitution of the Republic of Uganda 1995 (as amended), art 163 (3).

funds to be raised. These PRDP funds had been made available to enable a very vulnerable section of Ugandans to reclaim their dignity and enjoy their RTD. The said funds were embezzled.

Calls by Members of Parliament for the Permanent Secretary in the Office of the Prime Minister to be relieved of his duties due to the corruption scam that had occurred under his watch were futile.[210]The concerned Permanent Secretary was instead assigned a wider mandate of monitoring ministries and government departments.[211] This brings to question GoU's commitment towards fighting corruption as stipulated in the Uganda Constitution.

In addition to accountability, mechanisms within government entities are weak when it comes to disposal of such cases. The disposal rate is generally very slow. For instance, it took four years to hear and conclude one of the cases in which the senior accountant in the Office of the Prime Minister was implicated in the embezzlement of public funds meant for PRDP.[212] Consequently, any sanction meted out to corrupt government officers will not have the same deterrent effect if the matter had been handled expeditiously.

This lack of effectiveness of the accountability institutions was observed by the Justice Law and Order Sector annual performance review for financial year 2015/2016 when it noted the need for effective and timely sanctions.[213] It is, therefore, evident that effective accountability mechanisms are a must if the RTD and human rights in general, are to be guaranteed. For the Acholi people, this is a duty that is owed due to the GoU's failure to respect and protect their human rights during the LRA conflict.

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[210]'MPs discover more 'ghosts', substandard work at OPM', *Daily Monitor* Tuesday 5th March 2013, http//www.monitor.co.ug/News/National/MPs-discover-more--ghosts---substandard-work-at-OPM/-/688334/1711610/-/wfcmccz/-/index.html, (accessed 24 May 2016).

[211] As above.

[212]Uganda v Geoffrey Kazinda HCT-00-SC-0138-2012.

[213]The 21st JLOS annual performance review (2015/16): Joint assessment of the Justice Law and Order Sector Development Partners Group (JLOS DPG), 27th October 2016, http://www.jlos.go.ug/index.php/document-centre/annual-review-conferences/21st-annual-jlos-review/393-development-partners-assessment-of-the-jlos-annual-performance-201516/file, (accessed 18 May 2017).

5.3.3 Failure to prioritise victim's needs

Though there have been various development interventions carried out by the GoU. These interventions seek to promote the development of the Acholi, among others. There has, however, been a general failure to prioritise the needs of the victims of the northern conflict. As pointed out by Chanock, much as cultures are complex and multi-vocal in their representation, these voices are often drowned out by voices of the elites.[214] Consequently, in the northern Uganda setting, the needs and aspirations of the war-affected communities are drowned out by the views of the planners in the central government and at the district level.

Government plans like PRDP are devoid of any empowerment strategies for the Acholi who believe that the LRA conflict was intended to steal their wealth, weaken their economy and destroy their livelihood through forced displacement.[215] Considering that over 1.8 million people in northern Uganda were displaced from their homes, the Acholi were relegated to a life of very limited or no education, limited career prospects and opportunities for improvement in their socio-economic conditions.[216]

The human rights situation in northern Uganda was exacerbated by the fact that in the post-conflict reconstruction era, government's priorities were on strengthening State institutions and infrastructural development. In 2013, there were attempts by district local governments to utilise PRDP funds to construct district offices.[217] This shows a disconnect between the priorities of the district and those of the local communities. Due to the failure to attend to community needs, the number of Acholi committing suicide, engaging in alcoholism, or depressed had increased, as the local populace struggled to deal with life after the war.[218]

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[214]M Chanock, '*Human rights and cultural branding: who speaks and how';* in AA An-Na'im (ed) 'Cultural transformation and human rights in Africa', (2002), 38.

[215]FO Adong, 'Recovery and development politics: Options for sustainable peacebuilding in northern Uganda', Discussion Paper 61, 42.

[216]As above.

[217]R Batre, 'OPM blocks use of PRDP funds to construct district offices', http://ugandaradionetwork.com/story/opm-blocks-use-of-prdp-funds-to-construct-district-offices#ixzz4hyNnRjSU, 27 March 2013; (accessed 24 May 2017).

[218]Informal discussion held with Mr. Olaa Ambrose, Prime Minister of the Acholi Cultural Institution, on 9th June 2017 at the Ker Kwaro, Gulu district.

During the formulation of the policy document for PRDP, various consultative meetings were held at the regional and central government levels to establish victims' needs. This was in line with HRBA and good governance practices which required that plans ought to be responsive to the needs of beneficiaries. There were, however, concerns raised with regard to government prioritisation of infrastructural development under PRDP I &II focus in total disregard of issues that had been raised on their functionality and inter-communal relations.[219] For instance, victims as well as victim-focused CSOs cited truth-recovery and reparations as priority areas of action for the Acholi.[220] This has, however, not been implemented.

Questions arise as to whether the views that were obtained from the regional consultative meetings were actually reflected during the policy formulation and implementation processes? Furthermore, there has been a tendency for development partner policies to be followed. This has had the effect of causing the neglect of cultural integrity and identity, and social empowerment of local communities, among others.[221]

Reports indicate that there has been an improvement in attainment of the right to education in northern Uganda.[222] This improvement was attributed to an increase in primary school enrolment since 2006, when the conflict ended.[223] The number of enrolled children under PRDP was put at 8.5 million as at 2012/2013.[224] This success appears to be exaggerated as it does not tally with the National Service Delivery Survey report. The National Service Delivery report shows that 48% of children between the ages of 6 – 12 years old were unable to attend school due to various economic factors.[225] This, therefore, points to the fact that there is a failure to make a connection between peace-building and development.

[219]Refugee Law Project, 'Are we there yet: brainstorming the successor programme to peace recovery development plan (PRDP 2) for post conflict northern Uganda', Policy Brief No 1, February 2015, 4.

[220]Uganda Human Rights Commission & United Nations Office of the High Commissioner for Human Rights, (n 177 above) 59.

[221]Adong, (n 215 above), 57.

[222]United Nations Development Programme, Uganda human development report: Unlocking the development potential of northern Uganda 2015, 3.

[223]As above, 3.

[224]As above.

[225]Uganda Bureau of Statistics, The national service delivery survey, 2015, 22.

Under strategic objective no. 4 of PRDP, peace-building and reconciliation are cited as a component. However, the activities to be undertaken to fulfil this strategic objective., these include: counselling, disarmament, demobilisation, and reintegration; which do not take into account some of the issues that the locals consider critical. For instance, truth telling would be better appreciated as it would enable those with disappeared relatives to get closure and also facilitate reconciliation without dealing with the past.

5.3.4 Failure to prosecute high level corruption

The Uganda Constitution promotes accountability by persons in public office by requiring the use of all lawful measures to expose, combat eradicate corruption by those holding public office.[226] There has, however, been a failure to have persons implicated in high level corruption prosecuted. Few officials alleged to have indulged in corrupt practices concerning development funds have been arrested and prosecuted. Even where these officials are prosecuted, the sentences given are relatively low. Corruption has become glamorised and portrayed as being highly profitable.

> The Auditor General, while explaining the level of corruption in Uganda stated thus:
> ...Someone will ask, 'will it pay?' If it will, one will steal. If it won't pay, one won't steal. It should be too expensive to steal. This is why corruption is happening on a grand scale. They must steal enough to stay out of jail.[227]

Corruption affects general human rights observance through diversion of resources that could have been utilised to facilitate the enjoyment of basic human rights including the right to health and the right to food.[228] Here, corruption takes the form of the illegal appropriation of

[226]Constitution of the Republic of Uganda 1995 (as amended), principle xxvi of the National Objectives and Directive Principles of State Policy.

[227]Auditor General John Muwanga, May 31, 2013 in Human Rights Watch, 'Letting the big fish swim: Failures to prosecute high-level corruption in Uganda', https://www.hrw.org/report/2013/10/21/letting-big-fish-swim/failures-prosecute-high-level-corruption-uganda, (accessed 24 May 2017).

[228]Human Rights Watch, 'Letting the big fish swim failures to prosecute high-level corruption in Uganda', https://www.hrw.org/report/2013/10/21/letting-big-fish-swim/failures-prosecute-high-level-corruption-uganda, (accessed on 24 May 2017).

public funds or outright request for bribes before public services are rendered.[229] In other instances, corruption can take the form of inflated costs of goods and services being procured.

Despite the existence of anti-corruption institutions including the Office of the Auditor General and Inspectorate of Government, some investigations are botched. This has been attributed to various reasons, including: the limited resources required to facilitate the conduct of effective investigations by the criminal investigations unit; and even corruption among some investigators.

Further, political interference also weighs in with orders on who should be investigated and prosecuted. This occurred during investigations on the alleged abuse of PRDP funds. In the PRDP investigations, efforts by the Criminal Investigations Department to investigate the involvement of the former Permanent Secretary in the Office of the Prime Minister were thwarted when he was declared a whistle-blower by the President.[230] The Permanent Secretary was later transferred from the Office of the Prime Minister due to donor pressure.[231]

The transfer of the Permanent Secretary was contrary to the recommendation of the Auditor General to the effect that he be interdicted for mismanagement of PRDP funds.[232] Reports also indicated that the said Permanent Secretary tried to give guidance on the direction that the investigations should take, and allegedly shielded some of the staff in the Office of the Prime Minister that were needed for investigations.[233] This undermines the effectiveness of such institutions in combating corruption and abuse of public funds that could help attain the RTD.

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[229]Human Rights Watch (n 228 above).

[230]'OPM scam: Museveni explains why he stood by Bigirimana', *Daily Monitor* Thursday 14 August 2014, http://www.monitor.co.ug/News/National/OPM-scam--Museveni-explains-why-he-stood-by-Bigirimana/688334-2418294-jf7qorz/index.html, (accessed 24 May 2017).

[231]'Museveni bows to pressure, moving OPM's Bigirimana', *The Observer*, http://www.thepromota.co.uk/the-observer-museveni-bows-to-pressure-moving-opms-bigirimana/, (accessed 24 May 2017).

[232]As above.

[233]'How OPM corruption scandal got the hunter being hunted', *Daily Monitor* 7 July 2013, http://www.monitor.co.ug/OpEd/Commentary/How-OPM-corruption-scandal--got-the-hunter-being-hunted/689364-1906750-g8bpdaz/index.html, (accessed 24 May 2017).

5.3.5 Weak administrative/enforcement mechanisms

The administrative systems that are charged with managing and guaranteeing that effective interventions are undertaken through the government programmes are weak and ineffective in ensuring the programme goals are attained. There is a multiplicity of institutions; each with its own oversight mandate, but have all appeared to be crippled and unable to perform their role. Institutions like the Office of Auditor General have been unable to detect fraud in the handling PRDP funds. This is against the backdrop of the fact that every MDA has an Internal Auditor posted by the Ministry of Finance and specifically reports to the Permanent Secretary/ Secretary to the Treasury, and that value for money audits are carried out by external auditors on an annual basis.

Despite the conduct of annual audits by both internal and external Auditors, the mismanagement of funds went undetected in the Office of the Prime Minister in 2012. This points towards a corruption network in government entities. As previously noted, only the Senior Accountant has been prosecuted despite the fact that funds could not have been disbursed from the institution's coffers without assistance/necessary approvals from the Ministry of Finance, as well as the Bank of Uganda.

The UHRC is mandated to ensure government compliance with its international human rights obligations. The Commission has, however, been unable to get GoU pay out compensation awarded to victims of various human rights violations in the course of the conflict. This puts the UHRC's mandate in question. Failure to pay compensation to victims of human rights violations further violates their right to be effectively, promptly and adequately compensated. Consequently, the UHRC has been rendered ineffective in this regard.

5.3.6 Failure to address gender concerns

All government entities are obliged to ensure gender mainstreaming during all planning and development processes.[234] Gender mainstreaming in policy analysis and development draws one's attention to the impact of policy on people.[235] It also explores how this impact could

[234]The Uganda National Gender Policy (2007), 14-15.

[235]United Nations Office of the Special Adviser on Gender Issues and Advancement of Women, 'Gender mainstreaming: An overview', http://www.un.org/womenwatch/osagi/pdf/e65237, (accessed 12 January).

vary for women and men, given gender differences and inequalities.[236]

Gender mainstreaming also routinely seeks increased gender equality as one of the policy outcomes, along with growth, efficiency, poverty reduction, and sustainability.[237] Gender mainstreaming, therefore, requires the inclusion of gender perspectives at various points in the course of the policy making process.[238] The Gender Policy strives to cater for and reduce gender inequalities at all levels of government by all stakeholders.

Gender equality and women's empowerment ought to be an area for consideration during planning, resource allocation, and implementation of development programmes, especially since women were disadvantaged not only by the conflict, but also the already customary practices given that societies in northern Uganda are patriarchal in nature. Despite the fact that women and children bore the brunt of the conflict, they were not adequately catered for during the formulation of post-conflict development programmes. For instance, under PRDP I and II, there were barely any attempts towards addressing matters affecting them, especially access to land.

Land rights and access to land are some of the critical areas affecting women as they are unable to access land. This stems from Acholi culture which does not recognise women as potential land owners, even upon the passing of male members of their households. As a result of such social norms, the ability of women to fully develop their capacity and actively contribute to the prosperity of their family and society, among others, is affected.[239]

The limited provision for women and children in the implementation of PRDP is contrary to Uganda Constitution.[240] The Uganda Constitution guarantees women's rights to affirmative action.[241] The inclusion of women's rights to affirmative action in the Uganda Con-

[236]As above.

[237]The Uganda National Gender Policy (2007), 16.

[238]United Nations Office of the Special Adviser on Gender Issues and Advancement of Women, (n 235 above).

[239]United Nation Development Programme, 'Uganda Human Development Report: Unlocking the development potential of Northern Uganda', 2015, 21 – 22.

[240]Constitution of the Republic of Uganda 1995 (as amended), art 33 (5).

[241]As above.

stitution sought to redress the imbalances created by history, tradition or custom. Some of the imbalances that the Uganda Constitution sought to address include imbalances caused by the violent past suffered by women in northern Uganda, as well as the imbalances caused by the patriarchal nature of northern Uganda and its impact on land and access rights for women.[242]

Where the GoU fails to respect and protect women's rights, it becomes complicit in promoting the exacerbation of gender discriminatory practices against women.

5.3.7 Absence of victims' voices in policies

There is an absence of victim's voices in the policies that have been undertaken to promote attainment of the RTD. The absence of victim's voices may not be deliberate as there have been attempts to involve the local populace, especially through their representatives, in consultations on government policies to be undertaken. The challenge, however is that at times ideas solicited at the grassroots level are ignored in favour of a centralised planning approach, which may be ineffective in providing solutions.

Centralised policy formulation and implementation tend to be tone-deaf to the issues affecting local communities and drown out victim's voices. Various consultations were held regarding the northern conflict and how to address the harms done; but the final policy is silent on victim's voices or their human rights concerns. An example was cited of reparations being crucial to the people of Acholi and reflected as such in various consultative meeting, but not reflected in development programmes.

Further, some of the critical issues affecting local communities included land access rights as well as user rights. These interventions under the land sector raises doubt as to whether victim's rights were really under consideration. It should be remembered that the Acholi were herded out of their villages and into IDP camps in the mid 1990's for their 'protection'. The Acholi were returned to their villages from 2007, during which time some found that their land had been grabbed.[243] Child-headed families were equally challenged as some

[242]Constitution of the Republic of Uganda 1995 (as amended), art 33 (5).

[243]'Judge: Most land grabs are by govt officials, soldiers', *The Observer* 11 October 2017, https://observer.ug/news/headlines/55372-judge-most-land-grabs-are-by-govt-officials-soldiers.html, (accessed 10 August 2019).

could not trace their land.[244] Widows were equally denied user rights by their in-laws due to the patriarchal nature of Acholi society.

5.3.8 Ineffective regional human rights systems

The ACHPR establishes the African Commission on Human and Peoples' Rights, a body mandated to promote and guarantee protection of human and peoples' rights and ensure their protection in Africa.[245] The ACHPR obliges those that would like to invoke the powers of the Commission to exhaust local remedies unless the processes are unduly prolonged.[246] State interference, however, precludes one from exhausting local remedies thereby leaving the African Commission as the solution.

Making use of the African human rights system is one thing and getting an effective remedy that will be enforced by a concerned State party like Uganda is another debate. The challenge with the enforceability of the African Commission's decision is that there are no enforcement mechanisms. As previously observed, the good will of State parties is required for Commission decisions to be implemented. The African Commission is, therefore, as good and effective as the willingness of a State party to implement its decisions.

In the case concerning *Democratic Republic of Congo versus Burundi, Rwanda and Uganda*,[247] Burundi, Rwanda and Uganda were alleged to have committed massive human rights violations in Congolese provinces. The African Commission found that the soldiers belonging to the three countries had indeed looted, killed, and indiscriminately transferred civilian populations. The African Commission found in favour of DRC and recommended that adequate reparations be paid. However, no steps have been taken to make Uganda compensate DRC. Neither has Uganda taken any step to comply with the African Commission's decision.

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[244]MA Rugadya, 'Northern Uganda land study analysis of post conflict land policy and land administration: A survey of IDP return and resettlement issues and lesson: Acholi and Lango regions', February, 2008, iii, (accessed 10 August 2019).

[245]African Charter on Human and Peoples' Rights, art 30.

[246]African Charter on Human and Peoples' Rights, art 56 (5).

[247]DR. Congo v Burundi, Rwanda and Uganda, African Commission on Human and Peoples' Rights, Communication No. 227/99 (2003).

Apart from developing jurisprudence on State responsibility to protect the RTD of its citizens, it may be futile for the people of Acholi to take their case of the African Commission. Furthermore, ordinary Acholi in the quest to claim their RTD could equally face the challenge of accessing the African Commission given the limited knowledge on how the African Commission mechanism operates. Additionally, their access could be inhibited by limited financial means.

5.3.9 Lack of political will

> We have the means and the capacity to deal with our problems, if only we can find the political will...[248]

No government policy can be successfully implemented if there is no political will. Without active government support for the protection and promotion of RTD, the right to attain development will merely remain a lip service. As previously observed, there were other development interventions undertaken by the Uganda government in northern Uganda including NUREP and NUSAF which had three phases. These interventions were discussed in chapter three. With all these resources being sunk in one region, with a specific focus on development, socioeconomic development for the Acholi ought to have been visible.

5.3.10 Politicisation of transitional justice processes

As earlier observed, local communities in northern Uganda have often agitated for truth telling as one of the transitional justice mechanisms that Uganda government ought to facilitate. This is in light of the fact that under Acholi culture, truth telling would help the Acholi have closure and move forward from the conflict. The implementation of transitional justice mechanisms would be in line with the Juba Peace Agreement.

The Juba Peace Agreement clearly articulates victims' rights as including the need for victims to effectively and meaningfully participate in accountability and reconciliation proceedings.[249] The Juba Peace Agreement also included the right to reparations whether indi-

[248]Quote by Kofi Annan available at http://www.azquotes.com/quotes/topics/political-will.html?p=4.

[249]Agreement on accountability and reconciliation between government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba- Sudan , (2007), clause 8.1 and 8.2.

vidual or collective for harms suffered in the course of the conflict.[250] In this, it was hoped that truth telling would actually help survivors of the conflict by promoting psychological healing[251] and justice.[252]

Additionally, from the experiences of victims of the conflict it was hoped that official acknowledgment of the abuse they underwent would be availed.[253] Truth telling as a transitional justice mechanism is at the heart of Acholi culture and would be crucial in guaranteeing the development in the post-conflict setting. In accordance with Acholi culture, the parties would forgive each other, and enable the Acholi to effectively plan for and participate in development processes.

Development in Acholi is hinged on consideration of the local context and the cultural setting in the planning and implementation process to guarantee success.[254] If this system is reintroduced, more meaningful policy interventions would be developed and implemented in Acholiland. Uganda government, however, appears to be slow to implement transitional justice mechanisms. This could be attributed to the fact that government soldiers that participated in the conflict, the UPDF, would have to be subjected to truth-telling as well. Consequently, the Acholi would not feel prepared to move forward considering that they have not been able to deal with the past.

[250]Agreement on accountability and reconciliation between government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba- Sudan, (2007), clause 9.2.

[251]L. Kriesberg, 'Transforming intractable conflicts', Desafíos, Bogotá (Colombia), (10): 188-199, semestre I de 2004, http://revistas.urosario.edu.co/index.php/desafios/article/viewFile/659/590, (accessed 19 January 2017).

[252]RG Teitel, 'Transitional justice genealogy', http://www.qub.ac.uk/home/Research/GRI/mitchell-institute/FileStore/Filetoupload,697310,en.pdf, (accessed 17 January 2017).

[253]Dr. B Hamber, Putting the past in perspective, Paper presented at the 'Putting the past in perspective' seminar Canada Room, Queen's University Belfast, 17 May 2008, http://www.brandonhamber.com/publications/Paper%20Putting%20the%20Past%20in%20Perspective.pdf.

[254]N. Ginsberg, Determining the context of an international development project, *The Journal of Developing Areas*, special issue on Kuala Lumpur conference held in November 2015, (2016) Volume 50 no. 5, 431 – 442, 432.

5.4. Conclusion

The right of the Acholi to take part in and contribute to their development is guaranteed under the national and regional legal frameworks. This right to participate is critical for the meaningful attainment and enjoyment of the RTD in northern Uganda. Unlike other jurisdictions, Uganda has legal and institutional foundations that could safeguard developmental rights of the victims of the northern Uganda conflict. Through the existing legal and institutional frameworks, the Acholi people are availed space within which they can claim and attain their RTD.

The reality, however, is that the legal and institutional frameworks do not offer adequate protection. There is, however, still a gap between the human rights protection offered by the provisions of the existing legal frameworks and what is implemented in Acholiland. Chapter six, therefore, advances the imminent need for the Acholi to develop, especially through exploring their right to restitution.

CHAPTER SIX
THE RIGHT TO RESTITUTION IN POST-CONFLICT NORTHERN UGANDA

6. Introduction

The right to development (RTD) is an individual right as well as a right that ought to be enjoyed by peoples collectively.[1] The RTD seeks to address various international human rights concerns affecting peoples, including concerns on development and humanitarian assistance.[2] This chapter is an extension of chapter five which laid out the legal and institutional framework for enjoyment of the RTD in Acholi sub region. The RTD can, therefore, be attained through enforcement of the right to remedy (RTR).

This chapter seeks to make a case for the need for RTR, through which the Acholi can be afforded an opportunity to develop. The chapter argues that the Acholi have a right to remedy in light of the human rights violations/abuses that they suffered during the conflict. In enforcing the RTR, the GoU would equally guarantee the RTD.

6.1. Understanding the need for attainment of the RTD in the northern Uganda context

In chapter one, it was discussed how the GoU was obliged to protect the Acholi from the impact of the LRA conflict on human rights enjoyment. In chapter three, it was highlighted that human rights were violated by both State soldiers and the LRA. Some of the human rights that were violated included: the right to life,[3] the right to property[4] and the right to freedom from torture, cruel, inhuman or degrading treatment or punishment.[5] GoU failed to protect the Acholi from the human rights violations that they suffered. This was evidenced by the absence of peace in the northern region and the resultant devastation.

[1]United Nations Declaration on the Right to Development, the preamble.

[2]S Marks, The human right to development: Between rhetoric and reality, (Spring 2004) Volume 17 *Harvard Human Rights Journal*, 138.

[3]Constitution of the Republic of Uganda 1995 (as amended), art 22.

[4]Constitution of the Republic of Uganda 1995 (as amended), art 26.

[5]Constitution of the Republic of Uganda 1995 (as amended), art 24.

The failure to guarantee their human rights entitles the Acholi to effective remedies.[6] GoU is, therefore, obliged to avail effective remedies to these victims of the conflict. The African Commission expounded on this obligation to provide effective remedies as requiring the State to avail human rights protection to beneficiaries against social and economic interference.[7] The people of Acholi endured interference with the enjoyment of their social, economic, and civil rights, among others, thereby necessitating attainment of the RTD that had been consequentially affected.

The need for attainment of the RTD in the post-conflict northern Uganda context is a constitutional obligation. Flowing from the discussion in chapter five which shed light on the legal frameworks governing GoU's obligations on the RTD, it is evident that the Uganda Constitution creates obligations both for GoU and the people of Acholiland. The Uganda Constitution imposes an obligation on the State to respect, protect, promote, fulfil and uphold the rights of all individuals.[8] With the failure by the GoU to guarantee the rights of the Acholi, it is necessary that effective remedies are provided to the victims of the conflict.

The UN Basic Principles on the Right to Remedy and Reparations defines victims. Here, victims are defined to include the immediate family or dependents of the direct victim regardless of whether the perpetrator of the violation is identified, or has been convicted.[9]

The Acholi people are obliged under the Uganda Constitution to participate in the formulation and implementation of development plans and programmes which affect them in order to enjoy developmental rights.[10] Admittedly, other than these provisions, the Constitution does not spell out what other roles are to be played. The ACHPR, on the other hand, further guarantees the right to economic, social, and cultural rights, and the RTD in particular;[11]

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[5]Constitution of the Republic of Uganda 1995 (as amended), art 50; Social and Economic Rights Action Centre (SERAC) & Another v Nigeria (2001) AHRLR 60 (ACHPR 2001), para 46.

[6]Social and Economic Rights Action Centre (SERAC) & Another v Nigeria (2001) AHRLR 60 (ACHPR 2001), para 46.

[7]Constitution of the Republic of Uganda 1995 (as amended), art 20.

[8]United Nations Basic Principles on the Right to Remedy, principle 8.

[9]Constitution of the Republic of Uganda 1995 (as amended), principle x of the National Objectives and Directive Principles of State Policy.

[10]African Charter on Human and Peoples' Rights, art 22 (1).

and makes it a duty of the GoU, as a signatory, to ensure that the RTD is exercised.[12]

For a better understanding of what it would entail to attain the RTD in northern Uganda, both the UN DRD and Pinheiro's Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro's principles) are relied on.[13] The GoU has undertaken efforts towards the rehabilitation of northern Uganda. These efforts are commendable as they are in line with Pinheiro's Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro's principles).[14] Principle 2.2, in particular, obliges States to clearly prioritise the right to restitution as the preferred remedy for displacement and as a key element of restorative justice.

Pinheiro's principles recognise the right to restitution as a distinct human right.[15] This recognition creates a basis upon which the RTD can be claimed by the Acholi. The Uganda Constitution does not specifically provide for a right to restitution. However, article 50 of the Uganda Constitution can be invoked to enable the Acholi claim and seek enforcement of their rights to restitution. Furthermore, institutions like Uganda Human Rights Commission (UHRC) and the High Court of Uganda avail *fora* through which this right can be claimed.

6.2. Transitional justice and post conflict reconstruction of northern Uganda

The post-conflict setting consists of the undertaking of various processes including transition from war to peace,[16] that is, transitional justice (TJ). TJ has been defined as an approach to systematic or massive violations of human rights that seeks to avail redress to victims and create opportunities for the transformation of the political systems, conflicts, and other conditions that may have been at the root of the abuses.[17] In Uganda, the Juba Peace Agreement set

[11]African Charter on Human and Peoples' Rights, art 22 (2).

[12] As above.

[13] United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, Principle 2.2.

[14] As above.

[16]L Reychler & A Langer, Researching peace building architecture, *Cahiers internationale betrekkingen en vredesonderzoek* (2006) Volume 75, 24 in G Brown *et al*, 'A typology of post-conflict environments', CRPD Working Paper No. 1, September 2011, 2.

[17]What is transitional justice?: A Background', http://www.un.org/en/peacebuilding/pdf/doc, (accessed 12 March 2017).

the pace for the implementation of TJ mechanisms in northern Uganda. The Juba Peace Agreement was discussed in detail in chapter four.

Given that the northern conflict affected various locals differently, multifaceted TJ mechanisms were required to cater for the wider range of harms suffered by the Acholi. This was one of the problems with both PRDP I and II, which largely focused on infrastructural development. For instance, some suffered sexual and gender based violence as a result of which they were discriminated against, while others were economically disempowered.[18] One of the key items on the agenda in the Juba Peace talks was the need for commitment towards accountability and reconciliation. Under this, both formal and informal institutions and measures aimed at facilitating justice and reconciliation were considered.[19]

The signing of the Juba Peace Agreement on Accountability and Reconciliation paved way for the consideration of reparations as a form of TJ to be undertaken in northern Uganda. Much as the final agreement between the GoU and LRA was never signed, it was still expected that GoU would implement TJ mechanisms to enable the Acholi recover from the effects of the conflict. The Juba peace process, and its influence on the push for attainment of the RTD in northern Uganda, was discussed in chapter four.

At the end of every conflict, it is expected that peace and recovery efforts are undertaken; and that in these recovery efforts, victims of the conflict are at the core of all developmental policies affecting them. In light of this, a victim-centred approach ought to be adopted. This in essence, means that in any post-conflict setting, the central objective of TJ would be to 'serve the interests of the victim'.[20] Considering that reparations were one of the central features of the Juba Peace Agreement. It was expected that all development efforts in northern Uganda would focus on availing some form of reparations for the Acholi people. This has not been so.

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[18]International Centre for Transitional Justice Uganda, 'Reparations for northern Uganda: Addressing the needs of victims and affected communities', ICTJ Briefing paper, September 2012, 4.

[19]Commitment to accountability and reconciliation, Agreement on accountability and reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba, Sudan, 3.

[20]Foundation for Human Rights Initiative, 'Back home but not really home: Towards a victim-centered approach to justice-An analysis of Uganda's 5th Draft Transitional Justice Policy', November 2015, 1-2.

Unfortunately, a 'one-size-fits-all approach' in implementing policy was adopted. This approach disregarded the culture of the Acholi and the political realities in northern Uganda, and focused more on rebuilding of institutions.[21] This is contrary to the principle of victim-centredness, under which the Acholi would take centre stage in all policies aimed at ensuring development and realisation of their RTD.

It is not expected that TJ mechanisms like reparations would adequately compensate the victims of the northern conflict for the loss they suffered.[22] It would be a foundation upon which their development could be based. However, there is still a need for a multifaceted approach to aid development in Acholi sub-region. This way, TJ mechanisms alongside other government interventions would be effectively utilised to enhance realisation of the RTD.

6.3. Justifying the right to remedy as a component of the RTD in Acholiland

The right to remedy in Uganda is guaranteed under article 50 of the Uganda Constitution. This right reflective of Acholi culture that recognises the need for justice where one has been wronged. In Acholi culture, in the event of conflict, one cannot move forward without addressing the past injustice. For there to be real attainment and enjoyment of the RTD, the right to remedy (RTR) must be addressed in a bid to forge the way forward.

Acholi culture is a rich one that intertwines the past and the present, the living and the dead.[23] In the event of conflict, it is not only the living that were aggrieved, but also the ancestors that are long dead are believed to have been wronged as well.[24] All these aspects have to be addressed and redressed for the wrongs committed before local communities resume their lives and development opportunities. With a conflict that spanned over 20 years, there were a lot of unresolved issues between the GoU and the Acholi. There were also unresolved issues between the LRA and the Acholi; as well as among some members of the Acholi. Con-

[21]G Kasapas, 'An introduction to the concept of transitional Justice: Western Balkans and EU conditionality', UNISCI Discussion Papers, No. 18 October 2008, 61.

[22]A Soble & A Weiner, The cost of closure, *Yale Globalist*, 13 October 2009, 40-43 in G Kasapas, 'An introduction to the concept of transitional Justice: Western Balkans and EU conditionality', UNISCI Discussion Papers, No. 18 October 2008, 67.

[23]Informal discussion held with Mr. Ambrose Olaa the Prime Minister of Acholi Kingdom on 9th June 2017 at Ker Kwaro (Acholi Cultural Institution).

[24]Informal discussion held with Mr. Ambrose Olaa the Prime Minister of Acholi Kingdom, as above.

sequently, the right to remedy is indivisible from the RTD.

The UN Basic principles and guidelines on the right to a remedy and reparation for gross violations of international human rights law and serious violations of international humanitarian law of 2005 (UN Basic Principles on the RTR,) provides that reparations should be made to victims who have suffered harm.[25] In this instance, reparations are given to one who have suffered physical, mental, and psychological harm or economic loss due to gross violations of international human rights law, among others.[26]

Under these guidelines, the GoU is obliged to make available adequate, effective, prompt and appropriate remedies, including reparations.[27] These guidelines, however, do not have a binding force in Uganda. The guidelines merely offer direction on what GoU ought to consider. The remedies that the people of Acholi are entitled to for gross violation of their human rights include their right to equal and effective access to justice;[28] the right to adequate, effective, and prompt reparations for the harm they have suffered.[29] This right also includes having access to information with regard to their human rights violations and reparation mechanisms.[30] Unfortunately, these rights have been fulfilled to a limited extent.

With regard to the right to effective remedies, attempts have been made by some victims to access justice especially for violation of their civil and political rights. Some of the rights that the Acholi have tried to claim include the right to life; the right to freedom from torture, cruel, inhuman or degrading treatment of punishment; and the right to property, among others. Government institutions such as the Courts of Judicature and Uganda Human Rights Commission have attempted to handle complaints on human rights violations by State agents.

[25] United Nations Basic Principles on the Right to Remedy and Reparations, principle 8.

[26] As above.

[27] United Nations Basic Principles on the Right to Remedy and Reparations, principle 3 (d).

[28] United Nations Basic Principles on the Right to Remedy and Reparations, principle 11 (a).

[29] United Nations Basic Principles on the Right to Remedy and Reparations, principle 11 (b).

[30] The right to access information is guaranteed under art 42 of the Constitution of the Republic of Uganda 1995 (as amended).

Awards have been made in some of the cases but some victims of these human rights violations are yet to get access to their awards. Much as some victims of human right violations have been compensated, others have not. The Uganda Human Rights Commission 2015 Annual Report indicates that an outstanding Uganda shillings 5, 047, 671, 968 billion that had been awarded by UHRC is yet to be paid out by the Office of the Attorney General.[31] Recent indications show that this amount has since risen to Uganda shillings 8, 042, 318, 759 as at December 2020.[32] This is contrary to principle of the right to remedy.

The right to remedy can be enforced for the Acholi as a form of restorative justice and fulfilment of their development needs. The UN Principles and Guidelines on the Right to Remedy and Reparations require that restitution should restore the victims of the northern conflict to the pre-conflict position.[33] Some of the forms of restitution include: restoration of family life and return of property.[34] These forms of remedy have, however, not been explored as court and tribunal awards are monetary. There have, however, been no pronouncements on how the RTD should be enforced.

GoU's attempt to restore family life through the return of formerly displaced persons to their villages was inadequate. The mode of implementation was also a subject of contention as the return process was deemed to have been involuntary.

6.4. Prospects for attainment of the RTR and RTD in northern Uganda

With the end of the 20-year conflict and return of peace, the GoU, in cooperation with development partners, undertake efforts to develop northern Uganda. Inadequate attempts were also made to remedy the Acholi for the consequential harm from the conflict. The efforts to revamp northern Uganda and promote attainment of the RTD are coordinated and implemented through the OPM and Ministry of Local Government (MoLG).

The interventions that were undertaken in northern Uganda were discussed in chapter

[31]Uganda Human Rights Commission, Report on the State of Human Rights in Uganda, 2015, 31.

[32] Information obtained from the Directorate of Complaints, Investigations & Legal Services at the Uganda Human Rights Commission on 2 August 2021.

[33]United Nations Basic Principles on the Right to Remedy and Reparations, principle 19.

[34]As above.

three. For RTR and development to be attained, certain intervening factors ought to be addressed. These intervening factors that affect the effectiveness and sustainability of development for promotion of the RTD and RTR are discussed below:

6.4.1 Presence of a legal and institutional framework

The discussion in chapter five showed that Uganda has an array of legal and institutional frameworks that can be utilised to ensure that the negative consequences of the northern conflict are remedied. These frameworks seek to facilitate the protection and promotion of various human rights, including the RTD. The need to guarantee that the RTR and the RTD are fulfilled is crucial considering that local communities were essentially reduced to living a life of destitution.

The Acholi became wholly or substantially dependent on donors for handouts including food relief items and clothing. The Acholi lost their humanity and dignity; consequently, the GoU is obliged to assist them to regain it. Uganda's legal framework provides an opportunity for safeguarding the rights of Acholi. As already discussed, the GoU's constitutional obligation is enshrined in both the NODPoSP which recognises the RTD,[35] as well as the bill of rights. Particularly, article 50 guarantees the right of all persons whose rights have been infringed upon or threatened to seek redress from a competent court.

Furthermore, there are various policies that could be utilised to promote attainment of the RTD as well as RTR. These policies include: The National Development Plan (NDP) which provides for the strategic direction for the conduct of different development programmes including those aimed at rehabilitating northern Uganda; and the Peace Recovery and Development Plan (PRDP), which specifically sought to facilitate the reconstruction of northern Uganda.

This PRDP is in line with GoU's obligation under the UN DRD which renders it a duty for the GoU to come up with appropriate national development policies that seek to achieve improvement in the wellbeing of all individuals.[36] The challenge with PRDP is that

[35]Constitution of the Republic of Uganda 1995 (as amended), principle ix of the National Objectives and Directive Principles of State Policy.

[36] United Nations Declaration on the Right to Development, art 2(3).

the GoU has not stated whether it is a form of reparations, as this has been a subject of debate. PRDP and other development plans/programmes were discussed in greater detail in chapter three.

6.4.2 Existence of peace and security

The RTD cannot be attained in the absence of peace and security. The signing of the CHA resulted in peace in the northern region. As a result of this peace, the Acholi were availed an opportunity to reclaim their lives and pursue development opportunities. With this relative peace, various government development programmes were undertaken to facilitate human rights enjoyment. PRDP was first implemented in 2007 and sought to address the causes of conflict and instability in northern Uganda.[37] Currently in its third phase, PRDP implementation has continued amidst the existing peace and security albeit with challenges that were discussed in chapter three.

6.4.3 Government-donor partnerships

As part of its obligation to ensure the protection and promotion of RTD, the GoU is required to take steps, whether on its own or through international assistance and cooperation, to progressively achieve full realisation of socio-economic rights.[38] Further, the UN Declaration on the Right to Development (UN DRD) also obliges the GoU to promote and strengthen universal respect for and observance of all human rights and fundamental freedoms.[39] Hence the memoranda of understanding signed between the GoU with various development partners, with a view to making human rights enjoyment a reality.

Development partners on their part determine the extent of their role in facilitating realisation of economic rights.[40] The GoU has not been short of development partners that are willing to assist it to fulfil enjoyment of the RTD, with the exception of 2012 when some development partners withdrew their contribution due to their dissatisfaction with the misman-

[37] Peace Recovery and Development Plan (2007 – 2010), 29.

[38] Covenant on Economic Social and Cultural Rights, art 2 (1).

[39] United Nations Declaration on the Right to Development, art 6 (1).

[40] Covenant on Economic Social and Cultural Rights, art 2 (1).

agement of PRDP funds.[41] Funds were later made available to the GoU the moment action was taken on those implicated.

6.4.4. Willing communities

The Acholi are ready and willing to participate in any dialogue or planning process that could better their community. This willingness to participate stems from the right to participate which safeguards the right of the Acholi to take part in development processes that affect their interests.[42] This right to participate is in line with the human rights-based approach to development which encourages citizens to make claims on their States.

States, on the other hand, are required to account to their citizens on strategies undertaken to guarantee the realisation of citizens' rights.[43] Who is in a better position to shape the programme objectives other than those who were the victims and survivors of the conflict? As a result, programme objectives should be based on the human rights needs of the affected communities.

In light of the existence of these prospects for attainment of the RTD in post conflict northern Uganda, it is imperative that the various interventions that have been undertaken by the GoU be analysed. This is done in the next section.

6.5. Government interventions for advancing the RTD in northern Uganda

6.5.1. Establishment of courts of judicature

There cannot be peace or development without the existence of accountability mechanisms without the existence of court structures. The Uganda Constitution provides for administration of justice and mandates the Judiciary to fulfil this role.[44] The Uganda Constitution provides for the creation of courts and requires that their creation should be in conformity with

[41]'Donors cut shs 70b aid over OPM fraud', *Daily Monitor*, October 27 2012, http:llwww.monitor.co.ug/News/National/Donors-cut-Shs70b-aid-over-OPM-fraud/688334-1603888-bqrh4yz/index.html (accessed 25 January 2017).

[42] International Covenant on Civil and Political Rights, art 25.

[43]A Cornwall & C Nyamu-Musebi, Putting the 'rights-based approach' to development into perspective, (2004), Volume 25 No 8, *Third World Quarterly*, 14-1437, 1416.

[44]Constitution of the Republic of Uganda 1995 (as amended), chapter 8.

the law.[45]

The Uganda Constitution also prescribes that the establishment of these courts should be in line with the values, customs and needs of the people.[46] In the fulfilment of its mandate, the courts of judicature are expected to expeditiously handle cases brought before it.[47] It should be observed that in its establishment of courts, the Constitution states that judicial power emanates from the people and must, therefore, be exercised in the name of the people.[48] The Acholi, being a people in Uganda,[49] ought to have justice administered for them and in their name. This judicial power is exercised on behalf of the people of Uganda by the courts of judicature.[50]

In Acholi sub region, the relevant courts include the High Court circuits in Gulu, and Kitgum;, the Gulu , Pader and Kitgum Chief Magistrate's courts; and grade one Magistrate's courts in Aswa, Bobi, Gulu, and Omoro, Atanga, Kitgum, Kitgum Matidi, Lamwo, Madi Opei, Namokora, Padibe, Pajule, Palabek, Pader, Adilang, Agago, Kilak, Kalongo, Parabong and Patongo .[51] The holding of court sessions in some of these courts is subject to availability of funds to facilitate the travel of a magistrate from their area of residence to the court location to preside over the hearing of cases. This need arises due to the absence of a resident judicial officer within the court's jurisdiction.

The Courts of Judicature are obliged to handle cases brought before it by the Acholi people and protect the rights of those requiring it. Some of the rights that required expeditious protection included property and land rights. As discussed throughout the study, land became a very important recourse in the post-conflict era. One of the challenges faced by courts is casebacklog. According to the Judiciary 2016 National Court Census, there were 1123 cases

[45]Constitution of the Republic of Uganda 1995 (as amended), art 126 (1).

[46]Constitution of the Republic of Uganda 1995 (as amended), art 126 (1).

[47]Constitution of the Republic of Uganda 1995 (as amended), art 126 (2) (b).

[48]Constitution of the Republic of Uganda 1995 (as amended), art 126 (1).

[49]Uganda's indigenous communities as at 1st February, 1926 as provided for in third schedule to the Uganda Constitution.

[50]Constitution of the Republic of Uganda 1995 (as amended), art 129 (1).

[51]Magistrates Courts (Magisterial Areas) Instrument, 2017 [SI No.11 of 2017].

pending at the Gulu High Court circuit.[52] Of these 1123 cases, 362 were civil cases, 15 commercial, 580 criminal, 42 family and 124 land cases.[53] Gulu Chief Magistrate's Court had a total of 1, 912 pending cases, of which 685 were land related cases.[54]

It should be observed that in northern Uganda, some of the civil and criminal cases were equally land related. It should also be borne in mind that this court has one resident judge. The limited number of human resource affects the ability of judicial officers to expeditiously resolve land disputes in the region. Access to justice for the poor and vulnerable Acholi was and still remains a challenge. Traditional institutions that were instrumental in handling communal land disputes expeditiously, amicably and with finality were rendered weak. The powers of such institutions were eroded during the conflict when they were not functional.[55] This undermined their legitimacy among the people.

6.5.2 Creation of the International Crimes Division of the High Court

The GoU created the International Crimes Division (ICD) as a special division in the High Court of Uganda in 2008.[56] The creation of the ICD was in response to GoU's undertaking in the annexure to the Juba Peace Agreement on Accountability and Reconciliation.[57] The GoU undertook to create a special division of the High Court of Uganda to hear cases concerning serious crimes that were alleged to have been committed during the LRA conflict.[58]

The ICD is also part of Uganda's complementary obligation under the Rome Statute which provides for complementarity between the ICC and national criminal jurisdictions.[59] The Practice Directions of the ICD prescribe the criminal offences to be handled by court,

[52]The Judiciary, 'National court case census', 2016, 20-21.

[53]As above.

[54]As above, 35.

[55]MA Rugadya, 'Northern Uganda land study analysis of post conflict land policy and land administration: A survey of IDP return and resettlement issues and lesson: Acholi and Lango regions', (February 2008), 14.

[56]Information on the background to the creation of the International Crimes Division as a special division of the High Court, https://www.judiciary.go.ug/data/smenu/18/International%20Crimes%20Division.html, (accessed 2 July 2021).

[57]Annexure to the Juba Peace agreement on Accountability and Reconciliation, clause 7.

[58]As above.

[59]Rome Statute of the International Criminal Court, art 1; International Criminal Court Act, Act 11 of 2010.

these include war crimes, crimes against humanity, and terrorism.[60] In light of these, one of the cases concerning northern Uganda that has been handled is the *Kwoyelo case*.[61] However, Kwoyelo, a former LRA commander, challenged the operation of the court in light of the amnesty law.

The trial of Kwoyelo unfortunately does not mirror any aspects of Acholi traditional justice where the involvement and participation of the people is a key factor. With the trial being held in Kampala, the local people were hindered from participating in the hearing. This was challenging considering that the Acholi, within their traditional justice system, believe in collectively dealing with injustices committed as it affects the whole community.[62]

Judiciary, on its part, created an information desk at the High Court circuit in Gulu to enable the community and trial participants' access to accurate and timely information on the trial.[63] This is not sufficient given the level of involvement expected from the local populace if such a matter were to be handled traditionally.

6.5.3. Government programmes implemented by the Office of the Prime Minister

Office of the Prime Minister (OPM) is an essential institution established by government to coordinate government business. The OPM is created under article 108A of the Uganda Constitution as amended. Among other functions, the OPM is mandated to coordinate and monitor the implementation of special government policies and programmes for Northern Uganda, Bunyoro and Teso Affairs.[64]

[60]Practice Directions of the International Crimes Division, Legal Notice No. 10 of 2011, gazetted on 31 May 2011.

[61]Uganda v Thomas Kwoyelo HCT-00-ICD-Case No. 02/10.

[62]Informal discussion held with Mr. Ongaya Acellam, Clan Leader, Koro Ibakara Clan, on 9th June 2017 at Gulu municipality, Gulu district.

[63]Updates on the trial of Uganda versus Thomas Kwoyelo, available at http://www.jlos.go.ug/index.php/news-media-events/newsroom/latest-news/item/559-updates-on-the-trial-of-uganda-versus-thomas-kwoyelo, (accessed 17 July 2017).

[64]Functions of the OPM available at https://opm.go.ug/mission-vision-and-mandate/, (accessed 11 August 2019).

Some of the government policies and programmes that the OPM has coordinated and implemented specifically for Acholi sub region include, NUSAF, NUREP, PRDP and more recently, DINU. The effectiveness of the OPM in coordinating and implementing these special government development policies and programmes in Acholi sub region during and after the conflict were already discussed in chapter three.

6.5.4. Interventions by Uganda Human Rights Commission

i. Investigations and complaints handling mandate

In line with its constitutional mandate, the Uganda Human Rights Commission (UHRC) investigated allegations of human rights violations by State agents during the northern Uganda conflict.[65] These allegations were largely made against the Uganda People's Defence Forces and the Uganda Police Force. A total of 756 complaints were registered between 2003 and 2006 when the northern Uganda conflict was at its peak. Of the 756, 340 complaints were registered in 2003,[66] 174 registered in 2004;[67]128 registered in 2005;[68]and 114 in 2006.[69]

The Gulu regional office of the UHRC is responsible for monitoring the protection and promotion in the entire northern Uganda region. The sub-regions of West Nile and Karamoja have regional offices in the districts of Arua and Moroto, respectively. These regional offices are specifically assigned to ensure protection and promotion in them. The statistics in the post-conflict era showed that there was a decline in the number of complaints received due to the return of relative peace. For instance, the Commission registered 924 complaints on alleged human rights violations, as compared to 1,222 registered in 2006.[70]

Further, Gulu regional office in northern Uganda received 154 complaints in 2007,[71] as compared to 59 complaints that were received in 2010.[72] Nonetheless, complaints that had been investigated, and merit found in them were forwarded to the UHRC tribunal for hearing

[65]Constitution of the Republic of Uganda 1995 (as amended), art 53 (1).

[66] Uganda Human Rights Commission, 6th Annual Report, (2003), 3.

[67] Uganda Human Rights Commission, 7th Annual Report, (2004), 22.

[68]Uganda Human Rights Commission, 8th Annual Report, (2005,45.

[69]Uganda Human Rights Commission 9th Annual Report, (2006), 18.

[70]Uganda Human Rights Commission 10th Annual Report, (2006), 13.

[71]Uganda Human Rights Commission 10th Annual Report, (2006), 16.

[72]Uganda Human Rights Commission 13th Annual Report, (2010), 10.

and possible remedying of the wrong that had been committed against the complainants.

The UHRC tribunal is mandated by the Uganda Constitution, as well as the Juba Peace Agreement, to adjudicate complaints concerning gross human rights violations arising from the conflict.[73] UHRC's tribunal has powers of a court; its orders are, therefore, enforceable. The UHRC tribunal has had its own challenges. Firstly, the duration of time it took to hear and conclude a single case was quite long considering that the tribunal was meant to ensure the expeditious hearing of cases.

The table below shows a comparison between the number of complaints registered per year and the number of complaints disposed of by the Commission.

Table 6.1: Trends on complaints registered & disposed between 2010 - 2017[74]

YEAR	2017	2016	2015	2014	2013	2012	2011	2010
No. of Complaints registered	682	848	793	941	728	706	1021	797
No. of Complaints disposed of at the tribunal	170	139	85	206	150	96	75	94

Source: Uganda Human Rights Commission

From table 6.1 above, it can be seen that the number of complaints registered have consistently been much higher than the number of complaints disposed of through the UHRC tribunal. As depicted in the table above, between 2010 and 2016 alone, UHRC registered 5834 complaints and disposed of 845 complaints. This, therefore, means that for every complaint disposed of, UHRC registered an additional 8 complaints.

This low disposal rate was attributed to various factors including: the departure of complainants from IDP camps, where they were resident at the time of lodging the complaint, to their villages. This made it difficult for the Commission to trace them both for purposes of investigations, and service of summons to appear at the UHRC tribunal and testify.[75] Some of

[73]Juba Agreement on Accountability and Reconciliation, clause 6.2.

[74]Information obtained from Uganda Human Rights Commission's Annual Reports for the corresponding years.

[75]Uganda Human Rights Commission, 13th Annual Report, 27.

these complaints ended up being dismissed.

The UHRC is independent in its operations and empowered to rein in errant public servants violating human rights in the northern region.[76] This is in line with Smith's assertions that national human rights institutions **(**NHRIs) should be autonomous from the State inorder to be able to investigate the State and other actors alleged to have committed human rights abuses.[77] The UHRC tribunal has quasi-judicial powers and, therefore, makes binding decisions.[78]

The extent of the implementation of the UHRC tribunal's orders, as opined by authors like Aichele, is dependent on the will of government authorities.[79]As shall be seen in the ensuing sections, limited enforcement of UHRC tribunal's orders is one of the factors hampering the attainment of the RTD by some victims of the northern Uganda conflict.

ii. Voluntary Action Groups (VAGs)

VAGs can be described as a human rights version of 'crime preventers'. These were essentially self-help groups that already existed among local communities that were trained on human rights with a view to them being UHRC's eyes and ears on the ground. The UHRC, however, failed to monitor and continue with the partnerships that had been formed with the VAGs that had been trained. This was in light of the absence of funds to support the activities of these groups. These VAGs, therefore, became a lost opportunity for furthering human rights awareness among local communities.

iii. Human Rights Documentation Project

This is a project that seeks to document human rights abuses/violations committed in northern Uganda during the 20-year conflict between the Lord's Resistance Army (LRA) and government soldiers. The time frame that was considered was from 1986 when the last documentation was undertaken under the Justice Arthur Oder Commission of Inquiry into all human

[76]Constitution of the Republic of Uganda 1995 (as amended), art 54.

[77]A Smith, The unique position of national human rights institutions: A mixed blessing? (2006) 28 *Human Rights Quarterly* 904-946, 909.

[78]Constitution of the Republic of Uganda 1995 (as amended), art 53.

[79]V Aichele, 'National human rights institutions: An Introduction', (2010), 22.

rights abuses that occurred under the pre-1986 governments, until 25th January 1986 when President Yoweri Museveni took over power.[80] The project also seeks to draw lessons from other conflicts that occurred in Uganda, since a regional approach was undertaken.[81]

The idea of the project stemmed from the national transitional justice policy which sought to ensure justice, accountability, and reconciliation.[82] The project would also be the foundation for the conduct of truth seeking as a transitional justice mechanism in northern Uganda.[83] This was on the basis that the right to truth and remedy could only be attained upon the creation of an official record.[84] A comprehensive report is expected to be released in 2021.[85]

6.6. The role of traditional institutions in attainment of the RTD

The Uganda Constitution recognises the existence of the institution of traditional leaders or cultural leaders in Uganda. The Uganda Constitution is cognisant that these institutions exist in accordance with the culture, customs, and traditions, or wishes, and aspirations of the people to whom it applies.[86] The Acholi traditional institution is the *Ker Kwaro.*

The Acholi traditional institution can be equated to having the State of Acholi within the State of Uganda**.** This is the level to which the Acholi value their traditional structure and systems that operate under it. There may be formal systems that exist within the State of Uganda, but the cultural norms respected. This was attributed to the people of Acholi being firmly entrenched within their traditional practices. Under the direction of its cultural institution, the Acholi abide by a strict gender-normative regime which provides for hierarchical

[80]Human Rights Documentation Project, 11.

[81]Office of the Prime Minister, Report on the Challenges of the Peace Recovery and Development Plan, 22.

[82]F Musisi, Government to document rights abuses from 1987 – 2007, *Daily Monitor* 4 October 2015, http://www.monitor.co.ug/News/National/Government-to-document-rights-abuses-from-1987-2007/688334-2897248-qgcm5m/index.html (accessed 25 July 2017).

[83]As above.

[84]Human Rights Documentation Project, 14.

[85]As above.

[86]Constitution of the Republic of Uganda 1995 (as amended), art 246(1); Institution of Traditional or Cultural Leaders Act, Act 6 of 2011, sec 3.

division of labour within each household.[87]

Under this hierarchy, men had their roles as providers while women's duties focused on cooking, cleaning and harvesting crops, among others.[88] These roles equally fed into the clan hierarchy as the head of the home would be watched over by a clan leader. This system aimed at ensuring that all members of the community developed together. Where there were disputes or matters of development to be discussed, the clan leaders would handle it and come up with a decision for implementation.

Cultural institutions are governed by the Institution of Traditional or Cultural Leaders Act.[89] The Act mandates traditional or cultural leaders to promote and preserve cultural values, norms, and practices that enhance dignity and well-being of the people. [90] The Act further mandates such traditional or cultural leaders to promote development as well as the preservation and enrichment of all the people in their community.[91]

Cultural leaders were left out of the planning and implementation processes for PRDP.[92] This limits the sustainability of such development interventions in instances where cultural leaders, that command respect of and lead the Acholi community, are left out. The State tends to favour the involvement of political leaders as a way of pushing forward the ruling political party's agenda. However, in a cultural society like the Acholi, cultural leaders are respected and are more authoritative than political leaders. Such cultural leaders would, therefore, achieve more if involved in planning and implementation of interventions that would promote attainment of the RTD.

In line with the mandate of these cultural institutions, for the Acholi, especially in the

[87]United Nations Children's Fund Report 2005.

[88]JN Bilotta, 'Encompassing Acholi values: Culturally ethical reintegration ideology for formerly abducted youth of the Lord's Resistance Army in northern Uganda' (2011), *Theses, Dissertations, and Projects.* Paper 535, 22.

[89]Act 6 of 2011.

[90]Institution of Traditional or Cultural Leaders Act, Act 6 of 2011, sec 9 (a).

[91]Institution of Traditional or Cultural Leaders Act, Act 6 of 2011, sec 9 (b).

[92]Informal discussion held with Mr. Ongaya Acellam, Clan Leader, Koro Ibakara Clan, on 9th June 2017 at Gulu municipality, Gulu district.

post-conflict setting, the aspect of development may not be successfully handled if forgiveness and reconciliation have not been done. This arises from the Acholis' belief in the world of the 'living-dead' and divine spirits.[93] With the assistance of cultural institutions, reconciliation would have to be fostered in a bid to facilitate development.

For the Acholi, no meaningful development could be undertaken without traditional justice practices such as reparations and truth telling, being undertaken to foster forgiveness and reconciliation. The Acholi recognise the role of culture, especially in the mediation and settlement of disputes.[94] Consequently, when peace is fostered, development is facilitated. Considering the amount of respect that the *Ker Kwaro* cultural institution has in Acholi, it ought to have been involved in the implementation of post-conflict recovery strategies like PRDP.

In light of a rights-based approach to development, these traditional institutions would have been instrumental in the identification of critical issues affecting development among its subjects. Heads of traditional institutional would be better informed and privy to information on issues affecting development in Acholi sub-region. With limited participation and local ownership of development programmes by these traditional leaders and their people, the chances of success of these programmes would not be high; especially where local customs such as reparations have not been taken into account.

Despite the non-involvement of traditional leaders in the implementation of development programmes, indirect attempts have been made to cripple any resistance from these leaders. For instance, under PRDP, provision was made for construction of houses for some of the traditional Chiefs and a rehabilitation centre.[95] Traditional chiefs that have benefitted from such houses would be unable to criticise government programmes even where there are

[93]P Tom, 'The Acholi traditional approach to justice and the war in northern Uganda', http://www.beyondintractability.org/casestudy/tom-acholi, (accessed 10 June 2017).

[94]Uganda Human Rights Commission & United Nations Office of the High Commission for Human Rights, 'The dust has not yet settled: Victims' views on the right to remedy and reparation, A report from the greater north of Uganda'.

[95]'Acholi palaces: Are they fit for the chiefs' habitation', *Daily Monitor* 1 February 2013, https://www.monitor.co.ug, (accessed 18 May 2020).

genuine concerns.

Non-consultation of cultural leaders limits the prospects of success of development interventions. The Acholi as a people ordinarily rally around their traditional leaders and abide by their guidance. This would partly explain the ineffectiveness of PRDP as a strategy to guarantee the attainment of developmental rights. This would require that the implementation plan be revisited.

As reflected in the preceding discussion, some of the government interventions have not been effective in guaranteeing attainment and enjoyment of the RTD in post-conflict Acholiland. This is attributed to various factors which are discussed in the next section.

6.7. Factors affecting attainment of the RTD in Acholiland

Well-intentioned policies for the reconstruction of post-conflict societies like those in northern Uganda do not necessarily and automatically translate into development. The development of interventions that the GoU has undertaken to minimise the socio-economic impact of the LRA conflict on the Acholi have been ineffective. Development objectives, such as peace building and reconciliation have not been realised.[96] This can be attributed to the following factors:

6.7.1 Non-appreciation of Acholi culture as a subsystem within Uganda

The Uganda Constitution recognises the importance of culture and its impact on dignity and wellbeing of the concerned society.[97] Culture, therefore, has an important role in facilitating development and general improvement the social and economic wellbeing of the Acholi. However, the GoU's development interventions do not reflect Acholi cultural norms. Non-recognition of Acholi cultural norms and their influence on development affects impacts on the success of these interventions and local ownership. Without buy-in from the local traditional leaders and their subjects, chances of attaining and sustainable development would be limited.

[96] Peace Recovery and Development Plan (2012 – 2015), 7.

[97]Constitution of the Republic of Uganda 1995 (as amended), principle xxiv of the National Objectives and Directive Principles of State Policy.

The Acholi's belief and adherence to their cultural norms and practices influences all aspects of their lives and affects policy outcomes as well as the enjoyment of human rights. For instance, there has been a push by the Acholi traditional leaders to have their traditional reconciliatory practices acknowledged and implemented in the post-conflict government interventions, in particular, reparations and truth telling. As already noted, the Acholi believe that one cannot recover from conflict without the issues that led to the conflict being resolved as a clan/community.

As observed by authors like Pham *et al*, the Acholi should be allowed to deal with the atrocities stemming from the conflict in accordance with their traditional practices.[98] This mean that a holistic approach ought to be adopted if the Acholi are to effectively develop. Here, the approach needed would require that Acholi traditional justice practices be taken into account and implemented. At the same time, GoU would pave way for implementation of its interventions.

In the absence of facilitation for the conduct of Acholi traditional justice practices, the GoU's development interventions will not be embraced. This affects the sustainability of such interventions. This is against the backdrop of the fact that traditional justice in Acholi is based on restorative principles.[99] For them, their traditions supersede any formal systems, without which there will be no buy-in into government policies.

6.7.2 Politicisation of development programmes

Development programmes for northern Uganda have been politicised. This has impacted on their potential in bringing about socio-economic change for local communities. The available resources have been stretched to include districts that did not bear the brunt of the northern conflict, nor do they fall under the northern region. The same applies to the National Transitional Justice Policy whose scope was widened to include other conflicts that took place in Uganda.

[98]P Pham *et al*, 'Forgotten voices: A population-based survey on attitudes about peace and justice in northern Uganda'(2005), http://www.relie fweb.int/library/cic_documents/2005/hrc-uga-25jul.pdf; in P Pham, 'The Acholi traditional approach to justice and the war in northern Uganda', August 2006, http://www.beyondintractability.org/casestudy/tom-acholi, (accessed 10 June 2017).

[99]As above.

Furthermore, the passing of the National Transitional Justice Policy was also politicised given the duration it took to have the document approved. The drafting of the policy was a culmination of the Juba Peace Agreement on Accountability and Reconciliation.[100] In the agreement, it was recommended that a national transitional justice policy be drafted to guide the transitional justice process. Discussions on this policy begun as early as 2007 but the policy was recently passed in July 2019.[101]

In addition, the National Transitional Justice Policy that was initially meant for northern Uganda adopted a national character. This was done to incorporate other conflicts that have occurred in Uganda over the years. There were concerns about too much focus being placed on northern Uganda as other regions had previously suffered from the impact of conflict and the accompanying human rights violations.

The addition of other conflicts experienced by Uganda in the National Transitional Justice Policy signalled a departure from the Juba peace talks. This is because the policy was viewed more as an extension of the Agreement on Accountability and Reconciliation. It has been argued that government is no longer keen on transitional justice as it has already benefitted from the increased foreign aid it obtained to boost the justice sector.[102] Hence, the slow consideration and passing of the National Transitional Justice Policy.

The National Transitional Justice Policy sought to provide for transitional mechanisms including truth telling. This mechanism is crucial to the Acholi as it resonates with their traditional justice mechanism. However, GoU is reluctant to subject its soldiers to the process as it would highlight crimes committed by them.[103] The GoU to embrace TJ mechanisms, particularly truth telling and reparations, as they are at the core of the northern traditional justice practices.

[100]Juba Peace Agreement on Accountability and Reconciliation, clauses 5.6 & 14.3.

[101]'Uganda's transitional justice policy 2010: Better late than never!', New Vision of 5 July 2019, https://www.newvision.co.ug/new_vision/news/1502988/uganda-transitional-justice-policy-2019-late, (accessed 8 July 2019).

[102]S Okiror,'Truth and reconciliation in limbo: Ugandan cabinet drags on enacting transitional justice policy', 26 September 2016, http://letstalk.ug/article/truth-and-reconciliation-limbo-ugandan-cabinet-drags-enacting-transitional-justice-policy, (accessed 26 June 2017).

[103]As above.

6.7.3 Limited local ownership of developmental programmes

One of the pillars of good governance includes responsiveness. This would mean that public institutions ought to endeavour to meet the aspirations, expectations, and needs of the community served, in this case the Acholi. This is in line with the view that there should be local ownership of any programme aimed at attaining the RTD.

Local ownership has been defined as the extent to which domestic actors control both the design and implementation of political processes. In the post-conflict context, the term local ownership takes into consideration the need for the peace process to be embraced by the people that have to live with it, or else such a process would most likely fail.[104]

The programme monitoring unit under the OPM while monitoring the implementation of PRDP observed that there was never any feedback given by district councillors[105] to the sub-counties within the affected districts. These district councillors are political leaders that were elected to represent the interests of the local populace.[106] This lack of feedback does not promote accountability for and local ownership of government programmes. Therefore, attainment of socioeconomic rights is affected.

Failure to give feedback to the local populace is contrary to article 38 of the Uganda Constitution which confirms political leaders as representatives of the people. More importantly, the Uganda Constitution emphasises that power belongs to the people.[107] People's power cannot, therefore, be exercised to facilitate development in an environment where the beneficiaries are deliberately denied access to information.

Denial of the Acholi access to information curtails their ownership of developmental programmes; and, therefore, limited improvement in socio-economic rights. Local ownership of development processes in northern Uganda is largely affected on two levels. The first level is the conflict between national versus local (northern Uganda) interests; and national versus

[104]T Donais, Empowerment or imposition? Dilemmas of local ownership in post-conflict peacebuilding processes, January 2009, Volume 34 No 1, *Peace & Change*, 3.

[105]District Councillors are locally elected political leaders under the decentralised system of government.

[106]Office of the Prime Minister, Report on the challenges of the peace recovery and development plan, 17.

[107]Constitution of the Republic of Uganda 1995(as amended), art 1 (1) and (2).

international/development partner interests. These conflicting interests are created by the divergence between international and local priorities as a factor.[108]

Most peace-building interventions from external sources are in line with donor-driven agenda as a result of which policies are imposed on the local populace by experts, though these policies are not defined by local priorities.[109] This takes away the core element of people's participation, a central feature of the RTD. Irrespective of this, the GoU is required to try to address the needs of the entire Acholi community while balancing competing national interests in a timely, appropriate, and responsive manner.[110] To this end, some concerns have been raised by the locals with regard to the gaps in PRDP II.

Some of the aspects that were not catered for in PRDP include: support for youth groups to engage in agricultural and entrepreneurial ventures; absence of a reparations policy that targets individuals affected by conflict to enable them heal, reintegrate, and reconcile; as well as the need for each district to determine its key priorities for each year, as opposed to the central budgeting system under the OPM.[111] For PRDP to be meaningful, key concerns as raised by local communities ought to be considered and implemented not only to address their needs but also to guarantee ownership of developmental interventions and promote enjoyment of the RTD.

It is emphasised that for developmental interventions to be successful, local communities that were affected by the conflict and not the international community must take the lead.[112]The benefit of having local communities take the lead in overseeing development interventions is that they possess the historical and cultural resources, among others. Involvement of the local communities would not only facilitate the understanding of the root causes

[108]Donais, (n 104 above) 3.

[109]K Krause & O Jutersonke, 'Peace, security and development in post-conflict environments', *Security Dialogue*, 36:4 (2005): 459 in Donais, (n 104 above), 8.

[110]'What is good governance?', available at http://www.goodgovernance.org.au/about-good-governance/what-is good-governance/.

[111]Refugee Law Project, 'PRDP II: What needs to change? Views from Te-yat', (May 2012), http://www.refugeelawproject.org/resources/briefing-notes-and-special-reports/13-conflict-and-tj-special-reports/sprpts-ctj-accs/29-prdp-ii-what-needs-to-change-the-views-from-te-yat, (accessed 28 December 2016).

[112]Donais (n 104 above), 11.

of the conflict, but it would also facilitate the search for sustainable solutions.[113]

6.7.4 Limited control over development processes at the local level

> Two ants do not fail to pull one grasshopper[114]

For the RTD to be attained and enjoyed there is need for local ownership of development processes. This is in line with good governance principles of legitimacy and voice which require that there should be participation by the beneficiaries in the decision-making processes, either directly or through legitimate intermediate institutions.[115] Non-inclusion of local communities would culminate in their disinterest in developmental programmes, subsequent ineffectiveness of these programmes and a general failure to address human rights concerns.

There have been concerns about development programmes, especially PRDP, being managed by the central government in Kampala. The situation is not helped by the fact that most of those managing development programmes like PRDP are not from the affected districts. Such programme managers would not, therefore, have a vested interest to ensure PRDP addresses local human rights concerns. This detachment is reflected in how the number of conflict-affected districts that were to be catered for under PRDP was inflated to include districts like Mbale, Tororo, and Masindi, which do not fall under northern Uganda, and neither were they affected by the conflict.

It is very telling when in 10 years of PRDP implementation, the primary area of intervention has remained infrastructural development. Even where there was promise of psychosocial support under strategic objective 4 of PRDP,[116] the support given was in the form of construction of a psychosocial centre near the premises of the Acholi Cultural Institution in Gulu town. This intervention sought to appease traditional leaders, and yet the intended bene-

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[113]Donais (n 104 above), 11.

[114]Tanzanian proverb available at http://afritorial.com/the-best-72-african-wise-proverbs/ (accessed 14 June 2017).

[115]United Nations Development Programme, 'Five principles of good governance' in J Graham *et al*, 'Principles for good governance in the 21st Century', Policy Brief No. 15 August 2003, 3, http://unpan1.un.org/intradoc/groups/public/documents/UNPAN/UNPAN011842.pdf (accessed 17 June 2017).

[116]Peace Recovery and Development Plan (2007 – 2010), ix.

ficiaries of such support would be in the rural areas.

One respondent who participated in the informal discussions explained that the construction of the psychosocial centre near the *Ker Kwaro* was to make the cultural leaders happy. This was to stop the cultural leaders from questioning government programmes and mobilising the masses against them.[117] In addition to the psychosocial support centre, houses were also constructed for some of the cultural chiefs. Such cultural chiefs that benefitted from the houses would find it difficult to raise any concerns they may have against PRDP.

Limitation of local content in a development programme equally limits opportunities for its success. This explains the call for secession of northern Uganda to enable it to handle its own development programmes, as opposed to it being run by OPM.[118] There have equally been demands that the OPM ceases to oversee the implementation of PRDP especially due to mismanagement of funds.[119] As stated by opposition political party leader Norbert Mao,

> We have always said there are two Ugandas. There is the Uganda for which President Museveni receives praise, where the economy is growing, where investment is taking place and the infrastructure is improved. Then there is the other Uganda, where there are displaced people, where there is no peace, where HIV is on the increase and where the conflict has devastated lives.[120]

When asked about the benefits of PRDP, those spoken to did not really know what PRDP was but could only attest to the fact that there were now better roads in Gulu district.[121] Given the way culture is deeply entrenched within the Acholi way of life, limited involvement of the *Ker Kwaro*, in the implementation of development interventions like PRDP, would limit the success of such programmes; yet the Acholi are deeply traditional and have cultural structures.

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[117]Informal discussion with Mr. Ojut Dick at Gulu Main Market on 9th June 2017.

[118]'Northern MPs revive secession call threat', *Daily Monitor* 21 February 2013, http://www.monitor.co.ug/news/national/northern-mps-revive-secession-call-threat/-/688334/1699920/-/ixjqs5z/-/index.html (accessed January 26 2017).

[119] Daily Monitor (as above).

[120]Quote by leader of the Democratic Party and Former Member of Parliament for Gulu district, http://www.quotehd.com/quotes/nobert-mao, (accessed 15 June 2017).

[121]Informal discussions held on 9th June 2017 at Gulu Main Market, Gulu District, Northern Uganda.

6.7.5 Lack of political will

There is a general lack of political will and disregard for the plight of people from Acholiland in GoU's attempts at ensuring protection and promotion of the RTD. This lack of political will is reflected in various ways. Firstly, as explained in chapter three, various development plans and programmes have been formulated for northern Uganda. All of these plans and programmes bear the same objective of social reconstruction. These programmes have been implemented for over 15 years and have had the same results of intangible change in the economic and social well-being of local communities.

The GoU first implemented the Northern Uganda Reconstruction Programme (NUREP) in 1992. NUREP was criticised for having a top-down approach and for its failure to create a linkage between development and peace-building.[122] An estimated US dollars 600 million was budgeted for though only US dollars 93.6 million was spent on NUREP.[123] A low absorption of funds minimised the potential gains from the development intervention. The success of NUREP was also undermined by other factors including the prevailing insecurity at the time, as well as the limited grassroots participation.[124]

The limited grassroots participation was attributed to the centralised nature of the programme design.[125] The centralisation of programmes had the effect of impeding the people's right to participate in their development. NUREP was followed by NUSAF which sought to boost development in the northern region though its focus was on areas that were experiencing conflict and cattle rustling.[126] NUSAF had some challenges, including an estimated 100 cases that were reported as a result of embezzlement of funds.[127] These funds were meant for improving the livelihoods of local communities and yet they were embezzled for selfish in-

[122]E Bertasi, 'Post-conflict Reconstruction and Development: The PRDP for northern Uganda', http://trace.tennessee.edu/utk_bakerschol, (accessed January 24 2017).

[123]Ministry of Finance, Planning and Economic Development, 'Post-conflict reconstruction: The case of northern Uganda', 31, http://sitesources.worldbank.org/UGANDAE, (accessed 18 July 2017).

[124] As above.

[125]As above.

[126]RM Kavuma, 'NUSAF: Developing northern Uganda',
https://www.theguardian.com/katine/2010/jan/11/nusaf-developing-north-uganda, (accessed January 26 2017).

[127]N Fiala, 'Uganda Impact Evaluation: A documentation of the Northern Uganda Social Action Fund impact evaluation', (2008), http://ugandaimpactevaluation.blogspot.ug/, (accessed 17 June 2017).

terests. This affected the potential of local communities to develop.

No individual, institution or development partners that contribute the bulk towards the development budget question the effectiveness of these programmes in promoting development. One of the few exceptions was in 2013 when action was taken by development partners. This was after it was discovered that some government officials in the OPM had abused funds meant for PRDP.[128] Among other conditions, development partners demanded that the GoU refund the money.[129]

Secondly, there has been government inaction and a very limited crack down on those diverting funds. For instance, where Uganda shillings 2 billion was diverted from PRDP funds to buy a Mercedes Benz for the then Prime Minister. It is reported that the President reportedly placed blame on the office of the Auditor General for its failure to detect the scam until the whistle was blown by the Permanent Secretary of the OPM.[130]

It should be observed that for one to access government funds, three different institutions ought to be involved, that is: Office of the Prime Minister, Ministry of Finance, and the Bank of Uganda. The initial authorisation for funds to have left the OPM ought to have come from the Permanent Secretary who gives an approval and the password is ordinarily given to him alone. Despite the President's undertaking to crack down on the concerned officers from the Ministry of Finance, Office of the Prime Minister and the Bank of Uganda,[131] only the Senior Accountant in the Office of the Prime Minister was prosecuted and convicted. The Permanent Secretary in the Office of the Prime Minister was transferred to another ministry.

PRDP funds were also mismanaged during the livestock restocking exercise. This exercise was undertaken to replace livestock that had been looted from the local communities during insurgency. It was established that the budgeted cost for procurement of livestock was

[128]'Donors: Fulfil 7 conditions or forget Shs700b', *Daily Monitor* 14 May 2013, http://www.monitor.co.ug/News/National/Donors--Fulfill-7-conditions-or-forget-Shs700b/-/688334/1851506/-/b8r5rfz/-/index.html, (accessed 24 May 2016).

[129]As above.

[130]As above.

[131]Daily Monitor (n 128 above).

double the market price.[132] Each calf was allegedly bought at Uganda shillings 800,000 instead of the market price at the time of Uganda shillings 350,000.[133] GoU's commitment to the fulfilment of its obligation to guarantee the RTD for the Acholi people is questionable.

The aforementioned scenarios show a lack of effective monitoring and evaluation systems to ensure that programme output and impact on enjoyment of socio-economic rights and improvement in the wellbeing of local communities is being attained. The situation has been worsened by the nature of the public service in Uganda. The public sector is generally characterised by poor performance management practices, inefficiency, and the quality of accountability wanting. In light of the Uganda Public Service Standing Orders (2010), there ought to have been sanctions against errant public officers for poor or non-performance.

6.7.6 Poor implementation of laws/policies

Uganda has various laws that could protect and promote the RTD in northern Uganda, especially given the hardship the local communities endured. Much as the laws provide for the RTD, they do not specifically spell out the strategies that should be undertaken by GoU. Furthermore, when it comes to sentencing, the penalties are not stiff enough to deter other public servants. For instance, in the PRDP money scam, the senior accountant who was involved in the disappearance of over Uganda shillings 50 billion was found guilty but sentenced to only 5 years in prison.[134]

This sentence of 5 years is not commensurate to the social services that the Acholi were deprived of. Interestingly, no orders were made by the court on the recovery of the swindled funds.[135] Uganda has laws in place that aim at either discouraging public officers from, among others, embezzling or misappropriating public funds. These laws are not strong and neither are the sentences punitive enough.

[132]A Otto, 'Acholi leaders want OPM ejected from PRDP implementation', http://ugandaradionetwork.com/a/story.php?s=67309, (accessed 26 January 2017).

[133]As above.

[134]Uganda v Geoffrey Kazinda, HCT- 00- SC- 0138- 2012.

[135]As above.

6.7.7 Unempowered citizenry/ rights claimants

Authors like Hughes and Pupavac view local ownership as being about domestic political structures taking responsibility for implementing pre-existing and externally defined policy prescriptions.[136] This would require the Acholi to implement development policies. However, what is critical is that they ought to have been part of the policy formulation process. The active participation of the Acholi would be hinged on their being empowered. Having an unempowered citizenry limits the level of their participation.

As observed by Professor Hansungule, it is those that have power to decide that do not understand poverty.[137] To the contrary, those that have experienced poverty are better placed to propose strategies to alleviate their poverty. Participation of the local populace in Acholiland would include their participation in the formulation, implementation, and later evaluation of implementation of development interventions. This participation of Acholis in formulation, implementation, and evaluation of the GoU programmes like PRDP would promote not only transparency, but also local ownership and sustainability of the programme. Since this awareness is lacking, as a consequence, there is no ownership of the projects, and, therefore, limited or no sustainability.

There is a need for the views and interests of local communities to be reflected as they are the ones to deal with outcomes of any post-conflict processes.[138] It follows, therefore, that an imposition of development interventions on the locals would not succeed.[139]This affects the possibility of realising development objectives. Those that formulated PRDP did not have a stake in the developments, and may not have a drive to fight for its success. This would be reflective of the general political mood where other parts of the country that previously had wars, but did not benefit from such massive development programmes.

Consequently, programme implementers from such areas have no ownership. This would give credence to the calls for northern Uganda to handle its own development pro-

[136]C Hughes & V Pupavac in Donais (n 104 above), 7.

[137]Observation made by Professor Michelo Hansungule in a class on 'NEPAD: The African peer review mechanism and the right to development, Centre for Human Rights, University of Pretoria (2010).

[138]Donais (n 104 above), 10.

[139]As above.

grammes as opposed to it being run by OPM. A clan leader with whom an informal discussion was held in Gulu district, when asked what he thought of PRDP, said, 'I have heard of it. I hear that it is a good plan'.[140] This shows the level of detachment of local leaders from PRDP. If this is the case with them then the question is, what about the ordinary Acholi man or woman?

In light of the foregoing, what would it mean to have an empowered citizenry? Is it only about having a one-day sensitisation meeting to tell a few selected locals about a government programme? Would this really empower them enough to enable them to identify issues/concerns during the implementation process and raise questions about programmes?

Article 38 expounds on the National Objectives and Directive Principles of State Policy in the Uganda Constitution which provides for the role of the people in development.[141] The constitutional provision requires the GoU to involve the people in the formulation and implementation of development plans and programmes which affect them.[142] However, without access to information, there can be no meaningful involvement of the Acholi.

With little or no access to information, there can be no empowerment and without empowerment there can be no real accountability demanded by rights holders on their limited enjoyment of the RTD. It is only people that are aware of their rights and what exactly they are entitled to, who can actually demand for accountability. With limited empowerment, there will be limited participation, which affects programme success and sustainability and ultimately, enjoyment of the RTD.

Consequently, the participation of ordinary folk is cosmetic. It is, therefore, not surprising if there is a vicious cycle of funds being released for various development programmes without the resultant effect of general improvement in the socio-economic well-being of the Acholi.

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[140]Informal discussion held with Mr. Ongaya Acellam, Clan Leader, Koro Ibakara Clan, on 9th June 2017 at Gulu municipality, Gulu district.

[141]Constitution of the Republic of Uganda 1995 (as amended), principle x of the National Objectives and Directive Principles of State Policy.

[142]As above.

6.7.8 Limited access to information

This is linked to the previous section in that for one to meaningfully participate in the attainment of the RTD, there is need for access to information. The information required here includes: what is to be done and what the rights and obligations of the local community would include? This is one of the issues raised about PRDP.

The right to access information is guaranteed in the Uganda Constitution. The Uganda Constitution recognises the right of all Ugandans to access information in possession of the State.[143] Information may, however, not be accessed if it is likely to prejudice security or the sovereignty of the State, or interfere with the right to privacy of a person.[144] The Access to Information Act was enacted to guide on how public information can be accessed.

The Act provides that access to a record that is already publicly available cannot be denied.[145] One of the exceptions is an instance where the information is likely to prejudice the defence, security, and sovereignty of Uganda,[146] of which, information on PRDP would not. The challenge, however, is that in some instances, no information has been declared to be prejudicial to national security and yet access is denied. This affects the level of engagement on enforcement of human rights within development programmes.

Citizens can effectively claim their rights as rights-holders if they are aware that these rights do exist. For citizens to be in a position to demand for accountability as rights-holders, in the first place, they ought to know their rights and obligations in terms of overseeing government development interventions such as PRDP and the nature of services to be provided. This way, they would be able to hold government accountable in the event that there was ineffective service delivery. It is due to ignorance of government programmes that citizens tend to lose out and fail to demand for accountability despite the constitutional proclamation that 'power belongs to the people'.[147]

[143]Constitution of the Republic of Uganda 1995 (as amended), art 41.

[144]As above.

[145]Access to information Act 2005, sec 28(2).

[146]Access to information Act 2005, sec 32.

[147]Constitution of the Republic of Uganda 1995 (as amended), art 1(1).

6.7.9 Challenges in harmonising competing and conflicting interests

These competing and conflicting interests regarding the socio-economic needs of the Acholi are at various levels. There is conflict between central government priorities and those of the local governments; there is also a conflict between former rebels that had since abandoned rebellion and were interested in being reintegrated within local communities versus locals that blamed them as the source of the hardship. Additionally, there is also a conflict between national interests versus interests of development partners.

The system of governance in Uganda is both centralised and decentralised. The final planning and approval of budgets is a centralised function of the Central government while the initial formulation of work plans and budgets and actual implementation of programmes is decentralised. With the decentralised approach of governance, a bottom-up approach is adopted to generate ideas on areas that require interventions. A top-down approach is usually adopted during the dissemination of funds as the central government determines the actual areas that are to be considered for budgeting and programme implementation within a financial year.

There were reports on conflicting priorities of sectors and districts in that sectors attempted to impose their priorities at the expense of priorities identified at the district level. There were equally conflicts between those at the district and the locals at the grassroots.[148] One of the recommendations made by the Project Monitoring Unit of the OPM after monitoring performance of PRDP was that districts should be given an opportunity to determine their priority interventions. However, these priority interventions were to be determined in line with the design of the programme within the sector.[149]

The determination of priority interventions in line with the sector programme design confirms that a top-down approach had been used in the identification of activities to be implemented. This is contrary to rights-based approach to development, as locals were restricted to predetermined views of the central government. Those in charge of government programmes have at times failed to appreciate the local dynamics in northern Uganda and the different interest groups. For instance, Amnesty Commission has continuously given reset-

[148]Office of the Prime Minister, Report on the challenges of the peace recovery and development plan, 22.

[149]As above.

tlement packages to former rebels to enable them resettle among local communities.

The provision of resettlement packages was due to the fact that some of these former rebels had been abducted as children and could not live in the IDP camps or villages for fear of re-abduction or retribution from the community.[150] Local communities on their part felt that the practice was unfair since the former rebels were the reason for the violation of their human rights and general suffering. There was, therefore, a general resentment towards 're-porters', as they were referred to. Consequently, there was a cycle of hatred.

NGOs, on the other hand, have helped to address some local needs during the northern conflict. However, these NGOs left the northern region after the conflict ended. Those that remained focused on donor interests while issues affecting the local populace were left unattended to. The departure of NGOs was brought by the shift from emergency assistance, where most of their programmes could be implemented, to transition. There is now a shift in focus, that is, from quasi-recovery, to development.[151] Though here, the issue is, who determines the nature of development to be undertaken and whether it addresses local needs.

There is also an aspect of those involved in planning having a narrow appreciation of what PRDP stands for and ought to achieve. For instance, in Lira district, which falls under Lango sub-region, there were plans by members of Lira District Local Council to construct a 40 000 seat modern stadium named after John Akiibua, a former Olympic gold medallist, and an airport at a place called Anai using PRDP funds.[152] Such infrastructure are not reflective of the urgent socio-economic and human rights needs of the local populace.

This failure to harmonise competing and conflicting interests of both the central government versus local government diverts attention from the need to focus on the socio-

[150]FO Adong, 'Recovery and development politics: Options for sustainable peace-building in northern Uganda', Discussion Paper 61, 46.

[151]Informal discussion with Mr. Olaa Ambrose, Prime Minister of the Acholi Cultural Institution, held on 9th June 2017 at the Ker Kwaro, Gulu district.

[152]J Omara, 'Lira plans to build airport and modern stadium using PRDP funds'; in RS Esuruku, 'Horizons of peace and development in northern Uganda', http://www.accord.org.za/ajcr-issues/horizons-of-peace-and-development-in-northern-uganda/ (accessed 14 June 2017).

economic interests of the victims of the northern conflict. In essence, there is an absence of victim centredness which requires that the interests of the victims of the northern conflict be the central objective of transitional justice.[153]

6.7.10 Weak oversight institutions

> It is the absence of a cat that allowed the rat to climb onto the table[154]

Uganda has a number of institutions that are mandated to ensure accountability in the provision of public services. The consequential result of having such effective institutions would be the improvement in the social and economic wellbeing of the local populace since there would be limited diversion of public resources. As highlighted in Chapters five and six, some of these institutions include the Office of the Auditor General and the Inspectorate of Government, as well as the Office of the Prime Minister through its Programme Monitoring Unit.

Some of these institutions are weak in implementing their mandates. This weakness is reflected on two fronts, that is: weak in terms of having a limited capacity to detect and effectively handle cases involving corruption and abuse of office, among others; as well as ineffectiveness in the fulfilment of their mandates as watchdogs. The fight against corruption is a challenging one considering that these MDAs are underfunded thereby rendering the fulfilment of their oversight mandate ineffective.[155]

The Office of the Auditor General has equally been castigated for failing to detect scams in the utilisation of public funds,[156] as well as for collusion.[157] The Auditor General's

[153]Foundation for Human Rights Initiative, (n 20 above), 1-2.

[154]African proverb available at http://www.inspirationalstories.com/proverbs/african-money-can-even-corrupt-the-virtuous/ (accessed 14 June 2017).

[155]'Combatting corruption takes total commitment – Agaba', *The Observer*, 12 December 2016, http://www.observer.ug/news/headlines/50254-combatting-corruption-takes-total-commitment-agaba#comment-167, (accessed 19 June 2017).

[156]'Museveni meets Acholi MPs over OPM scandal', *Daily Monitor* Monday 25 February 2013, http://www.monitor.co.ug/News/National/Museveni-meets-MPs-over-OPM/-/688334/1703548/-/vuvxjfz/-/index.html, (accessed 24 May 2016).

weak auditing and reporting capacity is also aggravated further by the fact that the Public Accounts Committee of Parliament, which is mandated to enforce accounting standards, takes up to two years to take action on Auditor General's recommendations.[158] This system lengthens accountability processes and it at times takes years before an institution is put to task to explain anomalies in its accounts. Consequently, this weakness and unreliability of accountability mechanisms makes it difficult for the use of public funds to be monitored.

The Programme Monitoring Unit in the OPM was tasked to oversee how the initial 16. 6 billion Uganda shillings allocated in financial year 2009/2010 to PRDP was utilised.[159] In its initial report, the Unit visited all sites where various activities were conducted. Some of the sites included: construction of boreholes, construction of staff houses for doctors, classroom construction and supply of furniture under the education sector.[160] However, a report written by the Programme Monitoring Unit did not have a narrative on how PRDP was progressing yet the unit was expected to track progress on utilisation of resources and implementation of planned investments.[161] Corrupt practices, therefore, went undetected and development in the region was compromised.

6.7.11 Rampant and unchecked corruption

> If you make the choice to serve the public, then serve the public, not yourself[162]

The GoU's 'zero tolerance for corruption' or 'this is a corruption free zone' slogan has become a mantra. These words are often pasted on office walls of various government institutions in Uganda. According to the Transparency International Corruption perception index,

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[157]'Accounting standards must be enforced', *Daily Monitor* 14 June 2017, http://www.monitor.co.ug/Business/Prosper/Accouting-standards-enforced-Presidet-Museveni/6886163968556-158o874/index.html, (accessed 5 July 2017).

[158]As above.

[159]Office of the Prime Minister, Acholi sub region district & municipality: PRDP progress monitoring report FY 2009/2010 (June 2010).

[160] As above.

[161]As above.

[162]Quote by Jack Abramoff, http://www.brainyquote.com/quotes/authors/j/jack_abramoff_2.html, (accessed 28 August 2017).

Uganda ranked 151 out of 176 countries that were reviewed.[163] Hence, it is the 25th most corrupt country in the world.

As observed by the Chair of Transparency International:

> ...in too many countries, people are deprived of their most basic needs and go to bed hungry every night because of corruption, while the powerful and corrupt enjoy lavish lifestyles with impunity[164]

Corruption has become deeply entrenched in the Uganda public service to the extent that some public officers expect a bribe before any services are rendered to any member of the public. In fact, there is a lukewarm attitude towards the usual 'zero tolerance for corruption' slogan that has largely remained on paper.

Under the PRDP, some of the projects that were purported to have been undertaken were found to be either wanting or non-existent. The former Chairman of the Public Accounts Committee (PAC) of Parliament upon inspection of PRDP projects in Acholi Sub-region observed that '*there was nothing to be proud of...'*[165] With PRDP funding of over a million dollars, there should have been a visible socio-economic transformation of the Acholi. All the PRDP output monitoring indicators were quantitative indicators. For instance, under the education sector, indicators include number of classrooms constructed and renovated and the number of desks supplied.[166]

The indicators did not address issues of access to quality education in a bid to satisfy the core content of the right to education, which is interrelated with the RTD. The indicators on health include the number of beds supplied and the number of maternity wards rehabilitat-

[163]2016 Transparency International Corruption perception index, http://www.transparency.org/news/feature/corruption_perceptions_index_2016 (accessed 18 June 2017).

[164]Quote by Jose Ugaz, Chair of Transparency International, http://www.transparency.org/news/feature/corruption_perceptions_index_2016, (accessed 18 June 2017).

[165]Comment by PAC Chairman Kassiano Wadri in 'MPs discover more 'ghosts', substandard work at OPM, Daily Monitor 5 March 2013, http://www.monitor.co.ug/News/National/MPs-discover-more--ghosts---substandard-work-at-OPM/-/688334/1711610/-/wfcmccz/-/index.html (accessed 24 May 2016).

[166]Office of the Prime Minister, report on PRDP first year implementation in districts and municipalities: Challenges & Lessons FY 2009/2010 (June 2010), 12.

ed. However, it is the quality of treatment that matters.[167] This equally does not point towards how attainment of the right to health would be measured. This explains the ineffective service delivery that has been availed to the people in northern Uganda is ineffective.

6.7.12 Limited holistic planning for the GoU's interventions on the RTD

This is a challenge that could be referred to as a 'Ugandan' problem. In essence, a number of government programmes have short-term objectives and do not focus on crosscutting issues such as gender; and the need for sustainability of the programmes. Consequently, programmes like PRDP have had some inadequacies in terms of failure to adopt an all-round approach in which all, if not most of the socio-economic rights, would be catered for in the policy formulation and implementation processes.

An element that sticks out like a sore thumb is the limited involvement of Acholi cultural leaders in development processes. This is bearing in mind that for the people of Acholi, conflict resolution and development is viewed as a communal concern/responsibility,[168] and, therefore, needs to be resolved communally. Where conflict is being addressed, traditional rituals, including *'mato oput'* are used to foster collective healing.[169]

This 'oneness' of all members of local communities and the need to involve them in development planning is lacking. In light of the limited involvement, development efforts for the Acholi would not be as successful without their involvement, implementation of reconciliation activities, and payment of reparations. The need for reparations for the Acholi is paramount as it is viewed as an integral step towards recovery;[170] yet government did not pay attention to those needs in both PRDP Phase I and phase II.

The question remains: whose development is being fostered under PRDP and other development interventions? Government priorities include infrastructural development and

[167]Office of the Prime Minister, report on PRDP first year implementation in districts and municipalities: Challenges & Lessons FY 2009/2010 (June 2010), 12.

[168]Adong (n 150 above), 58.

[169]As above.

[170]Tom, (n 93 above).

enhanced human capital development, among others.[171] Other critical areas like health rights particularly the handling of nodding disease have not been catered for, except the few instances when there has been a protest by the northern Uganda community. It should be borne in mind that health is a critical factor that can affect development.

As already noted, government priorities are skewed towards infrastructural development, and enhanced human capital development.[172] These aspects do not necessarily contribute to the improvement the wellbeing of local communities. Government's failure to ensure that a rights based approach is applied in planning for development interventions would amount to a failure to appreciate the indivisible and interrelated nature of human rights.

6.7.13 Lack of systematic and coordinated project/programme planning

There have been a range of development programmes that have been implemented to stem the effects of the northern conflict on human rights enjoyment. These programmes include NUREP which started running in 2003;[173] NUSAF I and II which run from 2009 – 2014, both of which were jointly funded by World Bank with US dollars 100 million; after which NUSAF III was incorporated under PRDP III;[174] and PRDP, currently in its third phase, has 70% of its budget funded by donors and 30% by the GoU.[175]

In 2018, Development Initiative for Northern Uganda' (DINU), another development programme for northern Uganda was introduced.[176] DINU also seeks to enhance agriculture, social infrastructre, employment, marketing and trade, among others.[177] An estimated, Uganda shilling 665 billion (150 million Euros) is to be spent on the project.[178] Some of the

[171]Strategic direction of the second National Development Plan 2015/16 – 2019/20, Strategic direction, 101.

[172]As above.

[173]Progress and challenges in northern Uganda: consolidating peace and development, http://devinit.org/post/progress-challenges-norther-uganda-consolidating-peace-development/ (accessed 18 June 2017).

[174]As above.

[175]As above.

[176]F Tumusiime, 'Rugunda launches 665 billion development initiative for northern Uganda', http://www.opm.go.ug (accessed 15 July 2018).

[177]As above.

[178]Tumusiime, (n176 above).

objectives for all these programmes sound repetitive. It has been observed that OPM runs 18 projects funded by both the GoU and development partners.

A review of project implementation revealed that the projects had overlapping activities with duplication of efforts and payments which led to the loss of public funds.[179] DINU appears to overlap with PRDP and NUREP as well. With regard to PRDP, it took two phases for those handling it to realise that matters of concern to local communities had not been adequately tackled. In a joint report by UHRC and UN OHCHR, it was observed that priorities for the people of northern Uganda largely centred on truth-recovery and accountability for harms committed.[180]

With regard to reparations, the identified priorities of the local communities included physical and mental health services, assistance to recover housing, land and rebuilding of livelihoods, youth empowerment, public acknowledgement of harm and apologies.[181] However, in PRDP I, the first strategic objective was consolidation of State authority where efforts were geared towards enhancing judicial services, police, and local government, among others.[182] Community needs were not reflected.

Furthermore, with regard to coordination, there is some disjointedness in how government programmes are being coordinated and implemented.[183] For instance, the National Planning Authority (NPA) is tasked with, among others, ensuring that there is sustainable and balanced national development.[184] However, the actual formulation of programmes for northern Uganda is done by the Office of the Prime Minister. The implementation of government programmes is conducted by the Ministry of Local Government through its decentralised sys-

[179]'MPs discover more 'ghosts', substandard work at OPM', *Daily Monitor* 5 March 2013, http://www.monitor.co.ug/News/National/MPs-discover-more--ghosts---substandard-work-at-OPM/-/688334/1711610/-/wfcmccz/-/index.html, (accessed 24 May 2016).

[180]Uganda Human Rights Commission & UN Office of the High Commissioner for Human Rights, (n 94 above), ix.

[181]As above.

[182]Peace Recovery and Development Plan I, 36-54.

[183]Uncoordinated approaches to development planning was cited as one of the development challenges in the Third National Development Plan (NDPIII) 2020/21 - 2024/25, xx.

[184]Background to National Planning Authority, http://npa.ug/about-npa/background/, (accessed 18 June 2017).

tem of governance.

The allocation of funds, on the other hand, is done by the Ministry of Finance Planning and Economic Development. This affects performance and the ability of the centre to effectively monitor performance. Various institutions forward their Strategic Investment Plans to NPA, but not all the plans are implemented as envisaged. For instance, under PRDP II, there was a pledge to provide psychosocial support to local communities given the trauma they suffered as a result of the conflict;[185] but how does putting up one centre in the Gulu town help an Acholi living in the rural areas of the Gulu district?

Furthermore, workplans may exist but the Ministry of Finance may not release funds for certain aspects or even underfund some programmes due to budgetary constraints. Some of these underfunded activities would have been considered to be priority areas. At the end of the day, would the GoU have really done all it could within the available resources to guarantee the RTD?

This also raises questions on effectiveness of government tools like the output budgeting tool (OBT) that has been used to measure performance of government Ministries, Departments, and Agencies (MDAs). If these tools were being utilised to measure performance, performance gaps in the implementation of development programmes would have been identified. Better yet, if poor performance was detected, strategies to improve on performance would have been developed.

6.8. Development partners and the RTD in post-conflict northern Uganda

Uganda has a duty to individually, or collectively with other States, ensure the realisation of the RTD.[186] As highlighted earlier, GoU has entered into partnerships with development partners in a bid to ensure balanced development of the different regions of Uganda.[187] The only question that remains is whether these development partners take a keen interest to establish

[185]PRDP 2 Grant guidelines for Local Governments, strategic objective 4 on peace building and reconciliation, 21.

[186]African Charter on Human and Peoples' Rights, art 22 (2).

[187]Constitution of the Republic of Uganda 1995 (as amended), principle xii (ii) of the National Objectives and Directive Principles of State Policy.

whether programme objectives are being realised. If not, whether any action is ever taken.

It was stated in the preceding chapters that the RTD is a controversial right that is considered to be non-binding by western states. It follows, therefore, that development partners may not see themselves as having any laid out obligations to ensure realisation of human rights.[188] This brings into question the role of development partners in facilitating development. As stated by the late former President of South Africa, Nelson Mandela:

> Overcoming poverty is not a gesture of charity. It is an act of justice. It is the protection of fundamental human rights.... Everyone everywhere has the right to live with dignity, free from fear and oppression, free from hunger and thirst, and free to express themselves and associate at will.[189]

Development partners, therefore, assist States to attain the right to live with dignity for their citizens. In line with this, the UN DRD requires development partners to cooperate with each other to facilitate development and eliminate obstacles to development.[190] The UN DRD, however, does not spell out the role of development partners in ensuring and eliminating obstacles to development.

With the rampant corruption and mismanagement of funds meant for post-conflict recovery, there is need for the role of development partners to be clarified. Does it only stop at providing funds? Or does it include development partners making demands for value for money accountability? It was only due to the scam involving mismanagement of funds meant for PRDP that development partners demanded for a refund of the money they had so far released.[191] A total of Uganda shillings 58.5 billion (approximately €16.3 million) was refunded to donors by the Uganda Government.[192]

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[188]Cornwall & Nyamu-Musebi, (n 43 above), 1424.

[189]Quote by Nelson Mandela in the foreword of UNDP, 'Mainstreaming human rights in development policies and programming: UNDP experiences'.

[190]United Nations Declaration on the Right to Development, art 3 (3).

[191]2014 Uganda PRDP Final audit report by Evaluation and Audit Unit to Secretary General on misappropriation of funds in the Office of the Prime Minister, Uganda, 3.

[192]2014 Uganda PRDP Final audit report by Evaluation and Audit Unit to Secretary General on misappropriation of funds in the Office of the Prime Minister, Uganda, 3.

There is need for development partners to go beyond availing aid. Where development aid is squandered, especially at the expense of the poorest of the poor, development partners should be able to take decisive and deterrent action against those found to be culpable. Development partners should be able to demand not only for 'paper' accountability but also the physical presence of change in how socio-economic rights are enjoyed within an affected community.

6.9. Conclusion

Through the adoption of various legal frameworks and the creation of institutions to give life to legislation and policy, GoU tried to provide an avenue for attainment of the RTR. These avenues were, however, ineffective. The Acholi have not had the wrongs against them remedied, neither have development efforts restituted them to their pre-conflict state of development. It is evident that the manner in which government interventions are being implemented are not sustainable and would not achieve the desired goal of facilitating development and addressing the local human rights needs and concerns.

Chapter seven, therefore, seeks to explore alternative approaches that could be used to assist the Acholi to develop and promote sustainable development. Chapter seven makes a case for people-led development in Acholiland, especially in light of the glaring GoU's failure to facilitate tangible socio-economic development of the Acholi. The chapter also draws lessons from Rwanda which also emerged from conflict.

CHAPTER SEVEN
ALTERNATIVE APPROACHES TO THE DEVELOPMENT PARADIGM IN POST- CONFLICT SOCIETIES IN NORTHERN UGANDA

7. Introduction

There is a gap between the *de jure* and *de facto* protection and promotion of the RTD in post-conflict northern Uganda since not much has improved in the socio-economic conditions of the Acholi. Here, the term *'de jure'* refers to the existence of a legal framework providing for the RTD; while the '*de facto'* protection of the RTD means the actual practice of protecting enjoyment of the right. The infrastructural development is, however, noticeable in urban centres, whereas the primary needs of local communities like truth telling, resolution of land conflicts, access to health services, and the right to livelihood have barely been realised.

This chapter advances a case for people-led developmment initiatives in Acholiland since those initiated by the State have been ineffective. This would explore the use of traditional Acholi clan structures to facilitate development. The investigation is premised on public-private partnerships as a development tool and a casestudy of Nkondo project, a people-led development initiative that was conducted by Rotary Club of Kampala North (RCKN).

Lessons will be drawn from Nkondo project to demonstrate how sustainable development can be achieved through enjoyment of the right to self-determination. Nkondo project is specifically considered to showcase that the Government of Uganda (GoU) could use public-private partnerships in its bid to ensure attainment of sustainable enjoyment of the RTD in northern Uganda. The study advocates that the modus operandi of Nkondo project be replicated in a clan-based development system context-specific attainment of developmental rights in Acholi.

Furthermore, the interventions undertaken by Rwanda, a country that experienced conflict and is still undergoing post-conflict reconstruction, are analysed. From the Rwanda experience, lessons can be drawn on how a post-conflict society like the Acholi can successfully transition from conflict to realisation of developmental rights.

7.1. Public-privatepartnerships as a tool for attainment of RTD in northern Uganda

As noted by Sen, development is essential to economics in general but its success has to be judged by the enhancement of living conditions as an essential, if not the essential object, of economic exercise.[1] For the Acholi, some of the critical issues after the LRA conflict included: justice, access to land, reparations for harms done. The conflict left a developmental gap in terms of improvement of social and economic welfare of local communities.

As was seen in the previous chapters, the rights of the Acholi to attain and enjoy development was eclipsed by the 20- year conflict. There has also been no improvement in their livelihood after the implementation of PRDP and other development programmes for over ten years since hostilities ceased in 2007. Furthermore, in light of the rights-based approach to development, development ought to be more about assisting poor communities to overcome obstacles rather than about the never-ending pursuit of grants for social goods. This position was explained by Offenheiser and Holcombe who stated as follows:

> …poor people have dignity, aspirations and ambitions and their initiative is being blocked and frustrated by persistent systemic challenges.[1]

This section explores the possiblity of a clan-led development model being utlised by the Acholi to develop. Inspiration is drawn from the people-led development model that was employed in the Nkondo project, as a means of facilitaing the Acholi to regain their dignity and improve their economic and social wellfare. The people-led development model was alluded to by the President of Ghana while addressing a press conference with a visiting French President.[2] The Ghana president acknowledged the need for africans to break away from their dependency on foreign aid and liberate themselves.[3] The Acholi can equally liberate themselves from poverty and its associated human rights challenges as its

[1]CR Offenheiser and HS Holcombe, Challenges and opportunities in implementing a rights-based approach to development: An Oxfam America perspective, (June 2003) Volume 32, No 2 *Nonprofit and Voluntary Sector Quality*, 268-306, 271.

[2]GhanaWeb, 'Akufo-Addo 'schools' France President Macron', posted on 4 December 2017, http://www.ghanaweb.com, (accessed 15 July 2018).

[3]As above.

government continues to seek donor funds and channel it to areas that are non-essential to them.

The Acholi have an opportunity to shed-off their dependency syndrome and fulfil their RTD. This opportunity is founded on the Uganda Constitution that guarantees the right of all Ugandans to participate in peaceful activities that influence policy.[4] Nkondo project, therefore, showcases how ordinary members of a community can take the lead and contribute to their socio-ecoomic transformation and development. This can be replicated through the Acholi clan structures.

This clan-based development model could be implemented through the use of Public-private partnerships. This section proposes the use of public-private partnerships as an alternative mechanism through which public services can be effectively delivered in a bid to guarantee enjoyment of the RTD, a deserved right for the Acholi people.

7.1.1. Justifying the need for public-private partnerships in northern Uganda

Public-private partnerships (PPPs) are offered as an alternative for the attainment of development. PPPs would ensure timely delivery of government development interventions and within the available resources. A people-led development intervention would give life to provisions in the Uganda Constitution which obliges the GoU to facilitate rapid and equitable development by encouraging private initiatives and self reliance.[5] In this instance, those affected by the northern Uganda conflict would develop homegrown/localised ideas on how their socio-economic rights, and consequently the RTD, could be realised and enjoyed.

PPPs would be in contrast to the existing practice where policy development is centralised and affected communities are at times required to 'fit' in their views within existing policies. Furthermore, the GoU is also obliged to take all necessary steps to involve the people in the formulation and implementation of development programmes.[6] Here, the

[4]Constitution of the Republic of Uganda 1995 (as amended), art 38 (2).

[5]Constitution of the Republic of Uganda 1995 (as amended), principle ix of the National Objectives and Directive Principles of State Policy.

[6]Constitution of the Republic of Uganda 1995 (as amended), principle x of the National Objectives and Directive Principles of State Policy.

people of Acholi, who are best placed to determine their human rights needs in the post-conflict recovery era would have the responsibility to ensure their development.

The difference between the proposal in this chapter and the Nkondo project is that public sector financing as opposed to private-sector financing is proposed. This argument is founded on GoU's inefficiency in utlising available resources for the benefit of the Acholi. This was discussed in previous chapters, particularly chapter three. Private entities, especially the not-for-profit private sector such as Rotary, should, therefore, be given an opportunity to facilitate development processes. The private sector would work in close partnership with the Acholi through a victim-centred approach to development. This way, the human rights needs of the local populace are considered and reflected in policy formulation and implementation processes.

Various definitions have been attached to PPPs some of which include: PPPs being a 'a long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility, and remuneration is linked to performance'.[7] The other definition looks at PPPs as 'creative alliances' formed between a government entity and private developers to achieve a common purpose.[8] Another definition that would take into account government policies like PRDP is the definition by Linder and Rosenau that defines PPPs as 'the formation of cooperative relationships between government, profit-making firms, and non-profit private organisations to fulfil a policy function'.[9]

The definition adopted for purposes of this study is the definition by Linder and Rosenau. According to their definition, PPPs are viewed as a means of government forming a cooperative alliance with an NGO to fulfil a policy function. One of the key reasons for

[7]Definition of PPPs, http://ppp.worldbank.org/public-private-partnership/overview/what-are-public-private-partnerships (accessed 4 July 2017).

[8]MB Corrigan *et al*, Ten principles for successful public/private partnerships, http://uli.org/wp-content/uploads/2005/01/TP_Partnerships.pdf, (accessed 4 July 2017).

[9]SH Linder & PV Rosenau, 'Mapping the terrain of the public-private policy partnership in public-private policy partnerships, Cambridge MA: MIT Press 1 - 18 2000: 5 in TA Börzel & T Risse, Public-private partnerships: Effective and legitimate tools of international governance?, 4, http://userpage.fu-berlin.de/~atasp/texte/021015_ppp_risse_boerzel.pdf, (accessed 4 July 2017).

adopting PPPs is that it is an avenue for provision of better services through improved operational efficiency.[10] The policy that is borne in mind at this point is the PRDP which, as previously observed, is in its third phase having been in place since 2007.

There are at least four distinct types of PPPs and these consist of: co-optation which refers to cooperative arrangements that are entered into by governments with, as a consequence, governments and international organisations work hand-in-hand with non-state actors as official members of their delegations in rule-setting and rule-implementation in international negotiating systems.[11] Non-state actors provide consensual knowledge, expertise, and also moral authority and legitimacy.[12]

Under delegation, private actors can be held accountable by States and it includes outsourcing and the contracting out of certain functions.[13] In a way, it is a form of private self-regulation where it is hoped that there would be increased efficiency and the acceptance of standardisation outcomes.[14] There is also co-regulation, although rarely applied internationally, under which joint decision-making is done,[15] and self-regulation which is often utilised in instances where there is an ineffective international legal system to regulate transborder interactions between private individuals and organizations.[16] The mode of PPP recommended in this instance is delegation under which, as already noted, private entities can be held accountable.

The ability to hold private entities accountable is crucial as the GoU ought to maintain control over these entities and ensure that they fulfil the desired objectives on improvement of the social and economic welfare of the local populace, and consequently attainment of the RTD. For a PPP to be successful, there is need for some form of operational autonomy

[10]Potential benefits of public private partnerships, http://ppp.worldbank.org/public-private-partnership/overview/ppp-objectives, (accessed on 4 July 2017).

[11]TA Börzel & T Risse, Public-Private Partnerships: Effective and Legitimate tools of international governance? 6, http://userpage.fu-berlin.de/~atasp/texte/021015_ppp_risse_boerzel.pdf (accessed 4 July 2017).

[12]As above.

[13]Borzel & Risse (n 11 above), 8.

[14]As above.

[15]As above.

[16]Borzel & Risse (n 11 above), 9.

which enables the entity to be independent and operate in the interest of the beneficiaries, in this instance, the victims of the northern conflict, without interference.

7.1.2. Linking PPPs to attainment of the RTD in northern Uganda

As observed in the previous chapters, the GoU has spent a considerable amount of money to facilitate development in northern Uganda. There has, however, been no corresponding improvement in the realisation of the RTD for the Acholi. As observed in Chapter three, at least U. S dollars 955 million has been spent on post-conflict reconstruction and recovery in northern Uganda.[17] An additional 150 milllion Euros was provided for DINU, a new post-conflict development project introduced in May 2018,[18] in off-budget support.

A general improvement in the livelihood and socio-economic wellbeing of the local populace in Acholiland would have been expected, including access to better health facilities, especially the handling of nodding disease that has continued to plague children in the region. The need to consider the use of PPPs as a means of attaining the RTD was reflected in the words of former United States President Ronald Reagan when he said that '...the truth is that outside of its legitimate function, government does nothing as well or economically as the private sector of the economy'.[19]

PPPs being part of the reforms in public management would pave the way for the introduction of private entities in public administration. In this instance, the use of PPP in implementing development interventions especially in northern Uganda would seek to reduce inefficiencies in the public sector, minimise wastage and misuse of public resources in northern Uganda. The sustainability of a PPP would be dependent on how it is regulated. The GoU would, therefore, have to create an enabling environment for PPPs to thrive, as well as supervise, monitor, and evaluate performance.

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[17]A Otto *et al,* 'Concerns over north Uganda development plans', https://iwpr.net/global-voices/concerns-over-north-uganda-development-plans, (accessed 25 February 2015).

[18]F Tumusiime, 'Rugunda launches 665 billion development initiative for northern Uganda', http://www.opm.go.ug, (accessed 15 July 2018).

[19]Available at http://www.finestquotes.com/author_quotes-author-Ronald%20Reagan-page-0.htm>, (accessed 10 August 2017).

7.1.3. The legal regime governing PPP in Uganda

The legal framework supporting the use of PPPs in Uganda emanates from the Uganda Constitution and more specifically the Public Private Partnership Act.[20] The Uganda Constitution obliges the State to take any measures necessary to foster balanced development in different areas of Uganda.[21] Development in Acholiland stalled for over 20 years in the absence of effective measures aimed at guaranteeing enjoyment of the RTD. It is, therefore, necessary that PPPs be considered as an alternative means for facilitating the Acholi to develop. This can be attained through making use of the Public Private Partnership Act.

The Public Private Partnership Act provides for private parties engaging in PPPs. There are six PPPs that are ongoing between GoU and private parties: Kampala- Jinja Express Way Toll Project, Mulago Car Parking Project, Kampala Waste Management Project and Redevelopment of Uganda National Cultural Centre Properties.[22] The Act defines private parties as special purpose companies incorporated under the laws of Uganda to implement a specific PPP project.[23]

This definition of private parties would have to be broadened to include non-profit entities like Rotary and other NGOs. The broadening of the definition would enable these entities take on the role of facilitating development processes among local communities, thereby ensuring attainment of the RTD. However, some rotary clubs like the Rotary Club of Kampala North are registered as companies limited by guarantee and, therefore, fit within the definition in the Act.

Further, the Public Private Partnership Act only provides for the application of PPPs in the designing, construction, maintenance, and operation of infrastructure.[24] It is, however, possible for PPPs to be undertaken for any other project, subject to the approval by Minister

[20] Public Private Partnership Act, 2015.

[21]Constitution of the Republic of Uganda 1995 (as amended), Objective XII of the National Objective and Directive Principles of State Policy.

[22]Summary of Public Private Partnership projects in Uganda, https://www.pppunit.go.ug/content/overview-ppp-projects-uganda, (accessed on 2 July 2021).

[23]Public Private Partnership Act, 2015, sec 20 (1).

[24]Public Private Partnership Act 2015, sec 2 (1).

for Finance through a statutory instrument. [25] In instances such as the present, approval of the Minister can be obtained to enable the use of PPPs to development programmes for the Acholi.

7.1.4. Justification for PPP

There are various reasons why the GoU should engage in PPP in a bid to ensure that better social and economic services are availed for the Acholi. At the same time, the use of PPPs would facilitate the effective realisation of the RTD in northern Uganda. These are discussed below:

i. Certainty of outcome

First, there is certainty as to the desired outcome of a PPP to be undertaken in northern Uganda. The desired outcome would be an improvement in the socio-economic wellbeing of the local population. As a result, there would be enjoyment of socio-economic rights including the right to health and development. The private entity awarded the contract would be obliged to ensure that the RTD is realised in a holistic sense. This would ensure that there is an improvement in the general economic and social welfare of the local Acholi.

Additionally, the infrastructural development that the GoU has prioritised over the years, is equally achieved. The private entity on its part would be alive to the fact that a grant of future contracts would be dependent on its successful implementation of the project.

ii. Transfer of risk

With PPPs, there is transfer of risk especially in light of the fight against corruption in the public service. There is a way in which public service delivery has been marred, unabated, by corruption some of which were highlighted in chapters three and five of this study. Abuse of public funds and causing financial embezzlement consistently occured in different development programmes in Acholiland. This would have to be avoided with PPPs.

The private entity engaged to facilitate the implementation of developmental interventions would be obliged to ensure that development goals are achieved. However, the GoU would retain general control over the programme, hence transferring risks associated

[25]Public Private Partnership Act 2015, sec 2 (1) (k).

with implementation of the programme. Such entity would be obliged to fulfil set goals in the face of existing risks.

iii. Attract the right skills and management

Performance of a PPP requires that the right skills and management abilities are contracted to provide a public service. This is different from the public service system where the GoU ordinarily makes do with available human resources even when they do not have the desired competencies. This happens even when procurement laws provide for outsourcing for services.[26] Such a system would ordinarily have the effect of bringing about misuse and abuse of funds.

With PPPs, therefore, those competing to provide the desired services for the Acholi would have to demonstrate the ability and capacity to ensure realisation of the RTD. Fortunately, entities like rotary clubs ordinarily attract a wide range of professionals to join their membership. Where there is a gap, provision can always be made to procure the required services.

iv. Reduces corruption and wastage of public resources

Public service delivery is at times linked to the provision of poor quality services and delays in the provision of services; both of which are partly brought about by corruption. Here, corruption is fueled by competing and conflicting interests among leaders and bureaucrats to determine which firm is awarded the contract to run a public facility.[27] Corruption is rampant in the process of procuring goods and services, and in instances where programme implementers require release of funds.

With the latter, required funds would not be released by fund-holders unless a kickback was given by implementers. Private entities operating under a PPP would be obliged to implement the contract. This would limit opportunities for corrupt acts since failure to fulfil the contractual obligations of the PPP would reduce the possibility of future partnerships.

[26]Public Procurement and Disposal of Assets Act, 2003.

[27]R Nasasira *et al*, Public Private Partnerships (PPPs) and enhanced service delivery in Uganda: Implications from the energy sector, (2013) Volume 4 No 3 *International Journal of Business Administration*, 49.

v. Promotes innovation

The use of PPPs would give room for those implementing it to be innovative in their approaches towards achieving the programme goal; especially where local needs are the central focus like in Acholiland. Policies would be developed and implemented depending on the needs of the community.That is, it would be impossible to implement a 'one-size fits all'approach. Communities like the Acholi are at risk of being subjected to standard policies that totally ignore views and interests of the beneficiaries. Allowing participation of local communities and utilising their views to develop projects would facilitate sustainability of development interventions since the programmes would have been tailored to suit local needs and be in line with their aspirations.

vi. Improvement in service delivery

PPPs are viewed as an avenue for ensuring more effective and efficient service delivery. In Uganda, PPPs are recognised as a means for better utilisation and allocation of public funds and a more efficient way of delivering public infrastructure, among others.[28] Where a private entity is contracted to achieve the desired objective of ensuring an improvement in the economic and social well-being of the Acholi, fulfilling such an objective would be the vision and driving force of the entity. Consequently, unlike MDAs in the public service that have been characterised by poor service delivery, the private entity would be under an obligation to show that development can indeed be attained.

7.1.5 Nkondo project: A sustainable community-led initiative

Nkondo project is a community-led intervention that was implemented in Nkondo village.[29] Nkondo is a village in Kamuli district in eastern Uganda. Rotary is an international non-governmental organisation that brings together 1.2 million rotarians who come together to make positive, lasting change in communities at home and abroad.[30] It is from this experience that the study advances for a clan-based structure to implement developmental programmes

[28]Ministry of Finance, Planning and Economic Development, Public-Private partnership framework policy: Promoting equality services to the public, (September 2010).

[29]Information on Nkondo Adopt-A-Village project: https://map.rotary.org/en/project/pages/project_detail.aspx?guid=b046346d-f1c1-4b0a-8f9a-1a6e791bb949, (accessed 17 August 2017).

[30]About rotary available at https://www.rotary.org/en/about-rotary, (accessed on 17 August 2017).

identifed by the local populace. Under the clan-based development model, the clan members as a collective have a unified need to ensure the success of commonly identified development objectives. Here, development would trickle down to familes within the clan.

Rotary seeks to fulfil six areas of focus and these include improving lives and creating a better world to support peace efforts and end polio.[31] These areas of focus are realised through activities conducted by rotary clubs. One of such clubs is the Rotary Club of Kampala North (RCKN) that sought to 'adopt a village', Nkondo village. These Rotary areas of focus impact on the enjoyment of socio-economic rights.

Rotary implements its areas of focus through service projects that enhance economic and community development; create opportunities for work for both the young and old; and also strengthen local entrepreneurs and community leaders in impoverished communities.[32] Rotary also seeks to improve and expand access to low-cost and free health care in developing areas; provide clean water, sanitation, and hygiene by supporting local solutions; supporting education by giving support to basic education and literacy, reduce gender disparity in education, and increase adult literacy; and growing local economies.[33]

In an attempt to implement some of the foregoing areas of focus, RCKN partnered with two international rotary clubs, that is, Rotary Club of Escondido East and Rotary Club of La Jolla Golden Triangle, Oceanside.[34] The areas that RCKN sought to focus on in Nkondo were: water and sanitation, education, health, microcredit, and economic development, through which it was hoped that poverty would be alleviated.[35]

Through consultations with local communities, various needs were identified. These included: an expanded irrigation project which would enable locals to harvest and store

[31]Information on the Rotary six areas of focus available at https://www.rotary.org/en/our-causes/growing-local-economies, (accessed 21 July 2017).

[32]As above.

[33]As above.

[34]N 31 above.

[35]Information on Nkondo Adopt-A-Village project available at: https://map.rotary.org/en/project/pages/project_detail.aspx?guid=b046346d-f1c1-4b0a-8f9a-1a6e791bb949, (accessed on 17 August 2017).

rainwater for domestic and irrigation purposes; and local community empowerment to grow high value crops even during the dry season.[36] The value of this expanded irrigation project was US dollars 42,400.[37] With the involvement of local communities, where land was required, it was freely donated as a result of which a dam was constructed.[38]

The Nkondo community was obliged to oversee and implement the programme alongside rotarians. This way, there was local ownership of the project as well as a possiblity of project sustainability since the locals were able to take over administration. Much as RCKN came up with the idea of having a project in Nkondo, the interventions that led to the improvement socio-economic status in Nkondo, were determined by the community. The local community were involved in the project right from its inception and design and were better placed to indicate what their socio-economic needs were.

As active participants, local communities equally made some contributions to the project as they were partners. Where land or human resource was required, members of the Nkondo community readily donated land and the relevant human resource. Rotary on its part engaged with other stakeholders to obtain additional resources, and also tapped into the skills of its members to ensure project success.

Where local communities are actively involved in project identification, formulation and implementation, chances for sustainability of such projects are higher. This is because there is buy-in and ownership of the project by the local populace. Such a system would be replicated in a clan-based development model, where the clan, under the guidance of the clan-head, takes ownership of development projects that seek to elevate them from a life of destitution.

7.1.6. Possible challenges in PPPs

The use of PPPs to attain any form of development in Uganda is a fairly recent concept. As already seen, the law was passed in 2015, although implementation of some projects under

[36]Available at http://rotary-kampala-north.or.ug/completed-projects/, (accessed on 21 July 2017).

[37] As above.

[38]As above.

PPP begun in the 1990s.[39] It would follow, therefore, that there are bound to be some challenges that ought to be addressed to ensure that PPPs are indeed a feasible option for creating a conducive environment for the RTD to be attained in Acholiland.

i. Political interference

Political interference could occur on two fronts: first, through senior government officers mandated to oversee and implement PPPs. These officers would seek to ensure that their preferred firms are awarded contracts for projects. Interference by such officers would influence the award of contracts. This would in turn affect the quality of goods and services provided.

On the second part, there could be sabotage by politicians and civil servants that would have lost out on opportunities to directly or indirectly oversee and benefit from PPPs. Such politicians and civil servants would seek to sabotage the success of a PPP. This kind of inteference has been experienced in other areas including government's unsuccessful attempts at having commercial motorcycle riders known as 'boda bodas' stopped from riding within Kampala city centre.[40] However, safeguards can be put in place to minimise any kind of interference, including prosecution of those caught.

ii. Limited awareness of PPP as a potential tool for attaining the RTD

A successful PPP is dependent on a number of factors including the existence of a sound legal regime and a contract that defines the nature of the relationship between government agencies and firms.[41] For this relationship to hold any meaning, there is need for these government agencies as well as the local populace to have some level of awareness of how a PPP could be used to realise RTD. This awareness is, however, lacking. Uganda does have a PPP law in place, although it has not been popularised.

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[39]Nasasira et al, (n 27 above) 49.

[40]See 'KCCA plans to ban boda bodas from city centre', *Daily Monitor* 5 May 2014, http://www.moitorco.ug/News/National/KCCA-plans-to--ban-boda-bodas-from-city-centre/688334-2303590-s2tbrz/index.html>; Farahani Mukisa, KCCA stops boda boda from city centre, *Daily Monitor* 29 June 2015, http://www.monitor.co.ug/News/National/KCCA-stops-boda-boda-from-city-centre/688334-2768932-o5grcfz/index.htm,l (accessed 16 August 2016).

[41]Nasasira et al (n 27 above), 52.

Secondly, it is only some civil servants that know about the law; and, to be more specific, how PPPs operate. If PPPs are not understood, then there are chances of private entities taking advantage of the status quo to maximise their gains. Government on its part could make massive losses since its ability to negotiate could be compromised.

iii. Limited human resource to ensure the effective application of PPP

In addition to some civil servants being unaware of PPPs, there are also few of them that would be in a position to ensure that PPPs are effectively utilised to develop the Acholi. A human resource that is conversant with PPPs and the required procedures is very necessary as it is an important factor in determining whether a project would be successful. This is because project success relies on the ability to attract the right people to carry out the right roles.

The right human resource in an MDA would also be in a position to discern entities that can help the GoU attain the RTD from those that cannot do so. It is not uncommon in Uganda for an entity to claim to have the capacity to perform a contract only for them to outsource the service. Similarly, where an entity is to be engaged to facilitate the improvement in socio-economic rights for the Acholi, it should be one that has proof of having engaged in similar services before and has the capacity to deliver. If this is not possible and it is not detected early, it could pose a risk to the entire project. It is, therefore, imperative that the right people/entity with the right skill is put in place.

iv. Corruption/conflict of interest

Corruption is one of the social ills that has consistently plagued the Uganda public service. It is one of the reasons why PPPs fail to deliver on the planned outcomes, especially where there is a challenge on the part of the State to monitor and regulate performance.[42] With high levels of corruption, a private entity could be awarded a contract to guarantee the attainment of the RTD. This award of contract would, however, not be based on the entity's capacity to perform the contract, but because of their ties, be they politically or socially, to political heads or civil servants. To counter this, the solution would be to avail the contracted entity some level of autonomy to minimise corrupt tendencies.

[42]Public-Private Partnerships and gender justice in the context of the 3rd UN conference of financing for development, https://dawnnet.org/feminist-resources/sites/default/files/articles/ffd3_julyppp.pdf?, (accessed 4 July 2017).

v. Low levels of literacy and awareness

The other challenge that could be faced is that the effectiveness of PPPs could be affected by low levels of literacy among the beneficiaries of the development interventions and limited knowledge about PPPs and the projects to be implemented. For any development programme to be successful and sustainable, there is need for wide participation of the beneficiaries of the programme. However, where there are low literacy levels and limited awareness of PPP, the programmes would be affected by low levels of participation.

Participation, in this instance, would include locals having a general appreciation of PPPs and the programmes that they seek to be implemented. As such the Acholi would be able to contribute to the outcomes of the government programme. Where there are low literacy levels among the beneficiaries and lack of awareness of the content of the development programme, there would be lack of effective participation.

vi. Weak institutions

The public service in Uganda is generally weak in its operations. In the existing public service system, there are mechanisms for managing performance of public servants.this includes the annual appraisal system. However, these mechanisms have been ineffective due to the weak capacity of public service institutions to enforce sanctions. Public servants are annually appraised but those that do not meet set outputs per the performance appraisal are rarely sanctioned. It should be borne in mind that PPPs are complex to negotiate or even implement and have at times had to be renegotiated, quite often in favour of the private sector entity.[43]

Where there are general weaknesses within the public sector to hold public servants accountable for poor performance, the same could occur in the management of PPPs. This could affect the success of PPPs due to failure by MDAs to hold civil servants and private entities enforcing the PPP contract accountable. The same threat, therefore, awaits PPPs since the Ministry of Public Service, as well as the Office of the Prime Minister have previously failed to issue sanctions against public servants that failed to accomplish their set targets.

[43]'Laying bare the true cost of private sector involvement in development', https://www.theguardian.com/global-development/2015/jul/10/true-cost-private-sector-involvement-development-finance-summit-ppp, (accessed 4 July 2017).

vii. Limited transparency

There is a possibility of limited transparency in the execution of PPPs. Firstly, selection of the private entity engaged in the PPP is largely a closed process. This is because it is mostly officials from the Ministry of Finance and the concerned MDA that are involved in the evaluation and selection of the entity. The stakeholders, particularly civil society organisations (CSOs) and members of the local communities, would not be involved in the selection process. Limited transparency could create an opportunity for corrupt tendencies amongst those involved.[44]

In light of this, a deliberate effort would have to be made by the entity to directly engage with the local populace to ensure that their views are considered. One way of countering this would be to include a term in the contract that requires a specific level of participation; as well as a requirement that consultations be held at the grassroots to facilitate the inclusion of voices of the victims of the northern Uganda conflict in the programme implementation. Such inclusion of victims' views should be demonstrable.

viii. Limited availability of service providers

One of the challenges that could arise is the limited number of private entities with the capacity to engage in and fully implement the project. Service providers may not be easy to get, especially in this instance where attainment of the RTD would focus on specific socioeconomic needs of the Acholi. This PPP would require fulfilment of a wide array of socio-economic rights including the attainment of health rights, livelihood, food security, and housing. It may, therefore, be difficult to attract the required private entities to bid for contracts to supply the desired servicesas they ordinarily provide more specialised services including road construction.

7.2. Rwanda as a case study of government commitment to attainment of RTD

7.2.1. The Rwanda genocide and its implication on the enjoyment of human rights

Rwanda experienced civil war between 6th April and 4th July 1994. One may argue that the conflict was a short one given its three month duration; however, it deeply affected the

[44]'Laying bare the true cost of private sector involvement in development', https://www.theguardian.com/global-development/2015/jul/10/true-cost-private-sector-involvement-development-finance-summit-ppp, (accessed 4 July 2017).

observance and enjoyment of human rights in Rwanda. It is estimated that between 800, 000 to 1, 000, 000 people lost their lives in what has been described as an ethnically motivated genocide.[45] The eventual culmination into what became the genocide is deemed to have started with ethnic tensions emanating from the colonial period in Rwanda.[46]

The colonialists had viewed the Tutsi, one of the ethnic groups in Rwanda as a superior race and installed them as rulers over the Hutu that were the majority.[47] This led to an inflated Tutsi identity; while the Hutu's that were deemed to be inferior became resentful.[48] With time, other factors, such as population and land scarcity, aggravated the already existing, ethnic grievances thereby leading to the genocide.[49]

One of the human rights violations that occurred during the genocide was the massive violation of the right to life. In this regard, the genocide in Rwanda has been described as the most efficient mass slaughter in history.[50] The massive loss of lives and the accompanying exodus of those fleeing out of the country impacted on development in Rwanda, as well as the economy.

In the aftermath of the genocide, the Rwandan government sought to alleviate the impact that the genocide had had on the enjoyment of human rights and development in the country. To this end, some interventions were undertaken. These interventions are discussed in the next section.

7.2.2. Rwanda's post-genocide interventions

In its attempt to recover from the genocide, the Rwandan government undertook both formal

[45]MM Westberg, Rwanda's use of transitional justice after genocide: The Gacaca courts and the ICTR, (2010) Volume 59 *Kansas Law Review*, 331.

[46]Westberg (n 45 above), 334-335.

[47]Norwegian Refugee Council, 'Ensuring durable solutions for Rwanda's displaced people: a chapter closed too early', 8 July 2005, 6, http://www.internal-displacement.org/assets/publications/2005/2005-af-rwanda-ensuring-durable-solutions-for-rwandas-displaced-people-country-en.pdf.>, (accessed 15 July 2017).

[48]As above.

[49]As above.

[50]E Zorbas, Reconciliation in post-genocide Rwanda, (2004) Volume 1 No1, *African Journal of Legal Studies*, 32.

and informal interventions to promote its recovery and development. These interventions include:

i. Establishment of the International Criminal Tribunal for Rwanda

The International Criminal Tribunal for Rwanda (ICTR) was created on Rwanda's request to the Security Council as a means of maintaining peace, ensuring that violations were halted and effectively redressed, as well as to contribute to the process of national reconciliation.[51] The ICTR was an international attempt at ensuring national reconciliation considering that the national courts and government were deemed to be either weak or not willing to heal society.

Despite the establishment of the tribunal, Rwanda did not agree with the imposition of life imprisonment as the maximum penalty. This was because the Rwandan Penal Code provided for the death penalty as well as the fact that the court would be based in Arusha.[52] Rwanda's concern was that the deterrent effect of the trial and punishment would not be felt since the trials would take place outside Rwanda.[53] The Rwandan government had also wanted the scope of the court to be limited to genocide, leaving out crimes against humanity and other violations under the Geneva Conventions.[54] This was, however, not considered.

Under the ICTR, 93 individuals were indicted as having been responsible for committing genocide in Rwanda, out of which 62 were sentenced; 14 acquitted; 10 referred to the national jurisdiction for trial; 2 indictments withdrawn before trial; 2 passed away before the judgment, and 3 fugitives referred to the Mechanism for International Criminal Tribunals (MICT).[55] Some of the individuals that were indicted included high-ranking military and government officials, politicians, businessmen, religious, and media leaders.[56]

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[51]LA Barria & SD Roper, How effective are international Criminal Tribunals?: An analysis of the ICTY and the ICTR, (September 2005) Volume 9 No 3, *The International Journal of Human Rights*, 349 – 368, 357.

[52]As above, 355.

[53]As above.

[54] Barria and Roper (n 51 above).

[55]The ICTR in brief, http://unictr.unmict.org/en/tribunal, (accessed 15 July 2017).

[56]As above.

Despite its success, the ICTR had some challenges, including the delay in hearing of cases. On average, it took about four and a half years from the time of arrest of those alleged to have been involved in the genocide up to appeal.[57] This was contrary to the principles of natural justice which require that trials be handled expeditiously, which is critical to build public confidence in the court.

Much as Resolution 955 which established the ICTR considered national reconciliation as one of the goals of the court, no linkage was created through the operations of the tribunal.[58] Fostering national reconciliation was a challege especially where the location of the ICTR was in Arusha, which was too far to enable the people of Rwanda to participate.[59] The location of the court, therefore, impeded reconciliation since there was limited involvement of ordinary Rwandese.

The set up of the ICTR was different from the traditional *Gacaca* court system that Rwandese were accustomed to. The Rwandese, just like the Acholi, have their traditional justice systems at the grassroots level that encourage participation of all members of the community. With the *Gacaca* system, reconciliation would be easier to foster since all the parties would be abe to attend and participate in the session. As a result, the ICTR was viewed as a foreign entity.

ii. *Gacaca* courts

There were approximately 120, 000 people that had been arrested and imprisoned on suspicion that they had taken part in the genocide.[60] This made it difficult for the civil courts to expeditiously hear cases. This is where *Gacaca* courts became relevant. The idea for the creation of these courts was borrowed from the traditional conflict resolution mechanism in

[57]Barria and Roper, (n 51 above), 362.

[58]As above.

[59]As above.

[60]Westberg, (n 45 above), 331.

Rwanda. The *Gacaca* court system was originally a traditional justice system that was overseen by the elders.[61]

The goal of the elders in mediating disputes was the restoration of social order through reconciliation.[62] The *Gacaca* was ordinarily used to resolve property disputes, marital conflicts, and issues concerning inheritance rights, among others.[63] At the end of the dispute resolution process, no sentence of imprisonment would be passed. Rather, there would be a requirement that the victim be compensated, which would include the payment of livestock.[64] The *Gacaca* court, therefore, became another form of transitional justice mechanism in Rwanda. It was deemed to be inclusive as ordinary Rwandese could participate in the process with a view to fostering reconciliation.

The *Gacaca* court that was mandated to handle national reconciliation of the perpetrators and victims of the genocide was not the traditional court that the locals were familiar with. The post-genocide *Gacaca* court was a hybrid of the traditional system and the imaginations of the State. The membership of the *Gacaca* court was imposed by the State and the members were elected by the State as opposed to the traditional system where it was the elders who presided.[65] Additionally, a few youth and women were included in the membership which appeased development partners due to the inclusiveness it portrayed, in terms of catering for both gender and all age groups.

The *Gacaca* courts were also criticised as some of the victims of genocide were dissatisfied with the quality and level of participation of those that had been accused of perpetrating the genocide.[66] For instance, a concern was raised to the effect that there was

[61]W Schabas, 'Genocide trials and Gacaca courts,' (2005) 3 *Journal of International Criminal Justice*, 891 in A Senier, Traditional justice as transitional justice: A comparative case study of Rwanda and East Timor, (2008) Volume XXIII *The Fletcher Journal of Human Security*, 69.

[62]Senier, (as above).

[63]AE Tiemessen, After Arusha: Gacaca justice in post-genocide Rwanda, (2004) 8(1) *African Studies Quarterly* 60 in *Senier*, (n 61 above), 69.

[64]Tiemessen (n 63 above).

[65]Informal discussion with Professor Michelo Hansungule at the University of Pretoria on 22 June 2018.

[66]Tiemessen (n 63 above), 80.

lack of remorse shown by the alleged perpetrators.[67] Further, as already noted, there were concerns about legitimacy of the court as it merely resembled the traditional justice system that had existed before the genocide.[68]

Much as there are calls for traditional justice mechanism like *mato oput* to be applied in northern Uganda upon the eventual implementation of the national transitional justice policy, there is need for the justice system to replicate the traditional structures. For instance, the Acholi traditional justice system should be used in its traditional form; a form that is respected by the Acholi. This would ensure that the outcomes of the traditional justice process are owned by the Acholi. There may, however, be a concern as to whether the GoU would permit the UPDF soldiers that were alleged to have perpetrated the conflict to be subjected to the process. This is bearing in mind that there had been a practice of shielding those alleged to have committed human right violations by deploying them on foreign missions.

Furthermore, there would be need for the LRA to equally participate in *mato oput* to give it more meaning. It is necessary for both the perpetrators of the northern Uganda conflict and the victims to take part in the traditional justice process. However, the full participation of the LRA is doubtful since a number of them are still operating outside Uganda. With regard to the UPDF, it is not clear as to whether they would be permittedd to take part.

iii. Rwanda Government's national reconciliation policy

The government of Rwanda formulated and implemented a national reconciliation policy. This policy sought to prohibit reference or use of ethnic categories for political or economic gain as it would cause divisionism.[69] This policy emphasises the virtue of being Rwandan and pushes for co-existence among the different ethnic groups in Rwanda, that is, Hutus, Tutsis and Twa.[70]

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[67]Tiemessen (n 63 above), 80.

[68]As above, 81.

[69]Norwegian Refugee Council, (n 47 above), 14.

[70]RK Lebero, 'In Rwanda it is economic development that demonstrates government's respect for human rights', http://africanarguments.org/2014/03/14/in-rwanda-it-is-economic-development-that-demonstrates-governments-respect-for-human-rights-by-dr-richard-karugarama-lebero/, (accessed 20 April 2017).

Under this policy, one who was found guilty of causing division was punished by imprisonment.[71] This push for reconciliation and nation building contributed to the social, economic, and politial transformation that is being seen in Rwanda.[72] A policy of a similar nature in Uganda would be relevant and applicable in northern Uganda given the perception that the Acholi people have been marginalised.

iv. Villagisation policy

The villagisation policy was adopted in 1996 and was the Rwandan government's idea of offering protection to its citizens that had been internally displaced by the genocide.[73] Under this policy, the Rwandan government relocated those that had been displaced from makeshift camps to newly-established group settlements.[74] It is estimated that by 2004, 300, 000 houses had been constructed; though these developments were marred by reports of alleged coercion and use of force on Rwandese to move into the houses.[75]

It was hoped that the villagisation policy would help reduce pressure on land and that there would be a reduction in poverty; the local populace, however, did not view it that way.[76] There was a disconnect between what the government viewed as an improvement in their livelihood through poverty reduction, and the eepectations of the beneficiaries of the villagisation policy as they did not view the policy as a success in this respect.[77]

Uganda could pick a lesson from this, in that it is crucial that government should labour to not only harmonise its policy with local human rights concerns, but also ensure that the desired outcome is in line with local needs. Considering that northern Uganda is still marred with land conflicts which affect access rights thereby impeding development, government could have a similar policy to resettle some of the displaced persons. Courts in Uganda have been slow in disposing off cases. Resettlement would, therefore, be an

[71]Norwegian Refugee Council (n 47 above), 14.

[72]Lebero, (n 70 above).

[73] Norwegian Refugee Council (n 47 above), 10.

[74]As above.

[75]Human Rights Watch, 'Uprooting the rural poor in Rwanda' (2001) in Norwegian Refugee Council (n 47 above), 9.

[76]Norwegian Refugee Council, (n 47 above).

[77] As above.

alternative remedy.

7.2.3. Lessons from Rwanda

The following are some lessons that were identified from the Rwanda case study that Uganda could draw from to improve opportunities for attainment of the RTD in Acholiland:

i. De-ethnicisation Rwanda

The government of Rwanda, through the 'I am Rwandan' (Ndi umuyarwanda) campaign has tried to de-ethnicise Rwanda by blurring the lines between the two ethnic groups, the Hutu and Tutsi.[78] This has been done through a public education campaigns that begun in 2013 targeting all categories of citizens.[79]

Uganda could benefit from such a campaign as the government of Uganda seeks to foster unity and bridge the divide between the people of the northern region and those in the south. This would be in line with the Uganda Constitution which guarantees equality of all persons before the law.[80] The push for national unity and reconciliation would go a long way in eroding the existing mistrust between the northerners and the government in the south.

ii. Existence of political will

Much as some of its methods of implementing policy have been questioned, the Rwandan government has displayed some level of political commitment towards ensuring that both the Rwandan people and the economy are transformed through development processes. The push for national unity and reconciliation is an additional measure.

In light of the foregoing, the GoU could borrow a leaf and formulate a national unity and reconciliation policy to deal with perceptions of marginalisation and mutual distrust between the people of northern Uganda and the leadership in the south. This is part of the reason why the GoU has had a challenge obtaining land for development purposes in northern Uganda. It explains the recent bill to amend article 26 of the Uganda Constitution to provide

[78]L Wardorf, Thinking big: Rwanda's Post-genocide politics, 30 April 2014, http://www.e-i.ifo/2014/04/30/thinking-big-rwandas-post-genocide-politics/ (accessed 18 June 2017).

[79]As above.

[80]Constitution of the Republic of Uganda 1995 (as amended), art 21.

for compulsory acquisition of land from private individuals.[81]

There should also be commitment from the GoU to ensure that resources allocated for reconstruction and recovery of northern Uganda are effectively utilised. A lesson could be borrowed from Rwanda where in addition to criminalising corruption, a convict would be required to pay back two to threefold of what had been embezzled.[82]

iii. The need for inclusive and equal participation

There is need for inclusive and equal participation by both the victims of the conflict, as well as the UPDF and the LRA who are deemed to be the perpetrators of the human rights violations and abuses during the conflict. This stems from the fact that the Gacaca court system was made meaningful by the participation of both the victims and perpetrators of the Rwandan genocide.

In the same vein, the GoU would be expected to readily provide all its personnel that were implicated in perpetrating human rights violations during the 20-year conflict in northern Uganda. The challenge would, however, remain with the LRA that are still operating outside the boundaries of Uganda. Former LRA combatants that have since returned to Uganda and would be willing to participate in the traditional justice processes should be encouraged to do so.

iv. Sanctions for non-compliance with state policy

The Government of Rwanda (GoR) levies sanctions against those that do not abide by State policy. For instance, one of the outcomes of the post-genocide era was delivery of social goods for local commuities, especially health and education.[83] Under health, it has been observed that there was a sharp decline in maternal mortality as well as an increase in births at health centres.[84] This has been attributed to the levying of fines in the event that they failed

[81]'Land bill set to return to Parliament', *The Independent*, https://www.independent.co.ug/land-bill-set-to-return-to-parliament/ (accessed 10 July 2019)

[82]'Parliament amends law on corruption', KT Press of 31 May 2018, http://ktpress.rw (accessed 15 July 2018).

[83]Wardorf, (n 78 above).

[84]As above.

to do so.[85]

Similarly, the GoU should hold public servants accountable and levy sanctions on those that fail development programmes. As observed in chapter five, funds meant for development programmes have been massively abused by public servants. Public servants that divert funds should be heavily penalised to deter others. In addition, with regard to policy development, just like the Rwandan government, the GoU should customise its development policies in line with the needs of individual communities as opposed to the common practice of having a 'one-size fit all' approach where blanket development policies are issued and implemented.

v. Need for policy on implementation of TJ

The Rwandan case study has made it evident that the implementation of a transitional justice policy in Uganda is very urgent. The national transitional justice policy is necessary to address various transitional justice and development related issues in northern Uganda. With Rwanda, as has been seen, different policies were drafted and effected to address specific post-conflict interventions. In light of this, and given that Uganda's national transitional justice policy is over 10 years late, the GoU could adopt a 'piece meal' approach to address specific human rights needs in northern Uganda in the interim. For instance, given the need for reparations and truth telling as mechanisms to enable the Acholi to recover in accordance with Acholi culture, policies could be drafted and implemented.

7.2.4. Challenges in attainment of the RTD in Rwanda

The successes of the Government of Rwanda (GoR) in promoting developmental rights are not without challenges. Much as large successes were recorded, there were some challenges that came up. These challenges affected the general enjoyment of human rights of the Rwandese. These challenges include:

i. Reduced access to land

In any African society, the enjoyment of various human rights is closely linked to being able to access land and benefit from the associated land rights. The failure by some Rwandans to

[85]Wardorf, (n 78 above).

access land in post-genocide Rwanda proved to be a stumbling block to their enjoyment of the RTD. One of the ways through which the Rwandan government sought to address the issue of access to land was through the villagisation policy. This was discussed in the preceding sections.

Unfortunately, there were some challenges in the implementation of the villagisation policy. Some of the issues were that the Rwandans grappled with included food distress as well as inadequate access to health services, among others.[86] This would, therefore, call for a holistic approach in planning, if the GoU expects sustainable development to be achieved.

ii. Dissatisfaction with traditional justice mechanisms

There was also some dissatisfaction with how the traditional justice mechanisms were implemented, particularly the outcome of the *Gacaca* courts. For instance, there were concerns and dissatisfaction with the nature of punishments that were meted out by the *Gacaca* courts. The general view of Rwandans was that the sentences of community service were not commensurate to the amount of suffering that the survivors underwent or the loved ones whose lives were lost during the genocide.[87] The *Gacaca* court system, therefore, did not promote peacebuilding as was hoped.

Furthermore, the idea of the *Gacaca* was perceived as being a proxy traditional justice mechanism compared to what previously existed in Rwanda. In this regard, the *Gacaca* courts were given a wider jurisdiction beyond the customary processes it previously addressed. This is against the backdrop of the fact that serious crimes, for example, murder, were ordinarily, in traditional Rwandan society, heard by the king and not by peoples' courts.[88] Consequently, some Rwandans did not consider the *Gacaca* court as being legitimate since the courts traditionally did not have the authority to try the crimes that were perpetrated during the genocide.[89]

This is an area that the GoU would have to avoid in the event that Acholi traditional

[86]Norwegian Refugee Council, (n 47 above), 12.

[87]'Genocide sentences 'humiliate survivors', *Mail and Guardian*, 10 January 2006 in *Senier*, (n 62 above), 74.

[88]Norwegian Refugee Council, (n 47 above), 12.

[89]As above.

justice mechanisms are to be implemented. The systems put in place for handling human rights violations and abuses that occurred during the northern Uganda conflict would have to mirror what previously existed in the Acholi traditional justice system. This would encourage participation of all members of local communities as well as acceptance of the outcomes of the process. Without acceptance, there could be no reconciliation, which could affect future interventions to promote development in Acholiland. This is in view of the fact that for the Acholi, society cannot move forward in the event that a dispute has not been resolved, since both the spiritual world and the world they live in has been 'destablised' by the conflict.[90]

There may arise challenges and dissatisfaction with the Acholi traditional justice system just like there was with the *Gacaca* courts. This is against the backdrop of the fact that *mato oput*, the Acholi traditional justice system, is not designed to handle mass violations. Furthermore, there is limited infrastructure to facilitate the prosecution of UPDF soldiers and former LRA rebels that were not amnestied.[91]

The formal justice system has its own challenges including a very limited judicial presence in northern Uganda.[92] For instance, there is only one resident judge in Acholi sub-region, and three Judges specifically assigned to the International Crimes Division of the High Court of Uganda.[93] In light of the foregoing, a combination of transitional justice mechanisms would have to be implemented to ensure a more satisfactory outcome.

7.3. Conclusion

This chapter has shown that there is need for GoU to return to the drawing board to devise better or alternative mechanisms through which it can better fulfil its constitutional obligation of ensuring respect, protection, and promotion of the RTD in Acholiland. The case study on Rwanda showed that without political will, not much development can be attained, especially in light of the ever present social ills like corruption. Rwanda may have had some challenges

[90]Informal discussion held with Mr. Ambrose Olaa the Prime Minister of Acholi Kingdom on 9th June 2017 at Ker Kwaro (Acholi Cultural Institution).

[91]C Rose & FM Ssekandi, The pursuit of transitional justice and African traditional values: A clash of civilisations – The case of Uganda, (2007) No 7, year 4, *International Journal of Human Rights*, 119.

[92]As above.

[93]Information available at http://www.judiciary.go.ug (accessed 15 July 2018).

in attaining its development goals in the post-genocide setting, but it is evident that it is determined to achieve its goals in a manner that resonates with Rwandan culture. This is a lesson that the GoU could adopt especially with regard to northern Uganda where culture is deeply entrenched in all undertakings by the Acholi.

The reflections on Nkondo project, as an example of community-led development showed that people-led initiatives facilitate the active participation of concerned communities and can promote development, especially if PPPs are considered. Such interventions would lead to an improvement in the economic and social well-being of the Acholi, as well as the general enjoyment of human rights. In light of the findings in this chapter and the preceding chapters, recommendations are made on how the RTD can best be attained by the Acholi. These recommendations are contained in the next chapter.

CHAPTER EIGHT
GENERAL CONCLUSION AND RECOMMENDATIONS

8. Introduction

This study sought to establish how best the RTD could be made a reality for the Acholi. This chapter recaps the key findings of this study. The findings of the study are the basis upon which recommendations are made. These recommendations, if implemented would further the possibility of, and provide avenues through which the RTD can be attained for the Acholi. This chapter, therefore, makes proposals on how enjoyment of development can be protected and promoted in a way that ensures effective realisation of the RTD.

8.1. General conclusion

The common thread that has emerged throughout this thesis is that there could be no development without peace, no peace without development; and similarly, no development without respect of culture. The absence of peace in northern Uganda for over 20 years deprived the Acholi of the freedom and opportunity to participate in, contribute to and enjoy the RTD. In the pre-conflict era, the participation of all community members was guaranteed under the supervision of the clan-head. With the over 20-year conflict however, such clan-structure were abandoned during encampment and various human rights affected; thereby disenfranchising the Acholi as a people of their RTD.

The overarching legal question that underpinned this study was how best the people of Acholiland could be facilitated to enjoy the developmental and other related human rights needs and concerns in a post-conflict setting. Some questions were raised in the thesis, and each of the questions is addressed and a conclusion drawn in the thematic areas below:

8.1.1. RTD as a claimable right for the Acholi in the post-conflict setting

Chapter two of the thesis commenced with an exploration of the theoretical and conceptual framework underpinning human rights in general as well as the RTD. The chapter also interrogated whether the RTD was a claimable right for the Acholi in the post conflict setting in northern Uganda.

This investigation established that the RTD is indeed a claimable right for the Acholi people despite the murky nature of 'development' as a human right under the international human rights framework. As observed throughout the study, the international debate on whether the RTD is indeed a human right has not been resolved.

The legal obligation to guarantee enjoyment of the RTD is imposed on the GoU at the regional and national levels. The Acholi, as a consequence, have a right to enforce their RTD. This legal right to development that the Acholi people are seeking to claim arose due to GoU's failure to guarantee their civil and political rights during the LRA conflict.

The right of the Acholi to development emanates from the concept of human rights which creates duties and obligations, both for rights-holders and duty bearers. The Acholi people are identified as rights-holders which entitles them to actively participate in and contribute to attainment of the RTD in northern Uganda. However, the enjoyment of this right was curtailed by the northern Uganda conflict, and limited implementation of state interventions.

Since human rights are an entitlement, the Acholi people are owed a duty by the GoU to ensure that their RTD was attained, especially in the post conflict setting. This RTD is a group right, and it encompasses economic, social, cultural and political aspects, thereby lending credence to the notion of indivisibility of human rights. Hence, attainment of the RTD is deeply rooted in the enjoyment of economic, social and cultural rights.

Much as human rights are universal in nature, there is need for consideration of social values that apply within a given society. This way, human rights, including the RTD, are enjoyed with the necessary modifications. For the Acholi, this would require incorporation of their cultural practices in development processes. For instance, the Acholi clan structure could have been instrumental in the formulation, implementation and monitoring performance of development interventions. Such a practice would guarantee sustainability of development projects.

The principle of equality of all persons as provided for in the Uganda Constitution, resonates with the RTD. The Acholi have a right to enjoy peace. With the presence of peace,

the Acholi would be in a position to meaningfully participate in development processes as guaranteed in the African Charter on Human and Peoples' Rights (ACHPR) and the Uganda Constitution. This principle of equality reserves the right of the Acholi people to be afforded the same development opportunities that were accorded to other Ugandans; especially in the context of their recovery from a 20- year conflict.

The principles of indivisibility, interdependence, and interrelatedness of human rights provide an avenue through which the RTD can be claimed even where the legal framework is does not specifically guarantee its protection. In instances where civil and political rights are violated by the State agents, a corresponding duty by the State to guarantee the RTD arises. In the event that the state fails to guarantee protection of the RTD, the Acholi, as rights-holders, have a right to seek enforcement of the right and hold the State accountable. The Acholi should, therefore, be able to petition the state to enforce their developmental rights.

The RTD, as a right, requires the active participation of rights-holders as they are best placed to identify development strategies that are responsive to their human rights needs, and ensure that the right can be enjoyed within the localised context. The content of what amounts to the RTD in the Uganda Constitution is quite shallow though the ACHPR gives more guarantees for its enjoyment within the afore-cited human rights principles.

Closely linked to the RTD is the right to self-determination. The right to self-determination is relevant in the enjoyment of developmental rights as it affords the Acholi an opportunity to freely pursue their social, cultural and economic development in line with their needs as a people. Here, in line with the decentralised system of governance and the principles of a human rights based approach to development, the right to self-determination would be applied within the unique and social context of the Acholi.

Further, the legal frameworks cannot operate in isolation of cultural norms of the Acholi people. The study showed that the Acholi culture is deeply entrenched in their way of life and development practices. Any efforts to enforce the enjoyment of the RTD in post conflict northern Uganda would require recognition of cultural norms. This would ensure sustainability of any development process.

The need for recognition of the relevance of culture in the implementation of human rights interventions was evident. It was established that peace is critical for development in Acholiland. The theory of peace explored was the concept of peace meaning the absence of violence as expounded on by Galtung.

It was observed that the modern day practice of signing peace agreements was alien to the traditional African way resolving conflict. Parties to peace processes like the LRA could not, therefore, be bound by peace agreements that sought to end conflict by the stroke of a pen. Rather, traditional conflict resolution methods like requiring parties to swear an oath in the name of a mother or a deity bore more weight and commanded adherence to the oath taken.

On matters pertaining to the observance of peace and human rights among the Acholi community, their culture is restorative in nature and not punitive. This is in light of the push by GoU to have the LRA leadership prosecuted for crimes committed during the conflict. Further, the survivors of the conflict were passive participants in the negotiations. In the absence of 360-degree analysis of the needs of the conflicting parties and the conflict survivors, the Juba peace negotiation was bound to fail.

The study also explored the originality and 'africanness' of the RTD as a human right. It was resolved that the justiciability of the RTD remains debateable on the international realm. The RTD has, however, been embraced as a human right in Africa. This acceptance of the RTD is pegged to the fact that it was popularised by Keba M'Baye, an African. The popularisation of the RTD culminated into UN Declaration on the RTD; even though it remains unenforceable on the international plane.

The African continent went a step further to recognise the existence of the RTD as a distinct human right by putting in place the ACHPR. However, it is only Uganda, Benin, Ethiopia, Democratic Republic of the Congo and Malawi that provide for the RTD in their Constitutions. The Acholi can, therefore, claim this right by virtue of the ACHPR, which Uganda ratified.

In the claiming of the RTD, a rights based approach is critical as it guarantees sustain-

ability of development interventions. A rights based approach would provide a strong basis for the Acholi to make a claim; and the state would be held accountable in the event it fails to fulfil its duty. The development strategies should be identified by the Acholi and adapted to their needs since there is no universal development model.

8.1.2. Efficacy of specialised government programmes for attainment of peace and development in Acholi sub-region

Chapter three sought to analyse special government programmes that were implemented in Acholi sub-region in a bid to support peace and development during the northern conflict. The period under review ran from 1992 till the post-conflict era. Some of the programmes, particularly, PRDP that ran from 2007 and is in its third phase; and DINU that is still ongoing.

The study showed that GoU has a constitutional obligation to facilitate development programmes in Acholi sub region.[1] The obligation mandates GoU to fulfil the fundamental rights of all Ugandans to enjoy social justice and economic development. Development programmes implemented in Acholi sub-region were, therefore, linked to government's plan to eradicate poverty and ensure and national development.

For the Acholi, in particular, specialised government development programmes including northern Uganda reconstruction Programme (NUREP) which sought to restore economic and social structures in northern Uganda; Northern Uganda Social Action Fund (NUSAF) which sought to develop northern Uganda; Peace Recovery and Development Plant (PRDP); and Development Initiative of Northern Uganda (DINU) that was launched in 2018 to, among other things, strengthen the foundation for sustainable and inclusive socio-economic development. These programmes generally sought to narrow the development gap between northern Uganda and the rest of the country.

It was observed that most of these programmes had a centralised planning process which limited the participation of the local communities. The limited participation of the local populace affected sustainability of the development programmes. The limited participa-

[1] Constitution of the Republic of Uganda 1995 (as amended), principle xiv of the National Objectives and Directive Principles of State Policy.

tion was exacerbated by the forced displacement of the Acholi from their villages. This was from 1996 till 2007 when the return process begun.

The forced displacement of the Acholi also affected their participation in development programmes due to the disintegration of clan structures. These clan structures were previously instrumental in the formulation, implementation and monitoring of communally initiated development interventions. The forced displacement of the Acholi into internally displaced persons' (IDP) camp broke down clan structures and also divided families as the implementation was spontaneous.

The Ker Kwaro, that was left out of the critical programmes like PRDP, would have been key in the mobilisation of the clans to fully participate in development processes. The development groups that were funded by government were unsuccessful as they lacked the unifying factor that clans within the Acholi traditional structures had. Further, some of the targeted project beneficiaries were unable to access resources due to a number of factors including corruption by the project managers.

The study also established that there is no specialised government programme that sought to administer reparations for the Acholi in light of the loss of property and livelihood during the conflict. Reparations have not yet been catered for despite the passing of a national transitional justice policy in 2019.

The specialised government programmes lacked ownership by the local populace, were not inclusive or victim-centred. The programmes were referred to as 'community driven' and yet the content had been pre-determined by development partners. The programmes did not seek to address conflict drivers including the inadequate economic development in the northern region as compared to the rest of the country. These government programmes, therefore, failed to redress regional imbalances.

The government programmes were conflict insensitive as they focused on infrastructural development and did not consider peacebuilding and reconciliation, especially in the implementation of PRDP that was still running at the time hostilities between the LRA and UPDF had ceased. Some programmes like DINU assumed that the Acholi had access to land

inorder to benefit from it. The lack of access to land due to various factors including their land having been grabbed during encampment, affected their access to development opportunities.

The need for the development of the Acholi remains dire in the absence of effective, reparative and inclusive development interventions.

8.1.3. The nexus between the right to peace, the right to development and post conflict reconstruction in northern Uganda

Chapter four sought trace the foundation of the RTD as a legal right for the Acholi in the post-conflict era; and to draw lessons from regional peace processes with a view to establish how the RTD could have been better protected within a localised context for the Acholi.

This thesis traced the foundation of the RTD as a legal right for the people of Acholi in northern Uganda. This legal right emanated from the Juba Peace Agreement which paved way for peace in northern Uganda. As a result of the peace process, local communities, in principle, regained their freedom to participate in and contribute to the reconstruction and development of their region.

The study has shown that the Juba peace negotiations provided an avenue for determining peaceful and lasting solutions to the 20-year northern Uganda conflict. The peace negotiations were, however, marred by the lower negotiating capacity of the LRA. This tilted the dynamics of the peace negotiations and contributed to the failure of the two warring factions, the NRM government and the LRA rebels, to sign the final comprehensive peace agreement.

The organisers and facilitators of the Juba peace process ignored the importance of what may appear to be inconsequential but significant, cultural practices undertaken in the resolution of disputes. These include the ‘swearing on one’s mother’s grave’ as a symbol of honesty and an undertaking to abide by terms agreed to; or in the instance of the Acholi, ceremonies like *mato oput* where bitter herbs are undertaken to symbolise the bitterness caused

by the conflict; and reunites the parties to ensure non-repetition.[2]

Invocation of traditional dispute resolution symbolism would have had far reaching and a more positive impact on the Juba peace process. The LRA would have obliged to abide by the oaths that they ordinarily respect. An undertaking in the name of one's mother would have elicited an honest commitment to fulfil the terms of the peace agreement.

Some of the other short comings of the Juba Peace Agreement were that it only focused on ushering in peace without necessarily considering the factors that led to the conflict between the LRA and the NRM government. Establishing and dealing with the root cause of the conflict would have availed an opportunity for the identification of durable solutions that would avert future conflicts.

The Juba Peace Agreement did not have express provisions guaranteeing human rights protection in the post conflict setting. This would have catered for a guaranteed protection of the RTD. At best, it observed the need for reparations for the people of northern Uganda, but hinged its implementation to a national transitional justice policy. The implementation of the national transitional justice policy is yet to be done.

There is still need for the past injustices that the Acholi people experienced during the conflict to be dealt with through transitional justice mechanisms. This would pave way for the Acholi to have creativity and freedom to facilitate the attainment of the RTD in the northern region. The national transitional justice policy, therefore, needs to be implemented as it would provide the foundation upon which the RTD could be claimed by the people of northern Uganda, including the Acholi people.

8.1.4. The efficacy of the legal framework for guaranteeing the RTD in Acholiland

The study established the existence of legal and institutional frameworks governing the protection of the RTD albeit weak and ineffective. It was observed that the RTD, although provided for in the Uganda Constitution, it is not embedded in the bill of rights. This brought about confusion as to whether the RTD was a substantive right that could be claimed. Placement of the RTD within the text of the bill of rights would affirm it as a justiciable right.

[2] T Murithi, African approaches to building peace and social solidarity, 26.

The existing legal framework in Uganda is narrow in its definition of what amounts to the RTD, what government's obligations are in facilitating its fulfilment; as well as the rights and duties of the rights-holders, that is, the Acholi. This is in consideration of the fact that human rights go hand in hand with obligations.

There is also the need for culture to be considered and reflected in development policies since it is deeply entrenched in the Acholi people's way life. For any meaningful interventions aimed at guaranteeing the RTD, certain elements of Acholi culture should be included.

A concrete foundation for claiming the RTD as a justiciable right is laid out in article 22 of the ACHPR. This provision specifically guarantees the RTD as a human right. However, enforcement of the RTD largely depends on the goodwill of States parties.

The study revealed that at an international level, there is no concrete legal framework guaranteeing the RTD as the UN DRD is a soft law. However, it was observed that human rights are inherent and there is no need for the RTD to specifically be declared a distinct human right. However, having it codified renders such rights easier to claim and enforce.

8.1.5. The right to remedy as means of achieving development in post-conflict Acholi sub-region

This thesis has also justified the need for enforcement of the right to provide a remedy for the Acholi. This is on the basis of their vulnerable status during and after the war. It was established that despite the implementation of various government interventions, the Acholi people have not recovered from the impact of the conflict.

The slowness of the Acholi to recover from the conflict was attributed to failure by the GoU to prioritise the needs of the victims of the conflict. Consequently, the right to remedy has not been realised, neither has the transitional justice policy that is crucial to its fulfilment, been implemented.

The northern Uganda conflict curtailed the prospects of the local populace to meaningfully attain and enjoy their RTD. This was due to various effects of the northern conflict

including the fact that no economic activities could be engaged in due to the prevailing insecurity in the region, and the loss of parents/guardians either through abduction or death at the hands of the LRA and UPDF soldiers.

There has also been a shift in gender roles which destabilised the traditional roles assigned according to gender in Acholi culture. More women took over the mantle of providing for the family. Men, who were generally considered to be more economically empowered than women, were instead disempowered.

The productivity of children was also tested considering that some were forced to head families at a tender age following the loss of their parents/guardians. These children have since turned into youth. However, there are no clear strategies that have been developed to assist the Acholi youth to rise above their level of poverty and increase their prospects of attaining and enjoying their RTD. At the national level, a youth livelihood programme has been undertaken. This programme has its own challenges including the fact that only a few youth groups can be targeted per district at a time.

The local populace has remained in almost the same state as they were ten years ago when they first returned to their villages. With the exception of infrastructural development like road construction and construction of some basic school structures, the socio-economic well-being of the Acholi has not improved. Poverty has remained an issue which has led some young girls and women to turn to prostitution as a means of 'survival'.

Some of the limited success of GoU's interventions can be attributed to the failure to utilise a bottom-up approach in formulating development policies like PRDP. This has brought about neglect of the human rights concerns and priorities of the locals, as well as a failure to ensure a multi-faceted approach to attaining the RTD. The local populace would have preferred to have transitional justice mechanisms like truth telling and reparations implemented to enable them to move forward and possibly develop.

The implementation of the national transitional justice policy is yet to commence and yet this policy is crucial in addressing the human rights needs of the local populace. Reparations and the application of Acholi traditional justice norms in post conflict interventions

have been cited as some of the critical interventions required by the Acholi. It is, however, instructive to note that the Acholi people cannot move forward without addressing past injustices.

The study has shown that attainment of the RTD in northern Uganda hinges on the GoU's ability and willingness to undertake a multifaceted approach. The study observed that despite the GoU having a multi-billion-shilling programme like PRDP, not much was realised in terms of socio-economic development and, therefore, enjoyment of socio-economic rights like the RTD.

8.1.6. People-led development as an alternative mechanism for attainment of the RTD

The objective of chapter seven was to determine how public-private-partnerships through people-led interventions. In essence, the idea of a clan-based development model was being explored. Further, lessons were to be drawn from Rwanda, a post-conflict community, to establish the attainment of the RTD in northern Uganda can be better facilitated.

This thesis advanced a case for clan-led development in northern Uganda as a means of attaining the RTD. On the basis of Nkondo project, a community-led intervention in eastern Uganda, the Acholi would be availed an opportunity to formulate and implement development programmes aimed at guaranteeing their RTD. Here, just like in the Nkondo project, the programmes would be identified by and implemented with their active involvement.

It was observed that despite the existence of a legal framework governing public-private partnerships, there is still a need for some modifications to be made to the law. This is because the legal framework envisages partnerships between government and private institutions. In this instance, there is need for provision for non-governmental entities that have the capacity to oversee the implementation of development programmes; and clan-led structures within the Acholi cultural system.

Lessons were drawn from Rwanda, a country that is also recovering from conflict. Here, it was noted that in order to ensure sustainability of development programmes, the active involvement of the grassroots people is crucial. It was also noted that there is need for incorporation of cultural practices that are widely embraced by the local populace in post-

conflict development planning.

The need for victim-centredness in development processes stood out. This promotes local ownership of development programmes and facilitates the attainment of socio-economic rights. The applicability of clan-led development in northern Uganda was evident by the glaring need for the local populace to be involved and take the lead in any development interventions being undertaken. In the absence of a people-led development initiative, there would be no local ownership of development processes, thereby affecting sustainability of such interventions.

It was established that there is need for local content to be included in development processes. It was also necessary that transitional justice mechanisms be implemented to enable the Acholi to identify with the processes and fully participate to ensure meaningful outcomes.

An exploration of Nkondo project, a people-led initiative illustrated that socio-economic needs of local communities can indeed be effectively addressed through people-led development initiatives. This can occur where the beneficiaries identify their socio-economic necessities and manage the development process.

People-led development initiatives promote local ownership of development processes and programmes, thereby guaranteeing their success. Such people-led initiatives should, however, be replicated through the clan-system in Acholi-land since these are highly respected and effective development institutions in the pre and post-conflict traditional Acholi setting.

The analysis of Rwanda showed that there is need for government commitment post conflict interventions are to be successful. The case study also showed that for development to take root and have an impact, there is need for transitional justice mechanisms including traditional justice mechanisms to be undertaken. This is particularly crucial for the Acholi where some form of traditional justice has to be undergone by all the parties to the northern conflict before the Acholi can fully focus on their development.

8.2. Recommendations

In light of the findings of this study, it is necessary that strategies be adopted to ensure that the Acholi are afforded an opportunity to attain and enjoy the RTD. The adoption of these strategies will require the sharing of excerpts of the thesis with relevant actors, particularly, the Justice Law and Order Sector and Uganda Human Rights Commission a year. A direct contribution shall also be made to the Transitional Justice Working Group of JLOS once the drafting of the National Transitional Justice Bill is underway. There shall also be need for dissemination of the thesis to academic institutions like Makerere University; and through publication of journal articles to ensure wider coverage. These strategies are contained in the recommendations discussed below.

8.2.1. Development of the concept of the RTD

It was evident throughout the research process for this study that there was limited scholarship on the RTD, especially with regard to post-conflict societies like the Acholi. Where materials were available, they were largely biased towards European issues and yet this study focused on the RTD for the Acholi.

The need for literature was very glaring, especially those relating to Africa as a region, as well as country-specific scholarly works. Organisations should, therefore, fund researches, especially on the neglected area of post-conflict societies. Some of the issues that could be explored in such studies would include why conflicts break out; why they continue and how such conflicts could be minimised in light of the accompanying ills.

8.2.2 Adoption of public-private partnerships (PPPs) as a mechanism for guaranteeing the RTD

PPPs are a mechanism that the GoU can explore in its attempt to ensure efficient and effective implementation of development initiatives that could in turn lead to attainment of the RTD. PPPs are an option worth exploring since service delivery by the Uganda public service sector is really lacking.

The Uganda public service is characterised by a bloated structure, inefficiency and poor performance. Consequently, its services are not responsive to the needs of the victims of the northern conflict. It is time that the private sector is allowed to assist government to facili-

tate development among the Acholi. This would include empowering local communities to manage the implementation of government policies aimed at promoting the enjoyment of the RTD.

8.2.3. Political commitment towards attainment of the RTD

There is need for the GoU to fully commit to development efforts it undertakes. Lessons could be borrowed from Rwanda where government's commitment to development of the nation is unquestionable. Pronouncements made by the President of Rwanda are implemented with zeal and failure of a government programme is not taken lightly. Much as policies may be initiated by the GoU, the accompanying action by State officials do not reflect the commitment to ensure that the status quo improved.

8.2.4. Legal reform

i. Constitutional reform

The study has shown that the placing of the RTD among the national objectives and directive principles of state policy created doubt on whether it is a substantive and justiciable human right within the Uganda Constitution. This calls for amendment of the Uganda Constitution to include the RTD and other socio-economic rights in the bill of rights. With a general amendment of the Constitution, the bill of rights should be revisited and an amendment considered to categorically recognise socio-economic rights within the bill of rights, as opposed to relegating them to the national objectives and directive principles of state policy.

Furthermore, GoU should declare development as one of the cross-cutting issues that must be reflected by all government Ministries, Departments, and Agencies (MDAs) in their planning processes, work-plans and budgets. This is the same approach that GoU used to mainstream gender and HIV in all planning processes.

Attainment of socio-economic rights should be a cross-cutting issue in all government ministries, departments, and agencies without which institutional budget for a given financial year should not be approved. For instance, the Uganda Gender Policy recognises that different sectors have the responsibility to finance gender mainstreaming interventions pertinent to

their sector.[3]

ii. Law reform

The study has exposed the lightness of the sanctions imposed on public officers that have been found guilty of corrupt practices including embezzlement of public funds. In light of this, there is a need for law reform on the laws on corruption, particularly the sanctions for offences concerning financial mismanagement.

These sanctions should serve as a deterrent measure to discourage would-be corrupt public officers, while at the same time promote service delivery and boost government's efforts to fulfil her human rights obligations toward the citizens. There should also be provision for mandatory recovery of government funds lost through corrupt acts or omissions by public officers.

iii. The need for increased judicial activism

It has also been established that there is a general disregard for human rights as a concept by judicial officers. There is a need for a mind-set reform for judicial officers, especially judges before whom complaints concerning violation of socio-economic rights are brought for adjudication. The mind-set reform would facilitate judicial activism among judicial officers as they would have a better appreciation of human rights standards to be applied in the hearing of human rights cases.

Judges need to be encouraged to apply human rights principles, better still, a human rights course be incorporated as part of the training for judicial officers that have been recruited at the Judicial Studies Institute.

iv. Human rights education for advocates

Similarly, there is need for human rights education for all advocates in Uganda. This could be made a mandatory requirement by the Uganda Law Society as part of its clinical legal education programme for all advocates. Human rights trainings for advocates are crucial since it is the advocates that make the right prayers before court and move court to make the right or-

[3]The Uganda Gender Policy (2007), 22.

ders in favour of their clients.

Furthermore, advocates should be able to offer guidance to judicial officers through their submissions when handling cases concerning human rights violations. Where both the advocate and the bench are well informed on human rights standards, the right and just decision will be made.

v. The need to expedite the implementation of national transitional justice policy and Act

The Uganda Constitution spells out the role of the State in development and obliges the GoU to accord the highest priority to the enactment of legislation that would initiate measures that protect and enhance the right of the people.[4] In this instance, the Acholi would be entitled to equal opportunities in development. It is in line with this provision that the Juba Peace Agreement on Accountability and Reconciliation made provision for the drafting of the National Transitional Justice Policy. The delay in passing the National Transitional Justice Policy hampered enjoyment of the RTD in northern Uganda. There will, however, be further delays in implementing the policy and yet the Acholi would require that past injustices committed against them be resolved first, before they can focus on development.

In light of the foregoing, the GoU could in the meantime adopt a 'piece meal' approach to address specific and urgent human rights needs in northern Uganda. It has also been observed throughout the study that the Acholi people would have to deal with the injustices they experienced through the application of various transitional justice mechanisms including traditional justice and reparations.

A piece-meal approach would circumvent the delays in the implementation of the National Transitional Justice Policy. This would facilitate the attainment and enjoyment of the RTD by the Acholi people, having dealt with the past. These policies would promote the healing process as the implementation of other aspects of the National Transitional Justice Policy is awaited.

[4]Constitution of the Republic of Uganda 1995 (as amended), principle xi (i) of the National Objectives and Directive Principles of State Policy.

vi. Recognition and incorporation of culture in development planning

The Uganda Constitution provides for the development and incorporation of cultural and customary values that are consistent with fundamental rights and freedoms, human dignity, democracy and the Constitution in all aspects of Ugandan life.[5] The Uganda Constitution also obliges the GoU to promote and preserve cultural values and practices that enhance the dignity and well-being of Ugandans.[6] Where culture is incorporated in the development of policies, crucial human rights needs would be better reflected and the policies and programmes locally owned. Those affected by the conflict would not only be beneficiaries of the interventions, but would also be the drivers of the development programmes.

vii. Harmonisation of policy and the role of cultural practices in attainment of the RTD

An element that arose in the study is the strength of cultural practices in the daily lives of the Acholi people and its consequential impact on enjoyment of the RTD. It was observed that there is a disconnect between how the GoU is implementing policies like PRDP and the need for acknowledgement of the influence of Acholi culture in attainment of development goals. For better effectiveness of development interventions, it is prudent that traditional leaders are involved in mobilising local communities to participate in the implementation of government development interventions. This way, sustainability of development programmes would be promoted.

viii. Review of development policies

There is need for a review of the mode of formulating and implementing development policies. This would contribute to an improvement in the efficiency and effectiveness of programme outcomes. For instance, the use of a people-led approach would encourage direct interaction with the people and enable them to take the lead in identifying and fulfilling their socio-economic needs. A people-led development model would promote inclusive participation of the locals since there is no limit on who may participate. This way, better gains would be realised.

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[5]Constitution of the Republic of Uganda 1995 (as amended), principle xxiv of the National Objectives and Directive Prinicples of State Policy.

[6]Constitution of the Republic of Uganda 1995 (as amended), principle xxiv (a) of the National Objectives and Directive Prinicples of State Policy.

8.2.5. Institutional transformation

In 2017, the GoU adopted a policy on transformation of the Uganda public service. This policy recognised that the Uganda public service has been inefficient and ineffective in the delivery of public service, and, therefore, sought to overturn the prevailing the state of affairs. In the same vein, with a view to improving the performance of the GoU in promoting attainment and enjoyment of the RTD, the following strategies are recommended.

i. Prioritisation of post conflict reconstruction of the local populace

GoU should prioritise socio-economic reconstruction of the Acholi. The socio-economic restoration of the Acholi should be re-prioritised through the implementation of transitional justice processes, especially traditional justice, truth telling and reparations. This would directly impact on and improve on the social and economic conditions of the survivors of the northern conflict, as it would address the Acholi people's way of resolving conflict while at the same time facilitating socio-economic development.

ii. Implementation of an aggressive anticorruption campaign

There is need for the GoU to embark on an aggressive anti-corruption campaign among public officers. This calls for a more concerted effort by government towards stamping out corruption, though the bigger problem that needs to be addressed is the impunity with which corruption takes place. This would require, among other things, institutional cooperation. Here, the Inspectorate of Government would partner with other government entities like Ministry of Lands and Uganda Revenue Authority to track assets belonging to civil servants as well as alternative sources of income. Where one's wealth cannot be explained, an investigation will be conducted with the possibility of prosecution and recovery of assets.

This, among other interventions, would ensure that Uganda government's development objectives for the northern region are achieved while at the same time, local needs and human rights aspirations are respected, protected, and promoted.

iii. Establishment of a Transitional Justice Commission

Considering that National Transitional Justice Policy has been passed, there is need for an institution to oversee its implementation. It is on this note that a recommendation is made to the effect that the GoU should set up a Transitional Justice Commission. This would be in

line with the Juba Peace Agreement on Accountability and Reconciliation under which parties undertook to implement national legal arrangements consisting of formal and non-formal institutions for ensuring justice and reconciliation in light of the northern conflict.[7] Clause 4 of the annexure to the Agreement on accountability and reconciliation specifically required the GoU to establish a body that would be given powers to, among other things, inquire into the past and related matters. This body would inquire into human rights violations committed during the conflict, and to make recommendations for the most appropriate modalities for implementing a regime of reparations.

The establishment of a Transitional Justice Commission facilitate the implementation of transitional justice mechanisms, especially truth telling and reparations. Within this Commission would be a special hybrid tribunal with a special mandate of hearing cases of human rights violations stemming from the northern Uganda conflict. This tribunal's jurisdiction would be limited only to matters stemming from the conflict and would use traditional justice processes as opposed to formal justice to handle matters stemming from the northern Uganda conflict.

iv. Revamping of enforcement/oversight mechanisms

As pointed out in this study government institutions like the Inspectorate of Government and Auditor General have been largely weak in the implementation of their mandate. Some of their incapacity was attributed to inadequate facilitation of these institutions as well as corrupt tendencies by some of their staff that are tasked with a duty to investigate corruption allegations and conduct audits of expenditure of public institutions, respectively.

The Office of the Inspectorate of Government has a thin staff structure and only 16 regional offices; yet it is serving a population of almost 40 million Ugandans. The GoU should revamp oversight mechanisms that are mandated to guarantee the enjoyment of human rights in Uganda. State institutions should be put to task in the event that they fail to fulfil their mandates.

Furthermore, the Public Accounts Committee of Parliament should revamp its over-

[7]Juba Peace Agreement on Accountability and Reconciliation, clause 2.1

sight role over the executive arm of government to ensure that public resources are well spent. Here, regular interactions should be held with government entities and those accounting officers found complicit in causing financial loss should be penalised.

v. Need for harmonisation of mandates of MDAs

There is need for various mandates of MDAs involved in ensuring attainment of the RTD to be harmonised and the responsibility centres reduced. Having fewer departments or agencies involved in post conflict reconstruction would reduce opportunities for duplication of roles and depletion of the limited available resources, since all these activities and resource persons require finances for their operations. Furthermore, the responsibility centres would be better streamlined thereby ensuring better accountability for resources.

The study has shown that there are various government Ministries, Departments, and Agencies (MDAs) that are involved in the process of formulating and implementing development policies. For instance, the National Planning Authority is mandated to produce comprehensive and integrated development plans for the nation,[8] and review high priority development issues and needs.[9] The Office of the Prime Minister, on the other hand, and specifically with regard to northern Uganda, is tasked with overseeing and coordinating all national programmes in Northern Uganda.[10]

Furthermore, there is the Ministry of Local Government which is the parent ministry whose departments and units are replicated at district levels in line with the decentralisation policy that Uganda has in place for public administration. This creates three responsibility centres for any government department or agency that has a development role in the northern region. This slows down productivity, especially during reporting periods which include the end of every quarter and financial year.

vi. Zero tolerance for corruption

As already noted, corruption is a challenge that came up time and again as frustrating attainment of the RTD in post conflict northern Uganda. Consequently, there is need for the GoU

[8]National Planning Authority Act, sec 7(1).

[9]National Planning Authority Act, sec 7 (2) (g).

[10]PRDP institutional framework as stated in Peace Recovery and Development Plan (2007-2010), 105.

to aggressively implement its policy of zero tolerance for corruption. GoU should move beyond pasting notices on the walls of public institutions declaring them to be 'corruption free zones' and should take strong measures against those that have been found to have engaged in corrupt practices.

Uganda should adopt a similar position implemented by countries like Rwanda where those alleged to be corrupt are not shielded. Internal accountability mechanisms within institutions should be strengthened to detect and prevent corrupt practices that would otherwise lead to loss of public funds. Where these internal safety nets fail to work, action should be taken against both the perpetrators and the would-be 'watch dog'.

Mechanisms like pre and post audits should be strictly implemented. Where they are ineffective, the Office of the Ombudsman should be on hand to investigate and prosecute all who are implicated without fear or favour. In instances where public officers are prosecuted, effective and timely sanctions should be meted out. Sanctions should, mandatorily, include recovery of the funds that were lost.

vii. Decentralised development planning

The GoU already has a decentralisation policy in place though the challenge is that it is not fully implemented or followed at the central government level. Priority areas for development programmes are predetermined by the central government upon which the district local governments in areas like northern Uganda are expected to base their development plans. It is recommended that the GoU reverts to its decentralised development planning and implementation of government interventions on the RTD. Ordinarily, ideas should be generated depending on the needs of the local populace which is then factored into national planning. In the context of northern Uganda, there is need for a context-sensitive perspective to ensure that there is recovery of northern Uganda and the sustainable peace is attained.

In this regard, development planning should be based on life experiences, activities and views of various groups in northern Uganda including women, and unemployed youth. The views of such groups would then form the basis for plans that foster their reintegration,

rehabilitation, and reconciliation,[11] among others.

The GoU should open up for dialogue and take into consideration local views and reflect them in actual policy implementation. This way, there will actually be local ownership of government programmes and the need to ensure success for the betterment of all. In light of this, other modes of gathering victims' views can be utilised. For instance, the use of community *baraza* as a means of accessing and assessing the real needs of the local populace. *Baraza* is a Swahili word meaning 'public meeting'.[12] It is an approach that has been used by some government entities, including Uganda Human Rights Commission to address local human rights concerns; and the Judicial Service Commission to address matters concerning access to justice.

Baraza are a cost effective strategy that enable an entity to reach out to and dialogue directly with rights-holders even up to the village level. *Baraza*, therefore, eliminate instances of 'second hand' information being obtained and provides opportunity for local communities to individually participate and directly voice their opinions on human rights issues affecting them.[13]

Community *baraza* also avails a forum through which local communities are empowered with information that enhances their ability to participate in their governance, claim their rights, and ensure that duty bearers fulfil their obligations to the communities.[14] If community *baraza* were conducted as a government policy, the Acholi people would be better informed about the development interventions that they are entitled to and the programmes undertaken,

The Acholi would be in a position to demand for accountability on the extent to which

[11]FO Adong, Recovery and development politics: Options for sustainable peacebuilding in northern Uganda, Discussion Paper 61, 61.

[12]Definition of a *baraza* accessed from Uganda Human Rights Commission's Handbook on conducting community public meetings Human rights Baraza, 4.

[13]Uganda Human Rights Commission, 'Human rights baraza: A handbook on conducting community public meetings human rights baraza', 5-6.

[14]As above.

their rights to development have thus far been addressed under interventions like PRDP. Where there are gaps in attainment of programme goals, those implicated would be required to make good the loss, unlike the existing trend where public officers, more often than not, get away with diversion of public funds.

8.2.6. Other interventions

i. Establishment of a Traditional Justice Court

The concept behind this court would be similar to the creation of *Gacaca* Courts where Rwanda traditional justice mechanisms were employed. In this instance, Acholi traditional justice mechanism could be utilised to handle some of the human rights infractions that occurred during the conflict. These courts would resolve disputes arising from the LRA conflict in line with Acholi traditional justice mechanism.

The Traditional Justice Courts would create an opportunity for ownership of the court's decisions since the Acholi people would be able to identify with an Acholi traditional justice mechanism, as it emanates from their culture. It is hoped that with justice, there would be peace and with peace people of Acholiland would be able to obtain healing from the conflict and focus on attaining developmental rights.

ii. Government support for revival of cultural institutions

The importance of cultural institutions in pre-conflict northern Uganda and part of post-conflict era cannot be over-emphasised. They are traditionally instrumental in promoting development activities and fostering reconciliation among members of the community. It is, therefore, important that the GoU supports cultural institutions like the *Ker Kwaro,* to assist government to promote the development agenda in Acholi. The study observed that the role of elders as custodians and transmitters of culture and tradition has been receding and communal relations had shifted to focus on individual needs. The role of elders needs to be revived.

The Juba Peace Agreement on Accountability and Reconciliation recognised the need for application of traditional justice mechanisms like *mato oput* as practiced by communities that were affected by the northern conflict as a central framework for accountability and rec-

onciliation.[15] There is, therefore, need for the existence of these cultural institutions to be supported.

There is also need for recognition and incorporation of indigenous traditional dispute resolution mechanisms during the brokering of peace treaties. The study showed that western practices, including the signing of peace agreements, are foreign concepts to African societies; and therefore, are not recognised as a binding on indigenous participants of peace processes. In a bid to guarantee success of future peace agreements, there is need for traditional practices that are indigenous to the conflicting parties to be included in the formal processes. This would ensure the for and observance of the treaty.

iii. Use of rights based approach to development

The GoU, through UHRC, spent considerable resources on promoting and popularising the incorporation of a rights based approach to development in planning and budgeting in district local governments including northern Uganda. In northern Uganda, training workshops were held in the districts of Gulu, Pader and Lira, among others. A memorandum of understanding was also signed between UHRC and MoLG as a result of which desk officers were assigned in each district local government to ensure that HRBA is adopted.

There is need for these human rights desks at district local governments to be revamped. This way, critical issues like the need for improvement in the socio-economic well-being of the local people can be incorporated in the district work-plan and implemented. Without this, it would be an uphill task to attain the RTD.

GoU should ensure that there is inclusiveness in development planning. This would be a fulfilment of state duty to involve people in the formulation and implementation of development plans and programmes which affect them.[16] With HRBA, sustainable development outcomes that align with enjoyment of human rights and within the local context and promotion of values could be envisaged. The utilisation of HRBA would be in line with the Uganda

[15]Juba Peace Agreement on Accountability and Reconciliation, clause 3.1.

[16]Constitution of the Republic of Uganda 1995 (as amended), Principle xxvi (x) of the National Objectives and Directive Principles of State Policy.

Constitution which requires the State to encourage private initiative and self-reliance as a way of facilitating rapid and equitable development.[17]

iv. Need for multifaceted approach in tackling limited enjoyment of RTD

One of the weaknesses that PRDP had was its failure to be in touch with the political realities of the impact of the northern conflict on the local populace; and the need to address the imbalance, especially at household level in a bid to promote the RTD. Unfortunately, most resources were allocated to infrastructural development while improvement of economic and social development barely received any funding.

There is still need for GoU to consider holistic approach to development and attach equal importance to both the needs of the local communities and government agencies. GoU should adapt development policies to the local context as opposed to top-down approach where areas of priority are pre-determined by development partners and the central government. A top-down approach forces local leaders to 'forge' activities that fit within the recommended areas of focus and yet they do not necessarily lead to the fulfilment of local human rights and development needs.

v. Need for empowerment strategies for the Acholi people

There is need for the GoU to formulate and implement empowerment strategies for Acholi people. This is crucial, especially in light of the impact of the northern conflict as well as the continued marginalisation of the Acholi people. The northern conflict itself, created two categories of victims: those that were tormented from within their villages by both LRA and government forces; and those that were once abducted, operated under the LRA and then returned to be reintegrated among some of the very people they terrorised. PRDP catered for former combatants which led to some animosity towards former combatants. This was because disgruntled victims of the conflict that felt that the perpetrators were being rewarded.

PRDP and some development aid agencies also favoured women over men as microfinance support services targeted women and youth while leaving out the men. Any strategy that is adopted should cater for all categories of persons including men, women, youth, and

[17]Constitution of the Republic of Uganda 1995 (as amended), Principle xxvi (ix) of the National Objectives and Directive Principles of State Policy.

former combatants, among others. It should be noted that these broken citizens living in broken communities where such conditions exist and no strategies undertaken, societal structures and cohesion would be lost and values and norms could weaken further.

vi. Expedite compensation of victims of human rights violations

The Ministry of Finance, Planning and Economic Development should expedite the payment of compensation to victims of human rights violations. This should include the making of a one-off payment of all outstanding awards. The outstanding compensation awards as issued by UHRC tribunal stood at Uganda shillings 4,549,871,968 as at 31st December 2014.[18] This figure accumulated as a result of the slow rate at which the Ministry of Justice and Constitutional Affairs pays out tribunal awards. This is due to the fact that MoJCA formally committed to utilising 15% of funds released by Ministry of Finance for clearing of court awards towards paying out victims of human rights violations.

As pointed out, the payment system has been too slow. This, therefore, requires that UHRC in partnership with the MoJCA lobbies the Ministry of Finance for a one-off release to clear the current outstanding tribunal awards.

vii. Enforcement of tribunal decisions

Contrary to Aichele's assertion that NHRIs are 'only' permitted to make non-binding recommendations, this study has revealed that UHRC does make binding decisions, although they are not enforced in some instances. In light of this, there is need for UHRC to ensure that its decisions are enforced by concerned parties so that at the end of the day complainants receive effective remedies. Where compensation is awarded, it should be paid promptly by the concerned institution or individual; and where it is not paid, a writ of *mandamus* is taken out to compel the concerned government institution to pay. However, it is advisable that diplomacy and lobbying skills should first be employed to get government to promptly pay out awards to victims of human rights violations.

Furthermore, in addition to the concerned government institutions paying compensation, there is need for the perpetrators to be held personally liable so that those implicated in the violation of human rights are held accountable. If this is not done, the relevance of

[18] Uganda Human Rights Commission, 2015 Report on the State of Human Rights in Uganda, 213.

UHRC's existence would be put into question; as well as its ability to offer effective remedies to victims of human rights violations. In instances where perpetrators of human rights violations do not abide by UHRC's tribunal order to pay compensation, such persons should to be compelled to pay. This would include execution of tribunal orders by attaching their salaries till the compensation award owed is recovered.

Where punishment of an errant security officer is ordered by the UHRC tribunal, follow-up should be done with the concerned government institution to determine whether the tribunal's order was implemented. If it is established that the tribunal order was not implemented, UHRC should aggressively advocate for the order to be carried out. This way, errant public officers would feel the burden of having infringed on human rights thereby deterring any other future would-be offenders.

The holding of perpetrators strictly liable should stretch to enforcement of economic, social and cultural rights by taking advantage of the concept of reading in of rights.[19] In this instance, the Prevention and Prohibition of Torture Act must be invoked to protect socio-economic rights in northern Uganda. Denial of the Acholi people of development opportunities through the embezzlement of funds, despite their having being confined to IDP camps for years and forced to live in abject poverty, should amount to an act of cruel, inhuman, and degrading treatment by public officers concerned.[20]

> There can be no peace without development, no development without peace, and no lasting peace or sustainable development without respect for human rights and the rule of law
>
> UN Deputy Secretary-General Jan Eliasso

[19]SERAC Case.

[20]Prevention and Prohibition of Torture Act (2012), sec 7; Constitution of the Republic of Uganda 1995 (as amended), art 24.

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