

**Peace and Prosecution: An Analysis of Perceptions
Towards the International Criminal Court Intervention's in Northern
Uganda**

Amelia Katan
Brandeis University

Dr. Daniel Komakech
Institute of Peace and Strategic Studies, Gulu University, Uganda

Abstract

This paper evaluates the International Criminal Court's impact in Northern Uganda through the lens of the affected community. It seeks a nuanced assessment of the Court by contextualizing the communities' perceptions within their temporal context. Fluctuations in local perceptions of the Court in relation to developments on the ground identify peace as a local priority. The ICC must not simply behave in a static and rigid time-logic, but rather respond to shifting priorities and circumstances. It is this temporal consciousness that will make the ICC relevant both in context and in support.

Keywords: International Criminal Court, Northern Uganda, Lord's Resistance Army

Introduction

The view this paper advances is not the more familiar veneration of the International Criminal Court (ICC), but instead an exploration of how nuanced analysis of popular perception facilitates consideration of the ICC's future potential for measurable impact in the global arena. Secondly, this paper establishes the perception problem space of the ICC and how it constitutes new sets of demands and pressures on the Court. In studying the Northern Uganda *peace and prosecution* debate, we proceed to shift the conversation from liturgy and common sense mastery of the content and intension of the ICC to a more nuanced community of common expressions, narratives, and stories. The objective is to elaborate on the various sides and spatial sites of perceptions of the ICC given the commencement of Lord's Resistance Army leader Dominic Ongwen's trial. This we sought to accomplish by reaching into the "private and public spaces" for the "silent or softly spoken" and "loud" messages and tendencies that often times are not only pernicious but also ambivalent. The timing of the Court's involvement in the war in Northern Uganda spurred a precarious perception space that the ICC has occupied ever since. It is this materiality of perception that this paper interrogates and clarifies. Accordingly, the following section characterizes the episode of the war, the initiatives to end the war, and the subsequent involvement of the ICC in order to contextualize and provide a genesis.

Peace and Prosecution in Northern Uganda by Katan and Komakech

The ICC in Context: Staging the Conversation

The Lord's Resistance Army (LRA) terrorized Northern Uganda for over two decades despite various government counterinsurgency attempts. At the peak of the LRA's military strength, rebel leader Joseph Kony commanded approximately 15,000 to 20,000 members. The LRA became internationally recognized for its heinous terror tactics, including mutilation, rape, kidnapping, and murder, with the Acholi people bearing the brunt of the violence (Doom et al. 1999). Over the course of the conflict, an estimated 20,000 to 40,000 children have been abducted. In desperation, the Ugandan government forcibly moved 1.8 million Ugandans to internally displaced persons camps. By 2005, 90% of Acholiland was internally displaced (Cline 2013). The Ugandan army also perpetrated crimes throughout the insurgency. Among the few officially recognized government crimes is the 1989 murder of 69 civilians in Mukura village and the 1991 rape and murder of civilians in Burcoro village (Ogora 2014). Irrespective of military offensives and peace talks, the LRA inflicted unprecedented levels of violence on the people of Northern Uganda from the 1980s to the early 2000s.

In the face of appalling violence, the Ugandan government sought to end the insurgency through multiple, and potentially contradictory, means. In 1992, the most promising peace talks thus far collapsed. In 2000, the Amnesty Act had a minimal impact, granting amnesty to any Ugandan rebel who surrendered (Cline 2013). The Ugandan government undertook military initiatives Operation North in 1991 and Operation Iron Fist in 2002 before removing the majority of the LRA from Northern Uganda with Operation Iron Fist II in 2004 (Allen 2006). That same year, facing failed counterinsurgency attempts and growing civil discontent, President Museveni referred the Northern Ugandan situation to the International Criminal Court. Following Uganda's self-referral, the Court issued its first-ever arrest warrants and entered into the complexity of the Northern Ugandan conflict.

A little over a decade old, the International Criminal Court seeks to try those most responsible for the gravest international crimes. The Court's governing document, the Rome Statute, came into force after ratification in 2002. Therefore, the Court has jurisdiction over signatory countries and their nationals for incidents after July 1, 2002 for genocide, crimes against humanity, and war crimes. Complementarity is a fundamental principle of the Court, as it seeks to try individuals when a state is unwilling or unable to do so. The Court is therefore intended to supplement, not supplant, national jurisdictions (Cryer 2010). Following Museveni's referral in 2003, Uganda became the first client of the newly minted International Criminal Court.

In 2005, the Court issued arrest warrants against Lord's Resistance Army commanders Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen, and Raska Lukwiya for war crimes and crimes against humanity. Raska Lukwiya and Okot Odhiambo's warrants were terminated after confirmation of their deaths.

Vincent Otti is most likely deceased, despite lack of official confirmation (ICC Case Information Sheet 2015). In January of 2015, Dominic Ongwen surrendered and was quickly sent to The Hague (Chothia 2015). Ongwen's original arrest warrants listed seven counts for crimes based on individual criminal responsibility. The prosecution team increased the number to seventy by his pre-trial hearing in December of 2015 (ICC Office of the Prosecutor 2015). Only Joseph Kony remains at large, ten years after the issuance of arrest warrants.

The Juba Peace Talks commenced in July of 2006 and a Cessation of Hostilities Agreement was signed one month later (Pham et al. 2007). There is evidence to believe that a withdrawal of Sudanese support after the warrants were issued incentivized the LRA to negotiate (M. Mapenduzi, in-depth interview, October 29, 2014). The LRA also hoped that peace talks would provide a means to circumvent the ICC's warrants (N. Opiyo, in-depth interview, November 4, 2014). Negotiations proved difficult and halted in 2006 when the Ugandan military killed the LRA's third most senior commander and ICC indictee Raska Lukwiya (Peschke 2011). Despite setbacks, Ugandans saw the Juba Peace Talks as their greatest hope for a peaceful resolution of the conflict thus far. However, Joseph Kony failed to attend the Final Peace Agreement signing ceremony in April of 2008 (Peschke 2011). Many stakeholders argue that Joseph Kony's fear of arrest was the main factor that prevented his consent to the Final Peace Agreement (R. Oywa, in-depth interview, October 31, 2014). Despite Kony's refusal to sign the Final Agreement, a weakened LRA retreated to the Democratic Republic of the Congo, leaving Northern Uganda in relative peace by 2008.

In connection with this complex dynamic, there are extensive and varied works of academic literature exploring the ICC's relationship with peace and justice in Northern Uganda. Problematically, researchers have arrived at dramatically different perspectives despite their common enlistment of local perspectives. The variety of conclusions drawn from temporally limited depictions of popular opinion further polarizes debate over the Court's impact on peace in the region. Illustratively, studies conducted by the International Center for Transitional Justice only two years apart indicate a dramatic shift in the population's evaluations of the Court due to developments on the ground. Their 2005 survey found that 94% of individuals who knew of the ICC supported its involvement (Pham et al. 2005), while the same survey in 2007 found that a mere 29% of respondents believed the ICC was the most appropriate mechanism to deal with the LRA (Pham et al. 2007). This paper therefore seeks to use temporal analysis to appropriately identify the link between developments in the conflict, the community's shifting priorities, and perceptions of the Court. After establishing a causal relationship, this paper then aims to reveal the linkages between the *peace versus justice* and *informal versus formal justice* debates.

Local Tools, Local Resources: In Search of an Epistemology for Local Perception Framed within the theoretical articulation of Zubairu Wai in *Epistemology of African Conflicts*, we sought a method that would limit both dominant

Peace and Prosecution in Northern Uganda by Katan and Komakech

hierarchies of knowledge field building and problematization (2012). Pre-defined templates of understanding weaken the deductive approach and stifles local persons' voice spaces. Accordingly, this study was inductive to empower local voices and, consequently, their perceptions (Cubitt 2010). Popular perceptions were not only important sources of knowledge in themselves, but also enabled nuanced understanding through their setting and context. Data was collected through in-depth elite interviews and participant observation from October 27 to November 18, 2014 in Gulu Municipality and Kampala. The majority of interviews took place in Gulu Municipality, the largest population center in the affected community. Four interviews took place in Kampala, due to its concentration of legal and advocacy leaders as well as its status as a host site of the International Criminal Court Field Office. There were twenty-two respondents, each with a guiding interview schedule that lasted between twenty minutes to two hours in length. After the first week of interviews, the interview schedule was revised to reflect emerging themes and the need for clarification. In addition to interviews, data was gathered through observation of relevant civil society events, such as a transitional justice workshop hosted by the Agency for Cooperation and Research in Development, an ICC Community Outreach Working Group meeting, and demonstration of traditional justice ceremonies.

To arrive at the intended results, purposeful sampling targeted individuals representing different segments of society who interact with both the Court and community. Two representatives from each the following categories were interviewed: traditional leaders, religious leaders, ICC employees, academics, and municipal politicians. Additionally, three lawyers, three activists, and six NGO professionals, all in the post-conflict and international justice field, were interviewed. Such individuals were intentionally sought after in order to pursue an overarching view of popular perceptions made possible by their diverse positions of authority.

Several limitations of our research approach are important to acknowledge. First, some respondents had difficulty distinguishing personal perceptions of the Court from the popular perceptions they were asked to describe. Second, local leaders frequently embody institutional biases, as reflected in interview answers. In order to ensure that data collected was not misrepresentative or narrow in scope, information gathered from civil society leaders of different positions and opinions were compared. It can also be argued that different respondents' institutional biases reflect the biases found in the constituents of such institutions. Finally, it is crucial to note the fact that the interviews were conducted in English, which may have influenced how discussions were conceptualized and expressed, as well as influenced the pool of potential interviewees. The limitations of elite interviews were considered and mitigated throughout data analysis; however, such awareness is continuously applicable.

It is most important to acknowledge that elite interviews exclude the voices of community members not directly engaged in legal, political, academic, or advocacy work. Focus group discussions or surveys of the general public would

have contributed to a more comprehensive study of perceptions towards the Court. However, directly interviewing the general population would have provided a snapshot of current perceptions, rather than an analysis of shifting perceptions over time, which was the ultimate aim of our work. In-depth elite interviews with civil society leaders provided an overview of perceptions of the Court due to the interviewees' ongoing and deep engagement with post-conflict justice throughout the conflict's developments. The following section takes us analytically through the data, elaborating both in its original sense and in its analytical nuances.

Occupying an Ambivalent Space: ICC, Peace, and Community Perspective

Ever since 2004, the International Criminal Court has been embroiled in a heated debate as to whether peace and justice are mutually exclusive and if so, could accountability be sacrificed in the name of peace. By 2005, several peace talk attempts had already failed; however, civil society leaders continued to pursue negotiations. Many saw prosecution of LRA leadership as a threat to dialogue as the grounds for the Juba Peace Talks were being laid. As a result of such "either-or" simplification of peace and justice initiatives, anyone with an opinion towards the Court was either an absolute opponent or fervent supporter. Of those who believed it was necessary to choose between the Court and the Juba Peace Talks, a significant number called for peace. As 2005 Nobel Peace Prize nominee and the founder of People's Voice for Peace Rosalba Oywa explains;

They (the Court) came here and they wanted to tell us that it was only justice that was proper. And that justice was more important than peace. So there was a whole debate about what comes first, peace or justice ... So in that case we thought that, for us, peace should come first, if at all there was a choice between the two. But for them they were talking otherwise (in-depth interview, October 31, 2014).

When presented as mutually exclusive options, the community chose peace given the horrific nature and scale of LRA violence. As post-conflict justice expert Harriet Musoke Nabukeera clarifies, "although any stable community would demand for peace, justice, truth or accountability; post war communities tend to have ways in which they make priorities out for those pillars, given their lived realities" (in-depth interview, November 1, 2014). In entering an ongoing conflict, the Court had situated itself within a society yearning for peace.

Meanwhile, advocates for justice were largely those not directly exposed to violence. The Executive Director of Human Rights Focus in Gulu explains that "the people who [were] dying are the ordinary civilians, the people who [were] pushing for justice [are] the people in the international capitals" (F. Odongyoo, in-depth interview, November 14, 2014). In a 2005 survey, Acholi respondents

Peace and Prosecution in Northern Uganda by Katan and Komakech

preferred “peace with amnesty” while non-Acholi respondents preferred “peace with trials and punishment,” indicating that individuals facing the most violence were more weary of potential obstacles to peace (Pham et al.). The fact that peace weighed heavily on opinions towards ICC intervention means that a change of environment could quickly lead to a change of opinion. As Ugandan attorney Brenda Peace details;

At one point the overarching demand was peace, then the shift changed from peace and amnesty to ... compensation and reparations ... then to justice. So, I think it’s directly linked to the situation that the victims find themselves in. So if there was a conflict to break out again in Northern Uganda I bet those who are calling for justice now would go back to that demand for peace (in-depth interview, November 3, 2014).

Breaking down the *peace versus justice* debate reveals the influence of environment on individuals’ priorities and preferences. This becomes clear once the Juba Peace Talks commenced and perceptions of the Court became more nuanced and fluid, depending on the talks’ progress and the Court’s apparent impact. In view of this, the next section of this paper reflects on the Juba Peace Talks and how the Juba momentum and complexity invigorates and informs analysis of locally articulated opinions towards the Court.

The Juba Peace Talks

The Juba Peace Talks clearly present a dividing line between open conflict and relative peace in Northern Uganda as well as a distinct shift in perceptions towards the Court, revealing both processes’ complicated relationship. Civil society leaders interviewed overwhelmingly expressed the community’s desire for peace and their disappointment in the Court’s inability to facilitate a comprehensive peace agreement. Contextualizing views of the Court within the Juba Peace Process illustrates the Court’s shortcomings, according to the perspective and priorities of the population it ultimately seeks to serve.

The Juba Peace Talks, which began August 2006, were widely seen as the most meaningful opportunity for peaceful resolution of the conflict thus far. As Rosalba Oywa describes, “for us, people were dying on a day-to-day basis and we saw it as the greatest need to stop whatever was happening” (in-depth interview, October 31, 2014). Cultural, political, and religious leaders alike experienced Northern Ugandans’ desperation for peace, as Chief Bongojane of Patiko village explains, “on the ground here, because the war had gone on for so long ... people were tired, people were disorganized, they were living in camps under very terrible conditions and any effort that seems to bring peace was very much welcome” (in-depth interview, November 13, 2014). Despite the Court not wholly understanding the full horror and intricacy of the conflict when it first intervened in Northern Uganda, it quickly became a central actor in the community’s desperate pursuit for peace.

The relationship between the Juba Peace Talks and the Court can be broken down into three distinct periods: the commencement of negotiations, the negotiations as a whole, and the failed signing of the Final Peace Agreement. Nicholas Opiyo, a former government consultant on issues of justice and accountability during the Juba Peace Talks, describes fluctuating opinions of the Court as;

A shift from initial skepticism about the Court being a foreign court unable to address the concerns of the victims, to a Court that was seen as one of the major drivers for the LRA coming to the table in Northern Uganda in the famous Juba Peace Process. Then subsequently to a court that has been a spoiler of the Juba Peace Process. So there has been a pendulum shift in people's views about the Court and understanding (in-depth interview, November 4, 2014).

Initially, the ICC's arrest warrants were perceived to have incentivized the LRA to negotiate. Beyond the LRA commanders' hope to talk their way out of indictment, the warrants ended Sudanese support. An abrupt reduction in resources contributed to the LRA's agreement to negotiate as explained by the Gulu District Chairman, "many of us started realizing kind of the role the ICC played in sending a message to Joseph Kony, and actually contributed to having the Sudan government backing off from supporting Joseph Kony" (M. Mapenduzi, in-depth interview, October 29, 2014). A 2005 survey "Forgotten Voices" found that in Northern Uganda, 76% of respondents said perpetrators should be held accountable and that 91% had high expectations of the Court's contribution to peace and security (Pham et al. 2005). Therefore, the Juba Peace Talks and ICC prosecutions were initially believed to be complementary processes in the pursuit for peace.

However, initial optimism towards the Court's impact on negotiations devolved into pessimism and frustration as talks faltered,

People during wartime were desperate ... anything that would deliver peace, people were desperate [for]. So the ICC was just one of those mechanisms ... That desperation expressed itself in many ways. First, there was the embracing of the ICC ... So in that sense the Court was well received, people were eager ... but also, because of the frustration with the way the Court works, people lost confidence and then kind of drew from the Court, and thought the Court was a spoiler to the peace process, the Court was not very helpful (N. Opiyo, in-depth interview, November 4, 2014).

By 2007, 76% of individuals in Northern Uganda who had heard of the ICC believed that pursuing trials now could endanger the peace process in Juba. A

Peace and Prosecution in Northern Uganda by Katan and Komakech

mere 29% of respondents said the ICC was the most appropriate mechanism to deal with the LRA (Pham et al. 2007). As peace advocate and religious leader Sheikh Musa Khalil explains, Ugandans were not opposed to accountability or the ICC in principle, but rather its potential to postpone peace (in-depth interview, November 14, 2014). Opinions of the Court darkened as it rendered a peaceful settlement further from the community's reach.

The timing of arrest warrants was a major factor in the warrant's incompatibility with local peace processes. Conflict had been raging for over a decade but only at the initiation of peace talks were international judicial processes activated. According to Honorable Mapenduzi the warrants,

came at a time when the ground was being leveled for peace talks. For many people the timing was not good ... Many of us, you know, reacted emotionally. Because the first question was why was the ICC coming now to issue [these] warrants of arrest, why did they not do it 10 years ago, 20 years ago. Why did they not do it when the LRA was massacring [people]? (in-depth interview, October 29, 2014).

The sequencing of the Court presented a fundamental problem. The warrants' potential to disrupt the peace process led to calls for their suspension, "as cultural institutions we came up with the position that the ICC arrest warrants should either be suspended or deferred for the time being to allow the peace talks to continue the way it was going" explains the Chief Bongojane (in-depth interview, November 13, 2014). Time passed as the Court failed to either arrest the indicted LRA leadership or rescind the warrants, therefore allowing sufficient grounds for negotiation. Popular rejection grew not because the community opposed accountability for perpetrators, but out of fear that the conflict would be prolonged.

Negativity towards the Court climaxed in 2008 when Joseph Kony failed to sign the Final Peace Agreement on account of the warrants. The LRA repeatedly demanded for the warrants to be removed before a successful agreement could be reached (R. Oywa, in-depth interview, October 31, 2014). According to Article 16 of the Rome Statute, the Court is only able to postpone, not rescind, arrest warrants through the Security Council (The Rome Statute 1998). Some scholars argue that the Court actively, if not purposefully, constricted peace talks by continually stating that the warrants would not be rescinded (Finnstrom 2010). Kony ultimately did not attend the signing ceremony in April of that year (Peschke 2011). These factors resulted into a consensus that the ICC was a "peace detractor" (Bishop Onweng, in-depth interview, November 12, 2014). The Peace Talks' collapse confirmed the community's fears that the Court's involvement would run counter to the local prioritization of peace. The subsequent section of this paper contextualizes shifting perceptions given the return of relative peace and demonstrates how new realities allow for re-discovery of the ICC's role in supporting stability and peace. It is also illustrative of how a pervasive sense of

hopelessness shapes wartime perceptions in comparison to times of peace.

Post-Juba

Indifference towards the Court dominated the period between the Juba Peace Talks' collapse and Dominic Ongwen's arrest as the local community focused on returning home and rebuilding. Criticism dissipated in tandem with LRA violence and was instead replaced by a mixed desire for accountability and return to normal life. The Court's intervention contributed to the narrative of accountability as a necessary post-conflict component, yet this desire for accountability was tempered by an immediate need to reestablish livelihood and social cohesion. Lino Ogora of the Justice and Reconciliation Project articulates the reasons for decreasing hostility towards the Court;

I think opinions have changed in that there's less hostility towards the Court than there was, say, in 2004. And this is understandable because in 2004, we were in a situation of conflict. Now we are in a situation of relative peace. That has influenced opinions. In 2004, all the people wanted to hear about was peace. So anything that impeded peace was frowned upon and the ICC was seen as a barrier to peace (in-depth interview, November 11, 2014).

While Northern Ugandans have more time to consider crimes perpetrated against them, immediate needs, such as returning home and establishing a sustainable livelihood, have taken priority over court proceedings in The Hague. Therefore, the Court has not been welcomed with open arms but rather indifference as the community focuses on rebuilding;

When peace returned, immediately when it was returned to peace, people wanted to get on with their lives and the Court was the last thing on their mind. People wanted to ... go back to their homes and the Court was not a priority in their minds. So in peacetime the Court has tended to be a little bit irrelevant to the victims (N. Opiyo, in-depth interview, November 4, 2014).

A trend towards irrelevance was affirmed in a 2013 Justice and Reconciliation Project study of local perceptions that found overwhelming disinterest and disappointment with the Court. Focus group discussions and interviews found strong support for the Court's principles, such as accountability and reparations, but little hope of implementation (Tenove). Beyond shifting peace dynamics, the Court's failure to indict government officials as well as its lack of enforcement mechanism have also contributed the community's dismissal.

The absence of indictments against government and military officials despite widespread acknowledgement of government crimes brings into question the impartiality, and therefore the legitimacy, of the Court. Skepticism began when

Peace and Prosecution in Northern Uganda by Katan and Komakech

the warrants were announced at a joint press conference between President Museveni and Chief Prosecutor Moreno Ocampo (K. Komakech, in-depth interview, October 30, 2014). From that moment on, “the biggest question that is in the mind of the people is about Museveni and some of his top commanders. Because the people also saw how government forces also were responsible for some of these crimes under the ICC” (J. Komakech, in-depth interview, October 31, 2014). The Court’s apparent lack of interest in investigating government crimes resulted in a pervasive view among Ugandans that the Court is biased;

To the people in Northern Uganda, he [Chief Prosecutor Moreno Ocampo] was supposed to be investigating both parties of the conflict. However, he didn’t seem to be interested in prosecuting Museveni. Even persistent calls by the people to the Court to investigate crimes in Northern Uganda were met with indifference, and that then made people think that this Court is only serving one party, it’s not interested in serving the other (N. Opiyo, in-depth interview, November 4, 2014).

Over time, it became increasingly apparent that the Court would not issue warrants beyond those of the five LRA commanders, given the Court’s reliance on government cooperation. Local criticism of the Court appropriately highlights its reliance on government cooperation as one of its most fundamental weaknesses. The Court’s failure to acknowledge the government’s crimes against a historically marginalized ethnic group allows the government’s unfettered institutional violence to inhibit Northern Uganda’s post-conflict reconstruction. Ultimately, the Court’s reliance on government assistance contributes to Northern Uganda’s state of relative peace rather than a comprehensive positive peace.

The Court’s paralysis due to a lack of enforcement mechanism has also fed widespread disappointment in the decade after the arrest warrants were issued. Originally, many falsely believed the ICC’s indictment would quickly lead to Kony’s arrest (T. Awany, in-depth interview, October 29, 2014). Initial optimism dissipated once the Court’s limitations became known. As expressed by human rights lawyer Nicholas Opiyo, in lacking an enforcement mechanism, “the Court is rendered a bystander ... while people suffer” which, “makes the Court appear very weak and makes it appear incapable of doing anything.” At the very least, the Court is frequently described as “just a barking dog” which could not bite (in-depth interview, November 4, 2014). Meanwhile, proponents of the Court, such as Assistant Coordinator of the Uganda Coalition for the International Criminal Court Judi Erongot, are openly frustrated with the community’s harsh denunciation;

I think what has influenced people’s perception about the ICC is the fact that they have failed to appreciate that the ICC cannot arrest Kony. It is the duty of state parties. They have failed to understand that the ICC is purely a Court (in-depth interview, November 4, 2014).

Erongot highlights that courts definitionally serve a limited and specific function, and therefore selective use and realistic expectations are necessary to reach positive outcomes. The case study of Northern Uganda demonstrates that the Court benefits from neutrally informing the affected community of its function, rather than selling itself as a panacea.

Some Northern Ugandans' interest in the Court has rekindled since the commencement of Dominic Ongwen's trial in December of 2016. However, attention is largely limited to a small number of formally designated "affected communities" and professionals in the international justice field. As Oryem Nyeko highlights, ICC outreach is focused in the four areas in Northern Uganda subject to attacks led by Ongwen. Nyeko emphasizes that these communities' potential to receive reparations following a verdict threatens to foster tension with other communities that also suffered LRA attacks (2017). In a 2015 survey, members of Lukodi village, one such designated "affected community," expressed their investment in the outcome of Ongwen's trial in terms of hope for reparations rather than hope for a formal determination of guilt. Lukodi community members' focus signals that reparations are likely to play a large role in villages' views of the Court. The same survey also found a telling information imbalance about the Court's proceedings between Lukodi village and Cooram village, where Ongwen is from. Lukodi benefits from a high level of direct interaction and information in relation to trial developments. Meanwhile, Cooram's inhabitants largely learn of developments from the radio (Nyeko and Aloyocam). It is important to highlight that the majority of Northern Ugandans affected by the war do not benefit from close interactions or potential reparations from the Court. For those villages, indifference, bordering on a sense of abandonment, is likely to dominate as a small number of victims are ultimately identified as candidates for individual reparations pending a guilty verdict.

The ICC and Traditional Justice Mechanisms: A Community Perspective

Traditional justice mechanisms offer an alternative to the Court in the form of village-level conflict resolution. Cultural leaders have been long-term advocates for traditional ceremonies that provide inter-personal and inter-clan mediation. They found unlikely allies in Ugandan politicians who sought to rejuvenate the Juba Peace Talks by attempting to rescind and replace the warrants with alternative justice mechanisms (L. Ogora, in-depth interview, November 11, 2014). Therefore, traditional justice was a strategic bid for peace on the part of government negotiators; while for local leaders it presents a genuine and organic justice process. Accordingly, this section of the paper overlays the *peace versus justice* and *formal versus informal justice* debates in order to explore the interstitial spaces where perceived prospects for peace inform preferences for formal or informal justice.

Support for traditional justice mechanisms gained momentum beyond cultural

Peace and Prosecution in Northern Uganda by Katan and Komakech

leaders once accountability was asserted as a required element of the Comprehensive Peace Agreement. Several legal and political leaders interviewed described traditional justice as a means to circumvent accountability. Nicholas Opiyo believes that the “people’s resort to it was merely out of desperation” (in-depth interview, November 4, 2014). Likewise, Honorable Mapenduzi explains the link between the Court and traditional justice: “I think the question of a traditional justice mechanism came not because people wanted [it] ... it was a demand by Joseph Kony, saying he would not negotiate peace unless the ICC ... withdraws their interest.” To Honorable Mapenduzi and other stakeholders who watched the peace talks unravel, traditional justice was the government’s excuse by which to invoke the Court’s complementarity principle rather than a genuine justice option (in-depth interview, October 29, 2014).

Many Northern Ugandan civil society leaders and their community constituents argue that traditional justice’s restorative approach presents a culturally and practically appropriate response to LRA violence. In Acholi culture, *mato oput* is traditionally used to facilitate reconciliation after a murder between the perpetrator and victim’s clans. Rwot Bongojane of Patiko believes *mato oput* is applicable following the LRA conflict in situations where the perpetrator and their clan are known (in-depth interview, November 13, 2014). Meanwhile, *nyouo tong gweno* is used as a cleansing ceremony to welcome and purify former LRA combatants returning from the bush. Community members and their local representatives argue that these traditional ceremonies are legitimate post-conflict tools, in comparison to their unlikely government allies who sought to distance the Court from faltering peace talks.

A robust body of research demonstrates that traditional justice is widely supported in the Acholi, Lango, and Teso regions of Northern Uganda as it offers cleansing, truth telling, and reparations as well as provides direct and immediate justice (Refugee Law Project 2009). Rosalba Oywa relates Acholi justice mechanisms to Rwandan *gacaca* courts, which were adapted to facilitate Rwanda’s post-genocide reconciliation. Oywa argues that both *mato oput* and *gacaca* are an “African way of doing things.” Traditional justice also offers a mechanism in which rebels are not simply labeled perpetrators (in-depth interview, October 31, 2014), which contributes to strengthening social ties (Komakech 2012). Moreover, it is argued that traditional justice better cares for victims through direct reparations. As Chief Bongojane, who conducts traditional reconciliation ceremonies, articulated;

In our culture we believe in total justice, and we believe in justice that takes care of the perpetrator and the victim ... but these formal justice [systems] only takes care of the perpetrator and they leave the victim in pain, a lot of pain (in-depth interview, November 13, 2014).

For these reasons, many Northern Ugandans fervently believe that traditional justice mechanisms have a unique ability to deliver justice and reinforce peace at

the village level. Traditional justice promotion in Uganda is therefore a complex combination of the government's aim to end the conflict without genuine concern for accountability and a reconciliation mechanism authentically desired at the community level (Lino Ogora, in-depth interview, November 11, 2014).

Beyond questioning traditional justice advocate's motivations, legal professionals like Nicholas Opiyo observed that, "traditional justice systems had never confronted such hideous and massive crimes" (in-depth interview, November 4, 2014). Rather, several political and legal leaders expressed their view that traditional ceremonies are limited to Acholi culture and designed to process smaller-scale crimes (M. Mapenduzi, in-depth interview, October 29, 2014). In response such concerns, Finnstrom highlights that traditions adapt in response to modern conflicts just as much as newly formed institutions. Moreover, he adds that a modern versus traditional binary is harmful as it justifies unequal power relations between international and local institutions without accounting for the affected community's local realities (Finnstrom 2010). It is therefore important to give weight to Northern Ugandan cultural leaders and ground-level population surveys that widely articulate support for traditional mechanisms. It is also necessary to acknowledge that traditional justice is not an artifact frozen in time, but an ongoing social interaction that has been adapted to reintegrate former combatants into the community as well as its compatibility with prosecution of higher-level perpetrators like Ongwen. In regards to authenticity, he argues that all judicial mechanisms are manmade constructs and that what is most important is a social consensus regarding traditional justice's utility (Finnstrom 2010). Expressed support for traditional justice at the village level is therefore both proof and the reason that its application positively contributes to a sense of justice as well as social cohesion in recovering communities in Northern Uganda.

Conversation surrounding traditional justice must not regress to the false dichotomies of authentic versus inauthentic or modern versus traditional. Complementary use of formal and informal judicial processes will compensate for each institution's weaknesses and promote a more comprehensive justice. A 2007 United Nations study found that victims in Northern Uganda draw a clear distinction between high-level and low-level perpetrators, with accountability demanded for LRA and government leaders, but reconciliation desired at the community level (UNHCHR 2007). As a result, experts call for the ICC and Ugandan government to actively promote and fund *mato oput* ceremonies to reintegrate former combatants back into the community (Roach 2013). Lukodi villagers surveyed by the Justice and Reconciliation Project in 2015 expressed their desire for reconciliation with Ongwen's clan through traditional means. The researchers concluded that Lukodi community members likely want reconciliation before tensions increase with villages not qualified to receive Court ordered reparations, like Cooram (Nyeko and Aloyocam). In this way, traditional justice offers a means to mitigate the negative side effects of narrowly distributed individual reparations following Ongwen's conviction.

Peace and Prosecution in Northern Uganda by Katan and Komakech

Conclusion

Temporal analysis of local perceptions reveals that the Court ultimately failed to appreciate the affected community's timescale and therefore negotiate a more amenable and authentic space in which to operate. While the Court is a formal judicial mechanism and not a peacekeeping force, its proponents frequently laud its ability to deliver both peace and justice to post-conflict communities. The Court must engage more closely with locals to explain its mandates and limitations. In reviewing a decade of the Court's involvement in Northern Uganda, it becomes clear that the Court must continuously evaluate local priorities and context as well as develop the institutional flexibility to respond to shifting realities in order to best serve victim communities.

References

- Allen, T. (2006). *Trial Justice: The International Criminal Court and the Lord's Resistance Army*. Zed Books.
- Baines, E. (2010). Spirits and Social Reconstruction After Mass Violence: Rethinking Transitional Justice. *African Affairs*. Vol. 109(436) 409-430.
- Baldo, S. (2007). The Impact of the ICC in the Sudan and DR Congo. Expert paper: *Workshop 7 – The Impact of the International Criminal Court (ICC)*. International Conference: Building a Future on Peace and Justice.
- Branch, A. (2011). *Displacing Human Rights: War and Intervention in Northern Uganda*. Oxford University Press.
- Chothia, F. "Profile: Dominic Ongwen of Uganda's LRA" BBC News. Last modified: January 7, 2015. Retrieved from: <http://www.bbc.com/news/world-africa-30709581>
- Cline, L. (2013). *The Lord's Resistance Army*. Praeger Publishing.
- Cryer, R. (2010). *An Introduction to International Criminal Law and Procedure*. Cambridge University Press.
- Cubitt, P. C. (2010). *Sierra Leone's Post Conflict Reconstruction: A Study of the Challenges for Building long term Peace*. Ph.D. Thesis, University of Bradford: University of Bradford eThesis.
- Doom, Ruddy, Vlassenroot, & Koen. (1999). Kony's Message: A New Koine? The Lord's Resistance Army in Northern Uganda. *African Affairs*, Vol. 98.
- Dunn, K. (2004). Uganda: The Lord's Resistance Army. *Review of African Political Economy*. Vol. 31(99), 139-142.

- Finnstrom, S. (2010). Reconciliation Grown Bitter? War Retribution and Ritual Action in Northern Uganda. Ch. 7 in *Localizing Transitional Justice: Interventions and Priorities After Mass Violence*. Stanford University Press.
- Fish, E. (2010). Peace Through Complementarity: Solving the Ex Post Problem in International Criminal Court Prosecutions. *The Yale Law Journal*. Vol. 199(7) 1703-1714.
- ICC Investigations & Cases. American Non-Governmental Organizations Coalition for the International Criminal Court. Retrieved from: <http://www.amicc.org/icc/cases>.
- International Criminal Court. Retrieved from: <http://www.icc-cpi.int>. Accessed: January 24, 2015.
- International Criminal Court. "Statement of the Prosecutor." January 21, 2015.
- International Criminal Court Pre-Trial Chamber. Decision to Terminate the Proceedings Against Raska Lukwiya. July 11, 2007. Retrieved from: <http://www.amicc.org/docs/doc297945.pdf>.
- International Criminal Court. The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen. Case Information Sheet. Last Modified: January 29, 2015.
- Komakech, D. (2012). Re-inventing and Validating the Cosmology and Ontology of Restorative Justice. In Bennett, T., Schotsmans, M. (Eds), *African Perspectives on Tradition and Justice*. Intersentia.
- Office of the United Nations High Commissioner for Human Rights. (2007). Making Peace Our Own: Victims' Perceptions of Accountability, Reconciliation, and Transitional Justice in Northern Uganda.
- Ogora, L. "Welcoming President Museveni's acknowledgment of NRA crimes in northern Uganda." Justice and Reconciliation Project. Blog Post. January 28, 2014.
- Marong, A. (2010). Making Complementarity Work: The Case for Ugandan-Based Trials of the Lord's Resistance Army and Lessons from the Rwanda Tribunal. *African Legal Aid Quarterly*, Jan-Mar.
- Nyeko, O. & Aloyocam, H. (2015). Community Perceptions on Dominic Ongwen. Justice and Reconciliation Project. Situational Brief. May 2015.

Peace and Prosecution in Northern Uganda by Katan and Komakech

- Nyeko, O. (2017). Who Cares About Dominic Ongwen's Trial? Justice and Reconciliation Project. Blog Post. February 21, 2017.
- Nalule, C. & Odoi-Musoke, R. (2012). The Complementarity Principle Put to the Test. In Nhemielle V. (Ed.), *Africa and the Future of International Criminal Justice*. Eleven International Publishing.
- Nouwen, S. (2013). Ch. 12 The ICC's Intervention in Uganda: Which Rule of Law Does it Promote? In Zurn, Nollkaemper, and Peerenboom (Ed.), *Rule of Law Dynamics: In an Era of International Law and Transitional Governance*. Cambridge University Press.
- Nudd, E. (2006). First Arrest Warrants for the Lord's Resistance Army. The American Non-Governmental Organizations Coalition for the International Criminal Court. Retrieved from: <http://amicc.org/docs/Uganda%20arrest%20warrants.pdf>.
- O'Kadameri, B. (2002). LRA/Government Negotiations 1993-1994. *Conciliation Resources, Accord: An International Review of Peace Initiatives*.
- Peschke, K. (2011). The ICC Investigation into the Conflict in Northern Uganda: Beyond the Dichotomy of Peace versus Justice. In Brown, B. (Ed.), *Research Handbook on International Criminal Law*. 178-205. Cheltenham.
- Pham, Vinck, Stover, Moss, Wierda, & Bailey. (2007). When the War Ends: A Population-Based Survey on Attitudes about Peace, Justice, and Social Reconstruction in Northern Uganda. International Center for Transitional Justice, Human Rights Center, & Payson Center for International Development.
- Pham, Vinck, Wierda, Stover, & di Giovanni. (2005). Forgotten Voices: A Population-based Survey on Attitudes About Peace and Justice in Northern Uganda. International Center for Transitional Justice, Human Rights Center.
- Quinn, Joanna R. (2009). Chicken and Egg? Sequencing in Transitional Justice: The Case of Uganda. *International Journal of Peace Studies*. Vol. 14, (2) 35-53.
- Refugee Law Project and the Human Rights and Peace Centre. (2014). Beyond Juba Project. Retrieved from http://www.beyondjuba.org/BJP1/peace_agreements.php Accessed: December 1, 2014.
- Refugee Law Project. (2005). Peace first, Justice Later: Traditional Justice in Northern Uganda. Working Paper No. 17.

- Refugee Law Project and the Human Rights & Peace Centre. (2009). *Beyond Juba: Building Consensus on Sustainable Peace in Uganda*. In *Tradition in Transition: Drawing on the old to Develop a New Jurisprudence for Dealing with Uganda's Legacy of Violence*. The Faculty of Law, Makerere University. Working Paper No. 1.
- Roach, S. (2013). *Multilayered Justice in Northern Uganda: ICC Intervention and Local Procedures of Accountability*. In Rothe, Meernik, & Ingadottir (Eds), *The Realities of International Criminal Justice*. Martinus Nijhoff Publishers.
- Rome Statute of the International Criminal Court. (1998). The International Criminal Court. Retrieved at: www.icc-cpi.int.
- Stapleton, T. J. (2013). *The Era of Independence: From the Congo Crisis to Africa's World War*. In *A Military History of Africa*, Vol. 3, Praeger Publishing.
- Tenove C. & Radziejowska M. (2013). *The Dog that Barks but Doesn't Bite: Victims Perspectives of the International Criminal Court in Uganda*. The Justice and Reconciliation Project. Policy Brief Number 6.
- U.S. Department of State. Fact Sheet: The Lord's Resistance Army. Office of the Spokesperson. March 23, 2012. Retrieved from <http://www.state.gov/r/pa/prs/ps/2012/03/186734.htm>.
- Wai, Z. (2012). *Epistemologies of African Conflicts: Violence, Evolutionism, and the War in Sierra Leone*. Palgrave Macmillan.

Interviews Cited

- (A. Odongo, in-depth interview, October 27, 2014)
(B. Kabumba, in-depth interview, November 9, 2014)
(B. Otim, in-depth interview, November 13, 2014)
(B. Peace, in-depth interview, November 3, 2014)
(F. Odongyoo, in-depth interview, November 14, 2014)
(H. Musoke Nabukeera, in-depth interview, November 1, 2014)
(O. Onweng, in-depth interview, November 12, 2014)
(P. Douglass, in-depth interview, November 7, 2014)
(M. Mapenduzi, in-depth interview, October 29, 2014)
(J. Bongojane, in-depth interview, November 13, 2014)
(J. Erongot, in-depth interview, November 4, 2014)
(J. Komakech, in-depth interview, October 31, 2014)
(K. Komakech, in-depth interview, October 30, 2014)
(L. Ogora, in-depth interview, November 11, 2014)

Peace and Prosecution in Northern Uganda by Katan and Komakech

(M. Khalil, in-depth interview, November 14, 2014)

(N. Opiyo, in-depth interview, November 4, 2014)

(R. Oywa, in-depth interview, October 31, 2014)

(T. Awany, in-depth interview, October 29, 2014)

(Z. Nampewo, in-depth interview, November 14, 2014)